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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY [Signature]

DEPUTY

Case # 37654-7-II

**IN THE COURT OF APPEALS OF THE STATE
OF WASHINGTON
DIVISION II**

CORNELL HOHENSEE, Appellant

and

**CLALLAM COUNTY COMMISSIONERS
STEPHEN P. THARINGER, MICHAEL C.
CHAPMAN, HOWARD V. DOHERTY JR.,
SELINDA BARKHUIS, RICH SILL, DOES
1,2 3,4,5,6,7,8,9,10, Respondents.**

**ON APPEAL FROM CLALLAM COUNTY SUPERIOR COURT
Clallam County Cause No. 07-2-00644-6**

APPELLANTS' BRIEF

CORNELL HOHENSEE
Appellant,
in proprium personam
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11/28/08 Expires 11/28/11

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I ASSIGNMENTS OF ERROR

1. The trial court erred by exercising jurisdiction when such jurisdiction was reserved for a jury per CR38, and U.S. Constitution Amendment Seven.
2. The trial court erred in entering an order on November 16, 2007, denying Hohensees' Motion To Bar Office Of The Prosecutor.
3. The trial court erred by its' failure to redress Hohensees' Complaint filed June 29, 2007, secured under U.S Constitution, Amendment One.
4. The trial court abused its' discretion by dismissing the Complaint summarily, and in finding that Hohensee had no standing to petition.
5. The trial court erred by assessing against Hohensee, costs for these proceedings.

II ISSUES

- A. Does the trial court Judge have authority to assume jurisdiction and to proceed thereunder without the consent of the parties, when the fee for a jury trial has been paid and demand for said jury trial given.
(Assignment of Error 1)
- B. Can the Clallam County Prosecutor represent multiple individual Defendants while serving as a representative of the opposing party, ie. Plaintiff Hohensee? (Assignment of Error 2)
- C. Does Hohensee retain an absolute right to have his grievance redressed per U.S. Constitution, Amend One? (Assignment of Error 3, 4)
- D. Is it just to assess Hohensee personally for the cost of failures of officials in their fiduciary duties?

III. STATEMENT OF THE CASE

On March 13, 2007, Hohensee attended a scheduled meeting of the Clallam County Commissioners to offer input on a proposed county ordinance to be considered on that occasion. Said ordinance was proposed

as a Junk Vehicle Nuisance Ordinance, later designated as No. 822, and referred to hereafter as Ordinance. (CP 81) (See Defendants' Ex.C).

Hohensee raised the following objections orally at said meeting:(CP 70)

a. The Ordinance failed to provide compensation to the owner of the property being condemned as required by law. (Constitution of Washington, Art. 1, sec 21)(US Const. Amendment 5).(CP70)

b. Enforcement of the Ordinance as written would violate the due process commanded by the U.S. Constitution, Amendments 1, 4, 5, 7, 9, and 14. (CP70)

c Enforcement could activate title 18 of the U.S. Code, against those ordered to do so. (CP70)

d. The Commissioners had no authority to ordain punitive sanctions against the citizens pursuant to the statutes they cited (RCW 36.32.120, and RCW 46.55.2140). Said statutes allow for abatement only with costs. Nothing in the cited statutes could be read to include criminal sanctions against the property owner for possession of lawful, tax paid, registered personal property, and abatement could take place only within the constraints of due process. Hohensee noticed the meeting that if the final version of the Ordinance was not corrected, he would seek redress.

The final version of the Ordinance was enacted without the necessary safeguards. Consequently, Hohensee choosing not to offer tacit approval of such an anomaly, commenced the suit. (CP70)

On June 29, 2007, Hohensee filed and served a complaint in

Clallam County Superior Court seeking Injunctive and Declaratory relief, naming some of the Respondents named herein. (CP70)

On July 16, 2007, Debra Kelly, Clallam County Prosecutor filed an appearance on behalf of all the Defendants, by Mr. Mark Nichols, Chief Civil Deputy Prosecutor. (CP147)

The 20 day rule for an answer passed without an answer having been filed, and Hohensee filed a Motion And Order For Default on August 24, 2007. (CP65) At the hearing, on September 7, 2007, Hohensee asked the Hon. Williams, K. When a jury would be allowed to be present. The Court answered that he didn't give advise, but that the information was readily available at the library or on the internet. Hohensee responded that he was asking not for advise, but to find out what the Court required.

Hohensee then moved to bar the Office Of The Prosecutor from representing the Defendants on grounds that said Prosecutor represented Hohensee as a citizen, and couldn't represent both the Plaintiff and the Defendants simultaneously without prejudice to at least one or both of the parties. And further, should there be found merit in Hohensees' cause, the Prosecutor would have been advocating for the defeat of the law he is bound to uphold.

Judge Williams ruled that he would consider a written motion on this issue provided that Hohensee adhered to the filing procedures of the court.

Hohensees' motion for Default Judgment was denied
summarily.(CP61)

From that hearing date forward, there were various motions by both
parties, and hearings culminating with the dismissal of Hohensees'
Complaint on 03/28/2008 (CP 31) , and a prompt denial of his Motion For
Reconsideration on 04/10/2008. (CP12)

IV ARGUMENT

A party is entitled “full right to be heard according to law”, CJC 3(A)(4).

All of the judgments herein are devoid of true legal standing. They
were rendered even though jurisdiction was expressly reserved for a jury,
for which the required fee was paid and acknowledged.

Added to the leaden question of jurisdiction is the fact that the
Court refused to consider the oppressive aspects of enabling a patently
unconstitutional ordinance to lie against the people in morbid repose.
“When fundamental rights are violated, even for minimal periods of time,
the harm is irreparable”. *Elrod v. Burns*, 427 U.S. 347.

The defects outlined in this cause should not be spread further upon
the record, and the associated costs should not, at Common Law be
assessed against Hohensee for acting on his moral and civic duty to the
people and County when the Clallam County stewards utterly failed. (CP
51, 70) (Please see RCW 42.20.100).

The Appeal should be granted for relief under the First Amendment
Petition Clause:

“Central to an understanding of the full contours of the Right to Petition the Government for Redress of Grievances is a body of historical and archived evidence regarding the Natural Right of the people to a response from Government to their Petition for redress”.(Journals of the Continental Congress 1:105- 113). “Congress shall make no law....abridging....the right of the people...to petition the Government for redress of grievances”.(U.S Constitution, First Amendment).

Alternately, Appeal should be granted due to the material facts at issue, and the gravity of the issues. “The claim and exercise of a Constitutional right cannot be converted into a crime.” *Miller v. U.S.* 230 F 2d 486 ,489.

Appeal should be granted due to the vague and unresponsive nature of the rulings under review. Hohensee was accorded the opportunity to speak freely on each occasion, however his allegations were never contested with facts or argument and so should be treated as admissions.

The factual record of this case clearly shows that Hohensee repeatedly attempted to have his petition for relief (redress) heard in a lawfully prescribed jury forum. (CP25)

The factual record of this case clearly shows that the government has refused that petition at every instance for redress of these constitutional torts. It is a valid consideration of the facts of this case that the Respondents, their attorney (Clallam County Prosecuting Attorney

Debra Kelly and the Hon. Williams, K., are all members of the same organization and have a common paymaster. This fact alone should have aided in a decision to allow this inquiry to go to a jury. This has raised a corollary legal question of its' own.

The First Amendment is the taproot anchoring the rest of the document, providing surety that wrongdoing can be checked. A decision denying these essential girders of the law is as wondrous as it is unsustainable.

The right of government, limited by the Constitution including the *Right To Petition* secures a direct, practical exercise of Popular Sovereignty and self-government, and is beyond question. Therein lies the success of Constitutional government and a free and content people.

The Decision And Order by the lower court in this case and failure to give strict consideration to Hohensees' Petition Clause claim has removed from him and the citizens a right secured to them by the Constitution of the U.S., and by the binding *oaths* of those who have brought about said writs.

The U.S. Supreme Court has confirmed that “The very idea of a government, republican in form, implies a right on the part of its' citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances”.(United States v. Cruikshank, 92 U.S. 542,552) and has recognized that the First Amendment expressly

guarantees that right against abridgment by Congress as a right that cannot be denied without violating those fundamental principles of liberty and justice that lie at the base of all civil and political institutions. (Hebert v Louisiana 272 U.S. 312-316, and Powell v Alabama 287 U.S.45,67), and has recognized this right to petition as one of the most precious of the liberties safeguarded by the Bill Of Rights” (Mine Workers v Illinois Bar Assn., 389 U.S. 217, 222), making explicit that “The right to petition extends to all departments of government “, and that “The right of access to the courts is...but one aspect of the Right to Petition.” (California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508,510).

The Court erred in assuming summary jurisdiction when it was explicitly noticed in open court and within the pleadings that such jurisdiction was reserved for a jury (Article I Section 21, Washington Constitution)” The right of trial by jury shall remain inviolate...” and further enunciated in CR 38 (a,b,c), and additionally, “However late this objection has been made, in any cause, in an inferior or appellate court of the United States, it must be considered and decided before any court can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction” (37 U.S. 657,718).

CONCLUSION

The Superior Court failed to address in any meaningful way Hohensees' complaint. Any objective review of the Court records reveals

that the issues, easily understood by ordinary people, and directly relative to their well-being were not addressed or redressed at all. Therefore, the Court missed an opportunity to engender the gratitude of the people whom it serves, simply by requiring the individuals who are the Respondents herein to clean up their “*ordinance*” as required by their *oaths*.

The resources of the Clallam County Prosecutor are being used on behalf of named individuals who are acting outside of the radius of their competence, and so as *private individuals*. These limitless resources, part of which emanate from Hohensee, are turned against him in his case.

Hohensee placed a bone fide grievance before the Court, not as a trained barrister, but as a citizen who perceived serious conduct, however well intended, that contends with our law, and which deprived him and others of the majority of those rights enshrined in the law. From that point and to this instant it is the responsibility of those to whom the people have delegated authority, to redress that *grievance*. There is no Constitutional test to determine whether or not a grievance receives due consideration. It is mandatory.

The dismissal of Hohensees' action, if affirmed, would serve not the bona fide interests of the County, but instead may serve only to unleash arbitrary power. Our law is not such that upon some pretext of a good cause, the Bill Of Rights can be subverted.

Using a style of logic unknown to Hohensee, the lower Court has

determined and Ordered that Hohensee be assessed for the costs of seeking justice for the Citizens and himself, when the Prosecutor, in her advisory capacity, and the Respondents *failed and refuse* to discharge their shared mandate.

Now therefore, your Appellant requests this Honorable Court to rectify such Constitutional torts as it finds in the record of this cause if any there it finds, authored by the named members of the Clallam County Corporation, and to:

1. Make an Order directing same to modify Clallam County Ordinance No. 822, known as the Junk Vehicle Nuisance Ordinance so as to *compensate at fair market value* any citizen who is to have his property condemned by such *ordinance* enforcement.
2. In the alternative, remand for trial on the merits.
- 3 Award costs to Hohensee,
- 4 Take whatever other actions it deems just.

Respectfully submitted on this 26th day of July, 2008.

By: 
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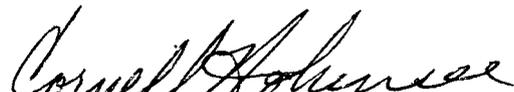
STATE OF WASHINGTON

BY _____
DEPUTY

Certificate of Service

I certify that I have served by U.S. Mail, postage prepaid, a copy of the within document on this 26th day of July 2008 to:

Mr. Douglas E. Jensen
Chief Civil Deputy Prosecutor
223 East Fourth street
Port Angeles, Wa. 98362


Cornell Honensee

VARIFICATION

I certify that the facts set forth in the within document are true to the best of my knowledge, information, and belief.

 7.26.2008.

Cornell Hohensee, sui juris

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