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NO. 94955-7

SUPREME COURT OF THE STATE OF WASHINGTON

NICOLE BEDNARCZYK, AND CATHERINE SELIN,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Petitioners,

v.

KING COUNTY, A MUNICIPAL CORPORATION,

Respondent.

**RESPONDENT KING COUNTY'S ANSWER TO AMERICAN
CIVIL LIBERTIES UNION OF WASHINGTON'S AMICUS
CURIAE BRIEF**

DANIEL T. SATTERBERG
King County Prosecuting Attorney

KAREN A. POOL NORBY, WSBA #22067
JANINE JOLY, WSBA #27314
HEIDI JACOBSEN-WATTS, WSBA #35549
Senior Deputy Prosecuting Attorneys
Attorneys for Respondent King County
King County Admin Building
500 Fourth Avenue, Suite 900
Seattle, Washington 98104
(206) 296-0430 Fax (206)-296-8819

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I. INTRODUCTION

Amicus, the American Civil Liberties Union of Washington (ACLU-WA), raises the issue of jury diversity in Washington and argues that increasing juror pay will improve jury diversity. While King County agrees that jury diversity is an issue that needs to be addressed, the concerns raised by ACLU-WA regarding the level of juror pay set by statute are appropriately directed to the Legislature. King County is in compliance with the current juror pay statutes and ACLU-WA's arguments to pay jurors under the Washington Minimum Wage Act (WMWA) are in conflict with express statutory provisions and unsupported by case law.

II. ARGUMENT

A. Racial diversity in juries is not at issue in this case.

There are three issues raised by Petitioners in this appeal:

- (1) Is "economic status" a protected classification within the meaning of RCW 2.36.080(3)?
- (2) Are jurors "employees" within the meaning of the WMWA, RCW 49.46.010(3)?
- (3) Are jurors entitled to payment of compensation beyond the reimbursement of expenses authorized by RCW 2.36.150?

See Petitioners' Statement of Grounds for Direct Review at 3.

Thus, the issues on review are limited to whether juror pay in King County is constrained by RCW 2.36.150 and whether such payment discriminates against Petitioners based on economic status.

Notably, the two individual petitioners before the Court are presumed not to be Black or African-American because Petitioners conceded that their standing to raise issues of racial discrimination based on juror payment statutes dissolved when they voluntarily dismissed former Plaintiff Ryan Rocha and all of his race-based claims.¹ Moreover, even if juror diversity was at issue in this case, it would not change the fact that juror pay is the Legislature's purview, not the Court's.

The Court may promulgate court rules, such as recently adopted General Rule 37,² that strive to eliminate the unfair exclusion of potential jurors based on race or ethnicity in the jury selection process. But where the legislature has enacted a statute, absent a constitutional challenge, the court's power is limited to interpreting the statute. *See, e.g. Robb v. City of Tacoma*, 175 Wash. 580, 586, 28 P.2d 327 (1933) ("Courts do not sit to review or revise legislative action, but rather to enforce the legislative will when acting within its constitutional limits."). No such constitutional

¹ *See* CP 693-697 (Plaintiff Ryan Rocha's Motion to Voluntarily Dismiss Claims Without Prejudice); CP 675-678 (Order Granting Defendant King County's Motion for Summary Judgment).

² The American Civil Liberties Union of Washington originally proposed the rule. *See* Order No. 25700-A-1221.

challenge to the juror payment statute is before the Court in this petition for review.

B. The issues before the Court relate solely to interpretation of state statutes.

To the extent ACLU-WA claims that jurors should be paid under the WMWA, its arguments are based on inapposite case law and in conflict with the statute.

The cases cited by ACLU-WA in support of the argument that the WMWA applies, concern jurors seeking compensation for injuries sustained during jury service.³ The cases do not involve jurors seeking to be paid minimum wage. And the only Washington case cited by ACLU-WA in support of this argument, was addressed in the County's opening brief. Brief of Respondent at pages 26-29. In *Bolin v. Kitsap County*, the Court held that the injured juror "was an employee" of Kitsap County solely for purposes of the Industrial Insurance Act (IIA). *114 Wn.2d 70, 785 P.2d 805 (1990)*. The IIA definition of "employee" is different than the WMWA definition, which excludes individuals, such as jurors, who are not "employed by an employer." See RCW 49.46.010(3)(d).

³ *Indus. Comm'n of Ohio v. Rogers*, 171 N.E. 35, 35 (Ohio 1930) (juror seeking compensation related to fall down stairs); *Holmgren v. N.D. Workers Comp. Bureau*, 455 N.W.2d 200, 203 (N.D. 1990)(juror seeking compensation for injuries related to fall down stairs); *Yount v. Boundary Cty.*, 796 P.2d 516, 526 (Idaho 1999) (juror seeking compensation for injuries suffered while on jury duty); *Waggener v. Cty. of Los Angeles*, 39 Cal. App. 4th 1078, 1079, Cal. Rptr. 2d 141 (Cal. Ct. App. 1995) (juror seeking compensation for injuries related to fall from jury box).

Thus, ACLU-WA's attempt to analogize cases in which courts have held that jurors are employees for purposes of Workers' Compensation are unavailing because jurors do not meet the statutory definition of employee under the WMWA.

Title 50 RCW, the Unemployment Compensation statute, demonstrates why analogizing Workers' Compensation to the WMWA fails. If jurors were employees for purposes of the WMWA, they could arguably be eligible for unemployment benefits when dismissed from jury service. But the Legislature clearly did not intend for jurors to be employees for purposes of the Unemployment Compensation statute, which expressly provides that jury service does not disqualify an otherwise qualified individual from receiving benefits and that compensation for jury duty is not considered wages. *See* RCW 50.20.117. Courts are obligated to read statutes harmoniously rather than in conflict, to give effect to both statutes. *Tollycraft Yachts Corp. v. McCoy*, 122 Wn.2d 426, 437, 858 P.2d 503 (1993).

The Legislature has stated that jurors are not employees under the WMWA and RCW Title 50: jurors do not fall within the statutory definition of "employee" in the WMWA and are not disqualified from receiving unemployment benefits due to jury service. Most significantly,

the Legislature created a specific statute for juror pay.⁴ The specific statute for juror pay cannot be overridden by the minimum wage statute. *See O.S.T. ex rel. G.T. v. BlueShield*, 181 Wn.2d 691, 701, 335 P.3d 416 (2014).

C. Policy arguments should be directed to the Legislature.

The Legislature has the authority to set juror payment at a fixed amount or a calculated amount that can take into account the impact of inflation. The Washington Legislature chose a fixed amount when it adopted RCW 2.36.150. In 2009, the Legislature considered an increase in the maximum juror pay from \$25 to \$65 per day and to require an annual adjustment to the maximum daily rate for juror pay based on changes in the consumer price index.⁵ The bill was not successful.

Although juror pay has increased relatively little since its statutory inception, the statutory provisions are clear and counties must follow them. Any future change to the statute to address the policy issues raised by Amicus needs to be addressed by the Legislature.

⁴ *See also* RCW 2.36.165, creating the conundrum of how the court as a juror's supposed "employer" could give the juror "leave" from employment as a juror to serve as a juror.

⁵ The bill also would have required the state to reimburse the county or city for juror pay after the first day of attendance, provided that the county or city fulfilled certain requirements and specifically appropriated funding was available. H.B. 1937, 61st Leg. Sess. (Wn. 2009).

III. CONCLUSION

There are no race-based claims presented in this appeal. Juror pay is governed by statute and any adjustments must be made by the Legislature.

DATED this 20th day of April, 2018.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

Respectfully submitted,

/s/ Heidi Jacobsen-Watts

KAREN A. POOL NORBY, WSBA #22067

JANINE JOLY, WSBA #27314

HEIDI JACOBSEN-WATTS, WSBA#35549

Senior Deputy Prosecuting Attorneys

Attorneys for Respondent King County

King County Prosecuting Attorney

500 Fourth Avenue, Suite 900

Seattle, WA 98104

(206) 296-0430 Fax (206) 296-8819

Karen.Pool-Norby@kingcounty.gov

Janine.Joly@kingcounty.gov

Heidi.Jacobsen-Watts@kingcounty.gov

CERTIFICATE OF SERVICE

I, NADIA RIZK, hereby certify that on April 20, 2018, I electronically filed the foregoing with the Clerk of the Court for the Washington Supreme Court by using the Washington State Appellate Courts' web portal system.

I certify that all participants in the case are registered electronic users and that service will be accomplished by the appellate portal system.

Dated this 20th day of April, 2018 at Seattle, Washington.

/s/ Nadia Rizk
NADIA RIZK
Paralegal
King County Prosecuting Attorney's
Office

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

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Comments:

Sender Name: Nadia Rizk - Email: nadia.rizk@kingcounty.gov

Filing on Behalf of: Heidi Joanne Jacobsen-Watts - Email: Heidi.Jacobsen-Watts@KingCounty.gov (Alternate Email:)

Address:
516 3rd avenue Room W-400
Seattle, WA, 98104
Phone: (206) 477-1120

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