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SUPREME COURT
STATE OF WASHINGTON
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No. 95959-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JANELLE RIDDLE, YAKIMA COUNTY CLERK,

Petitioner,

v.

DAVID A. ELOFSON, KEVIN S. NAUGHT, MICHAEL G.
MCCARTHY, DOUGLAS L. FEDERSPIEL, BLAINE G. GIBSON.
RUTH E. REUKAUF. GAYLE M. HARTHCOCK, and RICHARD H.
BARTHFIELD, Judges of the Superior Court of the State of Washington
for Yakima County.

Respondents.

**PETITIONER RIDDLE'S REPLY TO
RESPONDENTS' ANSWER TO PETITION**

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Petitioner Janelle Riddle, Yakima County Clerk, hereby replies to the Respondent Judges' Answer to Petition:

I. PETITIONER'S STATEMENT OF FACTS

Petitioner Janelle Riddle was elected to the office of Yakima County Clerk in 2014 and filed her required public official's bond in the amount of \$200,000 in January 2015. *Declaration of Riddle*, ¶3, Exhibit A. There have been no actions against or judgments entered against Ms. Riddle's official bond. It remains unimpaired. *Id.*, at ¶4.

On May 4, 2018, the Superior Court Judges issued an *ex parte* Order Directing Yakima County Clerk to Provide Supplemental Bond. *Declaration of Riddle*, ¶6, Exhibit B. The Order directed Janelle Riddle to "secure and provide proof of a supplemental bond in the sum of \$200,000" on or before June 6, 2018, to be maintained for the remainder of her term as elected Yakima County Clerk.

The Order was accompanied by a letter issued by Presiding Judge David A. Elofson on behalf of "the judges of the Yakima County Superior Court." The letter advised Ms. Riddle of the contents of the Order, and further advised Ms. Riddle that her failure to comply with the Order "will require Yakima County Superior Court to declare your position vacant" pursuant to RCW 36.23.020. *Declaration of Riddle*, ¶7, Exhibit C.

The Judges' letter expressly relied upon a State Auditor's Fraud Investigation Report issued in April 2018 as a basis for their action. *Declaration of Elofson*, ¶¶ 16-20, Exhibit E. The State Auditor's fraud investigation was instigated when Ms. Riddle notified the State Auditor in December 2017 of possible misappropriation of funds in the Clerk's Office. *Id.*, Exhibit E, at p.3. The Sheriff's Office was investigating the alleged theft as of the date of the Report. The Report recommended Yakima County seek recovery of \$3,599 in misappropriations and \$13,432 in audit costs from the Financial Supervisor identified as having responsibility "and/or the County's insurance bonding company, as appropriate." *Id.*, Exhibit E, at p.5.

The State Auditor did not recommend any action against Ms. Riddle's public officials bond.

The Judges' letter also relied upon an Accountability Audit Reports issued by the State Auditor in December 2016 finding the Clerk's Office was not timely transmitting child support orders to the Division of Child Support. *Declaration of Elofson*, Exhibit C, pp. 6-7. Although transmittal timelines markedly improved, the State Auditor identified a potential loss of reimbursement for copying and transmittal costs. *Id.*, Exhibit C, at pp. 6-7. The *estimate* for potential lost reimbursements was stated as \$206,500 as of December 2016, and the Clerk's Office was

working with the Division of Child Support on the reimbursements. *Id.*, Exhibit C, at pp. 7-8.

The County responded to the State Auditor's December 2016 report:

Yakima County voters elected a new County Clerk effective January 1, 2015, after the previous elected Clerk had been with the County for 20 years. There has been a significant staff turnover in the Clerk's Office in 2015, and the Clerk has reluctantly attempted to implement the state-wide system called Odyssey for managing the courts [sic] records.

Declaration of Elofson, Exhibit C, p. 8.

The State Auditor did not recommend any action against Ms. Riddle's official bond. However, in referencing the State Auditor reports, the Judges' letter stated:

The **Washington State Auditor advises** these monies should be restored to the public, **by among other methods, a claim on your bond.**

* * *

We believe the item stated above are **potential claims that may be made against your bond.** A claim against your bond is a method by which Yakima County may be made whole. These claims exceed your current bond coverage.

* * *

Consequently, the judges of the Yakima County Superior Court have issued the enclosed order requiring you to provide a supplemental bond pursuant to RCW 36.23.020. **Your statutory bond having been potentially absorbed by existing claims** we have determined you must provide a supplementary bond

(Emphasis added)

The Judges' Order and letter were issued *ex parte* without any prior notice to Ms. Riddle, nor was Ms. Riddle provided an opportunity to be heard and present evidence to controvert any proposed Judges' action. *Declaration of Riddle*, ¶8.

Ms. Riddle was not provided legal advice or representation by the Yakima County Prosecuting Attorney's office, as there was an obvious conflict of interest. "Conflict free" counsel was provided to Ms. Riddle on Friday, June 1, 2018, when Joseph Brusic, the Yakima County Prosecuting Attorney, appointed Douglas County Prosecuting Attorney Steven M. Clem as a Special Deputy Prosecuting Attorney for Yakima County. *Declaration of Riddle*, ¶10.

On Tuesday, June 5, 2018, Mr. Clem wrote on behalf of Ms. Riddle to Mr. Brusic, who represented the Judges. Sent by email, Mr. Clem's letter explained why the Judges' Order and letter exceeded their legal authority and was void. Mr. Clem requested that the Judges reconsider their action taken against Ms. Riddle, and voluntarily vacate or withdraw the Order and letter. Mr. Clem sent a short supplemental letter to Mr. Brusic on June 6, 2018, regarding the legal effect of an additional bond. *Declaration of Riddle*, ¶11, Exhibits D and E.

The Judges responded to Mr. Clem's letters on June 13, 2018, in a letter to Mr. Brusic, then forwarded to Mr. Clem by email. The Judges

affirmed their position taken in the Order and the letter issued on May 4. The Judges also affirmed the requirement that Ms. Riddle provide an additional \$200,000 public official's bond by June 18, 2018. *Declaration of Riddle*, ¶12, Exhibit F.

On June 14, Ms. Riddle filed this original action against the Judges of the Yakima Superior Court, in the nature of a writ of prohibition, pursuant to the Washington Constitution, Article IV, §4, RAP 16.1(b) and RAP 16.2, and RCW 7.16.290.

II. LEGAL GROUNDS FOR PETITION AND ARGUMENT

1. The Judges' Order Exceeds Their Legal Authority

The Judges' expressly based their action against Ms. Riddle on RCW 36.23.020, which provides as follows:

When the judge or judges of any court, or a majority of them, believe that the clerk of the court does not have a good and sufficient bond on file, or that the bond is not large enough in amount, such judge or judges shall enter an order requiring him or her, within such time as may be specified in the order, to execute and present to them a good and sufficient bond, in such sum as may be fixed by the order. In case of his or her failure to file the bond within ten days from the expiration of the date fixed the judge or judges shall declare the office vacant.

(Emphasis added.)

RCW 36.23.020 was codified with adoption of the Revised Code of Washington in 1963, having originally been enacted in 1895. The statute has not been amended since 1963, other than as part of a major

“technical corrections” bill enacted in 2009 to incorporate gender neutral language. There are no Washington cases applying, interpreting or otherwise citing RCW 36.23.020.

The Judges claim RCW 36.23.020 confers unfettered discretion, based upon their belief as to sufficiency of the Clerk’s current bond, to order a new bond be obtained in the amount they believe sufficient. Response to Petition, pp. 4-6.

The filing of public official bonds of county officials is governed by RCW 36.16.050. The bonds of county officers must be approved by the county’s legislative authority, except for the office of clerk. The Judge, or the majority of Judges, approves the Clerk’s bond:

Every county official before he or she enters upon the duties of his or her office shall furnish a bond conditioned that he or she will faithfully perform the duties of his or her office and account for and pay over all money which may come into his or her hands by virtue of his or her office Bonds of elective county officers shall be as follows:

* * *

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his or her hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he or she is clerk: **PROVIDED, That the maximum bond fixed for the clerk shall not exceed in amount that required for the treasurer in the same county;**

* * *

(8) Treasurer: Sureties to be approved by the proper county legislative authority and the amounts to be fixed by the proper county legislative authority at double the amount liable to come

into the treasurer's hands during his or her term, **the maximum amount of the bond, however, not to exceed:**

(a) In each county with a population of two hundred ten thousand or more, two hundred fifty thousand dollars

RCW 36.16.050. (Emphasis added.)

RCW 36.16.050 was codified as part of the Revised Code of Washington in 1963. The original language at RCW 36.16.050(3) applicable to the Clerk provided:

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he is clerk;

(Emphasis added.)

As originally codified, the Judges had broad discretion setting the amount of the Clerk's official bond. However, RCW 36.16.050(3) was amended by Laws of 1971, Ch. 71, to provide:

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he is clerk: PROVIDED, That the maximum bond fixed for the clerk shall not exceed in amount that required for the treasurer *in a county of that class*;

(Emphasis added.)

This 1971 amendment to RCW 36.16.050(3) limited the discretion of Judges in setting the official bond of the Clerk, so as not to exceed the amount required for a Treasurer *in a county of the same class*. The statute was then amended in 1991 to incorporate gender neutral language. The

most recent amendment to RCW 36.16.050(3) was at Laws of 2010, ch. 26, sec. 5, and the language “shall not exceed that required for the treasurer *in a county of that class*” was changed to “shall not exceed that required for the treasurer *in the same county*.”

The legislative history of RCW 36.16.050 demonstrates the narrowing discretion of Judges to set the amount of the Clerk’s official bond. The Yakima County Treasurer’s bond is set at \$250,000. The discretion of the Judges to determine the sufficiency of the Clerk’s official bond is limited by RCW 36.16.050(3) to a maximum amount of \$250,000: the amount actually required of the Yakima County Treasurer, as well as the maximum under RCW 36.16.050(8).

The Judges’ interpretation of RCW 36.23.020 not only results in unfettered discretion, it renders the limitations of RCW 36.16.050(3) meaningless. Their interpretation would allow the Judges to approve the maximum allowed Clerk’s official bond in the amount of \$250,000 and immediately thereafter require additional bonding as a condition of the Clerk remaining in office.

2. *The Clerk’s Official Bond is Unimpaired*

Ms. Riddle’s bond has been on file since January 13, 2015, and covers her term of office: January 1, 2015, through December 31, 2018. The amount of the bond is \$200,000. The bond was purchased and paid

for by Yakima County, as required by RCW 48.28.040. [Similarly, Yakima County would be required to purchase and pay for any initial, supplemental or additional official bond filed by any county elected officer.]

No lawsuit has been filed against nor any judgment entered against Ms. Riddle's official bond. The bond is unimpaired. The bond remains intact providing surety in the amount of \$200,000.

In the Judges' letter to Ms. Riddle, the Judges cite to the Washington State Auditor report's as the basis for requiring an increase in the Clerk's official bond. The monetary claims asserted by the Judges are unproven and characterized by the Judges as "potential claims." The State Auditor did not recommend taking action against *Ms. Riddle's* official bond. As of this date, Yakima County has declined to take any action against Ms. Riddle's bond, or against its own general fiduciary bonding.

The Judges' interpretation of RCW 36.23.020, which stands upon their "belief" regarding sufficiency as the sole criteria for ordering an increase in the Clerk's bond, is clearly unreasonable in light of Ms. Riddle having an unimpaired official bond. It is only more unreasonable when the "prospective only" coverage of any new official bond is considered.

3. The Judges' Action Violates Due Process

The Judges issued the Order and letter to Ms. Riddle without any notice and opportunity to be heard and to defend against the Judges' allegations. The Judges' action, and the authority conferred under RCW 36.23.020 upon which they rely, violates due process.

The elected office of County Clerk is authorized by the Washington Constitution and Washington statutes. Wash. Const., Art. IV, §26, and Art. XI, §5; RCW 2.32.050; RCW 36.16.020; RCW 36.16.030. Ms. Riddle has a property right in her elected position as the Yakima County Clerk and has the expectation and right to hold such office, employment and salary until the expiration of her four-year term.

The voters elected Ms. Riddle. The voters have the power of recall. The Judges' action as Ms. Riddle runs for reelection raises questions related to the doctrine of separation of powers and interference with the political process. In *State ex rel. Johnston v. Melton*, 192 Wash. 379, 73 P.2d 1334 (1937), this Court acknowledged the role of voters in selecting their county officials:

The people are the source of all governmental power, and, in setting up a constitutional government, they provided that certain of their powers should be exercised through county governments, governments close to the people, and they further provided, in section 5 of article 11 of the Constitution, that the powers to be thus exercised through county governments should be exercised only through officials elected by themselves.

Melton, 192 Wash. at 385-386.

The right of an elected county official to hold office and exercise the rights and duties of such office was recognized by this Court in *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 385 P.3d 769 (2016), as amended (Feb. 8, 2017), reconsideration denied (Feb. 9, 2017) :

This is a claim for usurpation of the office of a public official; quo warranto claims specifically permit prosecuting attorneys to patrol for unconstitutional delegations of public officials' authority. RCW 7.56.020. Moreover, **any person in public office may file an information where the action concerns the person's own office.** *Id.*

Drummond, 187 Wn.2d at 169. (Emphasis added)

Article XI, section 5 provides, in part, as follows: “The legislature, by general and uniform laws, shall provide for the election in the several counties of ... prosecuting attorneys.” **When the voters choose an elected official, they necessarily choose who will be responsible for the duties of that office.** It would be fruitless to delegate the selection of county officers to the voters if the duties of those officers could be freely delegated to officers appointed by other government branches.

Drummond, 187 Wn.2d at 179–80. (Emphasis added)

The reasoning of *Drummond* is equally applicable to Ms. Riddle’s elected office as Clerk. Her position was created under the same constitutional and statutory scheme for elected county officers.

In *Matter of Deming*, 108 Wn.2d 82, 102, 736 P.2d 639, 650 (1987), this Court held that a District Court judge facing disciplinary removal from office was entitled to due process, even though a judicial

disciplinary proceeding is not criminal in nature, because of the potentially severe consequences to the judge. Quoting at length from *Olympic Forest Products v. Chaussee Corp.*, 82 Wn.2d 418, 422-424, 511 P.2d 1002 (1973), this Court explained the nature of the Judge's right to and interest in due process:

For over a century it has been recognized that "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 [17 L.Ed. 531] (1864). The fundamental requisites of due process are "the opportunity to be heard," *Grannis v. Ordean*, 234 U.S. 385, 394, 58 L.Ed. 1363, 34 S.Ct. 779 [783] (1914), and "notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 94 L.Ed. 865, 70 S.Ct. 652 [657] (1950). Thus, "at a minimum" the due process clause of the Fourteenth Amendment demands that a deprivation of life, liberty or property be preceded by "notice and opportunity for hearing appropriate to the nature of the case." *Mullane*, at 313. Moreover, this opportunity "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 14 L.Ed.2d 62, 85 S.Ct. 1187 [1191] (1965).

Synthesizing decisions "representing over a hundred years of effort," the United States Supreme Court recently refined these fundamental requirements of procedural due process into the following standard:

[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.

Boddie v. Connecticut, 401 U.S. 371, 377, 28 L.Ed.2d 113, 91 S.Ct. 780 [785–86] (1971).

Matter of Deming, 108 Wn.2d at 96–97.

Also, in determining the specific procedures required by due process under any given set of circumstances we must consider:

The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, [and] the balance of hurt complained of and good accomplished

Joint Anti-Fascist Refugee Comm. v. McGrath, [341 U.S. 123] at 163 (Frankfurter, J., concurring.)

Matter of Deming, 108 Wn.2d at 97–98.

The due process rights of Ms. Riddle, facing threat of removal from her elected office as Clerk, are no less than those of an elected judge of the District Court.

The Judges' action violated Ms. Riddle's right to due process pursuant to the U.S. Const., Amend. V and XIV. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985); *Matter of Deming, supra*; *In re Hendrickson*, 12 Wn.2d 600, 606, 123 P.2d 322 (1942) (The essential elements of constitutional guaranty of procedural due process is notice and the opportunity to be heard or defend); *Geidra v. Mount Adams School Dist. No. 209*, 126 Wn.App. 840, 847-848, 110 P.3d 232 (2005)

(Discharge of teacher based on probable cause requires notice and an opportunity to be heard or defend against the allegations).

The Judges' action against Ms. Riddle is void.

III. CONCLUSION

Petitioner Janelle Riddle, Yakima County Clerk, respectfully requests that this original action be retained in the Supreme Court pursuant to RAP 16.2(d). There are no genuine, material issues of fact. The record is the documentary evidence at provided by the Exhibits attached to the *Declaration of Riddle* and the *Declaration of Elofson* filed in this action.

Respectfully submitted this 26th day of June, 2018.



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