

Supreme Court Case No. 88115-4
Court of Appeals No. 67515-0-1 (Consolidated with 67704-7-1)

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**SUPREME COURT
OF THE STATE OF WASHINGTON**

**WILLIAM RALPH,
Plaintiff-Petitioner,**

vs.

**STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES,
Defendant-Respondent.**

**WILLIAM FORTH, et al.,
Plaintiffs-Petitioners,**

vs.

**STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES, et al.
Defendants-Respondents.**

JOINT SUPPLEMENTAL BRIEF OF RESPONDENTS

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INTRODUCTION

The issue before the Court is whether the jurisdictional limitation set forth in RCW 4.12.010(1) is constitutional under Article IV, Section 6 of the Constitution. Plaintiffs argue it is unconstitutional to limit subject matter jurisdiction over injuries to real property to only the county where the property is located. Plaintiffs rely on the Court's analyses of other statutes – primarily in *Young v. Clark* and *Shoop v. Kittitas County* – where the Court reinterpreted jurisdictional statutes to be venue statutes to preserve their constitutionality. Those decisions and their constitutional analyses do not apply to this case. The statute before the Court in this case has different language, a different history, and bears the constitutional imprimatur of the framers of the Constitution.

I. STATEMENT OF THE CASE

A concise statement of the case is presented in the Respondents' Brief at pages 2-3 and in the Answer to the Petition for Review at pages 3-4.¹

¹ Defendants wish to correct two errors in Respondents' Brief. First, on page 8, "Defendants" should be "Plaintiffs." Second, on page 10, Defendants

II. ARGUMENT

RCW 4.12.010(1) mandates that actions for any injuries to real property “*shall be commenced*” in the county where the property is located. This language has remained unchanged since the first Washington Territorial Legislature passed it in 1854. *Compare* Laws of 1854, p. 133, § 13, *with* RCW 4.12.010(1). The intent of RCW 4.12.010 has always been clear. It codifies the local action rule, which has existed at common law for hundreds of years. Both the Territorial Supreme Court and the State Supreme Court have repeatedly interpreted this statute to mean exactly what it says – that it governs jurisdiction, not venue.

There can be no reasonable doubt concerning the constitutionality of this jurisdictional statute under Article IV, Section 6. This Court looks primarily to the intent of the framers when interpreting the Constitution. The framers’ intent regarding this statute has been memorialized in the case law.

The jurists who decided the earliest cases arising under RCW 4.12.010 – *both before and after* the Constitution was

state RCW 4.12.010 has been the law in Washington since 1881, but the statute was first enacted in 1854.

adopted – included drafters of this constitutional provision. Their judicial opinions underscored the exclusive jurisdiction of local superior courts over real property actions.

Throughout our state’s history, this Court has enforced this statute as the legislature intended – to govern jurisdiction, not venue, over real property cases. The Court unambiguously declared 56 years ago: “[T]his court is now committed to the doctrine that this is a jurisdictional statute, rather than one of venue.” *Snyder v. Ingram*, 48 Wn.2d 637, 638, 296 P.2d 305 (1956).

A. The Framers’ Intent Is the Guiding Principle When Interpreting the Constitution.

“[T]he fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of the framers and of the people who adopted it.” *State ex rel.*

Billington v. Sinclair, 28 Wn.2d 575, 579, 183 P.2d 813 (1947).

The Court begins its analysis of framers’ intent by examining the plain language of the constitutional provision at issue.

Wash. Water Jet Workers Ass'n v. Yarbrough, 151 Wn.2d 470, 477, 90 P.3d 42 (2004). In this analysis, the Court gives the words “their common and ordinary meaning, as determined at

the time they were drafted.” *Id.* (citing *State ex rel. O’Connell v. Slavin*, 75 Wn.2d 554, 557, 452 P.2d 943(1969)).²

If there is any ambiguity in the constitutional provision, the Court should look to other sources of information to determine the framers’ intent. *League of Educ. Voters v. State*, ___ Wn.2d ___, 295 P.3d 743, 749-52 (2013). Washington State Supreme Court decisions written at the time of the adoption of the Constitution – in this case, by framers of the Constitution – provide the best evidence of the framers’ intent. *See Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 120, 937 P.2d 154 (1997) (“State cases and statutes from the time of the constitution’s ratification, rather than recent case law, are more persuasive in determining whether the state constitution gives enhanced protection in a particular area.”); *see also State v. Reece*, 110 Wn.2d 766, 778-79, 757 P.2d 947 (1988). There is a

² Article IV, Section 6 states: “The superior court shall have original jurisdiction in all cases at law which involve title or possession of real property. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court....” The plain language of this section *does not* use the plural “superior courts” in vesting jurisdiction over all cases “which involve title or possession of real property.” *See Respondent’s Brief* at 11-13; *Answer to Petition for Review* at 8-9. Therefore, the plain language of the Constitution does not restrict the Legislature’s authority to vest jurisdiction *in rem* in the local superior court.

compelling rationale for adhering to early precedent when interpreting the Constitution:

[W]e are not in a better position to determine [the Constitution's] meaning than were all of the jurists who have preceded us. We do not do justice to the precedent created by this court when we announce a new constitutional analysis that conflicts with our historical analysis and with the significant body of law that has existed for nearly the entirety of this state's existence. We should not simply ignore what has been said in favor of what we think ought to have been said. Such an approach is directly at odds with the often recognized precept that an interpretation of the state constitution made closest to the adoption of that document provides the best evidence of the drafters' intent.

Madison v. State, 161 Wn.2d 85, 113, 163 P.3d 757 (2007)

(Madsen, J., concurring).

A party challenging the constitutionality of a statute must prove the statute unconstitutional beyond a reasonable doubt.

See School Districts' Alliance for Adequate Funding of Special Educ. v. State, 170 Wn.2d 599, 608, 244 P.3d 1 (2010)

(reaffirming "beyond a reasonable doubt" as the standard for challenges to state statutes under the state constitution).

**B. The Intent of the Drafters of Article IV,
Section 6 Is Demonstrated by the Supreme
Court Opinions They Wrote as Jurists.**

There is compelling evidence for the constitutionality of RCW 4.12.010 because framers of the Constitution also served as Supreme Court jurists. In particular, the work of four people at the Washington Constitutional Convention and on the Supreme Court demonstrates that the local action rule, RCW 4.12.010, does not conflict with Article IV, Section 6 of the Constitution. These people were **John P. Hoyt, George Turner, Ralph O. Dunbar, and Theodore L. Stiles.**

John P. Hoyt served in the Union Army during the Civil War. President Grant appointed Hoyt governor of the Arizona Territory. Later, President Hayes appointed him to the Washington Territorial Supreme Court, where Hoyt served from 1879 to 1887. In 1889, Hoyt's fellow delegates elected him President of the Washington Constitutional Convention. Immediately after the Convention, Hoyt was elected one of the five original members of the Washington State Supreme Court, serving until 1896. Hoyt taught at the University of Washington Law School from 1902 to 1909.

CHARLES H. SHELDON, THE WASHINGTON HIGH BENCH:
A BIOGRAPHICAL HISTORY OF THE STATE SUPREME COURT, 1889-
1991 220 (1992).

George Turner served at age 11 in the Union Army during the Civil War. President Arthur appointed Turner a justice of the Washington Territorial Supreme Court, where he served from 1884 to 1888. In 1889, at the Washington Constitutional Convention, Hoyt appointed Turner chair of the Judiciary Committee. Later, Turner served as a U.S. Senator for Washington. Charles K. Wiggins, *George Turner and the Judiciary Article, Part I*, Wash. State Bar News, Sept. 1989 at 46-50; THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION, 1889 488 (Beverly Paulik Rosenow ed., 1999).

Ralph O. Dunbar served as a probate judge, a prosecuting attorney, and a city attorney. In 1889, he was elected a delegate to the Washington Constitutional Convention, where he sat on the Judiciary Committee. After the Convention, Dunbar was elected to the Washington State Supreme Court, where he served nearly twenty-three years.

SHELDON, *supra*, at 135; THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION, 1889, *supra*, at 470.

Theodore L. Stiles was elected a delegate to the Washington Constitutional Convention in 1889, where he served on the Judiciary Committee. After the Convention, he won election to the Washington State Supreme Court, serving until 1894. Stiles was recognized as a legal scholar, and was considered the leading authority on the Constitution. SHELDON, *supra*, at 326.

These four experienced lawyers and jurists were well familiar with the local action rule, which had existed at common law for centuries. The rule requires plaintiffs to commence certain actions in the court where the subject of the action is located. *See Livingston v. Jefferson*, 4 Hall L.J. 78, 15 F.Cas. 660, 664-65 (1811) (Chief Justice John Marshall citing to Judge William Blackstone, and describing the local action rule as an “ancient rule”).

Washington’s first territorial legislature chose to codify the local action rule in 1854. Laws of 1854, p. 133, § 13. Before adoption of the Constitution and statehood, the Washington

Territorial Supreme Court, including **Justice Hoyt**, interpreted RCW 4.12.010 as jurisdictional. In *Wood v. Mastick*, 2 Wash. Terr. 64, 3 P. 612 (1881), the Court said:

We are of opinion that all actions for the causes mentioned in section 48, Laws W.T., 1877 [RCW 4.12.010], ***must be commenced*** in the county or district in which the subject of the action lies, **and the Court of no other county or district has jurisdiction**

2 Wash. Terr. at 69 (italics in original, emphasis added).

Eight years after the Court's interpretation of RCW 4.12.010 in *Wood v. Mastick*, the Washington Constitutional Convention was convened – led by **John P. Hoyt**, President of the Convention. The Convention's Judiciary Committee drafted Article IV, the Judiciary Article. The Committee's chairman was **George Turner**, and **Ralph O. Dunbar** and **Theodore L. Stiles** were members of the Committee.

The framers recognized the necessity of an orderly transition from territorial to state government. In Article XXVII, Section 2, they provided:

All laws now in force in the Territory of Washington, which are not repugnant to this Constitution, shall remain in force until they expire

by their own limitation, or are altered or repealed by the legislature[.]

This Court has interpreted Section 2 as giving special constitutional status to territorial statutes. *Gerberding v. Munro*, 134 Wn.2d 188, 208-9, 949 P.2d 1366 (1998); *State v. Estill*, 55 Wn.2d 576, 582, 349 P.2d 210 (1960). In *Estill*, concurring Justice Mallery stated: “Territorial laws have a specific constitutional sanction and approval which subsequent state statutes do not have.” 55 Wn.2d at 582. The framers would certainly not enforce a statute repugnant to the Constitution they drafted.

After statehood, the Washington State Supreme Court again considered the local action rule stated in RCW 4.12.010. **Judges Hoyt, Stiles, and Dunbar** were three of the five members of the Court.³ Citing *Wood v. Mastick*, the Court reiterated its pre-statehood determination that the statute is jurisdictional:

There is a marked difference between the language of section 47 [RCW 4.12.010] and sections 48

³ Until 1968, the official Washington Reports referred to members of the Washington Supreme Court as “judges,” except for the Chief Justice. In 1971, the Legislature changed “judge” to “justice” in a number of statutory references to the Supreme Court. Laws of 1971, ch. 81, §§ 1-8.

[RCW 4.12.020] and 50 [RCW 4.12.025]. The former refers to a peculiar class of actions, which were always local; while the latter only includes actions which were always transitory. **The first named says the actions specified must be commenced in certain counties or districts;** while the others only require the trial to be in the county or district where the property is or the defendant resides, as the case may be. . . . **The case of *Wood v. Mastick*, 2 Wash. T. 69, 3 Pac. Rep. 612, in a few words announced the same conclusion here expressed.**

McLeod v. Ellis, 2 Wash. 117, 121, 26 P. 76 (1891)

(emphasis added).

Two years later, the Court again interpreted RCW 4.12.010 as jurisdictional in *State ex rel. Peterson v. Superior Court of Pierce County*, 5 Wash. 639, 32 P. 533 (1893).

Of the five members of the Court, four participated in the case, including **Judge Stiles**, who wrote the opinion, and **Judge Hoyt**, who concurred. The Court stated:

[S]ection 47 of the Code of 1881 [RCW 4.12.010] . . . requires that all actions involving the right to the possession of, or title to, any specific article of personal property shall be commenced in the county in which the subject of the action is situated. It was held in *McLeod v. Ellis*, 2 Wash. St. 117, 26 Pac. Rep. 76, that the commencement of such actions in the county where the property is situated is mandatory, and that **if not commenced in the proper county the court acquires no jurisdiction.**

Peterson, 5 Wash. at 641 (emphasis added) (issuing a writ prohibiting the Pierce County Superior Court from trying an action relating to property located in Mason County).

These constitutional framers who were also Supreme Court judges – **Hoyt**, **Dunbar**, and **Stiles** – knew the meaning of both the local action rule and the provisions of the Constitution. These judges considered RCW 4.12.010 to be constitutional under Article IV, Section 6 and not repugnant to the Constitution under Article XXVII, Section 2.

The clear jurisdictional mandate of RCW 4.12.010 has been enforced by this Court again and again. *Snyder v. Ingram*, 48 Wn.2d 637, 296 P.2d 305 (1956), *Alaska Airlines v. Molitor*, 43 Wn.2d 657, 263 P.2d 276 (1953), *State ex rel. Grove v. Card*, 35 Wn.2d 215, 211 P.2d 1005 (1949), *Cugini v. Apex Mercury Mining Co.*, 24 Wn.2d 401, 165 P.2d 82 (1946), and *Miles v. Chinto Mining Co.*, 21 Wn.2d 902, 153 P.2d 856 (1944). The statute should now be reconfirmed as the jurisdictional rule it has always been.

C. The Court's Decisions in *Young v. Clark* and *Shoop v. Kittitas County* Do Not Affect the Constitutionality of RCW 4.12.010 and Its Jurisdictional Mandate.

Plaintiffs rely heavily on this Court's decisions in *Young v. Clark*, 149 Wn.2d 130, 65 P.3d 1192 (2003), and *Shoop v. Kittitas County*, 149 Wn.2d 29, 65 P.3d 1194 (2003), to support their argument that RCW 4.12.010 should now be reinterpreted to be a venue statute, despite the statute's unambiguous language and long history as the codification of the local action rule. The Court should reject Plaintiffs' argument.

In *Young*, the Court considered the constitutionality and interpretation of RCW 4.12.020(3), providing for the place of trial in motor vehicle cases. 149 Wn.2d 132-34. Although other parts of RCW 4.12.020 date back to 1854, the legislature enacted RCW 4.12.020(3) in 1941. See Laws of 1941, ch. 81, § 1; Laws of 1854, p. 133, § 14. This Court had held, in *Aydelotte v. Audette*, 110 Wn.2d 249, 253, 750 P.2d 1276 (1988), that RCW 4.12.020 was jurisdictional. *Young* overruled *Aydelotte*, reinterpreting RCW 4.12.020 to be a venue statute, reasoning that the statute would otherwise be unconstitutional under Article IV, Section 6. 149 Wn.2d at 134.

In *Shoop*, the Court considered RCW 36.01.050, applying to cases filed against counties. 149 Wn.2d at 33-35. Again, although the earliest version of this statute dates back to 1854, the legislature amended the statute several times after statehood. See Laws of 1854, p. 329, § 6; Laws of 1963, ch. 4, § 36.01.050; Laws of 1997, ch. 401, § 1. This Court had held, in *Cossel v. Skagit County*, 119 Wn.2d 434, 436-37, 834 P.2d 609 (1992), that RCW 36.01.050 was jurisdictional. *Shoop* overruled *Cossel*, reinterpreting RCW 36.01.050 to be a venue statute, again reasoning that the statute would otherwise be unconstitutional under Article IV, Section 6. 149 Wn.2d at 37.

Young and *Shoop* do not change the result in this case. First, unlike the statutes in *Young* and *Shoop*, RCW 4.12.010 has remained unchanged since Washington was a territory. Second, there is an important difference in the language of RCW 4.12.010, compared to the language in the other statutes. Only RCW 4.12.010 provides that actions “*shall be commenced*” in the local county. In contrast, RCW 4.12.020 provides that certain actions “*shall be tried*” in particular counties, and RCW 36.01.050 provides that certain actions “*may be*

commenced” in particular counties. In 1891, the Court recognized the importance of this distinction in *McLeod*:

There is a marked difference between the language of section 47 [RCW 4.12.010] and sections 48 [RCW 4.12.020] and 50 [RCW 4.12.025]. The former refers to a peculiar class of actions, which were always local; while the latter only includes actions which were always transitory. **The first named says the actions specified must be commenced in certain counties or districts;** while the others only require the trial to be in the county or district where the property is or the defendant resides, as the case may be

2 Wash. at 121 (emphasis added). Therefore, the plain language of RCW 4.12.010 distinguishes it from the statutory provisions considered in *Young* and *Shoop*.

Furthermore, neither *Young* nor *Shoop* involved the local action rule. Part of the fabric of our common law, the local action rule was accepted law in the Washington Territory when it was codified in 1854. When the Constitution was adopted in 1889, it was understood by the bench and the bar to be a basic rule governing the jurisdiction of our courts. It was applied as a jurisdictional rule by framers of the Constitution.

Finally, neither *Young* nor *Shoop* addressed a territorial statute that became state law under Article XXVII, Section 2.

Because RCW 4.12.010 was a territorial law and became state law by virtue of Article XXVII, Section 2, it is entitled to the specific sanction granted the Constitution.

III. CONCLUSION

The local action rule embodied in RCW 4.12.010 existed at common law for centuries before it was first codified by the Washington Territorial Legislature. The rule has long been applied as jurisdictional in nature, both in territorial days and after Washington entered the Union. Significantly, among those who have enforced this jurisdictional rule were jurists who served on both the Territorial and State Supreme Courts, and also as framers of the State Constitution.

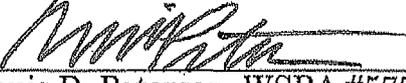
No amount of parsing the language of Article IV, Section 6 can change the fact that these framers and jurists considered RCW 4.12.010 to be jurisdictional and constitutional. In light of the longstanding precedent created by this Court enforcing the doctrine that RCW 4.12.010 is a jurisdictional statute, rather than one of venue, Plaintiffs cannot prove beyond a reasonable doubt that the statute is unconstitutional. This Court should “do justice to the precedent created by this court,”

and recommit "to the doctrine that [RCW 4.12.010] is a jurisdictional statute, rather than one of venue." *Madison*, 161 Wn.2d at 113; *Snyder*, 48 Wn.2d at 638.

The decision of the Court of Appeals should be affirmed.

RESPECTFULLY SUBMITTED this 3rd day of May, 2013.

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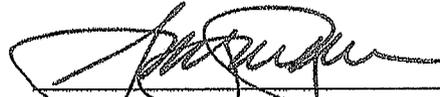
CERTIFICATE OF SERVICE

On the date indicated below, I, Suzanne M. Powers, legal assistant, hereby certify that I caused to be served via email and U.S. Mail, postage pre-paid, a true and correct copy of the foregoing document on the following:

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

DATED this 3rd day of May, 2013, at Seattle, Washington.



Suzanne M. Powers

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Supreme Court No. 88115-4, *William Ralph, et al. v. State of WA, Dept. of Natural Resources*
Court of Appeals No. 67515-0-1 (Consolidated with 67704-7-1)

Attached is a copy of the Joint Supplemental Brief of Respondents, with Certificate of Service, in the above-referenced matter.

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This brief is being served on all counsel of record by email and U.S. Mail.

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