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NO. 73303-6-I

COURT OF APPEALS, DIVISION I,  
OF THE STATE OF WASHINGTON

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ANDREW PILLOUD,

Appellant,

v.

KING COUNTY REPUBLICAN CENTRAL COMMITTEE,  
LORI SOTELO, COUNTY CHAIRMAN,  
KING COUNTY REPUBLICAN CENTRAL COMMITTEE,

Respondents.

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On appeal from the Superior Court of King County, re:  
Order Denying Petition for Alternative Writ of Mandamus

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BRIEF OF RESPONDENTS KING COUNTY REPUBLICAN  
CENTRAL COMMITTEE, LORI SOTELO, COUNTY CHAIRMAN,  
KING COUNTY REPUBLICAN CENTRAL COMMITTEE

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## I. INTRODUCTION

Appellant invites the Court to overturn both recent and decades-old votes by the Republican Party's grassroots leaders about how best to govern its internal affairs. The Court should reject Appellant's request to substitute his preferred, but repeatedly rejected, internal structure for the Republican Party. The original version of the statute was declared unconstitutional as applied to the King County Republican Central Committee ("KCRCC") nearly fifty years ago, for violating the Fourteenth Amendment to the United States Constitution and the privileges and immunities clause of the Washington State Constitution. Appellant is a successor to the class plaintiffs in the 1967 litigation and bound by the result there.

The passage of a half century (and different iterations of the statute by the Legislature) have not made the statute any less unconstitutional. In the intervening years, the United States Supreme Court has declared such governmental interference in internal party affairs an affront to the First Amendment. Even if the Legislature's interference did not violate the First Amendment, the specific legislation that Appellant seeks to enforce violated both the "single subject" and "subject-in-title" requirements of the State Constitution.

RCW 29A.80.061 is a zombie statute, and this Court should lay it to rest once and for all.

## **II. STATEMENT OF THE CASE**

Appellant, a Republican precinct committee officer whose preferred political structure for the King County Republican Party was rejected, seeks judicial intervention to override Party members' decision on how best to achieve their political ends.

The KCRCC is governed by precinct committee officers ("PCOs"), elected biennially in even years by Republican voters. Following the general election, the PCOs meet to organize the Party. Party leaders for the county are elected and bylaws adopted. CP 20. Afterwards, the County Chairman appoints subordinate officers in the legislative districts subject to PCO ratification. CP 14.

Since RCW 29A.80.061's predecessor, RCW 29A.80.058-.059, was adopted in 1967, the KCRCC has rejected a more district-based structure instead of the Party's preferred county-wide organization. CP 60-62. At the Party's most recent organizational meeting, its PCOs opted to retain the established structure of appointed district chairmen over a proposal to follow the elected district chairman system of RCW 29A.80.061. The vote was 2-1 in favor of appointed district chairmen. CP 34.

Throughout the decades since RCW 29A.80.061's predecessor was declared unconstitutional in 1967, the Party's members have repeatedly rejected electing district chairmen because such a structure has been viewed as politically undesirable. CP 60-62. Over the years, members "consciously chose to reject the method favored by the state legislature." CP 60. The Party did so again last year when it adopted its bylaws. CP 3, 34.

In 1967 and again in 1993, disaffected Republican activists brought lawsuits to force the KCRCC to elect rather than appoint district chairmen. CP 3; 25-33; 65-66. Both times the courts quashed the writs. In 1993, the Court ruled that the plaintiff was estopped from re-litigating the validity of the statute. CP 65-66.

Before Appellant brought this action, the Party noted its First Amendment objection to the statute and provided him with a copy of the controlling U.S. Supreme Court case on the unconstitutionality of state-imposed internal organizational structures for political parties. CP 34-35. Appellant admits being similarly situated to the plaintiffs in the 1967 case. VRP 10-11. The effect of RCW 29A.80.061 is the same as its predecessors – it mandates a different form of political party organization for King County from other county party organizations.

The Party's answer raised both *res judicata* and collateral estoppel as bars to re-litigation of the matter. The Party also raised federal and state constitutional grounds to quash the writ, asserting that (1) RCW 29A.80.061 violates core rights of political association under the First Amendment, and (2) the particular provision also violated both the single subject and subject-in-title mandates of Article II, Section 19 of Washington's Constitution. CP 39. The Attorney General has not intervened here to defend the statute against the identified federal and state constitutional defects, after receiving the required notice of the Party's claims of unconstitutionality. CP 69-71.

### **III. ARGUMENT**

#### **A. This Court may affirm on preclusion grounds or the constitutional issues raised below.**

Quashing the application for a writ of mandamus was the right result. This Court may affirm the lower court under its *res judicata* determination, or on two alternative grounds raised below. RCW 29A.80.061 violates the First Amendment by seeking to compel the Republican Party to adopt an organizational structure its members have repeatedly rejected. The provision is also void under Washington's Constitution because it contravenes the single subject and subject-in-title requirements of Article II, Section 19. This Court may affirm on any ground raised by the pleadings, whether relied on by the lower court or

not. *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P. 2d 1027 (1989).

RCW 29A.80.061's constitutional infirmities were presented to Appellant even before he sought court intervention to impose the rejected structure on the Republican Party, and he received a copy of the U.S. Supreme Court's decision in *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989). CP 34-35. The state and federal constitutional defects were presented to the Court from the outset, in both the Party's answer and its notice to the Attorney General. CP 39; 69-70.

**B. The trial court correctly barred another Republican PCO from re-litigating the question resolved by the 1967 litigation.**

Whether characterized as *res judicata* or collateral estoppel, Appellant is barred from seeking to compel the King County Republican Party to "elect" rather than appoint district chairmen. Appellant is a successor member of the class that sought to compel district chairman elections under the original version of RCW 29A.80.061. Appellant conceded that he is "in the same basic position relative to the challenging of the statute" as the original challengers. VRP 10-11. A litigant is entitled to "one but not more than one fair adjudication of his or her claim." *Lejeune v. Clallam County*, 64 Wn. App. 257, 266, 823 P.2d 1144 (1992). Appellant, as a successor to the office held by the 1967 challengers, is

considered to have been a party to the prior class action. “A party is one who appears and participates in the proceeding or one whose interests are properly placed before the court.” *Id.* at 267 (internal quotation marks and citations omitted). Both the original challengers and Appellant sought to enforce “rights” granted to them by virtue of their PCO status. All members of a class are parties to a class action and the resolution of the class action is determinative of the rights of each member of that class. 14 K. TEGLAND, WASH. PRAC., CIVIL PROC. 463, § 11:89 (2d ed. 2009).

All four elements of collateral estoppel are also present. First, the issue decided in the previous action must be identical with the issue posed in the later one. Second, there must have been a final judgment on the merits in the first action. Third, the party to be barred must have been a party or be in privity with a party to the prior action. Fourth, application of the doctrine must not work an injustice on the party to be barred. *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983).

RCW 29A.80.061 is indistinct from the 1967 and 1993 versions of the statute. RCW 29A.80.061 still creates different structures for the Republican Party in Washington. Parties in counties with multiple legislative districts would have diffused decision-making, based at the legislative district level, whereas smaller counties would still have centralized decision-making. As in the 1993 litigation, while such diffused

party governance might be attractive to legislators, it has never been viewed by the King County Republican Party as advancing its political objectives. CP 60-61. The issue presented here is the same as the 1967 and 1993 cases – compelled election of district chairmen. The judgments in the 1967 and 1993 cases regarding district chairmen elections are both final. Appellant suffers no injustice from the method for party governance preferred by 2/3 of the party’s PCOs. He just lost the vote. Further, applying long-standing rules of law is no injustice. *Rains*, 100 Wn.2d at 666.

The prior determinations that the predecessors of RCW 29A.80.061 violated the Fourteenth Amendment and the privileges and immunities clause of Washington’s Constitution bind Appellant and bar the remedy sought.

**C. Washington has no compelling interest in whether the King County Republican Party elects or appoints its district chairmen. RCW 29A.80.061 violates the First Amendment.**

State intervention in a political party’s internal affairs is constrained by the First Amendment.<sup>1</sup> The state may not mandate a particular organizational structure on a political party. “[A] political

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<sup>1</sup> Restrictions on the right of association also directly impact core speech rights guaranteed by the First Amendment. *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 300, 102 S. Ct. 434, 70 L. Ed. 2d 492 (1981) (“[T]o limit the right of association places an impermissible restraint on . . . expression.”).

party's determination of the structure which best allows it to pursue its political goals, is protected by the Constitution. Freedom of association also encompasses a political party's decisions about the identity of, and the process for electing its leaders." *Eu*, 489 U.S. at 229 (internal quotation marks and citations omitted). Where a state statute "burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest." *Id.* at 222.

Appellant offered no compelling interest below, instead merely asserting that the Legislature had adopted a statute dictating the King County Republican Party's internal structure. Even had he offered some state interest, the realm of compelling state interests is very limited. The Attorney General's decision not to participate and defend the statute from either the federal or state constitutional challenges speaks volumes to the state's interest and whether any interest would be "compelling."

The state may intervene in internal affairs only to make sure that elections are "fair and honest." *Eu*, 489 U.S. at 232. In *Eu*, California asserted as a "compelling interest" the "democratic management" of the "party's internal affairs." *Id.* The Supreme Court rejected that as a compelling interest, observing that "the State has no interest in 'protect[ing] the integrity of the Party against the Party itself.'" *Id.*

(quoting *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986)). At the most recent organizational meeting of the KCRCC, a proposal to elect district chairmen was rejected by a 2-1 vote. “[A] State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure, any more than it can tell a party that its proposed communication to party members is unwise.” *Eu*, 489 U.S. at 233.<sup>2</sup>

**D. The Legislature violated both strictures imposed by Art. II, § 19 by adopting RCW 29A.80.061 as an undisclosed subject in an unrelated bill.**

The original version of RCW 29A.80.061 was stricken for violating Article II, Section 19 of Washington’s Constitution. CP 29-32. The most recent legislative attempt to force the KCRCC to elect district chairmen again violates the provision, which provides that “[n]o bill shall embrace more than one subject, and that shall be expressed in the title.” This contains two checks against legislative abuse: (1) no bill shall embrace more than one subject (single-subject rule), and (2) no bill shall

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<sup>2</sup> Appellant may raise *Marchioro v. Chaney*, 442 U.S. 191, 99 S. Ct. 2243, 60 L. Ed. 2d 816 (1979) in reply, but *Marchioro* cannot save the statute. The *Eu* court distinguished *Marchioro* on the grounds that “party members did not claim that these *statutory* requirements imposed impermissible burdens on the party or themselves.” *Eu*, 489 U.S. at 232 n.22 (emphasis in original). The Republican party has consistently objected to the statutory requirement of RCW 29A.80.061 and its predecessors as a burden on constitutional rights. *See generally* CP 34, 39, 60-62, 69. The Party’s constitutional objection was discussed when Appellant’s preferred structure was debated. CP 3.

have a subject which is not expressed in the title (subject-in-title rule). *See State ex rel. Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 249, 88 P.3d 375 (2004). Statutory provisions are unconstitutional if they violate either requirement.

The Legislature adopted the provision mandating election of district chairmen as part of “An Act Relating to a qualifying primary.” However, RCW 29A.80.061 has nothing to do with primary elections. Instead, it was buried 50 pages deep in the bill. The statute had its origins in SB 6453. The bill’s title was amended once by the Legislature, but neither the original title nor the amended title had anything to do with political party internal governance. The first title was “AN ACT Relating to the modified blanket primary.” SB 6453. The amended title referred instead to a “qualifying primary.” ESB 6453<sup>3</sup> (A detailed discussion of the bill’s history can be found in *Wash. State Grange v. Locke*, 153 Wn.2d 475, 481-85, 105 P.3d 9 (2005) (litigation arising from the governor’s partial veto of the bill)). Not even the final bill report, detailing both its provisions and the governor’s partial veto, makes any reference to the party organization provisions of the law.<sup>4</sup> CP 51-52. The state Supreme Court has already considered the scope of the legislation in which RCW

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<sup>3</sup> The title pages of SB 6453 and ESB 6453 are attached as Appendix A.

<sup>4</sup> The district chairman provision, Section 150, was added by floor amendment to the Bill. Available at <http://app.leg.wa.gov/dlr/billsummary/default.aspx?year=2003&bill=6453> (last visited August 31, 2015).

29A.80.061 was buried. Internal political party affairs do not come within the scope of the term “qualifying primary” as defined by the Court:

Following established precedent to this case, we must first look to the common and ordinary meaning of “AN ACT Relating to a qualifying primary” by referring to a dictionary definition of the title’s terms. . . . [T]he common and ordinary meaning of the term “qualifying primary” is an election in which the list of potential candidates for an office is reduced or refined and certain candidates are chosen to advance to the later general election.

*Locke*, 153 Wn.2d at 495-6. Political parties are organized *after* the general election, by elected PCOs. RCW 29A.80.030. Internal political party organization is not part of the “common and ordinary meaning” of a “qualifying primary.”

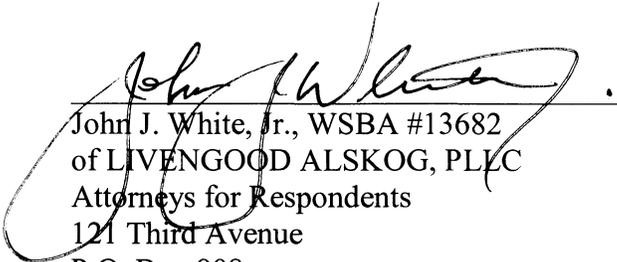
An act violates the single-subject rule if it has a general title and its provisions lack rational unity, or if it has a restrictive title and contains provisions not fairly within the scope of that title. *See City of Burien v. Kiga*, 144 Wn.2d 819, 825-26, 31 P.3d 659 (2001) (rational unity); *State v. Broadway*, 133 Wn.2d 118, 127, 942 P.2d 363 (1997); *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 26, 200 P.2d 467 (1948) (provisions not within scope of title). An act violates the subject-in-title rule if the plain language of its legislative title does not indicate the scope and purpose of the bill to an inquiring mind or it does not give notice to parties whose rights and liabilities are affected by the legislation. *Patrice*

*v. Murphy*, 136 Wn.2d 845, 853-54, 966 P.2d 1271 (1998). Chapter 271, laws of 2004 violates both the single-subject rule and the subject-in-title rule. The law violates the single subject rule because regulating political party internal affairs after a general election lacks rational unity to conducting primary elections and is outside the scope of “An Act Relating to a qualifying primary.” The law violates the subject-in-title rule because its title gives no clue that there are provisions that lack any connection to primary elections but, instead, seek to mandate internal structures for some major party organizations in the state.

#### IV. CONCLUSION

The Superior Court was right to quash the writ. This Court should affirm.

DATED this 14<sup>th</sup> day of September, 2015



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**DECLARATION OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on September 15, 2015, I caused service of the foregoing to the following counsel of record:

|  |   |
|--|---|
| <i>Appellant:</i><br>Andrew Pilloud, <i>Pro Se</i><br>2600 2 <sup>nd</sup> Avenue, Apt. #807<br>Seattle, WA 98121-1238<br>Ph: 206-279-2777 | <input checked="" type="checkbox"/> via U.S. Mail<br><input type="checkbox"/> via Hand Delivery<br><input type="checkbox"/> via Facsimile - xx<br><input type="checkbox"/> via Overnight Mail |
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**Dated:** September 15, 2015

  
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