

79966-1

No. 255271

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

HOWARD F. DELANEY,
Appellant,

v.

THE BOARD OF SPOKANE COUNTY COMMISSIONERS, et al,
Respondent.

BRIEF OF APPELLANT

SCOTT R. STAAB, WSBA #23287
Attorney for Appellant

Law Office of
Scott R. Staab
430 W Indiana Ave
Spokane, WA 99205
509-327-6100

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A. ASSIGNMENTS OF ERROR

1. Appellant assigns error to finding of fact (11), stating that “Defendant Board of County Commissioners did not under Resolution No. 02-0403 establish and/or fund the 10th Spokane County District Court Judge position as provided for under SB 6596 (Laws of 2002, ch. 135).” [CP 102.]

2. Appellant assigns error to that part of conclusion of law (4), providing that “Engrossed Substitute House Bill No. 1881 (Laws of 1991, ch. 313 § 2, 3) and House Bill No. 1467 (Laws of 1991), ch. 354 § 1) amending RCW 3.34.101, RCW 3.34.020 and adding a new section denominated as RCW 3.34.025 did not create a legal duty requiring Defendant Board of County Commissioners of Spokane County to establish and/or fund the 10th District Court Judicial position created by the Legislature under SB 6596 (Laws of 2002, ch. 135). Defendant Board of County Commissioners of Spokane County retains the discretionary right to establish and/or fund the 10th District Court Judicial position created by the Legislature under SB 6596 (Laws of 2002, ch. 135) which amended RCW 3.34.010.” [CP 103.]

3. Appellant assigns error to conclusion of law (5), which provides: “Reading RCW 3.34.020, .025 together, the Defendant

Board of Spokane County Commissioners has discretion to create the 10th District Court Judicial position, and has two years from creation to phase-in funding of that position pursuant to RCW 3.34.025.” [CP 103.]

4. Appellant assigns error to conclusion of law (6), which provides: “*State v. Yakima County Commissioners*, 123 Wn.2d 451, 869 P.2d 56 (1994) stands for the proposition that every additional district court position created by the legislature after the base number of judges established by Engrossed Substitute House Bill No. 1881 (Laws of 1991, ch. 313 § 2, 3 and House Bill No. 1467 (Laws of 1991, ch. 354 § 1) requires approval by the legislative authority as provided for in RCW 3.34.025. The base number of judges established by Engrossed Substitute House Bill No. 1881 (Laws of 1991, ch. 313 § 2, 3) and House Bill No. 1467 (Laws of 1991, ch. 354 § 1) for Spokane County was nine (9). The 10th District Court Judicial position for Spokane County created by the Legislature under SB 6596 (Laws of 2002, ch. 135) required approval by the Defendant Board of Spokane County Commissioners under RCW 3.34.025.” [CP 103.]

5. Appellant assigns error to conclusion of law (7), which provides: “The 1991 amendments to RCW 3.34.010 established a

baseline number of judicial positions in Spokane County at nine (9); any deviation from the number of judicial positions in 1992 are required to follow the mechanism set forth in RCW 3.34.020, .025 – which is contingent upon the Defendant Board of Spokane County Commissioners approving to fund any increase from nine (9).” [CP 103-04.]

6. Appellant assigns error to conclusion of law (8), which provides: “Defendant Vicky M. Dalton, Spokane County Auditor, has no legal duty to accept Plaintiff’s Declaration of Candidacy for the 10th District Court Judicial position and place Plaintiff’s name on the 2006 ballot for such position because Defendant Board of Spokane County Commissioners has not established and/or funded the 10th District Court Judicial position.” [CP 104.]

7. Appellant assigns error to the Superior Court’s order denying Appellant’s Writ of Mandamus directed toward Defendants Vicky M. Dalton and the Spokane Board of County Commissioners. [CP 104.]

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether RCW 3.34.010, which provides that Spokane County "shall" have ten full-time elected district court judges, imposes a duty upon the Spokane County Commissioners and Spokane County Auditor to place ten district judicial position on the elections ballot and accept Mr. Delaney's properly tendered declaration of candidacy for the tenth position. [Assignments of Error 1-7.]

C. STATEMENT OF THE CASE

The facts are relatively straight forward and undisputed. In Washington State, district court judges are elected quadrennially, with the most recent such election in November, 2006. [CP 19 and RCW 3.34.020.] The Washington State Constitution mandates that "The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace." WA Const. art. IV, § 10. Justices of the peace are the historical antecedent of current-day district court judges. RCW 3.30.115.

The Legislative mandate to set the number of judges is codified by statute. Chapter 3.34 RCW sets forth the number of

district court judges for each county, along with the method and manner for changing this number.

In 2002, then-senator Jim West from Spokane co-sponsored a bill to amend RCW 3.34.010 to increase the number of district court judges in Spokane from nine to ten. [See Senate and House Bill Reports for SB 6596, attached hereto as Exhibits A and B, also available at

<http://apps.leg.wa.gov/billinfo/summary.aspx?year=2001&bill=6596>]

Several Spokane District Court judges along with Spokane County Commissioner Kate McCaslin testified before the Legislature in favor the amendment. The Legislature found that the weighted case load analysis was outdated, but that a more accurate analysis showed that “Spokane County needs an additional judge.” In addition, the Legislature found that the “county legislative authority wants the new position to be created and has agreed to pay for it.”

[Ex. B.]

As a result, RCW 3.34.010 was amended to increase the number of district court judges in Spokane County from nine to ten. See Laws of 2002, ch. 138 § 1. Since 2002, this statute has read: “The number of district judges to be elected in each county shall be: ... Spokane, ten:”

Shortly after this statute was amended, the Spokane Board of County Commissioners ("Board") adopted Resolution 02-0403, amending the Spokane County Districting Plan, as set forth in the Spokane County Code, to read: "There shall be ten elected full-time judges in the Spokane County District." [CP 50, 57, 58; SCC 1.16.020; Exhibit C.] However, within the resolution that amended the districting plan, the Board noted:

that by amending the Spokane County District Court Districting Plan to increase the number of full-time District Court Judges from nine (9) to ten (10) in Spokane County, the Board is not establishing the additional tenth position. This position will be established subsequent to the effective date of SB 6596, [handwritten] and at the sole discretion [sic] of the Board of County Commissioners.

[FOF 7; CP 101-02; Ex. C.] Since the 2002 amendment to the Spokane County Districting Plan, the Board has not funded the tenth district court judicial position.

The Appellant, Howard Delaney, is a registered Spokane County voter and an attorney licensed to practice in the State of Washington. [CP 15-16.] He is eligible under RCW 3.34.060 to file a Declaration of Candidacy for Spokane County District Court Judge. [FOF 1; CP 100.]

In July, 2006, before the one-week period for filing declarations of candidacy, Mr. Delaney contacted Respondent, Vicky M. Dalton, Spokane County Auditor in charge of Spokane County elections, to determine if the tenth district court judicial position would be on the elections ballot for 2006. [FOF 8; CP 102.] On July 14, 2006, Ms. Dalton confirmed with Mr. Delaney that the tenth position would not be on the elections ballot because the Board had not established or funded the tenth position. Ms. Dalton also confirmed that she would not accept Mr. Delaney's properly tendered Declaration of Candidacy for the tenth position should he submit it along with the applicable filing fee. [FOF 9; CP 102.]

Mr. Delaney then filed this Writ of Mandamus action to compel the Board to fund the tenth position and to compel Ms. Dalton to accept his declaration of candidacy for the tenth position. [FOF 10; CP 102.] In summary proceedings, the Superior Court found that Mr. Delaney was a beneficial party and that his Application for Writ of Mandamus was the proper procedure for seeking the relief requested. [FOF 10; COL 2, 3; CP 102-03.] Nevertheless, the Court concluded that a Writ was not warranted by law because neither the Board nor Ms. Dalton was under a duty to

act. Instead, as set forth in its conclusions of law, the Superior Court construed chapter 3.34 RCW as reserving discretion to the Board to decide if and when it will create the tenth judicial position once the statute has been amended to provide for the additional position. [COL 4, 5, 6, 7, 8; CP 103-04.]

Mr. Delaney has filed this timely appeal.

D. SUMMARY OF THE ARGUMENT

The plain language of Washington's Constitution grants the State Legislature sole authority to determine the number, of district court judges. WA. Const. art. IV, § 10. The Legislature has fulfilled this mandate by enacting RCW 3.34.010, which unambiguously provides that Spokane County shall have ten full time elected district court judges. The County has no authority to provide for fewer judges.

The minimum number of district judges is set by RCW 3.34.010. Once the statute is amended to increase the number of judges for a particular county, it is not necessary to further comply with the procedures set forth in RCW 3.34.020 and .025 before creating a new position required by RCW 3.34.010. Instead, these procedures only apply when the County wishes to increase the number of judges beyond the number of judges required by RCW

3.34.010. As demonstrated by the House and Senate Bills on SB 6596, these procedures were employed before RCW 3.34.010 was amended.

The Superior Court below erred by construing chapter 3.34 RCW as reserving or delegating to the Spokane Board of County Commissions the authority to indefinitely disregard the number of judges established by the State Legislature. Such a construction raises serious constitutional issues because the State Constitution requires the Legislature to set the number of judges and this mandate cannot be delegated. Yet, if the statutes are construed so that a County may decide if and when it will provide for the number of judges set by statute, then ultimately the County is determining the number of judges, not the Legislature.

Finally, the Board established the tenth judicial position when it amended the Spokane Districting Plan and Spokane County Code to clearly provide that Spokane County shall have ten district judges. The County's attempt to usurp the ordinance with language in the resolution is void as against the Constitution, the statutes and the ordinance.

Because the Board is under a clear duty to place ten district judicial positions on the election ballot and accept Mr. Delaney's

declaration of candidacy for the tenth position, Mr. Delaney's writ of mandamus should be granted.

E. STANDARD OF REVIEW

Mr. Delaney seeks relief by Writ of Mandamus. He is entitled to relief if he can show: "(1) the party subject to the writ is under a clear duty to act, RCW 7.16.106; (2) the applicant has no 'plain, speedy and adequate remedy in the ordinary course of law,' RCW 7.16.170; and (3) the applicant is 'beneficially interested.' RCW 7.16.170." *Eugster v. City of Spokane*, 118 Wn. App. 383, 402 (2003). The Superior Court explicitly found that Mr. Delaney had a beneficial interest and implicitly found there was no plain, speedy or adequate remedy at law when it concluded that mandamus was the proper procedure for seeking relief in this case. [COL 2, 3; CP 102-03.] Thus, the only issue is whether the Board and County Auditor are under a clear duty to act. "Whether there is a clear duty to act is a question of law reviewed *de novo*." *Paxton v. City of Bellingham*, 129 Wn. App. 439, 445 (2005).

F. ARGUMENT

1. **Mr. Delaney's writ of mandamus should be granted because the plain language of the Constitution and statute require the Board of County Commissioners and Vicky M. Dalton to place ten district judicial positions on the elections ballot.**

The Washington Constitution clearly vests the State Legislature with sole authority to determine the number of district court judges. Article IV, section 10 of the Washington Constitution provides in part: "The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace."

Pursuant to this mandate, the Legislature has enacted chapter 3.34 RCW to establish district courts, including the number of judges for each County along with the method and manner for selecting these judges. In 2002, RCW 3.34.010 was amended to increase the number of district court judges in Spokane County from nine to ten. See Laws of 2002, ch. 138 § 1. This statute unambiguously provides that Spokane County "shall" have ten full-time elected district court judges.

When the number of district court judges is increased by amendment to RCW 3.34.010, the County must amend its

Districting Plan to conform to the statutory amendment within 180 days. RCW 3.38.040. In this case, the Board met that requirement by adopting Resolution 02-0403 which amended the Spokane County Districting Plan, as set forth in Spokane County Code 1.16.020, to provide that “There shall be ten elected full-time judges in the Spokane County District.” By doing so, the County created the tenth judicial position. (See Subheading (4) on page 21.)

When the text of a statute is clear, the Court does not need any other tools of statutory construction. *1000 Friends of Washington v. McFarland*, __ Wn.2d. __ (Dec. 21, 2006) (76581-2). But even an unambiguous statute is reviewed in relation to the other statutes on the subject. *Id.*, slip op. at 7. In this case, the plain language of the Constitutional and statutory provisions places a duty on Spokane County to include ten district judicial positions on the election ballot.

The plain language of these provisions has already been construed by the Supreme Court to mean exactly what the provisions say – that the number of judges set by RCW 3.34.9010 is mandatory. See *Royal v. Yakima County Commissioners*, 123 Wn.2d 451 (1994). In *Royal*, RCW 3.34.010 provided that Yakima County would have six district court judges, but the County had

been operating for years with only four judges. The Yakima County Commissioners initially adopted a resolution creating a fifth position, but when told they must also create a sixth position to comply with RCW 3.34.010, they instead repealed the earlier resolution, leaving Yakima County with four district court judges. The appellant filed a writ of mandamus after the Yakima Auditor refused his declaration of candidacy for the fifth district court judicial position.

After considering chapter 3.34 RCW, the Supreme Court ultimately held that RCW 3.34.010 sets the minimum or base number of judges required in each County. *Id.* at 461. The statute left the County with no discretion to ignore the number of judges. The Court then granted appellant's writ, and required Yakima County to increase the number of district court judges to six, as set forth in RCW 3.34.010. *Id.* at 460, 466.

The *Royal* decision clearly establishes that the unambiguous language of RCW 3.34.010 sets the minimum number of district judges in Spokane County as ten. There is no authority which would allow the Board to disregard these mandates.

2. The language of chapter 3.34 RCW does not support the Superior Court's conclusion.

After RCW 3.34.010 is amended to increase the minimum number of judges in a County, the procedures in RCW 3.34.020 and .025 no longer apply. Instead, as the last sentence in RCW 3.34.010 establishes, the procedures in RCW 3.34.020 and .025 only apply before the statute is amended, when a County wishes to increase the number of judges above the minimum number set by RCW 3.34.010. After the statute sets forth the minimum number of judges for each county, the last sentence of RCW 3.34.010 provides that "this number may be increased as provided in RCW 3.34.020."

Rather than finding that RCW 3.34.010, as amended, always sets the minimum number of judges, the Superior Court below concluded that the minimum or base number of judges for each County was the number of judges set for each County by the 1991 version of RCW 3.34.010. The Superior Court then reasoned that any increase in the number of judges beyond the number of judges as of 1991 required compliance with the procedures set forth in RCW 3.34.020 and 3.34.025, regardless of any subsequent

amendment to RCW 3.34.010. Neither the *Royal* decision, nor the language of the statutes supports the Superior Court's reasoning.

In *Royal*, one of the issues was the first sentence of RCW 3.34.020 which provides that "Any change in the number of full and part-time district judges after January 1, 1992, shall be determined by the legislature after receiving a recommendation from the Supreme Court." On January 1, 1992, there were four sitting judges in Yakima, although RCW 3.34.010 required six. So the question was whether Yakima was required to comply with the procedures set forth in RCW 3.34.020 before increasing the number of judges from the four actually sitting to the six required by RCW 3.34.010. *Royal*, 123 Wn.2d at 458.

The *Royal* Court rejected Yakima Board's argument that the procedures in RCW 3.34.020 were mandatory while the number of judges set forth in RCW 3.34.010 was permissive. *Id.* at 465. Instead, the Court found that when the legislature amended RCW 3.34.020(1) in 1991, it presumed that the number of district court judges sitting at the time was identical to the number of judges required by RCW 3.34.010. *Id.* at 461. Consequently, the "mandate and the procedure established in RCW 3.34.020 would apply to any changes which *increase* the number mandated in

RCW 3.34.010.” *Id.* (emphasis in original). The Court also concluded that the “procedures under RCW 3.34.020 and .025 would not apply to those positions created after January 1, 1992, in an attempt to comply with RCW 3.34.010.” *Id.* (emphasis added).

In addition to misconstruing the holding in *Royal*, the superior court’s reasoning below is not supported by the plain language of the statute. RCW 3.34.010 clearly states that the procedures of RCW 3.34.020 and .025 apply only when the County wishes to have more judges than the minimum number set in RCW 3.34.010. Such is not the case here.

However, even if the procedures in RCW 3.34.020 and .025 are to be employed when the number of district judges is increased beyond the number set in 1991, these procedures would be employed before RCW 3.34.010 is amended. As the *Royal* Court noted, after 1992, any changes to the number of judges set forth in RCW 3.34.010 are made only after the procedure of RCW 3.34.020 are employed. *Royal*, 123 Wn.2d at 466. If, after employing these procedures, the legislature determines that a county should have more or fewer judges, it then amends the statute to reflect the analysis. See RCW 3.34.020(1) and (4).

The court below illogically concluded that once RCW 3.34.010 is amended, then the procedures under RCW 3.34.020 and .025 would be employed before any change became effective. Under this logic, the legislature would first amend the statute to change the number of judges and then determine if the statutory amendment was justified by following the procedures in RCW 3.34.020 and .025.

In this case, the legislature employed the procedures before amending RCW 3.34.010. Review of the House and Senate Bill Reports on the 2002 amendment to RCW 3.34.010 shows that several Spokane County district court judges, the district court administrative, and a Spokane County Commissioner testified in favor of an amendment to increase the number of judges. Both the Senate and House Bill Reports note that before voting to increase the number of judges in Spokane by amending RCW 3.34.010, the House and Senate followed the procedures set forth in RCW 3.34.020 and .025 by considering different case load analysis. The House Bill Report also found that “the county legislative authority wants the new position to be created and has agreed to pay for it.” [See House Bill Report to SB 6596 and Senate Bill Report to SB 6596, attached hereto as Exhibits A and B.] Even if the procedures

of RCW 3.34.020 and .025 do apply to an increase in the number of judges after 1991 by amendment to RCW 3.34.010, these procedures were met before the statute was amended.

Just as the procedures set forth in RCW 3.34.020 do not apply after RCW 3.34.010 has been amended to increase the minimum number of judges within a county, nor do the procedures in RCW 3.34.025 apply. This statute provides:

Any additional district judge positions created under RCW 3.34.020 shall be effective only if the legislative authority of the affected county documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities. The legislative authority of any such county may, at its discretion, phase in any judicial positions over a period of time not to exceed two years from the effective date of the additional district judge positions.

RCW 3.34.025 (emphasis added).

As the *Royal* Court noted, “By its language RCW 3.34.025 applies only to positions created under RCW 3.34.020. It may not therefore apply to positions created solely under authority of RCW 3.34.010.” *Royal*, 123 Wn.2d at 461 n.32.

But even if RCW 3.34.025 does apply, its requirements have already been met. As the House Bill Report to SB 6596 indicates,

the county requested the increase in judges and agreed to pay for the additional position so as to convince the legislature to add the new position. Under RCW 3.34.025, once the tenth position became effective, the county has up to two years to phase-in the position under RCW 3.34.025. This two-year period, even if it did apply, has long since expired.

The minimum number of district court judges is established by RCW 3.34.010. The Board has no authority to deviate from this number unless it receives Legislative approval under the procedures established by RCW 3.34.020 and .025, and then only to increase the number of judges as set in RCW 3.34.010. Absent an amendment to the statute, the Board has no authority to employ fewer than ten judges as required by RCW 3.34.010.

- 3. Construing chapter 3.34 RCW to give counties the discretion to indefinitely ignore the number of judges set by statute raises serious constitutional questions because the legislative mandate to set the number of judges cannot be delegated.**

In addition to misconstruing the statutes and the Supreme Court's *Royal* decision, the effect of the superior court's statutory construction – which allows a county, at their “sole discretion,” to indefinitely disregard the number of judges set by statute – results

in delegating to the county legislative body the authority reserved solely to the state legislature by our Constitution.

As noted above, the State Constitution explicitly provides that “The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace.” WA Const. art. IV, § 10. This article has been construed as “too clear for interpretation.” *Manus v. Snohomish County Justice Court Dist. Comm.*, 44 Wn.2d 893, 895 (1954). “It unequivocally places the duty of fixing the number of justices of the peace upon the legislature exclusively, and leaves no room for the applicability of the doctrine of permissive delegation of legislative authority.” *Id.*, see also *In re Eng*, 113 Wn.2d 178, 184, 776 P.2d 1336 (1980) (the mandate in Article IV, section 10 to create justice of the peace courts and set the number of judges is a strict requirement, unlike section 12 which allows more flexibility in the creation of “inferior courts,” including the authority to delegate the power to set the number of inferior court judges).

If RCW 3.34.010, .020 and .025 are construed to allow a county legislative body to employ only nine judges, when the state legislature has clearly set the minimum number at ten judges, then

ultimately it is the county that is determining the number of judges, not the state. Statutes should be construed so as to avoid raising constitutional infirmities. *State v. Robinson*, 153 Wn.2d 689, 703 (2005).

4. The tenth position became effective when the amendment to RCW 3.34.010 became effective.

The superior court below erroneously found that the Board has never created the tenth position.¹ The court then reasoned that under RCW 3.34.025, a county has two years to phase in a new position, but that this two-year period does not commence until after the new position is created by the Board. Since the Board has never created the tenth position, the superior court reasoned that the two-year phase in period has never commenced.

The errors of this statutory construction are manifest. First, it is in direct conflict with the plain language of the statute. The relevant portion of RCW 3.34.025 provides that “[a]ny additional district judge positions created under RCW 3.34.020 shall be effective only if the legislative authority of the affected county

¹ Appellant assigns error to finding of fact (11), which states that by adopting resolution 02-0403 the Board did not establish and/or fund the 10th Spokane County District Court judicial position as provided for under SB 6596 (Laws of 2002, ch. 135.).

Appellant contends that this is a conclusion of law misidentified as a finding of fact. What the Board did is not in dispute. The legal consequences of their actions are conclusions of law, not findings of fact.

documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state” The statute goes on to state that the “legislative authority of any such county may, at its discretion, phase in any judicial positions over a period of time not to exceed two years from the effective date of the additional district judge positions.” (Emphasis added.) In this case, the county documented its approval of the new position and agreement to pay for it as reflected in the House and Senate Bill Reports. Thus, the addition judicial position became “effective” on June 13, 2002, when the amendment urged by the county became effective. See Laws of 2002, ch. 138, § 1.

Moreover, the county did create the tenth position when it amended the County Districting Plan and Spokane County Code. As Resolution 02-0403 notes, under RCW 3.38.040, the County is required to amend its districting plan to increase the number of judges when the number is increased by an amendment to RCW 3.34.010. Amendments to the districting plan are made by the county legislative authority. RCW 3.38.030. Once the districting plan is amended by ordinance, there are no additional steps

necessary to create the additional position. See chapter 3.38 RCW.

In *State v. Amodio*, 110 Wn. App. 359, 365, 40 P.3d 1182 (2002), this Court noted that by amending the Spokane Districting Plan and Spokane County Code, to specifically provide for up to five district court commissioners, the Board had created these position in compliance with RCW 3.38.020. See also *State v. Moore*, 73 Wn. App. 805, 812, 871 P.2d 1086 (1994) (chapter 3.38, authorizing district courts is not self-executing, but requires “counties to adopt specific plans containing statutorily mandated elements.”).

Nevertheless, the superior court below erroneously found that by adopting Resolution 02-0403, and amending the Spokane Districting Plan and Spokane County Code, the Board was not really establishing the tenth judicial position. Instead, the court found that despite the unambiguous language of SCC 1.16.020 creating the tenth position, the Board’s conflicting resolution withheld creation of that position. The reservation within Resolution 02-0403 is invalid because it conflicts with the Constitution, the statutes, and the County Code.

Nothing in chapter 3.38 RCW grants the Board the authority -- much less the "sole discretion" -- to ignore its duty under RCW 3.34.010 and 3.38.040 to create this new position. A resolution that conflicts with a statute is invalid as unauthorized. WA Const. art. 11, § 11 (Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.). Just recently, in *1000 Friends*, our State Supreme Court recognized the hierarchy of government within our State. Although considering the ability to veto state mandated requirements by local referendum, the Court noted that when the sovereign people of the State require action from the local legislative body, this action is not subject to undoing by local referendum. *1000 Friends*, 76581-2 slip op. at 2. "It would violate the constitutional blueprint to allow a subdivision of the State to frustrate the mandates of the people of the State as a whole." *Id.*

In the same manner, when the people of this State specifically mandate within the Constitution that the number of district judges shall be set by the state legislature, the local county board has no authority to frustrate this mandate by ignoring or overriding the legislature's clear decision.

Finally, the Board cannot claim to reserve discretion within a resolution when that resolution directly conflicts with the ordinance. While Resolution 02-0403 amended the County Code to unambiguously declare that there “shall” be ten judges in Spokane County, the Board’s attempt to directly contradict the ordinance with a reservation contained only within the resolution is invalid. The difference between a resolution and an ordinance is explained in 5 McQuillin, *THE LAW OF MUNICIPAL CORPORATIONS*, §15:2 (3d ed. 2006). “A resolution ordinarily denotes something less solemn or formal than, or not rising to the dignity of, an ordinance.” *Id.*, see also *Baker v. Lake City Sewer Dist.*, 30 Wn.2d 510, 191 P.2d 844 (1948). It logically follows that a resolution cannot trump the language of an ordinance.

G. CONCLUSION

The Constitution requires the state legislature to set the number of district judges. This mandate cannot be delegated, and the statutes should not be construed to suggest that the mandate is being delegated. Instead, the plain language of RCW 3.34.010 sets the minimum number of district judges for Spokane County as ten. The Board has no discretion to ignore this number but rather, has a duty to place all ten positions on the election ballot and

accept Mr. Delaney's duly tendered declaration of candidacy for the tenth position.

As such, Mr. Delaney asks that the order of the superior court be reversed and this Court grant his writ of mandamus and require Spokane County to hold a special election for the tenth district judicial position.

Respectfully submitted, December 26, 2006.



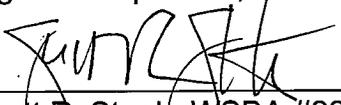
Scott R. Staab, WSBA #23287
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on December 26, 2006, I personally delivered a copy of the **Appellant's Brief** in this matter to:

James Emacio
Spokane County Prosecuting Attorney's Office
1115 West Broadway Ave
Spokane, WA 99260

Signed at Spokane, Washington on December 26, 2006.



Scott R. Staab, WSBA #23287
Attorney for the Appellant

SENATE BILL REPORT

SB 6596

As Passed Senate, February 13, 2002

Title: An act relating to the number of district court judges in Spokane county.

Brief Description: Increasing the number of Spokane district court judges.

Sponsors: Senators McCaslin, Brown, Long, Sheahan, Johnson, Kline, Roach and West.

Brief History:

Committee Activity: Judiciary: 2/5/02, 2/6/02 [DP].

Passed Senate: 2/13/02, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Kastama, Vice Chair; Costa, Hargrove, Johnson, Long, McCaslin, Poulsen, Roach, Thibaudeau and Zarelli.

Staff: Dick Armstrong (786-7460)

Background: The number of district court judges in each county is set by statute. There is a procedure, also in statute, for changing the number of judges in a county.

The Legislature determines the number of district court judges in a county after receiving a recommendation of the Supreme Court. The process of formulating such a recommendation involves the use of a "weighted caseload" analysis developed by the Administrative Office of the Courts. The weighted caseload analysis includes consideration of the amount of judicial time and resources needed to process various kinds of cases.

Summary of Bill: The number of district court judges in Spokane County is increased from nine to ten.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Spokane County needs an additional district court judge. The weighted-case analysis does not accurately reflect the actual workload in Spokane County and an additional district court judge is needed. New laws have been enacted that increase judicial workload, plus more police officers are being added. Harassment cases and DUI cases have added to the workload because the penalties have been increased and the statutes are more complex.

Ex. A

The weighted caseload analysis is being changed to another process that will provide for a more accurate measure of judicial need.

The county is willing to pay the costs of the ad.

Testimony Against: None.

Testified: PRO: Judge Mike Padden, District Court, Spokane; Ron Miles, Court Administrator, Spokane; Judge Donna Wilson, District Court, Spokane; Honorable Kate McCaslin, County Commissioner, Spokane.

HOUSE BILL REPORT

SB 6596

As Passed House:
March 6, 2002

Title: An act relating to the number of district court judges in Spokane county.

Brief Description: Increasing the number of Spokane district court judges.

Sponsors: By Senators McCaslin, Brown, Long, Sheahan, Johnson, Kline, Roach and West.

Brief History:

Committee Activity:

Judiciary: 2/28/02 [DP].

Floor Activity:

Passed House: 3/6/02, 93-0.

Brief Summary of Bill

- Increases the number of district court judges in Spokane County from nine to 10.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Lantz, Chair; Hurst, Vice Chair; Carrell, Ranking Minority Member; Dickerson, Esser, Jarrett, Lovick and Lysen.

Staff: Bill Perry (786-7123).

Background:

The number of elected district court judges in each county is set by statute, and the number of judges in any county may be increased only through a procedure also set out in statute.

Upon the recommendation of the supreme court, the Legislature may increase the number of judges in a county. The recommendation of the supreme court is to be based on a weighted caseload analysis of the need for additional judges in a county. The analysis is

Ex B

to take into account a variety of factors including how much time existing judges in the county currently have to hear cases and how much judicial time is needed for various kinds of cases.

The addition of a new district court judge position is conditional upon to the agreement by the county legislative authority to pay all costs associated with the creation of the new position. A county may take up to two years to phase in new judicial positions created by the Legislature.

There are currently nine elected district court judges in Spokane County.

Summary of Bill:

An additional district court judge position is authorized for Spokane County, bringing the total number of district court judges in the county to 10.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: There is a clearly demonstrated need for at least one additional judge in the Spokane County District Court. The outdated weighted caseload method of assessing the need for judicial positions does not take into account many factors, including changes in the laws over time and the special needs of local courts. For instance, the weighted caseload method assumes a much lower average time per case for DUI cases than recent studies by King County and by Spokane County have shown. A more accurate objective analysis of workload shows that Spokane County needs an additional judge. The county legislative authority wants the new position to be created and has agreed to pay for it. There will be no state expense.

Testimony Against: None.

Testified: Judge Mike Padden, Judge Donna Wilson, and Court Administrator Ron Miles, Spokane District Court; Commissioner Kate McCaslin, Spokane County; and Melanie Stuart, Washington District and Municipal Court Association.

NO. 2 0403

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE)
SPOKANE COUNTY DISTRICT COURT) **DECISION AND FINDINGS**
DISTRICTING PLAN)

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County has the care of County property and the management of County funds and business; and

WHEREAS, pursuant to the provisions of chapter 3.38 RCW, the Board of County Commissioners has adopted a District Court Districting Plan codified in Spokane County Code Chapter 1.16; and

WHEREAS, pursuant to the provisions of RCW 3.38.040, at any time, on call of the County legislative authority, the District Court Districting Committee composed of those individuals set forth in RCW 3.38.010, may meet for the purpose of recommending an amendment to the Spokane County District Court Districting Plan; and

WHEREAS, pursuant to the provisions of RCW 3.38.040, the Board of County Commissioners, under Resolution No. 02-0301, set a meeting for the Spokane County District Court Districting Committee at 10:00 a.m. on March 7, 2002 to consider certain amendments to the Spokane County District Court Districting Plan, including, among others, increasing the number of elected full-time judges in the Spokane County District from nine (9) to ten (10); and

WHEREAS, the Spokane County District Court Districting Committee, by document dated March 15, 2002, recommended to the Board of County Commissioners certain amendments to the Spokane County District Court Districting Plan; and

WHEREAS, as required under RCW 3.38.030 and RCW 3.38.040, the Board of County Commissioners set a public hearing to consider the March 15, 2002 recommendation on amending the Spokane County District Court Districting Plan made by the Spokane County District Court Districting Committee as well as additional recommendations made by the Spokane County Prosecuting Attorney's Office; and

This is to Certify this is a true and correct copy of the original document NO. 2-0403 on file in the County Commissioners minutes of 4/16/2002 dated this 18th day of July 2006 BY: Lawrence Eickson CLERK OF THE BOARD



EXHIBIT 3

Ex. C

2 0403

WHEREAS, on April 16, 2002, the Board of County Commissioners held a public hearing on the recommendation of the Spokane County District Court Districting Committee, as well as the recommendation of the Spokane County Prosecuting Attorney's Office, and determined that the advertised recommendations were consistent with provisions of RCW 3.38.020 and that the Governor had signed SB 6596 Bill which increased the total number of District Court Judges within Spokane County from nine (9) to ten (10).

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of County Commissioners of Spokane County, that the Board does hereby adopt those amendments to the Spokane County District Court Districting Plan as set forth in the advertised NOTICE OF PUBLIC HEARING under Resolution No. 02-0301.

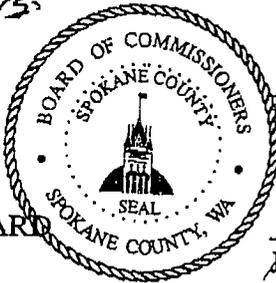
In making such decision, the Board does hereby adopt each and every recital herein above as a finding of fact to support the decision. Additionally, the Board notes that by amending the Spokane County District Court Districting Plan to increase the number of full-time District Court Judges from nine (9) to ten (10) in Spokane County, the Board is not establishing the additional tenth position. This position will be established subsequent to the effective date of SB 6596. ~~The City of Spokane's agreement to fund 1/2 of the salary to include all benefits of such position as well as 1/2 the salary to include the benefits of the bailiff assigned to the position and the Board of County Commissioners formally passing a Resolution establishing such position.~~

Handwritten initials and scribbles

PASSED AND ADOPTED this 16th day of April 2002.

and at the sole discretion of the Board of County Commissioners

BOARD OF COUNTY COMMISSIONERS OF SPOKANE, COUNTY, WASHINGTON



[Signature]
M. KATE McCASLIN, Chair

ATTEST:
VICKY M. DALTON
CLERK OF THE BOARD

[Signature]
JOHN ROSKELLEY, Vice-Chair

BY: *[Signature]*
Daniela Erickson, Deputy

[Signature]
PHILLIP D. HARRIS

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE)
SPOKANE COUNTY DISTRICT COURT) **NOTICE OF PUBLIC HEARING**
DISTRICTING PLAN)

NOTICE IS HEREBY GIVEN by the Board of County Commissioners of Spokane County, as provided for in RCW 3.38.040 and RCW 36.32.120(7), a public hearing will be held by the Board of County Commissioners at **5:00 P.M.** on **April 16, 2002**, in the Commissioners' Hearing Room located in the Lower Level of the Public Works Building at 1026 West Broadway, Spokane, Washington.

The purpose of the meeting will be for the Board to consider public testimony and take action on the recommendation from the Spokane County District Court Districting Committee, dated March 15, 2002, as well as an additional recommendation by the Prosecuting Attorney's Office. The recommendation of the Spokane County District Court Districting Committee was as follows:

(Underlined language to be added – striken language to be deleted. Bolded language recommended by Prosecutor's Office subsequent to recommendation of Redistricting Committee.)

JUSTICE DISTRICT COURT DISTRICTS

1.16.010 Established.

There shall be one ~~justice~~ District Court District within Spokane County known as the Spokane County District, which boundaries shall be the same as that of Spokane County. (See RCW 3.30.015).

1.16.020 Number of ~~justices~~: Judges.

~~—The number of justices of the peace to be elected in the Spokane County District shall be nine full-time justices of the peace.~~

There shall be ten elected full-time judges in the Spokane County District.

1.16.030 Location of court facilities.

The location of the central office, courtrooms and records of the Spokane County District shall be in the Spokane County Courthouse Complex. The judges of the Spokane County District shall, however, sit in facilities located within the city limits of Cheney, and the city limits of Deer Park, and other places, including, but not limited to, any other incorporated cities within Spokane County, as the board of county commissioners, in their sole discretion, may from time to time deem conducive to the best interest and welfare of the county as a whole.

1.16.040 Number and location of Court Commissioners.

There shall be up to five Spokane County District justice court commissioners having those powers enumerated in RCW Section 3.42.020. The actual number of Spokane County District justice court commissioners, up to five, shall be determined on a yearly basis upon the Board of County Commissioners adoption of the Spokane County District

2 0301

Court budget. Spokane County District Justice court commissioners' court rooms and records shall be in the Spokane County Courthouse Complex or in court facilities located within the city limits of Cheney or city limits of Deer Park or other places, including, but not limited to, any other incorporated cities within Spokane County, as the Board of County Commissioners, in their sole discretion, may from time to time deem conducive to the best interest and welfare of the county as a whole.

1.16.050 Municipal departments.

All of the ~~nine justices of the peace judges~~ in the Spokane County District are designated by this plan as a municipal department and the ~~justices of the peace judges~~ shall function as ~~part-time~~ municipal or police judges.

The time and salary of each of these ~~justices of the peace judges~~ shall be allocated between municipal business and state/county business as the board of county commissioners of Spokane County and respective political subdivisions may hereinafter agree to in writing.

1.16.060 Salary of justices. judges.

(a) The annual salary rate for full-time ~~justices of the peace judges~~ in the Spokane County District shall be established by the Washington Citizens' Commission on Salaries for Elected Officials or as otherwise provided by State law, thirty-three thousand dollars, or that amount as the Washington State Legislature may hereafter by statute determine.

(b) The annual salary for the part-time ~~justice of the peace officers judges~~ in the Spokane County District shall be established by the Washington Citizens' Commission on Salaries for Elected Officials or as otherwise provided by State law, as established pursuant to Spokane County Resolution No. 78-045, adopted March 30, 1978, and Resolution No. 78-945, adopted July 13, 1978, shall be fifteen thousand dollars.

Any person may appear at the time, place and date set forth herein above and present testimony on the above changes to the Spokane County District Court District Plan. The Board reserves the right to consider additional changes in the Plan as a result of the testimony submitted at the public hearing.

Additional information with respect to this Notice may be obtained by contacting James P. Emacio, Chief Civil Deputy Prosecuting Attorney, (509) 477-5764.

PASSED AND ADOPTED this 20th day of March, 2002.



ATTEST:
VICKY M. DALTON
Clerk of the Board

By: Daniela Erickson
Daniela Erickson, Deputy

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE, COUNTY, WASHINGTON

M. KATE McCASLIN
M. KATE McCASLIN, Chair

John Roskelley
JOHN ROSKELLEY, Vice-Chair

Phillip D. Harris
PHILLIP D. HARRIS