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STATE OF WASHINGTON

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No. 93786-9

SUPREME COURT  
OF THE STATE OF WASHINGTON

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ANDREW PILLOUD,  
Appellant,

vs.

KING COUNTY REPUBLICAN CENTRAL COMMITTEE

and

LORI SOTELO,  
County Chairman, King County Republican Central Committee,

Respondents.

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REPLY BRIEF OF APPELLANT

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## I. Argument

- A. RCW 29A.80.061 calls an independent legislative district committee, does not impose a burden on the county central committee, and serves a compelling state interest.

Respondents have brought no response to the first two arguments brought by Petitioner Pilloud: that RCW 29A.80.061 calls for the election of a district chair to an independent legislative district committee and that the statute does not impose a burden on the county central committee. These arguments alone are grounds to overturn the decision of the Superior Court. The statute does not suppress the speech of the county central committee, it compels the party's chair to act as an election official for the formation of independent legislative district committees. "The First Amendment requires us to err on the side of protecting political speech rather than suppressing it." *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007) King County Republican Central Committee is the party attempting to suppress speech through bylaws that block Chairman Sotelo from holding an election forming an independent legislative district committee. The ruling that the statute is unconstitutional under the First Amendment is inappropriate, as the Court would be using the First

Amendment as a justification to suppress speech of the legislative district committee.

The remaining argument relies on an unreasonable construction of the statute: that the legislative district committee is part of the county central committee and that it restricts the county central committee's ability to form its own legislative district subcommittee. The statute has not been applied in such an unconstitutional fashion, making this a facial challenge. “A plaintiff can only succeed in a facial challenge by 'establish[ing] that no set of circumstances exists under which the Act would be valid,' i.e., that the law is unconstitutional in all of its applications.” *Washington State Grange v. Washington State Republican Party* 552 U.S. 442 (2008) (quoting *United States v. Salerno*, 481 U.S. 739 (1987)) Pilloud has repeatedly provided a set of circumstances under which the Act would be valid. Neither King County Republican Central Committee or Sotelo have shown how a statute calling for the formation of an independent legislative district committee infringe on their rights.

Respondents have correctly identified a flaw in the original pleading of Pilloud which requested the Court apply the law in such an unconstitutional manner. These flaws do not themselves render the statute unconstitutional. “Pleadings are intended to serve as a means of arriving at

fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end.” *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938)

Respondents cite RCW 42.17A.405(4)(b) which imposes aggregate limits on contributions a candidate may accept to suggest that county and legislative district party organizations are a unity for contribution limits. Similar aggregate limits on contributions have been held to be unconstitutional as rules “prohibiting donors from creating or controlling multiple affiliated political committees... forecloses what would otherwise be a particularly easy and effective means of circumventing the limits on contributions to any particular political committee.” (internal quotation marks omitted) *McCutcheon v. Federal Election Commission* 572 U.S. \_\_\_, 134 S.Ct. 1434 (2014) This is not a limit on an individual party organization's contributions and RCW 42.17A.405(4)(a) provides that the county and legislative district committee may each independently contribute their limit to a candidate. Further, this suggests restrictions preventing the county central committee from controlling legislative district committees would be proper.

Respondents argue for one party, but this does not match reality. The King County Republican Central Committee has no right to interfere in

the Snohomish County Republican Central Committee or the Washington State Republican Party for example. The identity of the County Central Committee and Legislative District Committee are distinct. The Court is not protecting the party from itself but from another party. The First Amendment protects the association and speech rights of the King County Republican Central Committee just as much as it protects the rights of the 36th Legislative District Committee.

The Attorney General has so far declined to intervene in this case. “RCW 43.10.030(1) grants the attorney general discretionary authority to act.” *City of Seattle v. McKenna*, 172 Wn.2d 551 (2011) The Attorney General's refusal to defend the statute is not evidence of an absence of a compelling interest. “Amicus must review all briefs on file and avoid repetition of matters in other briefs.” RAP 10.3(e) The previous appeal was thoroughly argued by the parties, the Attorney General could have easily concluded that an Amicus Curiae Brief from the state was unneeded.

The unambiguous language of the statute requires the county chair to call the election. CP71 It only applies to King County Republican Central Committee through their bylaws barring Chairman Sotelo from calling an election as mandated by the statute. “There can be no complaint that the

party's right to govern itself has been substantially burdened by statute when the source of the complaint is the party's own decision.” Marchioro v. Chaney 442 U.S. 191 (1979) The Marchioro decision is controlling.

B. ESB 6453 and elections are related to political parties as a basic function of a political party is to select candidates for election.

This Court previously considered ESB 6453. While this Court did not decide this specific question, it found that “the title is a general one and any subject reasonably germane to such title may be embraced within the body of the bill.” (internal citations and quotation marks omitted) Washington State Grange v. Locke, 153 Wn.2d 491 (2005). A bill “can embrace several incidental subjects or subdivisions and not violate article II, section 19, so long as they are related. In order to survive, however, rational unity must exist among all matters included within the measure and the general topic expressed in the title.” City of Burien v. Kiga, 144 Wn.2d 819 (2001).

The office of Precinct Committee Officer appears “on the ballot for the primary for each even-numbered year.” RCW 29A.80.051 These Precinct Committee Officers then establish rules and select party

leadership that ultimately select the candidates the party brings forward in future elections.

“A basic function of a political party is to select the candidates for public office to be offered to the voters at general elections.” *Kusper v. Pontikes* 414 U.S. 51 (1973) Candidates who appear on the general election ballot pass through a primary election. This election may serve to nominate the party's candidates or qualify candidates nominated by the party. Either way, the political party is necessarily related to the primary election, as that is part of its basic function. Nearly every aspect of the political party would be covered by the title of ESB 6453.

C. The Court should not consider an argument raised only on appeal, however, 14th Amendment issues have been resolved in the current statute.

The Court should not consider arguments when raised for the first time on appeal. *LK Operating LLC v. Collection Group, LLC*, 181 Wn.2d 117 (2014). Respondents make no argument related to the Fourteenth Amendment in their motion for summary judgment, only mentioning it as a reason a previous instantiation of the statute was found unconstitutional.

CP 76

In a previous appeal of this same case, the Court of Appeals Division I found the present statute to be materially different from its predecessor. CP70 The predecessor required legislative district organizations in only King County. CP27 The current statute requires legislative district organizations for every legislative district within the state. The Court may take judicial notice that legislative district boundaries are not the same as county boundaries. There are legislative districts fully contained within a county and legislative districts containing full counties, however, there exists no legislative district that is exactly the same as any one county. Counties with only one legislative district still have to contend with distinct district-level organizations which span multiple counties. As all county organizations find themselves sharing precincts with one or more distinct legislative district organization, all counties and districts are equally affected by this statute. A county is unable to act as the central authority for a legislative district and a legislative district is unable to act as the central authority for the county. This Fourteenth Amendment challenge can not be a challenge to the statute itself and must be a challenge to how districts are drawn.

One would be quick to observe that a legislative district organization can not span multiple counties as the election must be called

by the county chair. The statute requires an election for “each legislative district” not each legislative district within the county. The state legislature does appear to have forgotten that legislative districts span multiple counties, but they have given the parties rule-making authority to resolve these issues. The state party bylaws are not on the record and it would be improper to introduce them as new evidence on appeal.

This Court should not consider arguments raised for the first time on appeal. Respondents would be free to raise this new issue and Pilloud will be free to introduce new evidence should this Court overturn the decision of the Superior Court on the First Amendment issues.

D. Respondents can not re-litigate the same issue.

In a previous appeal of this same case, the Court of Appeals Division I found the present statute to be materially different from its predecessor. CP70 The Court held that Pilloud is not bound by res judicata or collateral estoppel. CP67 The Supreme Court loses the power to change or modify a decision of the Court of Appeals upon issuance of the mandate of the Court of Appeals. RAP 12.7(b) The Court of Appeals issued a mandate in the case on July 29, 2016. CP66

A litigant is entitled to “one but not more than one fair adjudication of his or her claim.” *Lejeune v. Clallam County*, 823 P.2d 1144 (1992).

Respondents are barred from relitigating issues of res judicata and collateral estoppel by res judicata and collateral estoppel.

## **II. Conclusion**

The Superior Court erred in finding the statute unconstitutional on a facial challenge when a constitutional construction exists. The Court should overturn the order, find the statute constitutional, order the writ granted against Sotelo, and remand to the Superior Court for further proceedings.

Respectfully submitted on March 15, 2016,



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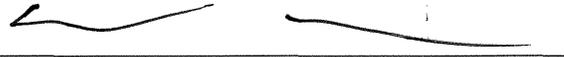
CERTIFICATE OF SERVICE

I certify (or declare) under penalty of perjury under the laws of the State of Washington that on the 15th day of March 2017, I caused a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to be served on the following in the manner indicated below:

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