

No. 87823-4

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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VICKIE LEE ANNE PARKER and  
JAMES S. JOHNSON,

Petitioners,

v.

KIM WYMAN, in her capacity as Thurston County Auditor, and  
CHRISTINE SCHALLER-KRADJAN, M ARIE CLARKE, and  
VICTOR MINJARES,

Respondents.

AND

Marie C. Clarke,

Petitioner,

v.

Kim Wyman, Thurston County Auditor; Christine Schaller-Kradjan,  
Candidate for Thurston County Superior Court, Position 2,

Respondents.

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RESPONDENT SCHALLER'S CONSOLIDATED ANSWER  
TO PETITIONERS' STATEMENTS OF GROUNDS FOR DIRECT  
REVIEW

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I. INTRODUCTION:

Petitioners<sup>1</sup> seek direct review by this court of Judge Olsen's Order<sup>2</sup> rather than pursue their right to appeal to the Court of Appeals. As such, they have the burden to specify why direct review by this Court is necessary. Petitioners have failed to carry that burden and document why they are entitled to direct review under RAP 4.2(a). Therefore, the Court should deny direct review and transfer the case to the Court of Appeals for determination. RAP 4.2(e).

II. PETITIONERS MISREPRESENT THE DECISION

Petitioners completely misrepresent the trial court's decision. Clarke states that "the trial court held that residency requirements are unconstitutional as applied to the judiciary."<sup>3</sup> Parker/Johnson argue that "the trial court effectively found three statutes repugnant to Washington's Constitution."<sup>4</sup> This is blatantly false. Judge Olsen rejected the petitioners' claim that Schaller's name be removed from the ballot and held:

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<sup>1</sup> As noted by the Court's letter to all parties dated September 5, 2012, Appellants Johnson and Parker also filed a "Statement of Grounds for Direct Review". The Johnson/Parker case was consolidated with Clarke's case by the Thurston County Superior Court. Therefore, the cause number assigned by the court to the Parker/Johnson notice of appeal is the same as that assigned to Clarke's appeal.

<sup>2</sup> App. 1 [Memorandum Decision and Order]

<sup>3</sup> Clarke's Statement of Grounds for Direct Review at 1.

<sup>4</sup> Parker/Johnson Statement of Grounds for Direct Review at 5.

This Court finds that the constitution does not require superior court judges to be citizens or electors of the county and that RCW 42.04.020 does not apply.<sup>5</sup>

The respondents never argued<sup>6</sup> and Judge Olsen never ruled that “residency requirements are unconstitutional as applied to the judiciary.” Instead, Judge Olsen ruled that RCW 42.04.020 does not apply to superior court judges.

### III. ANSWER TO ISSUES RAISED BY PETITIONERS

#### 1. There is no residency requirement for superior court judges.

The first issue raised by the petitioners assumes there is a residency requirement for justices of the Supreme Court and judges of the superior court. There is none.<sup>7</sup> Article IV § 17 defines the eligibility requirements for judges of the supreme court and of a superior court as follows:

No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

The Constitution states no other qualification for the office of superior court judge. As noted by Judge Olsen,

This is consistent with the legal presumption in favor of candidate eligibility for public office and that “the

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<sup>5</sup> App. 1 [Memorandum Decision and Order at 10]

<sup>6</sup> See App. 2 [Schaller’s Trial Brief] and App. 3 [Wyman’s Trial Brief]

<sup>7</sup> See App. 2 [Schaller’s Trial Brief]; App. 3 [Wyman’s Trial Brief].

constitution, where the language and context allows, should be construed as to preserve [eligibility for office].”<sup>8</sup>

Washington law has long recognized that the only constitutional requirement for election to the superior court is that the candidate be admitted to practice law in Washington. The question to be determined in *In re Bartz*<sup>9</sup> was whether certain statutes requiring justices of the peace to be attorneys were in conflict with certain constitutional provisions, and, therefore void.<sup>10</sup> The Court held that, unlike superior court judges, justices of the peace were not state officers but statutory judicial officers subject to legislatively imposed qualifications. In so holding, the Court noted the qualifications for superior court judges are limited to those set forth in the Constitution:

Article IV, § 17, declares that no person shall be eligible to the office of judge of the supreme court, or superior court, unless he shall have been admitted to practice law in this state or in the territory of Washington.

....

State constitutions which prescribe qualifications for office holders generally and specific qualifications for certain officers, but are silent as to the qualifications for a particular office, have been construed to prohibit the legislative imposition of any additional qualifications.<sup>11</sup>

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<sup>8</sup> Memorandum Decision and Order at 4 [citing *State ex rel. O'Connell v. Dubuque*, 68 Wn.2d 553, 566 (1966)].

<sup>9</sup> 47 Wn.2d 161, 287 P.2d 119 (1955)

<sup>10</sup> *Id.*, at 162

<sup>11</sup> *Id.*, at 163-164

In *Nielsen v. Washington State Bar Association*,<sup>12</sup> the Court stated:

Under Washington's scheme the status of attorney is the only present criteria for membership in the judiciary of the superior court or supreme court. Const. art. 4, § 17 states:

No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

But see RCW 3.04.040, requiring citizenship for justices of the peace. We note, however, that by virtue of Const. art. 3, § 25 (amendment 31) the noncitizen attorney is precluded from holding certain other state offices.<sup>13</sup>

In *State ex rel. Quick-Ruben v. Verharen*,<sup>14</sup> a case like the present action in which the losing candidate for election to the superior court asserted that the victor was not a qualified candidate because the victor was allegedly not a county resident, the Court rejected Quick-Ruben's argument on procedural grounds. Nevertheless, the Court indicated that "residency may not even be required for a superior court judicial candidate."<sup>15</sup> (emphasis added). In footnote 11 of its opinion, the Court

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<sup>12</sup> 90 Wn.2d 818, 585 P.2d 1191 (1978)

<sup>13</sup> *Id.*, at fn. 4

<sup>14</sup> 136 Wn.2d 888, 891, 969 P.2d 64 (1998)

<sup>15</sup> 136 Wn.2d at 901-02, n. 11; see also *Gerberding v. Munro*, 134 Wn.2d 188, 202-203, 949 P.2d 1366 (1998) ["The constitutional provisions establishing qualifications for state constitutional officers were the subject of intense debate in the 1889 Constitutional Convention. The original draft of article III, § 25, provided a general residency in Washington requirement of two years in addition to other qualifications. For the governor and lieutenant governor, a minimum age of 35 years and a five-year Washington residency requirement were established. This draft of the § was ultimately rejected. See

reaffirmed the principle that the qualifications in Article IV § 17 are

exclusive:

CONST. art. IV, § 17 (sets the qualifications for superior court judges, but does not include county residency). See also *The Journal of the Washington State Constitutional Convention 1889*, at 623 (Beverly Paulik Rosenow ed., 1962) (noting "qualified elector" and two year residency (in Washington state or territory) requirements were debated as possible qualifications for superior court judges and rejected at the constitutional convention)<sup>16</sup>; *In re Bartz*, 47 Wash.2d 161, 164-67, 287 P.2d 119 (1955) (noting Legislature could not add to constitutional qualifications, and that CONST. art. III, § 25, requiring state officers to be citizens of the United States and qualified electors, did not apply to the judiciary); *Gerberding v. Munro*, 134 Wash.2d 188, 201-10, 949 P.2d 1366 (1998) (holding qualifications prescribed by the constitution for constitutional offices are exclusive and may not be added to by statute absent express constitutional authority to do so).<sup>17</sup>

Thus, imposing the requirement that superior court candidates be electors is completely "repugnant to this Constitution" not only because it would amend Article IV, § 17 *sub silentio* but also because the issue was specifically debated and *rejected* at the constitutional convention.<sup>18</sup>

According to the *Journal of the Washington State Constitutional*

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*The Journal of the Washington State Constitutional Convention 1889*, at 589-91 (Beverly Paulik Rosenow ed., 1962)."]

<sup>16</sup> Newman Dec. Ex. 3: *The Journal of the Washington State Constitutional Convention 1889* at § 17

<sup>17</sup> See also *Thorsted v. Munro*, 75 F.3d 454 (1996) affirming the district court's decision that the Washington state term limits initiative was unconstitutional in light of the United States Supreme Court's decision in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

<sup>18</sup> Newman Dec. Ex. 3: *The Journal of the Washington State Constitutional Convention 1889* at § 17

*Convention 1889*, specific motions to add residency and elector status to Article IV § 17 were proposed and rejected.<sup>19</sup>

Additionally, the statute the petitioners rely upon, RCW 42.04.020<sup>20</sup>, does not require residency but “elector” status. As Clarke pointed out in her own trial brief,<sup>21</sup> “an ‘elector’ is merely one who is qualified, by reason, e.g. of age and citizenship, to vote.”<sup>22</sup> Thus, the petitioners’ claim that Washington has required superior court judges to be residents of the county is false.

2. The petitioners’ remedies are not authorized by law.

Article I, § 19 provides that: “All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” The primary election was held on August 7, 2012. The certification of the election occurred on August 21, 2012. Schaller was in the top position, receiving 48.42% of the total votes and Johnson was second receiving 21.97% of the votes. Clarke received 17.44% and Minjares 11.86% of the remaining votes.<sup>23</sup> The primary was a valid election and has been certified. The legal action brought by the petitioners was not to invalidate the primary. It was to remove

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<sup>19</sup> See App. 2 [Schaller’s Trial Brief; Newman Dec. Ex. 3: *The Journal of the Washington State Constitutional Convention 1889* at § 17 ]

<sup>20</sup> Emergency Motion at 1

<sup>21</sup> Clarke Br. at 7:16-20

<sup>22</sup> *Cedar County Committee v. Munro*, 134 Wn.2d 377, 384, 950 P.2d 446 (1998)

<sup>23</sup> See App. 4: Declaration of Kim Wyman (August 22, 2012)

Schaller from the general election ballot and make her use a different name.

Pursuant to RCW 29A.36.171, Schaller and Johnson will be the two candidates listed on the ballot for Thurston County Superior Court position 2 for the general election on November 6, 2012. If Schaller were to be removed from the general election ballot, it would not invalidate the primary. It would not change the fact that she received the most votes and Johnson was second. There is nothing in the law that moves Clarke up into second place and gets her on the ballot. Further, Clarke refers to placing the 2 "eligible" candidates on the ballot in her pleadings. Clarke is again misleading the Court as to the law. Nowhere does the statute refer to "eligible" candidates. Clarke is requesting a remedy that simply is not available to her under the law - getting on the ballot as a third place finisher.

Beyond that, the petitioners conflict on the appropriate remedy.<sup>24</sup> While they all want Schaller's name removed from the ballot, Johnson, who came in second at the primary, suggests his name alone on the general election ballot. Clarke, who came in third, wants her name on the ballot in lieu of Schaller. Minjares, who came in fourth, wants a total mulligan with Johnson, Clarke and his name on the ballot as well.

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<sup>24</sup> See Parker/Johnson Statement of Grounds for Direct Review at 13-14

#### IV. ANSWER TO GROUNDS FOR DIRECT REVIEW

1. RAP 4.2(a)(2) does not apply because the trial court did not find any statute unconstitutional.

The petitioners persist on misrepresenting to the court that Judge Olsen held that RCW 42.40.020 was unconstitutional. Judge Olsen held:

This Court finds that the constitution does not require superior court judges to be citizens or electors of the county and that RCW 42.04.020 does not apply.<sup>25</sup>

2. RAP 4.2(a)(4) does not apply because there is no “urgent issue of broad public import” because Schaller’s right to assume office can be challenged after the general election.

Clarke claims that the Court must hear and decide this case no later than September 10, 2012<sup>26</sup> because the general election ballots must be finalized for printing by that date.<sup>27</sup> Nevertheless, there is no urgency since state law allows any registered voter the right to challenge Schaller’s right to assume office if she is elected.<sup>28</sup> Moreover, Clarke could also pursue a *quo warranto* action against Schaller as was the case in *State ex rel. Quick-Ruben v. Verharen*.<sup>29</sup>

#### V. REQUEST

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<sup>25</sup> Memorandum Decision and Order at 10

<sup>26</sup> Emergency Motion

<sup>27</sup> Statement of Grounds at 2

<sup>28</sup> RCW 29A.68.020 Any of the following causes may be asserted by a registered voter to challenge the right to assume office of a candidate declared elected to that office: ... (2) Because the person whose right is being contested was not at the time the person was declared elected eligible to that office ....

<sup>29</sup> 136 Wn.2d 888, 891, 969 P.2d 64 (1998)

Therefore, for the reasons set forth above, Schaller and Wyman request that direct review be denied and the case be transferred to the Court of Appeals. This would give all parties time to brief the issues and allow the appellate court adequate time to make a decision.

Dated: 9/5/12

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APPENDIXES:

1. Memorandum Decision and Order
2. Schaller Trial Brief (and declarations)
3. Wyman Trial Brief (and declarations)
4. Wyman Declaration of Kim Wyman (August 22, 2012)

1 X EXPEDITE  
2 X No hearing set  
3 X Hearing is set  
4 Date: August 29, 2012  
5 Time: 1:30 pm  
6 Judge/Calendar: Sally Olsen  
7 Visiting Judge  
8 Kitsap Co. Superior Court

9  
10 THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
11 IN AND FOR THURSTON COUNTY

12 Vicki Lee Anne Parker and James S. Johnson, )

13 Petitioner, )

14 vs. )

15 Kim Wyman in her capacity as Thurston  
16 County Auditor, Christine Schaller Kradjan  
17 also known as Christine Schaller, Marie Clarke  
18 and Victor Minjares, )

19 Respondents )

Case No.: 12 2 01730 9

**COMMISSIONER  
CHRISTINE SCHALLER'S  
CONSOLIDATED  
RESPONSE TO PETITIONS**

20 Marie C. Clarke, )

21 Petitioner, )

22 vs. )

23 Kim Wyman, Thurston County Auditor, and  
24 Christine Schaller-Kradjan, Candidate for  
25 Thurston County Superior Court, Position 2, )

26 Respondents )

Case No: 12-2-01732-5

27 **I. Introduction and Summary:**

28 Petitioners Parker, Johnson, and Clarke seek an order prohibiting the Thurston County  
29 Auditor from placing the name of Christine Schaller on the general election ballot for Thurston  
30 County Superior Court Judge Position 2 or, alternatively, that Schaller's last name appears as

31 Brief in Opposition

32 1

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1 Schaller-Kradjan.<sup>1</sup> The respondents, Kim Wyman, the Thurston County Auditor, and Christine  
2 Schaller, Thurston County Superior Court Commissioner, prevailed against the petitioners Parker  
3 and Johnson in their previous effort to prevent Commissioner Schaller's name from appearing on  
4 the primary ballot.<sup>2</sup>  
5

6  
7 Petitioners Johnson and Clarke are disgruntled candidates for the superior court position  
8 sought by Commissioner Schaller, having finished a distant second and third respectively to her  
9 in the primary election. Commissioner Schaller received 48.42% of the votes in the primary  
10 election held August 7, 2012. Commissioner Schaller received the most votes of the 4  
11 candidates, with petitioner Johnson coming in second with 21.97% of the votes and petitioner  
12 Clarke coming in third with 17.44% of the votes. Now, petitioners seek an order prohibiting the  
13 Thurston County Auditor from placing the name of "Christine Schaller" on the general election  
14 ballot. Their arguments are meritless.  
15

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18 **II. Facts<sup>3</sup>**

19 Christine Schaller was born and raised in Thurston County and was educated there from  
20 preschool through her graduation from St. Martin's College. Commissioner Schaller  
21 immediately returned to Thurston County after graduating from Gonzaga University School of  
22 Law and began work as an attorney in private practice with the law firm of Foster, Foster &  
23 Schaller. She lived in Thurston County until the age of 29 when she moved to Tacoma as a  
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27

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29 <sup>1</sup> See Order to Show Cause dated 8/22/12

<sup>2</sup> *Parker v. Wyman and Schaller*, Thurston Co. Superior Court No. 12-2-01115 7

<sup>3</sup> See, Schaller Declaration.

1 commuting compromise when she married her husband who worked in Seattle. Commissioner  
2 Schaller has lived or worked in Thurston County her entire life.  
3

4 After 8.5 years in private practice with the law firm Foster, Foster & Schaller,  
5 Commissioner Schaller was appointed from a pool of 19 applicants as a Superior Court  
6 Commissioner in February 2005. She has held that position since that time. All judicial officers  
7 in Thurston County Superior Court are rated on a bi-annual basis by the Thurston County Bar  
8 Association (TCBA). Commissioner Schaller has been evaluated 4 times since being appointed  
9 as Court Commissioner. Commissioner Schaller was the highest rated Superior Court judicial  
10 officer for 3 of the 4 evaluations and was the second highest rated Superior Court judicial officer  
11 in the 4<sup>th</sup> evaluation. Commissioner Schaller was named "Jurist of the Year" by the Washington  
12 State Bar Association, Family Law Section in 2009. Commissioner Schaller has also been rated  
13 "Well Qualified" by Washington Women Lawyers and "Exceptionally Well Qualified" by the  
14 Latino/Latina Bar Association of Washington and the Joint Asian Judicial Evaluation  
15 Committee.  
16  
17  
18  
19

20 Commissioner Schaller announced her candidacy on or about February 13, 2012 and  
21 began actively campaigning. On May 14, 2012 Commissioner Schaller filed her Washington  
22 State Declaration of Candidacy for Thurston County Superior Court Judge Position 2 with the  
23 Thurston County Auditor's Office. Three other people also filed a Declaration of Candidacy for  
24 position 2, including petitioners Johnson and Clarke.  
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30

31 Brief in Opposition  
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1 The petitioners and the other candidates for position 2 have made Commissioner  
2 Schaller's residency a major issue.<sup>4</sup> It has received considerable press coverage<sup>5</sup> and is the  
3 central theme of petitioner Johnson's campaign for superior court.<sup>6</sup> Petitioner Johnson even sent  
4 a letter to the majority, if not all, of the attorneys licensed to practice law in Thurston County  
5 urging them not to vote for Commissioner Schaller because of her residency. Both Clarke and  
6 Minjares raised the issue of Commissioner Schaller's residency as well throughout the campaign.  
7

8 Nevertheless, when *The Olympian*, the largest newspaper in Thurston County, endorsed  
9 Schaller it noted:  
10

11  
12 Christine Schaller, 41, practiced as a trial lawyer for eight years in Thurston  
13 County, leading criminal jury and non-jury trials. In 2005, she was picked from  
14 among 18 applicants to serve as a Family Court commissioner and has ruled from  
15 the bench for just over seven years. She has experience in 85 percent of the cases  
16 that come before Superior Court judges.

17 The question of residency clouds Schaller's candidacy. Although she was born  
18 and raised in Thurston County and has spent her professional life working here,

19 <sup>4</sup> Id., Schaller Dec.

20 <sup>5</sup> Id., There have been at least 11 articles in *The Olympian* (on-line or hard print) since late Feb. 2012 and at least 5  
21 letters to the editor that mention Schaller's residency in Pierce County.

22 <sup>6</sup> Mr. Johnson's campaign website <http://jimjohnsonforthurstoncounty.org/> begins with:

23 Thurston County: My home

24 I am running to become a judge in Thurston County because I think it is important that our judges  
25 come from, and be a part of, our community. Judges are where the awesome power of the state  
26 bears down on individuals, threatening to take away their liberty and property. We want the  
27 judges wielding this power to be "us" not "them."

28 We elect judges from among ourselves because we long ago rejected a system that had appointed  
29 judges ride into town to deliver justice as strangers then leave. We want our judges to live among  
30 us, to be our neighbors.

31 *One of my opponents, Christine Schaller, lives in and is a registered voter in Pierce County.  
32 Commissioner Schaller believes it is unconstitutional to require her to live in Thurston County. I  
disagree. I think it is essential that our judges come from within the community they serve.*

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1 she currently lives in Pierce County, a commuting compromise with her husband  
2 who works in Seattle.

3 Rather than establishing a "phantom" address in Thurston, she sought an opinion  
4 from the state Supreme Court, which dismissed the case and directed her to seek a  
5 declaration of candidacy from the county auditor. Both the auditor and the county  
6 prosecuting attorney agreed with Schaller's interpretation of residency laws and  
7 accepted her filing for office.

8 Others, including candidate Jim Johnson in this judicial race have indicated they  
9 will challenge Schaller's eligibility if she advances from the primary. This has  
10 potential for confusion.

11 Putting the residency issue aside, however, Schaller would make a thoughtful and  
12 decisive Superior Court judge and is more qualified than her opponents Johnson and  
13 Victor Minjares.<sup>7</sup>

### 14 *Procedural History*

15 Knowing that 3 of the Thurston County Superior Court judges would be retiring by the  
16 end of 2012, Commissioner Schaller decided to seek election to one of those positions. As  
17 Commissioner Schaller was an elector of Pierce County, she recognized that there may be issues  
18 related to her filing a Declaration of Candidacy form. Therefore, on October 27, 2011  
19 Commissioner Schaller petitioned the Washington State Supreme Court for a writ of mandamus  
20 to the Secretary of State to address the issue. On December 15, 2011, the Supreme Court  
21 Commissioner dismissed the matter.<sup>8</sup> In the dismissal opinion, the Commissioner effectively  
22 gave Commissioner Schaller guidance on how to proceed.  
23  
24

25 Pursuant to the Commissioner's guidance, Commissioner Schaller's attorney, Shawn  
26 Newman, sent a letter on December 16, 2011 to the Thurston County Auditor Kim Wyman  
27

28  
29 <sup>7</sup> [http://www.theolympian.com/2012/07/29/2190403/august-primary-could-bring-  
first.html#storylink=related#storylink=cpy](http://www.theolympian.com/2012/07/29/2190403/august-primary-could-bring-first.html#storylink=related#storylink=cpy)

30 <sup>8</sup> Schaller Declaration Ex. 1 [Ruling Dismissing Petition Against State Officer (12/15/11)].

1 inquiring as to whether her declaration of candidacy would be accepted for the position of  
2 Superior Court Judge. On January 10, 2012, the Thurston County Prosecuting Attorney's Office,  
3 through David Klumpp, responded on behalf of the Thurston County Auditor.<sup>9</sup> Commissioner  
4 Schaller was informed that her declaration of candidacy would not be rejected based upon her  
5 residency. Klumpp's response included a memorandum dated February 10, 1986 from the Chief  
6 Civil Deputy to a state legislator on the very issue of the necessity of residency for a superior  
7 court judge. That memorandum concluded that a person seeking or holding the office of superior  
8 court judge need not be a resident of the county or district served.<sup>10</sup>

9  
10  
11  
12 On May 14, 2012 Commissioner Schaller filed her declaration of candidacy for judge  
13 with the Thurston County Auditor. The last date for declaring one's candidacy was May 18,  
14 2012. On May 29, 2012, petitioner Parker filed her petition for declaratory judgment and  
15 temporary relief seeking an order 1) declaring Christine Schaller ineligible for the position of  
16 Thurston County Superior Court Judge; and 2) ordering the Thurston County Auditor to not  
17 place the name of Christine Schaller on the ballot for Thurston County superior court judge.  
18 Petitioner Johnson sought to intervene citing his candidacy for the same position. The case was  
19 heard on July 13, 2012 by the Honorable Larry E. McKeeman, a visiting judge from the  
20 Snohomish County Superior Court. Judge McKeeman denied petitioner Johnson's intervention  
21 and dismissed petitioner Parker's case.

22  
23  
24  
25  
26 The primary election was held on August 7, 2012. The certification of the election was  
27 made on August 21, 2012. Commissioner Schaller was in the top position, receiving 48.42% of  
28

29 <sup>9</sup> Schaller Declaration Ex. 2 [E-mail from Klumpp to Newman (1/10/12)].

30 <sup>10</sup> Schaller Declaration Ex. 3 [Memorandum from Kamerrer to Unsoeld (2/10/86)].

1 the total votes and Mr. Johnson was second receiving 21.97% of the votes. Marie Clarke  
2 received 17.44% and Minjares 11.86% of the remaining votes. Commissioner Schaller and  
3 Johnson will be the 2 candidates listed on the ballot for Thurston County Superior Court position  
4 2 for the general election on November 6, 2012.

5  
6 The Parker/Johnson petition was filed on August 22, 2012 and reasserted the claim made  
7 in Parker's primary challenge that Schaller's name should not appear on the ballot because she is  
8 not a county elector.<sup>11</sup> Additionally, Parker and Johnson now assert for the first time that  
9 Schaller's married last name should appear on the ballot.<sup>12</sup> An order to show cause was issued in  
10 their case on August 22, 2012 by Judge Chris Wickham directing Wyman to appear before this  
11 Court and:  
12  
13

14  
15 Show cause why this Court should not issue an order barring her from placing  
16 Commissioner Schaller-Kradjan's name on the general election ballot, or if the  
17 Court determines Commissioner Schaller-Kradjan's name may appear on the  
18 general election ballot, why this Court should not issue an order requiring  
19 Commissioner Wyman to list Commissioner Schaller-Kradjan's last name as  
20 Schaller-Kradjan.

21 On August 22, 2012, petitioner Clarke filed a separate lawsuit seeking to keep Schaller's name  
22 from appearing on the general election ballot and having Clarke's and Johnson's names appear  
23 instead.<sup>13</sup> She also asks the Court to allow her to submit a revised candidate statement for the  
24 general election voter guide. An order to show cause was issued in her case on August 24, 2012  
25 directing Wyman to show cause why Schaller's name should not be barred from the ballot and  
26 directing Wyman to place Clarke's name on the ballot.  
27

28  
29 <sup>11</sup> Petition Count I

<sup>12</sup> Petition Count II

<sup>13</sup> *Clarke v. Wyman and Schaller-Kradjan*, Thurston Co. Superior Court No. 12-2-01732-5

1 Parker filed a Memorandum of Authorities on August 24, 2012. That memorandum is  
2 untimely and should be stricken.<sup>14</sup>  
3

4 **III. Issues**

- 5 **A. Do the petitioners have the burden to overcome the strong presumption in**  
6 **favor of eligibility for office and the people's fundamental right to choose?**
- 7 **B. Does the Constitution require superior court judges to be electors?**
- 8
- 9 **C. Are the general Territorial Laws relied upon by petitioners to infer that**  
10 **superior court candidates must be county electors "repugnant to the state**  
11 **Constitution" given that a "qualified elector" qualification for superior court**  
12 **judges was considered and rejected by the Constitutional Convention?**
- 13 **D. Is the fact that the Legislature could require the Attorney General (a**  
14 **constitutional officer) to be a lawyer justify imposing the specific**  
15 **requirement that superior court judges be electors when that specific**  
16 **requirement was rejected by the Constitutional Convention?**
- 17 **E. Does the law mandate Schaller use the last name on her voter registration for**  
18 **the ballot?**

19 **IV. Arguments:**

- 20 **A. The petitioners have the burden to overcome the strong presumption in favor**  
21 **of eligibility for office and the people's fundamental right to choose.**

22 Article 1, § 1 of the Washington State Constitution begins:

23 **POLITICAL POWER.** All political power is inherent in the people, and  
24 governments derive their just powers from the consent of the governed, and are  
25 established to protect and maintain individual rights.

26

27

28 <sup>14</sup> LCR 5(d)(1)(C) Civil motions. Unless otherwise provided in these rules, briefs and all supporting materials for  
29 motions shall be filed and served before 12:00 noon, five court days before the hearing. Opposing briefs and  
30 materials shall be filed and served before 12:00 noon, two court days before the hearing. Reply briefs shall be filed  
31 and served before 12:00 noon, one court day before the date scheduled for hearing. (emphasis added).

1 As a result of this core value, our courts have expressed a strong presumption in favor of  
2 eligibility for office. In *State v. Schragg*,<sup>15</sup> our Supreme Court stated:

3  
4 Since the right to participate in the government is the common right of all, it is the  
5 unqualified right of any eligible person within the state to aspire to any of these  
6 offices, and equally the unqualified right of the people of the state to choose from  
7 among those aspiring the persons who shall hold such offices. It must follow from  
8 these considerations that eligibility to an office in the state is to be presumed  
rather than to be denied, and must further follow that any doubt as to the  
eligibility of any person to hold an office must be resolved against the doubt.

9 Accord, *State ex rel. O'Connell v. Dubuque*, 68 Wn.2d 553, 566, 413 P.2d 972 (1966)

10 ("[a] strong public policy exists in favor of eligibility for public office, and the  
11 constitution, where the language and context allows, should be construed so as to  
12 preserve this eligibility").  
13

14  
15 The petitioners must overcome this powerful presumption and have failed to do so here.  
16 It is well established that the judiciary should "exercise restraint in interfering with the elective  
17 process which is reserved to the people in the state constitution."<sup>16</sup> Judicial election challenges,  
18 by their very nature, raise political issues.<sup>17</sup> Schaller's residency is a well-known political issue  
19 that should properly be left up to the voters to decide.<sup>18</sup>  
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28 <sup>15</sup> 158 Wash. 74, 78, 291 P. 321 (1930)

29 <sup>16</sup> *Dumas v. Gagner*, 137 Wn.2d 268, 283, 971 P.2d 17 (1999).

30 <sup>17</sup> See, e.g. *In re Coday*, 156 Wn.2d 485, 130 P.3d 809 (2006) dismissing challenges to the 2004 governor's election.

31 <sup>18</sup> See Schaller Dec.



1 Washington law has long recognized that the only constitutional requirement for election  
2 to the superior court is that the candidate be admitted to practice law in Washington. The  
3 question to be determined in *In re Bartz*<sup>24</sup> was whether certain statutes requiring justices of the  
4 peace to be attorneys were in conflict with certain constitutional provisions, and, therefore  
5 void.<sup>25</sup> The Court held that, unlike superior court judges, justices of the peace were not state  
6 officers but statutory judicial officers subject to legislatively imposed qualifications. In so  
7 holding, the Court noted the qualifications for superior court judges are limited to those set forth  
8 in the Constitution:  
9  
10  
11

12 Article IV, § 17, declares that no person shall be eligible to the office of judge of  
13 the supreme court, or superior court, unless he shall have been admitted to  
14 practice law in this state or in the territory of Washington.

15 ....  
16 State constitutions which prescribe qualifications for office holders generally and  
17 specific qualifications for certain officers, but are silent as to the qualifications for  
18 a particular office, have been construed to prohibit the legislative imposition of  
19 any additional qualifications.<sup>26</sup>

20 In *Nielsen v. Washington State Bar Association*,<sup>27</sup> the Court stated:

21 Under Washington's scheme the status of attorney is the only present criteria for  
22 membership in the judiciary of the superior court or supreme court. Const. art. 4,  
23 § 17 states:

24 Constitution (Art. V § 12) states: "Every judge of the district court shall reside in the district for which he is  
25 elected...." Montana's Constitution [Art. VII, § 9 (4)] provides:

26 Supreme court justices shall reside within the state. During his term of office, a district court judge  
27 shall reside in the district and a justice of the peace shall reside in the county in which he is elected  
28 or appointed. The residency requirement for every other judge must be provided by law.

29 The drafters of the Washington Constitution considered and rejected similar residency requirements for superior  
30 court judges.

31 <sup>24</sup> 47 Wn.2d 161, 287 P.2d 119 (1955)

32 <sup>25</sup> Id., at 162

<sup>26</sup> Id., at 163-164

<sup>27</sup> 90 Wn.2d 818, 585 P.2d 1191 (1978)

1 No person shall be eligible to the office of judge of the supreme  
2 court, or judge of a superior court, unless he shall have been  
3 admitted to practice in the courts of record of this state, or of the  
4 Territory of Washington.

5 But see RCW 3.04.040, requiring citizenship for justices of the peace. We note,  
6 however, that by virtue of Const. art. 3, § 25 (amendment 31) the noncitizen  
7 attorney is precluded from holding certain other state offices.<sup>28</sup>

8 In *State ex rel. Quick-Ruben v. Verharen*,<sup>29</sup> a case like the present action in which the losing  
9 candidate for election to the superior court asserted that the victor was not a qualified candidate  
10 because the victor was allegedly not a county resident, the Court rejected Quick-Ruben's  
11 argument on procedural grounds. Nevertheless, the Court indicated that "residency may not  
12 even be required for a superior court judicial candidate."<sup>30</sup> (emphasis added). In footnote 11 of  
13 its opinion, the Court reaffirmed the principle that the qualifications in Article IV § 17 are  
14 exclusive:

15  
16  
17 CONST. art. IV, § 17 (sets the qualifications for superior court judges, but does  
18 not include county residency). See also *The Journal of the Washington State*  
19 *Constitutional Convention 1889*, at 623 (Beverly Paulik Rosenow ed., 1962)  
20 (noting "qualified elector" and two year residency (in Washington state or  
21 territory) requirements were debated as possible qualifications for superior court  
22 judges and rejected at the constitutional convention)<sup>31</sup>; *In re Bartz*, 47 Wash.2d  
23 161, 164-67, 287 P.2d 119 (1955) (noting Legislature could not add to  
24 constitutional qualifications, and that CONST. art. III, § 25, requiring state  
25 officers to be citizens of the United States and qualified electors, did not apply to

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<sup>28</sup> *Id.*, at fn. 4

<sup>29</sup> 136 Wn.2d 888, 891, 969 P.2d 64 (1998)

<sup>30</sup> 136 Wn. 2d at 901-02, n. 11; see also *Gerberding v. Munro*, 134 Wn.2d 188, 202-203, 949 P.2d 1366 (1998)  
[“The constitutional provisions establishing qualifications for state constitutional officers were the subject of intense  
debate in the 1889 Constitutional Convention. The original draft of article III, § 25, provided a general residency in  
Washington requirement of two years in addition to other qualifications. For the governor and lieutenant governor, a  
minimum age of 35 years and a five-year Washington residency requirement were established. This draft of the §  
was ultimately rejected. See *The Journal of the Washington State Constitutional Convention 1889*, at 589-91  
(Beverly Paulik Rosenow ed., 1962).”]

<sup>31</sup> Newman Dec. Ex. 3: *The Journal of the Washington State Constitutional Convention 1889* at § 17

1 the judiciary); *Gerberding v. Munro*, 134 Wash.2d 188, 201-10, 949 P.2d 1366  
2 (1998) (holding qualifications prescribed by the constitution for constitutional  
3 offices are exclusive and may not be added to by statute absent express  
4 constitutional authority to do so).<sup>32</sup>

5 Thus, imposing the requirement that superior court candidates be electors is completely  
6 “repugnant to this Constitution” not only because it would amend Article IV, § 17 *sub silentio*  
7 but also because the issue was specifically debated and *rejected* at the constitutional  
8 convention.<sup>33</sup>

9  
10 There are specific circumstances where the Legislature may prescribe additional  
11 requirements for judicial office, as noted in *Bartz*. Those circumstances are not present here.

12  
13 Article IV, § 1 of our constitution states:

14 § 1 JUDICIAL POWER, WHERE VESTED. The judicial power of the state shall  
15 be vested in a supreme court, superior courts, justices of the peace, and such  
16 inferior courts as the legislature may provide.

17 Superior courts were established by Article IV are, therefore, “constitutional courts”<sup>34</sup> whereas  
18 “inferior courts” created by the legislature are “statutory courts.”

19  
20 As constitutional courts, the qualifications for superior court judges are specified in the  
21 Constitution itself.<sup>35</sup> As for statutory courts, the Legislature can dictate qualifications for the  
22 judges of such courts. Consequently, while the Legislature can impose qualifications on  
23

24  
25  
26 <sup>32</sup> See also *Thorsted v. Munro*, 75 F.3d 454 (1996) affirming the district court’s decision that the Washington state  
27 term limits initiative was unconstitutional in light of the United States Supreme Court’s decision in *U.S. Term*  
28 *Limits, Inc. v. Thorton*, 514 U.S. 779 (1995).

29 <sup>33</sup> Newman Dec. Ex. 3: *The Journal of the Washington State Constitutional Convention 1889* at § 17

30 <sup>34</sup> *State ex rel. New Washington Oyster Co., Inc. v. Meakim*, 34 Wn.2d 131, 136, 208 P.2d 628 (1949)

31 <sup>35</sup> Wash. Const. Art. IV § 17: No person shall be eligible to the office of judge of the supreme court, or judge of a  
32 superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory  
of Washington.

1 statutory courts, it cannot impose added qualifications on judges of constitutional courts. This  
2 can only be done by voters approving a constitutional amendment.  
3

4 This distinction between constitutional courts and statutory courts is germane to the  
5 applicability of general statutory qualifications for elective public office.<sup>36</sup> Statutes requiring  
6 candidates to be electors do not apply to superior or supreme court candidates because the  
7 qualifications set forth in Article IV § 17 of the Constitution are exclusive.  
8

9 This exclusivity principle was discussed in *Gerberding v. Munro*<sup>37</sup> where our Supreme  
10 Court struck down term limits finding that the law imposed added qualifications on state  
11 constitutional officers beyond those expressed in our Constitution. In so doing, the Court noted  
12 that "it is important to re-visit fundamental principles regarding qualifications for state  
13 constitutional offices,"<sup>38</sup> and later stated:  
14  
15

16 Washington's constitutional framers believed qualifications for state constitutional  
17 officers were a matter of constitutional, not statutory, concern. They debated  
18 citizenship, residency in the state, age, status as qualified elector, and term limits  
19 in ultimately arriving at the appropriate qualifications for state constitutional  
20 officers. Additionally, the framers did not confer authority on the Legislature to  
21 prescribe additional qualifications for such officers. Various constitutional  
22 provisions demonstrate the framers knew how to grant, and expressly d'd grant  
23 the Legislature lawmaking authority pertaining to certain constitutional offices.  
24 See, e.g., WASH. CONST. art. III, §§ 19-23 (establishing constitutional offices  
25 and providing such officers shall perform duties "as may be prescribed by law."  
26 thereby expressly delegating to the Legislature the power to fix the officers'  
27 duties). See also WASH. CONST. art. IV, § 3(a) (amend.25) (setting mandatory  
28 retirement age for judges but authorizing Legislature to fix a lesser age). Article  
29 III, § 25 itself allows the Legislature to abolish certain offices by statute. The  
30

31 <sup>36</sup> See, e.g. RCW 42.04.020 Eligibility to hold office. That no person shall be competent to qualify for or hold any  
32 elective public office within the state of Washington or any county ... unless he be a citizen of the United States and  
the state of Washington and an elector of such county...."

<sup>37</sup> 134 Wn.2d 188, 198-199, 949 P.2d 1366 (1998)

<sup>38</sup> *Id.*, 201-202

1 framers were careful to spell out the extent of legislative power over other  
2 constitutional offices, indicating that if the framers intended the Legislature to  
3 have authority to add to the qualifications of WASH. CONST. art. II, § 7, and art.  
4 III, § 25, they would have so stated.<sup>39</sup>

5 It is undisputed that Article IV, § 17 only requires judges of the superior court to be “admitted to  
6 practice in the courts of record of this state, or of the Territory of Washington.” No other  
7 qualification for the office of superior court judge is set forth.

8  
9 Neither the Legislature nor the people acting in their legislative capacity may add  
10 statutory qualifications to those prescribed for “state constitutional officers.”<sup>40</sup> Any additional  
11 qualifications or limitations can only be made by amending the Constitution.<sup>41</sup> For example, the  
12 mandatory retirement age of 75 years old for supreme and superior court judges was enacted by  
13 constitutional amendment, not by statute.<sup>42</sup>

14  
15 The petitioners allege that, “Under Washington law, all elected officials in Washington  
16 must be residents of the communities they serve. RCW 42.04.020.”<sup>43</sup> However, RCW  
17 42.02.020 refers to “elector” status not “residency.”<sup>44</sup> As noted in petitioner Clarke’s brief<sup>45</sup>,  
18 there is a distinction. She cites *Cedar County Committee v. Munro*, where the Court stated that  
19 “an ‘elector’ is merely one who is qualified, by reason, e.g. of age and citizenship, to vote.”<sup>46</sup>  
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24 <sup>39</sup>*Gerberding v. Munro*, 134 Wn.2d 188, 204-205, 949 P.2d 1366 (1998).

25 <sup>40</sup> *Id.*

26 <sup>41</sup> *Id.* at 200

27 <sup>42</sup> See Wash. Const. Art. IV § 3(a) (amend.25)

28 <sup>43</sup> Petitioner Clarke’s Br. at 2:10-11

29 <sup>44</sup> “That no person shall be competent to qualify for or hold any elective public office within the state of  
30 Washington, or any county, district, precinct, school district, municipal corporation or other district or political  
31 subdivision, unless he or she be a citizen of the United States and state of Washington and an elector of such county,  
32 district, precinct, school district, municipality or other district or political subdivision.” emphasis added

<sup>45</sup> Clarke Br. at 7:16-20

<sup>46</sup> 134 Wn.2d 377, 384, 950 P.2d 446 (1998)

1 Hence, the petitioners ask this Court to amend RCW 42.40.020 to expressly add residency as a  
2 qualification.  
3

4 It is a cardinal canon of statutory construction that general words do not derogate from  
5 special.<sup>47</sup> Furthermore, where a statute is open to more than one interpretation, and one will  
6 render it invalid while the other would render it constitutional, the latter construction should  
7 prevail.<sup>48</sup> Moreover, any conflict should be harmonized wherever possible and effect should be  
8 given to both.<sup>49</sup> Courts have the “responsibility to harmonize statutes if at all possible, so that  
9 each may be given effect.”<sup>50</sup> It is the function of this court, while giving full effect to all  
10 provisions of the constitution, to harmonize wherever possibly any seeming conflicting provision  
11 so that the whole constitution is left intact.<sup>51</sup>  
12  
13  
14

15 Here, the general statutes relied upon by the petitioners can be harmonized with the  
16 specific state constitutional provision dictating who is eligible to become a superior court judge<sup>52</sup>  
17 and existing state law governing superior courts. First, they are general statutes that do not apply  
18 to officers for whom the Constitution sets qualifications, like “judicial officers.”<sup>53</sup> Second, RCW  
19 Ch. 2.08 [Superior Courts] specifically addresses the election, terms of office and salary of  
20 superior court judges.  
21  
22  
23

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24  
25 <sup>47</sup> For example, in *Meade v. French*, 4 Wash. 11, 29 P. 833 (1892), the court applied the maxim *generalia*  
26 *specialibus non derogant* (general words do not derogate from special) to hold the general statute does not preclude  
27 application of the special statute.

28 <sup>48</sup> *Woodson v. State*, 95 Wn.2d 257, 623 P.2d 683 (1980); *State v. Dixon*, 78 Wn.2d 796, 479 P.2d 931 (1971).

29 <sup>49</sup> *Snohomish County PUD 1 v. Broadview Television Co.*, 91 Wn.2d 3, 586 P.2d 851 (1978); *State v. Wright*, 84  
30 Wn.2d 645, 529 P.2d 453 (1974).

31 <sup>50</sup> See, e.g., *In re Mayner*, 107 Wn.2d 512, 522, 730 P.2d 1321 (1986).

32 <sup>51</sup> *Northshore School Dist. No. 417 v. Kinnear*, 84 Wn.2d 685, 715, 530 P.2d 178

<sup>52</sup> Wash. Const. Art. IV, § 7

<sup>53</sup> Wash. Const. Art. IV, see also *In re Bartz*, 47 Wn.2d at 167

1 In addition, mandating that superior court candidates be electors of the county is  
2 inconsistent with other provisions of the Constitution. For example, under Article IV, § 2(a), the  
3 Supreme Court may authorize a superior court judge to perform judicial duties in any superior  
4 court regardless of voter registration or residency. That is the basis for authorizing visiting  
5 judges such as Judge McKeeman or this Court. Article IV § 5 does not condition the Governor's  
6 appointment to fill a vacancy in the office of judge of the superior court on voter registration.<sup>54</sup>  
7 Additionally, Article IV, § 5 designates several single superior court districts consisting of  
8 multiple counties regardless of the judge's residency or elector status.  
9

10  
11 Thus, the plain text of the Constitution and the case law construing qualifications  
12 imposed by statute in excess of the basic constitutional requirement for the office do not support  
13 petitioners' challenges.<sup>55</sup>  
14

15  
16 **C. The general territorial laws relied upon by petitioners to infer the**  
17 **requirement that superior court candidates be electors are "repugnant**  
18 **to the state Constitution" given that a "qualified elector" qualification for**  
19 **supreme and superior court judges was considered and rejected by the**  
20 **Constitutional Convention.**

21 Petitioners assert that territorial laws required superior court judges to be electors of the  
22 county and that this requirement continues to apply under Article XXVII, § 2 of the Washington  
23 State Constitution. That Constitutional provision states:  
24

25 <sup>54</sup> "If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the  
26 office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding  
27 general election, and the judge so elected shall hold office for the remainder of the unexpired term."

28 <sup>55</sup> Clarke's reliance on the criteria used by the Governor to appoint judges is misplaced. The governor has  
29 discretion to make such appointments and impose whatever personal or professional qualifications she deems  
30 necessary. Clarke Br. at 3 para. 10. See Wash. Const. Art. IV § 5 ["If a vacancy occurs in the office of judge of the  
31 superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to  
32 fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold  
office for the remainder of the unexpired term."]

1 § 2 LAWS IN FORCE CONTINUED. All laws now in force in the Territory of  
2 Washington, which are not repugnant to this Constitution, shall remain in force  
3 until they expire by their own limitation, or are altered or repealed by the  
4 legislature: Provided, That this § shall not be so construed as to validate any act of  
5 the legislature of Washington Territory granting shore or tide lands to any person,  
6 company or any municipal or private corporation.

6 (emphasis added).

7 The territorial laws cited by the petitioner limit eligibility of county probate judges to “qualified  
8 electors.”<sup>56</sup> Causes pending before the territorial district and probate courts were transferred to  
9 the “superior court of the same county created by this Constitution.”<sup>57</sup>

10 But this argument flies in the face of the plain language of the test of article IV, § 17 as  
11 noted *supra*, and should be rejected. The framers specifically addressed and rejected a residency  
12 requirement for judges in adopting the plain language of article IV, § 17. Territorial laws  
13 therefore have no application to this case where article IV, § 17 effectively rejected them.  
14

15 Should this Court even reach the argument, it is baseless.  
16

17 The territorial laws limited electors to white male inhabitants, over the age of 21, who are  
18 or will be citizens of the United States, and who have resided at least 3 months in the territory  
19 and 15 days in the county.<sup>58</sup> Moreover, the Territorial Legislature specifically mandated that  
20  
21  
22

23  
24 <sup>56</sup> Territorial Code of Wash. Laws of 1854 at 309, § 1  
<http://www.leg.wa.gov/CodeReviser/documents/sessionlaw/1854pam1.pdf>

25 <sup>57</sup> Wash. Const. Art. XXVII § 8 and 10

26 <sup>58</sup> Newman Dec. Ex. 1: Territorial Code of Wash. Laws of 1854 at 64;  
27 <http://www.leg.wa.gov/CodeReviser/documents/sessionlaw/1854pam1.pdf>; and  
28 Laws of 1855 at 7 (§ 8) <http://www.leg.wa.gov/CodeReviser/documents/sessionlaw/1855pam1.pdf> :

29 “That all white male inhabitants over the age of twenty-one years, who shall have resided within this territory for  
30 three months next proceeding an election, shall be entitled to vote at any election for delegate to congress, and for  
31 territorial, district, count and precinct officers: Provided, That they shall be citizens of the United States, or shall  
32 have declared, on oath, their intentions to become such, and shall have resided three months in the territory, and  
fifteen days in the county where they offer to vote, next preceding the day of election; Provided, That nothing in this

1 "no female shall have the right of ballot or vote."<sup>59</sup> That did not change until 1910 with  
2 women's suffrage.<sup>60</sup> Now, Article VI, § 1 states:

3  
4 QUALIFICATIONS OF ELECTORS. All persons of the age of eighteen years or  
5 over who are citizens of the United States and who have lived in the state, county,  
6 and precinct thirty days immediately preceding the election at which they offer to  
7 vote, except those disqualified by Article VI, § 3 of this Constitution, shall be  
entitled to vote at all elections.

8 It is now clear that these discriminatory territorial laws barring women from voting and running  
9 for office are "repugnant to this Constitution".<sup>61</sup>

10  
11 Likewise, the territorial laws relied upon by the petitioners to infer the requirement that  
12 candidates for superior court judge be electors of the county are also "repugnant to this  
13 Constitution" because that requirement was considered and rejected by the Constitutional  
14 Convention. See argument on Article IV § 17, supra.<sup>62</sup>

15  
16 **D. The fact that the legislature could require the Attorney General (a**  
17 **constitutional officer) to be a lawyer does not justify imposing the specific**  
18 **requirement that superior court judges be electors because that specific**  
19 **requirement was rejected by the Constitutional Convention.**

20  
21 act shall be construed as to prevent ass such American half-breed Indians, as the judges of elections shall determine  
have adopted the habits and customs of civilization, from voting. ....

22 <sup>59</sup> Newman Dec. Ex. 2: Territorial Code of Wash. 1871 at 175 ["An Act in Relation to Female Suffrage. ... That  
23 hereafter no female shall have the right of ballot or vote at any poll or election precinct in the Territory, until the  
Congress of the Unites States of America shall, by direct legislation upon the same, declare the same to be the  
supreme law of the land." <http://www.leg.wa.gov/CodeReviser/documents/sessionlaw/1871pam1.pdf>

24 <sup>60</sup> Wash. Const. Art. VI, § 1 [See original text and amendments here:  
25 <http://www.leg.wa.gov/LawsAndAgencyRules/Pages/constitution.aspx>]; see, generally, "A Ballot for the Ladies:  
Washington Women's Struggle for the Vote (1850-1910)" <http://content.lib.washington.edu/exhibits/suffrage/>

26 <sup>61</sup> Art. VI, § 1 of the Washington State Constitution. Article VI, § 3, of our state Constitution now provides:  
27 "All idiots, insane persons, and persons convicted of infamous crime unless restored to their civil rights are excluded  
from the elective franchise."

28 <sup>62</sup> While the petitioners are presumed not to be misogynistic, their shrill xenophobic claims that foreigners could run  
for office evidences prejudice unfitting for a superior court judge. See Clarke Br. at 5. Furthermore, the petitioners  
ignore the fact that "Foreign Licensed Officers" can qualify for admission to the state bar.

29 <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Admissions/Bar-Exam-Admissions/Qualifications-for-Bar-Exam>

1  
2 Petitioners argue that because the Court in *Gerberding* "agreed that the legislature could  
3 require the Attorney General to be a lawyer,"<sup>63</sup> the Legislature could require superior court  
4 judges to be electors. However, that situation is easily distinguished from that of imposing the  
5 requirement of county elector for superior court judicial officers.  
6

7 First, unlike the elector qualification for superior court judges, the constitutional  
8 convention did not expressly consider and reject a requirement that the Attorney General be  
9 admitted to the bar.<sup>64</sup> As noted by the Court in *State ex rel. Quick-Ruben*,<sup>65</sup> "qualified elector"  
10 and two year residency (in Washington state or territory) requirements were debated as possible  
11 qualifications for superior court judges and rejected at the constitutional convention.<sup>66</sup>  
12  
13

14 Second, the requirement that the Attorney General be an attorney is implicit in the state  
15 constitution which requires that the Attorney General be the "legal adviser of the state officers."<sup>67</sup>  
16 After all, if a non-attorney were to become Attorney General, that person would be engaged in  
17 the unauthorized practice of law.<sup>68</sup>  
18  
19

20 Third, the requirement that the Attorney General be an attorney exists today (RCW  
21 43.10.010 "No person shall be eligible to be attorney general unless he or she is a qualified  
22 practitioner of the supreme court of this state") in effectively the same form as it did during  
23  
24  
25

26 <sup>63</sup> *Gerberding v. Munro*, 134 Wn.2d 188, 208-209, 949 P.2d 1366 (1998)

27 <sup>64</sup> See Journal/Analytical Index at 585 (Attached to Memorandum from Thurston County Chief Civil Deputy Dale  
28 Kamerrer to Gary McIntosh, Auditor's Office) [Ex. A]

29 <sup>65</sup> 136 Wn.2d 888, [fn.11], 969 P.2d 64 (1998)

30 <sup>66</sup> Newman Dec. Ex. 3: *The Journal of the Washington State Constitutional Convention 1889* at § 17

31 <sup>67</sup> Wash. Const. Art. III, § 21

32 <sup>68</sup> *In re Disciplinary Proceeding Against Shepard*, 239 P.3d 1066 (2010) [citing RPC 5.5(b) (2002)]

1 territorial times.<sup>69</sup> That is not true for any eligibility requirement for superior court judges for  
2 several reasons. First, because our Constitution created our superior courts, there were no  
3 territorial laws that specifically required superior court judges to be qualified electors in the  
4 county they served. Second, the presently existing residency requirement that people point to for  
5 the purported lineage that dates back to territorial times (RCW 42.04.020) has undergone a  
6 material alteration since territorial times, which renders Article XXVII, § 2 inapplicable  
7 (territorial law only good until "altered or repealed by the legislature"). Territorial law (Code of  
8 1881, § 3050) simply lays out a number of qualifications, including residency, and says that they  
9 are required in order to "hold office or vote at any election."  
10  
11  
12

13  
14 **E. The law does not mandate Schaller use the last name on her voter  
15 registration for the ballot.**

16 Petitioners Parker/Johnson assert in paragraph 14:

17 RCW 29A.24.060 allows candidates to use nicknames, but requires that the last  
18 name appearing on the ballot to be the candidate's last name as shown on the  
19 candidate's voter registration.

20 This argument, a transparent effort to secure some political advantage by confusing the  
21 voters who selected "Christine Schaller" in the primary election, should be rejected. Petitioners'  
22 assertion is contradicted by the express language of the statute. RCW 29A.24.060 says:  
23

24 When filing for office, a candidate may indicate the manner in which he or she  
25 desires his or her name to be printed on the ballot. For filing purposes, a candidate  
26 may use a nickname by which he or she is commonly known as his or her first  
27 name, but the last name shall be the name under which he or she is registered to  
28 vote. . . .

29 <sup>69</sup> Laws of 1887-88, § 3, at 7, "attorney general of this Territory shall be learned in the law and shall be a qualified  
30 practitioner before the supreme and district courts of this Territory."

1 (emphasis added).

2 Additionally, the assertion is contradicted by: (1) Secretary of State's regulations<sup>70</sup>; (2) the  
3 unambiguous language of the declaration of candidacy form itself; and (3) the Secretary of  
4 State's instructions on how to fill out the form and file for elective office out the form.<sup>71</sup> The  
5 Secretary of State's instructions for "3. ballot information" states:  
6

7  
8 Print your name exactly as you wish it to appear on the ballot. Nicknames are  
9 acceptable.

10 Schaller complied with the statute when she filed her declaration of candidacy, she put (*per the*  
11 *form*) "personal information as registered to vote" which included her hyphenated last name.

12 The "Ballot information" states the "exact name I would like printed on the ballot" as is clearly  
13 authorized by law. She wrote "Christine Schaller" which is the only name she has ever used in  
14 her professional career.<sup>72</sup>  
15

16  
17 Moreover, petitioners waived this argument by not advancing it in their primary election  
18 challenge. Under RCW 29A.68.011, petitioners Parker/Johnson (Clarke has not raised the issue)  
19 had to make their arguments regarding a name on the ballot in their primary challenge. They did  
20 not do so in a timely fashion. They cannot now raise an issue about how Commissioner  
21 Schaller's name appears on the ballot, once her name was placed on the ballot, albeit the primary  
22 ballot, as Christine Schaller. During her campaign, Commissioner Schaller had yard signs,  
23 prepared literature, sent out mailings and had some ads, all using her ballot name of "Christine  
24  
25  
26  
27

28 <sup>70</sup> WAC 434-215-012

29 <sup>71</sup> See; see also *Washington State Declaration of Candidacy - how to file for elective office.*

30 [http://www.co.thurston.wa.us/auditor/Elections/candidate/Dec\\_cand.pdf](http://www.co.thurston.wa.us/auditor/Elections/candidate/Dec_cand.pdf)

31 <sup>72</sup> See Schaller Dec.

1 Schaller". It would be confusing to the voters to have a "new" person appear on the general  
2 ballot. But that is precisely what the petitioners want for their political advantage. That is why  
3 there are specific deadlines for raising such issues set forth in RCW 29A.68.011 and why such an  
4 argument should be rejected by this court.  
5

6  
7 **V. Conclusion**

8 The petitioners have not overcome the strong presumption in favor of Commissioner  
9 Schaller's eligibility. Nor have they overcome the plain language of Article IV, § 17. If the  
10 petitioners believe Commissioner Schaller should not serve as a superior court judge because she  
11 is not a county elector, they can (*and vociferously have*) continue to make that known to voters.  
12 But, in any case, it is the voters who should decide. The petitions should be denied.  
13  
14

15  
16 Date: 8/24/12

Respectfully submitted,

  
Philip A. Talmadge [WSBA 6973]  
Shawn Newman [WSBA 14193]  
Attorneys for Respondent Schaller

**FILED**

AUG 24 2012

SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

Vicki Lee Anne Parker and James S. Johnson,

Petitioner,

vs.

Kim Wyman in her capacity as Thurston  
County Auditor, Christine Schaller Kradjan  
also known as Christine Schaller, Marie Clarke  
and Victor Minjares,

Respondents

Case No.: 12-2-01730-9

**SCHALLER AMENDED  
DECLARATION  
WITH EXHIBITS**

Marie C. Clarke,

Petitioner,

vs.

Kim Wyman, Thurston County Auditor, and  
Christine Schaller-Kradjan, Candidate for  
Thurston County Superior Court, Position 2,

Respondents

Case No: 12-2-01732-5

I, Christine Schaller, declare and state:

1. I am over the age of 18 and am competent to testify.
2. I am and always have been a citizen of the United States and a resident of the State of Washington.
3. I am a registered voter in Pierce County.
4. I was licensed and admitted to practice law in the State of Washington on November 1, 1996. I have been in good standing with the Washington State Bar Association since that time.

5. I was a resident of Thurston County, State of Washington, from birth until age 29.
6. Upon marrying my husband, whose employment is in Seattle, my husband and I made a commuting compromise in the best interest of our family and both relocated to Pierce County, State of Washington, on or about November 1999.
7. Upon marrying my husband I changed my last name to Schaller-Kradjan. This enabled me to maintain my name upon which I had built my professional career. Additionally, and in contemplation that we would have a family in the future, allowed me to have the same last name as my children.
8. The only name I have ever used in my professional career is the name Christine Schaller.
9. I was born and raised in Thurston County and was educated there from preschool through her graduation from St. Martin's College.
10. I immediately returned to Thurston County after graduating from Gonzaga University School of Law and began work as an attorney in private practice with the law firm of Foster, Foster & Schaller.
11. I was an attorney in private practice in Thurston County, State of Washington, beginning as a Rule 9 Legal intern, from August of 1996 until February 2005 with the law firm Foster, Foster and Schaller. I ultimately became a partner and then managing partner of the firm.
12. In February 2005, I was appointed as a Superior Court Commissioner for Thurston County from a pool of 19 applicants and have served in that capacity since that time.
13. As a Thurston County Superior Court Commissioner, I make decisions for the residents of Thurston County every day.

14. In October 2011, I filed an action with the Supreme Court of the State of Washington asking the Court for a Writ of Mandamus to the Secretary of State.
15. In December 2011, my action with the Supreme Court was dismissed. I have attached, and herein incorporate by reference, a copy of the decision from the Supreme Court as Exhibit 1.
16. Pursuant to the Supreme Court decision, a letter was sent in December 2011 to the Thurston County Auditor inquiring as to whether my Declaration of Candidacy would be accepted for the position of Superior Court Judge.
17. In January 2011, the Thurston County Prosecuting Attorney's Office, through Deputy Prosecuting Attorney David Klumpp, responded on behalf of the Thurston County Auditor in an email. A copy of the email dated January 10, 2012 is attached and herein incorporated by reference as Exhibit 2. The email indicated that my filing would not be rejected on the basis of residency and attached a Memorandum from 1986 written by a former Deputy Prosecutor on the very issue of the necessity of residency for a Superior Court Judge. A copy of the Memorandum is attached and herein incorporated by referenced as Exhibit 3.
18. On or about February 13, 2012 I announced my candidacy for Thurston County Superior Court judge and began actively campaigning.
19. My campaigning has included, but is not limited to, a large kick-off event, appearing at numerous community events and forums, printing of hundreds of "yard signs", extensive doorbelling throughout the county, printing of written materials, including a mailer and other advertising. All of this was using my name, Christine Schaller.
20. On May 14, 2012, I filed my Declaration of Candidacy with the Thurston County Auditor for Thurston County Superior Court Judge, position 2. This is a position being vacated with the retirement of Judge Paula Casey.

21. On May 14, 2012, my Declaration of Candidacy was accepted by the Thurston Auditor.
22. During the filing period, 3 other candidates filed for position 2: petitioner Johnson, petitioner Clark and Victor Minjares.
23. During the course of the campaign the issue of my residency has been a well-publicized issue. The residency issue has appeared in at least 11 articles in *The Olympian*, the largest paper in Thurston County, and at least 5 letters to the editor. It has been mentioned by all of the candidates at some point, including at public speaking forums, on some of their websites and in 1 candidate's voter pamphlet statement. It has been a focus of petitioner Johnson's campaign, as set forth on his website and in the letter he sent to most, if not all, of the lawyers in Thurston County.
24. On or about May 29, 2012, petitioner Parker filed a petition for declaratory judgment and temporary relief. Said petition requested that I be declared ineligible for the position of superior court judge and that the Auditor, Kim Wyman, be prohibited from listing my name on the ballot.
25. On or about June 28, 2012, petitioner Jim Johnson sought to intervene in the law suit.
26. On July 23, 2012, the Honorable Larry E. McKeeman, a visiting Snohomish County Superior Court Judge, heard the matter and denied petitioner Johnson's motion to intervene and dismissed Parker's action.
27. Despite the lawsuit and the controversy raised on the residency issue, *The Olympian* endorsed me, along with Clark, for position 2, noting specifically "...Schaller would make a thoughtful and decisive Superior Court judge and is more qualified than her opponents Johnson and Victor Minjares."
28. The primary was held on August 7, 2012. I received the most votes of the 4 candidates receiving 23,681 votes, or 48.42% of all votes cast for position 2.

29. On August 22, 2012, I was served with a lawsuit filed by petitioners Parker and Johnson, as well as a lawsuit filed by petitioner Clark.
30. I have been evaluated as part of a judicial survey by the Thurston County Bar Association on 4 occasions. I have been the highest rated Superior Court judicial officer for 3 of the 4 evaluations and was the second highest rated Superior Court judicial officer in the 4<sup>th</sup> evaluation.
31. In October of 2010, I was rated by Washington Women Lawyers as "Well Qualified".
32. In October of 2010, I was rated by the Joint Asian Judicial Evaluation Committee as "Exceptionally Well Qualified."
33. In October of 2010, I was rated by the Latino/Latina Bar Association of Washington as "Exceptionally Well Qualified".
34. I received the 2009 *Jurist of the Year Award* from the Washington State Bar Association, Family Law Section.
35. I received 88% of the votes from local lawyers in the recent Thurston County Bar Association judicial election survey for position 2, with petitioners Johnson and Clark each receiving 11% respectively and Victor Minjares receiving 0%.
36. I have been endorsed by many public officials, including, but not limited to: retired Washington State Supreme Court Chief Justice Gerry Alexander; Thurston County Superior Court Judges Paula Casey and W. Thomas McPhee; retired Thurston County Superior Court Judges Daniel Berschauer, Richard A. Strophy, Christine Pomeroy, Richard "Cork" Hicks and Robert Doran, Thurston County Sheriff John Snaza and retired Thurston County Sheriff Gary Edwards.
37. I have been endorsed by the Thurston County Deputy Prosecuting Attorney's Association.

I declare under the laws of the State of Washington that the foregoing is true and correct.

Dated: August 24, 2012, in Olympia, Washington.

  
CHRISTINE SCHALLER

RONALD R. CARPENTER  
SUPREME COURT CLERK

SUSAN L. CARLSON  
DEPUTY CLERK / CHIEF STAFF ATTORNEY

**THE SUPREME COURT**  
STATE OF WASHINGTON



TEMPLE OF JUSTICE  
P.O. BOX 40829  
OLYMPIA, WA 98504-0929

(360) 357-2077  
e-mail: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
[www.courts.wa.gov](http://www.courts.wa.gov)

December 15, 2011

**LETTER SENT BY E-MAIL ONLY**

Shawn Timothy Newman  
Attorney at Law  
2507 Crestline Drive NW  
Olympia, WA 98502-4327

Asa C. Garber  
Attorney at Law  
PO Box 11626  
Olympia, WA 98508-1626

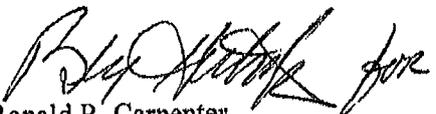
James Kendrick Pharris  
Maureen A. Hart  
Jeffrey Todd Even  
Office of The Attorney General  
PO Box 40100  
Olympia, WA 98504-0100

Re: Supreme Court No. 86650-3 - State ex rel Christine Schaller v. Sam Reed

Counsel:

Enclosed is a copy of the RULING DISMISSING PETITION AGAINST STATE OFFICER signed by the Supreme Court Commissioner, Steven Goff, on December 15, 2011, in the above entitled cause.

Sincerely,

  
Ronald R. Carpenter  
Supreme Court Clerk

RRC: daf

Enclosure

Ex. 1



IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON ON THE  
RELATION OF CHRISTINE  
SCHALLER,

Petitioner,

v.

SAM REED, SECRETARY OF STATE,

Respondent.

FILED  
SUPERIOR COURT  
WASHINGTON  
2011 DEC 15 PM 12:18  
BY RONALD R. CARPENTER  
CLERK

NO. 86650-3

RULING DISMISSING PETITION  
AGAINST STATE OFFICER

The Honorable Christine Schaller has filed an original petition in this court seeking an order mandating Secretary of State Sam Reed to take action to prevent the disqualification of candidates for superior court judge on the basis of their nonresidency in the county in which they seek the office. Now before me for determination is whether to retain the petition for a decision on the merits, transfer it to the superior court, or dismiss it. RAP 16.2(b). For the reasons discussed below, the petition must be dismissed.

Petitioner is a commissioner of the Thurston County Superior Court. She intends to seek election in 2012 to one of the open positions of judge of the court that will then be available. But she currently resides in Pierce County. By statute anyone seeking public office within a county must be an elector of that county. RCW 42.04.020. Believing that this requirement is unconstitutional as applied to candidates

625/140

for superior court judge, petitioner asked the attorney general to bring an action to compel the secretary of state in his capacity as chief elections officer to prevent the statute from being enforced against superior court candidates. When the attorney general declined the request, petitioner brought this original action in this court under RAP 16.2.

Petitioner seeks relief in the form of mandamus, an extraordinary remedy.<sup>1</sup> A writ of mandamus may be issued to compel a state officer to perform a nondiscretionary act that the law clearly requires as part of the official's duties. *Cnty. Care Coal. v. Reed*, 165 Wn.2d 606, 614, 200 P.3d 701 (2009). But being an extraordinary remedy, it is available only when there is no plain, speedy, and adequate remedy at law. *Staples v. Benton County*, 151 Wn.2d 460, 464, 89 P.3d 706 (2004). As indicated, by statute anyone seeking "any elective public office withi ... any county" must be "an elector of such county." RCW 42.04.020. And the name of a candidate may not appear on a ballot for an office unless at the time the candidate files a declaration of candidacy the candidate is registered to vote in the geographic area represented by the office. RCW 29A.20.021(3). But the Washington Constitution spells out the qualifications for superior court judge, specifying only that no one is eligible for the office unless he or she is admitted to practice law in the state. WASH. CONST. art. IV, § 17. Relying on the principle that the legislature generally may not add to the qualifications for a public office prescribed by the constitution, *see, e.g., Gerberding v. Munro*, 134 Wn.2d 188, 205, 949 P.2d 1366 (1998), petitioner argues that the statutes limiting eligibility for county elective offices to residents and electors of the county do not apply to superior court judicial candidates.

---

<sup>1</sup> I do not address in this ruling the issue of standing or whether this action is properly characterized as an "ex rel." action. Petitioner characterizes the action as a petition against a state officer under RAP 16.2, and in form it is plainly an action against a state officer seeking mandamus relief.

But even if petitioner's legal arguments are sound (an issue I do not decide), she still must identify some clear nondiscretionary legal duty on the secretary of state's part that this court may order him to perform, and she must show additionally that she has no adequate remedy at law. On these points her petition fails. Petitioner asks this court to "mandate that the Secretary of State exercise his affirmative duty to ensure [voter registration and residency requirements] are not imposed as a barrier to constitutionally qualified candidates seeking to declare their candidacy for Washington State superior court." But because superior court judge is a county office, declarations of candidacy for that office are to be filed with the county auditor. RCW 29A.24.070(3). Although petitioner cites statutes setting forth the duties of the secretary of state as the state's chief elections officer, none of the cited statutes confers on the secretary of state a clear legal duty, or even the power, to "ensure" that county auditors accept future declarations of candidacy from applicants who do not meet statutory qualifications on the basis that they satisfy constitutional qualifications. And a writ may not be issued simply directing the secretary of state to follow the state constitution. *Walker v. Munro*, 124 Wn.2d 402, 407-08, 879 P.2d 920 (1994). A writ must specify the exact thing to be done. *Id.* at 407.

In an effort to be more precise, petitioner cites the secretary of state's statutory obligation to adopt by rule a uniform declaration of candidacy form. See RCW 29A.24.031. She urges the court to direct the secretary to promulgate and distribute a form that does not require a candidate for superior court judge to be a resident or elector of the county. But the secretary has promulgated a form, and it contains no such requirement. It directs the candidate to provide personal information including a residence address, and it requires the candidate to declare under oath that the information provided is true, that the candidate is "a registered voter residing at the address listed above," and that "at the time of filing this declaration, [the candidate

is] legally qualified to assume office." WAC 434-215-012. Nothing in the form requires the candidate to certify that she is a resident and elector of the county in which she is seeking office. Petitioner is concerned that she would be unable to truthfully certify that she is "legally qualified to assume office," but if, as she urges, she is constitutionally qualified for the office and honestly believes that to be the case, she would not be violating an oath by declaring that belief.

In sum, petitioner does not demonstrate the existence of a clear nondiscretionary legal duty that the secretary of state has failed to perform and that this court may order him to perform with the specificity required for a writ of mandamus.

Nor does petitioner show that she lacks adequate alternative remedies. She claims herself that she meets the requirements for standing to bring a declaratory action challenging the application of statutory residency requirements to superior court candidates (within the zone of interests regulated by the statute and injury in fact). *See Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 186, 157 P.3d 847 (2007). And though petitioner urges that such an action brought before she tried to file a declaration of candidacy would not be ripe, that issue is at least debatable. *See Walker*, 124 Wn.2d at 411 (declaratory relief action presents justiciable controversy if it involves an actual and existing dispute or that mature seeds of one, is between parties of genuine opposing interests, involves substantial and direct interests, and would be finally resolved by a judicial determination). Petitioner in any event could file a declaration of candidacy, and if she did so it is questionable whether the auditor could reject it, since petitioner's claim to be constitutionally eligible for the office is a judicial question that the auditor is not empowered to resolve. *See State ex rel. McCaffrey v. Superior Court*, 20 Wn.2d 704, 709-11, 149 P.2d 156 (1944) (interpretation of statute as to whether residency requirement must be met at time

declaration is filed is beyond auditor's power); *compare Fischnaller v. Thurston County*, 21 Wn. App. 280, 285, 584 P.2d 483 (1978) (auditor may reject declaration of candidacy that on its face fails to comply with plainly stated residency requirements fixed by statute and the constitution, requiring no resort to interpretation of the constitution or the statute). And even if the auditor rejected the declaration, petitioner could readily bring a declaratory relief action or an action in mandamus to compel the auditor to accept the declaration. *See McCaffrey*, 20 Wn.2d 704. Petitioner urges that if she waits for rejection to bring an action, the action will be moot, but she does not explain why that would be so. *See id.* at 711 (issuing decision on emergency basis ordering superior court to issue writ of mandamus directing auditor to place candidate's name on primary ballot).

For all of these reasons petitioner does not demonstrate that she is entitled to mandamus relief against the secretary of state.

This original petition against a state officer is dismissed.

  
COMMISSIONER

December 15, 2011

[REDACTED]

---

The email below is Ex. 2 to the Schaller Declaration

**From:** David Klumpp [mailto:KLUMPPD@co.thurston.wa.us]  
**Sent:** Tuesday, January 10, 2012 2:25 PM  
**To:** newmanlaw@comcast.net  
**Cc:** Jon Tunheim; Kim Wyman  
**Subject:** Residency of Superior Court Judge Candidates

Mr. Newman:

Attached is a copy of a 1986 opinion by then Chief Civil Deputy Dale Kamerrer on the issue of whether a person seeking or holding the office of superior court judge must be a resident of the county or district served by the judgeship in question. Dale Kamerrer's opinion was that residency was not a requirement for the reasons set forth in his opinion.

I have reviewed Christine Schaller's petition to the Supreme Court and the legal authority cited therein and believe that Dale Kamerrer's opinion is still correct. I have discussed this issue with Kim Wyman, and she is in agreement that should Christine Schaller decide to run for superior court judge that her declaration of candidacy will not be rejected based on her residency in Pierce County.

If you have any questions, feel free to give me a call.

David Klumpp  
Chief Civil Deputy  
Thurston County Prosecuting Attorney's Office  
786-5574 x 7856

Ex. 2



# Thurston County Prosecuting Attorney

2000 Lakeridge Drive S.W., Olympia, WA 98502  
Telephone (206) 786-5540

PATRICK D. SUTHERLAND  
PROSECUTING ATTORNEY

February 10, 1986

## M E M O R A N D U M

TO: Gary McIntosh  
Auditor's Office

FROM: Dale Kamerrer *Dale*  
Chief Civil Deputy

RE: Superior Court Judge Residency Issue

Attached for your information is a copy of our opinion written to Representative Unsoeld at the request of Karen Fraser regarding the Superior Court judge residency issue.

vwt  
Attachment



# Thurston County Prosecuting Attorney

2000 Lakeridge Drive S.W., Olympia, WA 98502  
Telephone (206) 786-5540

PATRICK D. SUTHERLAND  
PROSECUTING ATTORNEY

February 10, 1986

The Honorable Jolene Unsoeld  
State Representative  
House Office Building No. 405  
Olympia, WA 98504

Dear Representative Unsoeld:

In response to the request made by County Commissioner, Karen Fraser, and you, set forth below is our opinion concerning whether a person seeking or holding the office of superior court judge must be a resident of the county or district served by the judgeship in question. We have concluded that the question is answerable in the negative for the reasons indicated below.

The superior courts of Washington are provided for in the State Constitution (Article IV). Among the provisions of that article is Article IV, § 17, which reads:

"Eligibility of judges. No person shall be eligible to the office of judge of the supreme court, or judge of the superior court, unless he shall have been admitted to practice in the courts of record of this state or of the territory of Washington."

No other constitutional provision establishes additional or different qualifications for the office of superior court judge.

The question of whether the legislature could impose additional or different qualifications for holding the office of superior court judge (such as a residency requirement stated in RCW 42.04.020) has never been directly addressed in Washington. However, the Supreme Court has indicated, in dicta, that

"[W]e will assume the preferable rule to be that, where the constitution has set forth qualifications for an office, either general or specific, in the absence of an express grant of power to the legislature, there is an implied prohibition against the imposition of additional qualifications by the legislature."

The Honorable Jolene Unsoeld  
February 10, 1986  
Page 2

In re Bartz, 47 Wn.2d 161, at 164, 287 P.2d 119 (1955). Since Article IV, § 17 specifically sets forth a qualification for the office of superior court judge, no legislative enactment can add to it. In accord with this statement is 61--62 AGO No. 173 (10/9/62), which dealt with whether the legislature could prescribe qualifications for the office of Superintendent of Public Instruction which were in addition to or different from those constitutionally prescribed.

Additionally, Title 2 of the Revised Code of Washington, dealing specifically with superior courts as courts of record, contains no provisions relating to the qualifications of superior court judges, indicating that the legislature has recognized the exclusiveness of the constitutional provision. Also, in Nielsen v. Bar Association, 90 Wn.2d 818, 585 P.2d 1191 (1978), the court recognized in a footnote the exclusive character of Article IV, § 17, by saying:

"Under Washington's scheme the status of attorney is the only present criteria for membership in the judiciary of the superior court or supreme court."

90 Wn.2d 818 at 825, Footnote 4.

In the event that an argument is made that the framers of the state Constitution omitted a residency requirement from Article IV, § 17, as an oversight which could be rectified by the legislature, the Journal of the State Constitutional Convention reveals that motions to amend that section in order to provide residency requirements were made and defeated. (See attached copy of p. 623 of the Journal of the State Constitutional Convention.) In the case of other elected officials, the framers did provide residency requirements (Article II, § 7, legislators; Article III, § 25, executive officers), or left it to the legislature to establish qualifications for office holders (Article IV, § 1, inferior courts; Article XI, § 5, county officers). Thus, the framers of the Constitution were well aware that they could impose residency requirements as a qualification for elective office, but they consciously avoided the same with respect to judges of the supreme court and superior courts.

Therefore, in conclusion, it is the opinion of this office that a person need not be a resident of the

The Honorable Jolene Unsoeld  
February 10, 1986  
Page 3

county in which a particular superior court judgeship is situated in order to qualify for that office. We trust the foregoing will assist you. If there are any further questions on this matter, please feel free to contact us.

Very truly yours,

PATRICK D. SUTHERLAND  
PROSECUTING ATTORNEY

*W. Dale Kamerrer*

W. Dale Kamerrer  
Chief Civil Deputy

vwt  
Attachment  
c: Karen Fraser

with respect to matters of fact, nor comment thereon, but shall declare the law.

Original language same as present.<sup>44</sup>

Text as given in report of committee, July 16:

Same as final. (p. 104)

Consideration by committee of the whole, July 20:<sup>45</sup>

**Motion:** Suksdorf moved to strike the phrase "nor comment thereon."

**Motion:** Dyer moved to amend Suksdorf's amendment so that judges could not instruct juries in regard to matter of fact, but could state the testimony and declare the law. Suksdorf accepted this amendment.

**Action:** Motion lost, 10 ayes, noes not counted.

**Discussion as follows:**

**For:** Turner felt it was necessary to refer to the facts in order to make the law clear to the jury. Buchanan urged that judges ought to be allowed to protect juries from lawyers who confused them. J. Z. Moore thought the judge should be an active factor. Suksdorf said the amendment was in the interest of the people who paid the costs of litigation. Hoyt and Jones also spoke in favor of it.

**Against:** Godman opposed the motion because he thought it was useless. Dunbar feared that the jury would follow the judge's lead, and E. H. Sullivan said the jury should be the sole judge of facts. Crowley and Kinnear thought the functions of judge and jury should be kept separate and distinct. Dyer pointed out that the jury system began as a protection from judges who tried to carry out the corrupt desires of English kings. P. C. Sullivan and Griffiths were also opposed to the motion.

**Motion:** Stiles moved to put "disputed" before "matters."

**Action:** Motion lost.

<sup>44</sup> Charge to Jury: Hill, Prop. Wash. Const., Art. 6, sec. 15. [Identical except that Wash. adds words "or comment on."] Cal., Const. (1879), Art. 6, sec. 9. [Similar.]  
<sup>45</sup> Ledger, Daily Oregon Statesman [Salem], Times, Review, July 21; Spokane Falls Northwest Tribune, July 26, 1889.

## Section 17

Present Language of the Constitution:

**ELIGIBILITY OF JUDGES.** No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

Original language same as present.<sup>46</sup>

Text as given in report of committee, July 16.

Same as final. (p. 104)

Consideration by committee of the whole, July 20:<sup>47</sup>

**Motion:** Buchanan moved to add "and a citizen thereof for two years."

**Action:** Motion lost.

**Motion:** Power moved to add "and a qualified elector."

**Action:** Motion lost.

## Section 18

Present Language of the Constitution:

**SUPREME COURT REPORTER.** The judges of the supreme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

Original language same as present.<sup>48</sup>

Text as given in report of committee, July 16:

Same as final. (p. 104)

## Section 19

Present Language of the Constitution:

**JUDGES MAY NOT PRACTICE LAW.** No judge of a

<sup>44</sup> Eligibility to Judgeship: Hill, Prop. Wash. Const., Art. 6, sec. 18. [Identical.] Cal., Const. (1879), Art. 6, sec. 23. [Similar.]

<sup>45</sup> Ledger, Times, July 21, 1889.

<sup>46</sup> Reporter for Supreme Court: Hill, Prop. Wash. Const., Art. 6, sec. 16. [Identical.]

AUG 24 2012

X EXPEDITE  
X No hearing set  
X Hearing is set  
Date: August 29, 2012  
Time: 1:30 pm  
Judge/Calendar: Olsen

THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

Vicki Lee Anne Parker and James S. Johnson,  
Petitioner,

vs.

Kim Wyman in her capacity as Thurston  
County Auditor, Christine Schaller Kradjan  
also known as Christine Schaller, Marie Clarke  
and Victor Minjares,

Respondents

Case No.: 12 2 01730 9

**DECLARATION OF  
SHAWN NEWMAN  
IN SUPPORT OF  
CHRISTINE SCHALLER'S  
RESPONSE TO PETITIONS**

Marie C. Clarke,

Petitioner,

vs.

Kim Wyman, Thurston County Auditor, and  
Christine Schaller-Kradjan, Candidate for  
Thurston County Superior Court, Position 2,

Respondents

Case No: 12-2-01732-5

I, Shawn Newman, declare and state:

I. I am over 18 and represent the Respondent, Christine Schaller.

2. Attached are true and correct copies of the following Exhibits:

#1. Territorial Code of Wash. Laws of 1854 at 64 and  
Laws of 1855 at 7 (sec. 8)

#2. Territorial Code of Wash. 1871 at 175

#3. *The Journal of the Washington State Constitutional Convention*  
1889 at sec. 17

3. The Territorial Session Laws can be found on line here:  
[http://www.leg.wa.gov/CodeReviser/Pages/session\\_laws.aspx](http://www.leg.wa.gov/CodeReviser/Pages/session_laws.aspx)

I declare under the laws of the State of Washington that the foregoing is  
true and correct.

Date: August 22, 2012  
Olympia, WA

  
SHAWN NEWMAN  
Attorney for Ms. Schaller

# STATUTES

OF THE

## TERRITORY OF WASHINGTON:

BEING THE CODE PASSED BY THE

### LEGISLATIVE ASSEMBLY,

AT THEIR FIRST SESSION BEGUN AND HELD AT  
OLYMPIA, FEBRUARY 27<sup>TH</sup>, 1854.

ALSO. CONTAINING

THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF  
THE UNITED STATES, THE ORGANIC ACT OF WASHING-  
TON TERRITORY. THE DONATION LAWS, &C., &C.

-----  
PUBLISHED BY AUTHORITY.  
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OLYMPIA:  
GEO. B. GOUDY, PUBLIC PRINTER.

1855.

# STATUTES

OF THE

## TERRITORY OF WASHINGTON.

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### AN ACT

RELATING TO ELECTIONS AND THE MODE OF SUPPLYING VACANCIES.

#### CHAPTER I.

- Sec. 1. Qualification of voters.
- Sec. 2. Certain persons not entitled to vote.
- Sec. 3. General election; time of.
- Sec. 4. Appointment of judges; notice of appointment.
- Sec. 5. Clerks, election of; how long to serve.
- Sec. 6. Notices of election; when, and by whom made out; form of.
- Sec. 7. Notices to be posted up by sheriff.
- Sec. 8. Oaths to be taken by judges and clerks.
- Sec. 9. By whom administered.
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 SEC. 24. Ballots and poll list to be made to agree.  
 SEC. 25. Votes to be counted; certificate of election; form of.  
 SEC. 26. Disposition of poll book.  
 SEC. 27. Punishment for failure or neglect to make proper disposition of poll book.  
 SEC. 28. Canvass by clerk of board of county commissioners; abstract and certificates to be made out; *proviso* in case of tie.  
 SEC. 29. Decision to be by lot when two or more county or precinct officers have an equal number of votes for the same office.  
 SEC. 30. Return to be made to the secretary of the territory. Votes for delegate, how canvassed.  
 SEC. 31. Messenger employed to procure returns.  
 SEC. 32. Certain persons may resign. Vacancies, how filled.  
 SEC. 33. If two or more counties are united, votes to be counted in senior county.  
 SEC. 34. Compensation of judges of election, clerks, &c.  
 SEC. 35. Punishment of judges, &c., for violation of election law.  
 SEC. 36. Term of office, when to commence.  
 SEC. 37. Persons having majority to be deemed elected.  
 SEC. 38. In counting votes, misspelling and abbreviations to be disregarded.  
 SEC. 39. Contests for county and precinct officers, where and how to be tried. Clerk of county commissioners to issue notice.  
 SEC. 40. Board of county commissioners to determine such contest.  
 SEC. 41. Election of county commissioner or clerk, how contested.  
 SEC. 42. Probate judge to determine such contest.  
 SEC. 43. This chapter not to be construed to impair the right of any person to contest any election in the manner otherwise provided by statute.

SEC. 1. *Be it enacted by the council and house of representatives of the territory of Washington,* That all white male inhabitants over the age of twenty-one years, who shall have resided within this territory for three months next preceding an election, shall be entitled to vote at any election for delegate to congress, and for territorial, district, county and precinct officers: *Provided,* That they shall be citizens of the United States, or shall have declared, on oath, their intentions to become such, and shall have resided three months in the territory, and fifteen days in the county where they offer to vote, next preceding the day of election: *Provided,* That nothing in this act shall be so construed as to prevent all such American half-breed Indians, as the judges of election shall determine have adopted the habits and customs of civilization, from voting.

SEC. 2. No person under guardianship, non compos mentis, or insane, nor any person convicted of treason, felony or bribery, unless restored to civil rights, shall be permitted to vote at any election.

AN ACT ENTITLED, "AN ACT TO AMEND AN ACT DEFINING THE TIME OF HOLDING ELECTIONS;" PASSED APRIL 15, 1854.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a general election shall be held in the several precincts in this territory on the second Monday in July, in each year, at which time there shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for.

SEC. 2. All laws or acts heretofore made conflicting with this act are hereby repealed.

SEC. 3. This act to take effect from and after its passage.

*Passed February 1, 1855.*

---

AN ACT TO AMEND AN ACT ENTITLED "AN ACT RELATING TO ELECTIONS AND THE MODE OF SUPPLYING VACANCIES."

SEC. 1. Qualification of a voter, or person holding office; soldiers or seamen not entitled to vote; Repealing clause.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all white American citizens above the age of twenty-one years, and all other white male inhabitants of this territory above that age who shall have declared on oath their intention to become citizens, and to support the constitution of the United States, at least six months previous to the day of election, and who shall have resided six months in the territory, and twenty days in the county, next preceding the day of election, and none others, shall be entitled to hold office, or vote at any election in this territory; *Provided,* that no officer, soldier, seaman or marine in the army or navy of the United States, or attached to troops in the service of the United States shall be allowed to vote at any election in this territory, and that all existing laws hitherto passed, and not in conformity with this act, be and they are hereby repealed, or so much of them as conflicts with this act.

*Passed, January 25, 1855.*

**STATUTES**

**OF THE**

**TERRITORY OF WASHINGTON,**

**MADE AND PASSED**

**AT A SESSION OF THE LEGISLATIVE ASSEMBLY BEGUN AND HELD AT OLYMPIA  
ON THE SECOND DAY OF OCTOBER, 1871, AND ENDED ON THE  
THIRTIETH DAY OF NOVEMBER, 1871.**

**NINETY-SIXTH YEAR OF INDEPENDENCE.**

**PUBLISHED BY AUTHORITY.**

**OLYMPIA:  
PROSCH & McELROY, PRINTERS.  
1871.**

**EX 2**

## AN ACT

MAKING THE SHERIFFS OF PIERCE AND THURSTON COUNTIES  
EX-OFFICIO ASSESSORS OF SAID COUNTIES.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the sheriffs of Pierce and Thurston counties, Washington Territory, shall be *ex-officio* assessors of said counties and shall fulfill all the duties required by law to be fulfilled by the assessors of said counties, and they shall be governed by all the laws relating to the same.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 28, 1871.

J. J. H. VAN BOKKELEN,

*Speaker of the House of Representatives.*

Passed the Council\* November 29, 1871.

H. A. SMITH,

*President of the Council.*

Approved November 29, 1871.

EDWARD S. SALOMON,

*Governor of Washington Territory.*

## AN ACT

IN RELATION TO FEMALE SUFFRAGE.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That hereafter no female shall have the right of ballot or vote at any poll or election precinct in this Territory, until the Congress of the United States of America shall, by direct legislation upon the same, declare the same to be the supreme law of the land.

SEC. 2. This act to take effect and be in force from and after its passage.

Passed the House of Representatives November 25, 1871.

J. J. H. VAN BOKKELEN,

*Speaker of the House of Representatives.*

Passed the Council November 29, 1871.

H. A. SMITH,

*President of the Council.*

Approved November 29, 1871.

EDWARD S. SALOMON,

*Governor of Washington Territory.*

---

## AN ACT

FOR THE PRESERVATION OF SHEEP IN ISLAND COUNTY.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That every person who shall keep or harbor a dog or bitch above the age of six months, shall be taxed yearly the sum of two dollars for each and every dog or bitch, which tax shall be assessed and collected by the assessors and collectors appointed for assessing and collecting the county tax, in the same manner as other annual taxes raised for the use of the county, and the same fees shall be allowed for assessing and collecting the same as are allowed for assessing and collecting the said county tax; and the assessors and collectors shall be subject to the same penalties for neglect of duty in assessing and collecting taxes for the use of said county.

SEC. 2. That every inhabitant who shall refuse or wilfully neglect to deliver into the said assessor, when by him required, a true account of the number of dogs or bitches made taxable by this act, he or she shall, for every such refusal and neglect, forfeit and pay the sum of two dollars, to be recovered with costs

THE JOURNAL OF THE  
**WASHINGTON STATE**  
CONSTITUTIONAL CONVENTION  
**1889**

with Analytical Index  
by  
Quentin Shipley Smith

Edited by  
Beverly Paulik Rosenow

BOOK PUBLISHING COMPANY  
Seattle, Washington

**EX 3**

## PUBLISHER'S ACKNOWLEDGMENTS

The publisher wishes to acknowledge the invaluable aid and counsel of Marian Gallagher, librarian of the University of Washington School of Law; Professor Ralph Johnson of the University of Washington School of Law; Judge Frank P. Weaver of the Washington State Supreme Court; and particularly, Professor Charles M. Gates of the University of Washington History Department who graciously wrote the foreword and guided each step in the publication of this volume.

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Book Publishing Company



## Section 17

**Present Language of the Constitution:**

**ELIGIBILITY OF JUDGES.** No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

Original language same as present.<sup>44</sup>

Text as given in report of committee, July 16:

Same as final. (p. 104)

Consideration by committee of the whole, July 20:<sup>45</sup>

**Motion:** Buchanan moved to add "and a citizen thereof for two years."

**Action:** Motion lost.

**Motion:** Power moved to add "and a qualified elector."

**Action:** Motion lost.

## Section 18

**Present Language of the Constitution:**

**SUPREME COURT REPORTER** The judges of the supreme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

Original language same as present.<sup>46</sup>

Text as given in report of committee, July 16:

Same as final. (p. 104)

## Section 19

**Present Language of the Constitution:**

**JUDGES MAY NOT PRACTICE LAW.** No judge of a

44. Eligibility to Judgeship: Hill, Prop. Wash. Const., Art. 6, sec. 18. [Identical.] Cal., Const. (1879), Art. 6, sec. 23. [Similar.]

45. Ledger, Times, July 21, 1889.

46. Reporter for Supreme Court: Hill, Prop. Wash. Const., Art. 6, sec. 18. [Identical.]

1  EXPEDITE  
2  Hearing is set:  
3 Date: August 29, 2012  
4 Time: 1:30 p.m.  
5 Visiting Judge: Sally Olsen

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AUG 24 2012  
CLERK OF COURT  
THURSTON COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

9 VICKI LEE ANNE PARKER and JAMES S.  
10 JOHNSON,

Petitioners,

vs.

11 KIM WYMAN, CHRISTINE SCHALLER-  
12 KRADJAN, MARIE CLARKE, and VICTOR  
13 MINJARES,

Respondents.

No.: 12-2-01730-9

14 MARIE C. CLARKE,

Petitioner,

vs.

16 KIM WYMAN, Thurston County Auditor, and  
17 CHRISTINE SCHALLER-KRADJAN, Candidate for  
18 Thurston ,

Respondents.

No.: 12-2-01732-5

**RESPONDENT KIM WYMAN'S  
MEMORANDUM OF LAW**

**I. INTRODUCTION**

20 This matter comes before the Court on the motion of Petitioners Parker and Johnson for an  
21 order to show cause why this Court should not order Kim Wyman, Thurston County Auditor, to not  
22 place Christine Schaller's name on the general election ballot for Thurston County Superior Court  
23 Judge Position 2. In the alternative, the Petitioners are requesting that this Court order the Auditor to  
24 list Christine Schaller's last name as "Schaller-Kradjan" on the general election ballot.  
25

RESPONDENT KIM WYMAN'S MEMORANDUM OF LAW - 1

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JON TUNHEIM  
Thurston County Prosecuting Attorney  
Civil Division - Glenn Bldg.  
2000 Lakeridge Dr., SW  
Olympia, WA 98502  
360/786-5574 FAX 360/709-3006

1 Petitioner Clarke filed a Petition for Writs of Mandamus and Prohibition under RCW  
2 29A.68.011. She subsequently filed a Motion to Show Cause. Petitioner Clarke also requests that this  
3 Court order the Auditor to remove Christine Schaller's name from the general election ballot Thurston  
4 County Superior Court Judge Position No. 2. Additionally, Petitioner Clarke requests that this Court  
5 direct the Auditor to place the names of Jim Johnson and Marie Clarke on the general election ballot  
6 for Thurston County Superior Court Judge Position No. 2.

7 A Thurston County Superior Court Judge granted both motions for orders to show cause and  
8 this matter has been set for hearing on August 29, 2012, before this Court.  
9

## 10 II. FACTS

11 On December 19, 2011, Christine Schaller through her attorney, Shawn Newman, sent a letter  
12 to Kim Wyman, the Thurston County Auditor, asking if her declaration of candidacy would be  
13 accepted for the position on the Thurston County Superior Court Judge. Ms. Schaller, a Thurston  
14 County Superior Court Commissioner, resides in Pierce County as a commuting compromise with her  
15 husband who works in Seattle.

16 Because Ms. Schaller's eligibility involved the interpretation of statutory and constitutional  
17 provisions, Kim Wyman referred Mr. Newman's letter to the Thurston County Prosecuting Attorney's  
18 Office. On January 10, 2012, Mr. Newman was advised by the Chief Civil Deputy of the Prosecutor's  
19 Office that Ms. Schaller's declaration of candidacy would be accepted by the Auditor. This decision  
20 was based on a 1986 opinion by then Chief Civil Deputy Dale Kamerrer and a review of subsequent  
21 case law. *See Declaration of Kim Wyman.*

22 On May 14, 2012, Christine Schaller filed her Washington State Declaration of Candidacy for  
23 the Thurston County Superior Court Judge Position 2 with the Thurston County Auditor's Office.  
24 Petitioner Parker filed a Declaratory Judgment action in an attempt to have Christine Schaller's name  
25

1 removed from the primary ballot. Petitioner Parker argued that Christine Schaller was ineligible to run  
2 for Thurston County Superior Court because she resides in Pierce County. Snohomish County  
3 Superior Court Judge Larry McKeeman granted Respondents Schaller's and Wyman's motions to  
4 dismiss finding that a declaratory judgment action was improper because there was an adequate  
5 statutory remedy in RCW 29A.68.011 and Petitioner Parker had failed to comply with the time  
6 requirements of that statute.

7  
8 Christine Schaller was on the primary ballot along with Jim Johnson, Marie Clarke and Victor  
9 Minjares. On August 21, 2012, the results of the primary elections were certified. Christine Schaller  
10 received the greatest number of votes with 48.42% of the total votes, and Jim Johnson received the  
11 second greatest number of votes with 21.97% of the total votes. Pursuant to RCW 29A36.171 Ms.  
12 Schaller and Mr. Johnson will advance to the general election. *See* Declaration of Kim Wyman.

### 13 III. ARGUMENT

#### 14 A. **There is a Strong Public Policy in Favor of Eligibility for Office and an** 15 **Unqualified Right of the People to Choose Who Shall Hold Office.**

16 Petitioners argue that Kim Wyman erred in allowing Christine Schaller's name to appear on the  
17 primary ballot for Thurston County Superior Court Judge position 2. However, an auditor may not  
18 reject a declaration of candidacy on the grounds that the candidate is ineligible if that rejection  
19 involves the interpretation of statutory or constitutional provisions. *Fischnaller v. Thurston County*, 21  
20 Wn. App. 280, 283, 584 P.2d 483 (1978). In this case it is clear that Christine Schaller's eligibility to  
21 run for superior court judge requires interpretation of statutory provisions, constitutional provisions  
22 and case law. Christine Schaller's eligibility requires a judicial determination and is beyond the scope  
23 of an auditor's duties.

24 Courts are to exercise restraint in election contests, and there is a strong public policy which  
25 favors eligibility for public office. *Dumas v. Gagner*, 137 Wn.2d 268, 295, 971 P.2d 17 (1999). In

RESPONDENT KIM WYMAN'S MEMORANDUM OF LAW - 3

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Civil Division - Glenn Bldg.  
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Olympia, WA 98502  
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1 ruling that the qualification for state constitutional officers are exclusive, the Washington Supreme  
2 Court in *Gerberding v. Munro*, 136 Wn.2d 188, 949 P.2d 1366 (1998) reiterated that the people have  
3 an unqualified right to choose among aspiring candidates for public office.

4 **B. The Washington State Constitution, Article IV, § 17 Establishes the**  
5 **Qualifications for the Office of Superior Court Judge.**

6 The Washington State Constitution, Article IV, § 17 establishes the qualifications for the office  
7 of superior court judge. Article IV, § 17 states:

8 Eligibility of judges. No person shall be eligible to the office of judge of the supreme  
9 court, or judge of the superior court, unless he shall have been admitted to the practice  
10 in the courts of record of this state or of the territory of Washington.

11 No other constitutional provision establishes additional or different qualifications for the office  
12 of superior court judge.

13 In *In re Bartz*, 47 Wn.2d 161, 164, 287 P.2d 119 (1955) the Court stated:

14 [W]e will assume the preferable rule to be that, where the constitution has set forth  
15 qualifications for an office, either general or specific, in the absence of an express grant  
16 of power to the legislature, there is an implied prohibition against the imposition of  
17 additional qualifications by the legislature.

18 In *Nielsen v. Bar Association*, 90 Wn.2d 818, 585 P.2d 1191 (1978) the Court recognized the  
19 exclusiveness of the constitutional provision in a footnote by saying:

20 Under Washington's scheme the status of attorney is the only present criteria for  
21 membership in the judiciary of the superior court or supreme court.

22 *Nielsen* at 825.

23 The Washington State Supreme Court most recently addressed the issue in a footnote in *Quick-*  
24 *Ruben v. Verharen*, 136 Wn.2d 888, 902, 969 P.2d 64 (1998). The Court stated as follows:

25 CONST. art. IV, § 17 (sets the qualifications for superior court judges, but does not  
include county residency). See also The Journal of the Washington State Constitu-  
tional Convention 1889, at 623 (Beverly Paulik Rosenow ed., 1962) (noting "qualified  
elector" and two year residency (in Washington state or territory) requirements were  
debated as possible qualifications for superior court judges and rejected at the

1 constitutional convention); *In re Bartz*, 47 Wn.2d 161, 164-67, 287 P.2d 119 (1955)  
2 (noting Legislature could not add to constitutional qualifications, and that CONST. art.  
3 III, § 25, requiring state officers to be citizens of the United States and qualified  
4 electors, did not apply to the judiciary); *Gerberding v. Munro*, 134 Wn.2d 188, 201-10,  
5 949 P.2d 1366 (1998) (holding qualifications prescribed by the constitution for  
6 constitutional offices are exclusive and may not be added to by statute absent express  
7 constitutional authority to do so).

8 *Quick-Ruben* at n. 11.

9 **C. The Qualifications Set Forth in RCW 42.04.020 Do Not Apply to Supreme and  
10 Superior Court Judges.**

11 Petitioners argue that RCW 42.42.020 applies to all public offices including superior court  
12 judges. RCW 42.04.020 provides as follows:

13 That no person shall be competent to qualify for or hold any elective public office  
14 within the state of Washington, or any county, district, precinct, school district,  
15 municipal corporation or other district or political subdivision, unless he or she be a  
16 citizen of the United States and state of Washington and an elector of such county,  
17 district, precinct, school district, municipality or other district or political subdivision.

18 RCW 42.04.020 is a general statute that makes no mention of specific office and, therefore,  
19 does not mention superior or supreme court judges. The qualifications set forth in Article IV, § 17 is  
20 specific to supreme and superior court judges. As noted above, where the constitution has set forth  
21 qualifications for an office, absent an express grant of power, the legislature is prohibited from  
22 imposing additional qualifications.

23 Even if the legislature was not prohibited from adding to the qualifications set forth in Article  
24 IV, § 17, any alleged conflict can be reconciled. When statutes are in apparent conflict, courts should  
25 reconcile them that each may be given effect. *In re Mayner*, 107 Wn.2d 512, 522, 730 P.2d 1321  
(1986). In this case, Article IV, § 17 of the Washington Constitution controls the qualifications for  
superior court judges and supreme court justices. RCW 42.04.020 can be given effect by applying it to  
all offices where the qualifications are *not* set forth in the constitution.

1           **D.     The Territorial Laws Cited by Petitioners Predate the Creation of Superior**  
2           **Courts.**

3           Petitioner Clarke argues that territorial laws that predate the creation of superior courts should  
4 be incorporated into the requirements for supreme and superior court judges set forth in Article IV,  
5 § 17 of the Washington Constitution. Petitioner cites territorial laws requiring probate court judges  
6 and justices of the peace to be county residents and argues that Article XXVII, § 2 of the Washington  
7 Constitution somehow incorporates these residency requirements into the qualifications for supreme  
8 and superior court judges set forth in Article IV, § 17.

9           Petitioner Clarke ignores the fact that these territorial laws predate the creation of superior  
10 courts and the fact that the Journal of the State Constitutional Convention reveals that motions to  
11 amend Article IV, § 17 to add a residency requirement were made and defeated. *See Attachment A,*  
12 *page 623 of the Journal of the State Constitutional Convention.*

13           The framers of the Constitution were well aware that they could impose residency requirements  
14 and did so for other offices. (Article II, § 7, legislators; Article III, § 25, executive officers.)

15           **E.     Petitioner Clarke's Claim that the Absence of a Residency Requirement Will**  
16           **Result in Absurd Results Assumes Voters Are Incompetent.**

17           Petitioner Clarke argues that without a residency requirement for superior court judge that the  
18 voters could elect or a future governor could appoint a foreign national or resident of some other state  
19 to the superior court bench. Petitioner Clarke ignores the fact that the current governor will not even  
20 consider a candidate that is not a county resident and she assumes that without a copy of The Olympian  
21 and voters' pamphlet in their hands that voters are hopelessly uniformed. Petitioner Clarke ignores the  
22 fact that we live in an electronic age where most people get their news online. The Olympian and most  
23 newspapers are available online and are regularly updated throughout the day. The Seattle PI is  
24 exclusively online. Practically every candidate for public office has a web page. Voters Pamphlets  
25

1 are available on line. There is currently a web site (votingforjudges.org) that is devoted entirely to  
2 providing information about judicial candidates in the State of Washington.

3 Petitioner Clarke's argument is that we need to protect the voter's from their own  
4 incompetence. Her suggestion that the voters are so uninformed that a foreign national (who would  
5 have to be a member of the WSBA) could change their name to Gerry Alexander and be elected judge  
6 is preposterous. Her argument that the absence of a residency requirement will lead to absurd results  
7 has no basis in reality.

8  
9 **F. WAC 434-215-012 Permits a Candidate to Indicate How They Want Their Name  
Printed on the Ballot.**

10 RCW 29A.04.611 provides that the Secretary of State shall assist local election's officers by  
11 devising uniform forms and procedures. WAC 434-215-012 establishes the form for declaration of  
12 candidacy. The form provides that a candidate must, in the section entitled "personal information,"  
13 provide their name as they are registered to vote. In the section entitled "ballot information" the  
14 candidate is asked to provide "exact name I would like printed on the ballot," but does not specify that  
15 the last name must be as it appears on their voter registration. *See Attachment B.*

16  
17 Christine Schaller's last name on her voter registration is Schaller-Kradjan, however, she is  
18 licensed with the Washington State Bar Association as Christine Schaller. Since she is professionally  
19 known by the last name of Schaller, her use of the last name under which she is licensed to practice  
20 law on the ballot will inform, rather than mislead, voters about who she is. Requiring her to use the  
21 name under which she is registered to vote rather than the name by which she is known in Thurston  
22 County as an attorney and court commissioner is likely to confuse voters.

23 Furthermore, she has already appeared on the primary ballot as Christine Schaller and to  
24 require that she be placed on the general election ballot with a different name will potentially confuse  
25

1 voters. The time to have raised this challenge was before her name appeared on the primary ballot.  
2 This Court should find that Petitioners have waived this issue by not raising it immediately after the  
3 close of filing.

### 4 III. CONCLUSION

5 The burden of proof is on the Petitioners. As noted above, there is a strong public policy in  
6 favor of eligibility for office and voters have an unqualified right to choose among aspiring candidates  
7 for public office.

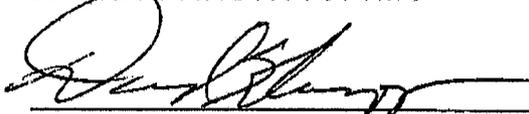
8 There is clearly no residency requirement for superior court judges in Article IV, § 17.  
9 Petitioner's have provided no compelling evidence to refute that two year residency requirements were  
10 debated as possible qualifications for superior court judges and rejected at the constitutional  
11 convention.  
12

13 It is well established law that where the constitution has set forth qualifications for an office, in  
14 the absence of an express grant of power to the legislature, there is an implied prohibition against the  
15 imposition of additional qualifications by the legislature.

16 Based on all of the above, Petitioners' request to have Christine Schaller's name removed from  
17 the general election ballot should be denied.

18 DATED this 24<sup>th</sup> day of August, 2012.

19  
20 JON TUNHEIM  
PROSECUTING ATTORNEY

21 

22 DAVID KLUMPP, WSBA #10910  
23 Chief Civil Deputy  
24 Attorney for Respondent Wyman  
25

1 A true and correct copy of this document was sent electronically *and* properly addressed and mailed, postage prepaid, to the following individual(s) on the date indicated below:

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9 I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia,  
10 Washington.

11 Date: 8-24-13

12 Signature: [Handwritten Signature]

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RESPONDENT KIM WYMAN'S MEMORANDUM OF LAW - 9

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JON TUNHEIM  
Thurston County Prosecuting Attorney  
Civil Division - Glenn Bldg.  
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with respect to matters of fact, nor comment thereon, but shall declare the law.

inal language same as present."<sup>s</sup>

as given in report of committee, July 16:

Same as final. (p. 104)

ideration by committee of the whole, July 20:<sup>s</sup>

**Motion:** Suksdorf moved to strike the phrase "nor comment hereon."

**Motion:** Dyer moved to amend Suksdorf's amendment so that judges could not instruct juries in regard to matter of fact, but could state the testimony and declare the law. Suksdorf accepted this amendment.

**Action:** Motion lost, 10 ayes, noes not counted.

**Discussion as follows:**

**For:** Turner felt it was necessary to refer to the facts in order to make the law clear to the jury. Buchanan urged that judges ought to be allowed to protect juries from lawyers who confused them. J. Z. Moore thought the judge should be an active factor. Suksdorf said the amendment was in the interest of the people who paid the costs of litigation. Hoyt and Jones also spoke in favor of it.

**Against:** Godman opposed the motion because he thought it was useless. Dunbar feared that the jury would follow the judge's lead, and E. H. Sullivan said the jury should be the sole judge of facts. Crowley and Kinnear thought the functions of judge and jury should be kept separate and distinct. Dyer pointed out that the jury system began as a protection from judges who tried to carry out the corrupt desires of English kings. P. C. Sullivan and Griffiths were also opposed to the motion.

**Motion:** Stiles moved to put "disputed" before "matters."

**Action:** Motion lost.

<sup>s</sup> go to July; Hill, Prop. Wash. Const., Art. 6, sec. 15. [Identical except Wash. adds words "or comment on."] Cal., Const. (1879), Art. 6, sec. 15. [Similar.]

<sup>s</sup> ar, Daily Oregon Statesman [Salem], Times, Review, July 21; Spokane Northwest Tribune, July 26, 1889.

## Section 17

Present Language of the Constitution:

**ELIGIBILITY OF JUDGES.** No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

Original language same as present.<sup>44</sup>

Text as given in report of committee, July 16:

Same as final. (p. 104)

Consideration by committee of the whole, July 20:<sup>s</sup>

**Motion:** Buchanan moved to add "and a citizen thereof for two years."

**Action:** Motion lost.

**Motion:** Power moved to add "and a qualified elector."

**Action:** Motion lost.

## Section 18

Present Language of the Constitution:

**SUPREME COURT REPORTER** The judges of the supreme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

Original language same as present.<sup>45</sup>

Text as given in report of committee, July 16:

Same as final. (p. 104)

## Section 19

Present Language of the Constitution:

**JUDGES MAY NOT PRACTICE LAW.** No judge of a

<sup>44</sup> Eligibility to Judgeship: Hill, Prop. Wash. Const., Art. 6, sec. 18. [Identical.] Cal., Const. (1879), Art. 6, sec. 23. [Similar.]

<sup>45</sup> Ledger, Times, July 21, 1889.

<sup>46</sup> Reporter for Supreme Court: Hill, Prop. Wash. Const., Art. 6, sec. 16. [Identical.]

WAC 434-215-012

# Declaration of candidacy.

Declarations of candidacy filed either in person or by mail shall be in substantially the following form:

## Washington State Declaration of Candidacy

office	
jurisdiction and office name	position number
personal information	
as registered to vote	first name middle last
	date of birth (mm / dd / yyyy) phone number
	residential address city / zip
ballot information	
	enter name I would like printed on the ballot
	political party I prefer, if filing for partisan office
	<input type="radio"/> (Prefer <input type="text"/> Party)
	<input type="radio"/> (State No Party Preference)
campaign information	
	campaign address (if different from residential address) city / zip
	email address phone number
	website
filing fee	
	<input type="radio"/> The office has no fixed annual salary; no filing fee
	<input type="radio"/> The office has a fixed annual salary of \$1,000 or less: \$10
	<input type="radio"/> The office has a fixed annual salary over \$1,000: 1% of salary
	<input type="radio"/> I am submitting a filing fee petition instead of a filing fee
oath	
	I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that, at the time of filing this declaration, I am legally qualified to assume office.
	I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.
	sign here date here
for officer use only	

The filing officer must provide a paper or electronic copy of the filed declaration of candidacy to the candidate and to the public disclosure commission.

[Statutory Authority: RCW 29A.04.611, 10-03-072, § 434-215-012, filed 1/18/10, effective 2/18/10; 08-15-052, § 434-215-012, filed 7/11/08, effective 8/11/08; 08-14-049, § 434-215-012, filed 6/28/06, effective 7/29/06. Statutory Authority: 2002 c 140 § 3, 02-15-156, § 434-215-012, filed 7/23/02, effective 8/23/02. 02-09-007, recodified as § 434-215-012, filed 4/4/02, effective 4/4/02. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200, 97-21-045, recodified as § 434-228-012, filed 10/13/97, effective 11/13/97. Statutory Authority: 1990 c 59, 92-12-083, § 434-28-012, filed 6/2/92, effective 7/3/92. Statutory Authority: RCW 29.04.080, 84-15-050 (Order 84-2), § 434-28-012, filed 7/16/84; 80-05-014 (Order 80-1), § 434-28-012, filed 4/8/80.]