

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
6/8/2020 2:19 PM  
BY SUSAN L. CARLSON  
CLERK

No. 97739-9

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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SPOKANE COUNTY, a Washington municipal entity; AL FRENCH, an individual taxpayer and current Spokane County Commissioner; JOHN ROSKELLEY, an individual taxpayer and former Spokane County Commissioner; and WASHINGTON STATE ASSOCIATION OF COUNTIES, a Washington non-profit association,

Appellants,

v.

THE STATE OF WASHINGTON,

Respondent.

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**APPELLANTS' RESPONSE TO ACLU OF WASHINGTON AND  
ONEAMERICA'S AMICUS BRIEF**

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## I. INTRODUCTION

The narrow legal question before this Court is whether SHB 2887 violates the uniformity requirements of Article XI, Sections 4 and 5 of the Washington Constitution. As Spokane County, the State, and now Amici Curiae American Civil Liberties Union of Washington and OneAmerica (collectively, “Amici”) have explained, the constitutionality of the Washington Voting Rights Act (“WVRA” or “Act”) is not at issue.

Regardless, striking down SHB 2887 would not disturb the constitutionality of the WVRA. As Amici correctly explain, the WVRA satisfies the constitutional requirements of uniformity because it empowers every Washington county to take voluntarily action to remedy voting rights violations. In contrast, SHB 2887 mandates a unique form of county government and election process for counties exceeding a threshold population, which only Spokane County meets.

Amici’s argument regarding Article I, Section 19 of the Washington Constitution has no bearing on the constitutionality of SHB 2887. This Court has interpreted that provision to apply only to cases involving denial or dilution of the right to vote, which is not at issue here. To the extent Spokane County voters have had a say in their form of government, they repeatedly have chosen to retain the uniform system of government otherwise shared by all noncharter counties in Washington.

SHB 2887 overrules that local voter preference.

Spokane County respectfully requests that this Court reverse the trial court's ruling and declare SHB 2887 unconstitutional.

## II. ARGUMENT

### A. All Parties Agree that the Washington Voting Rights Act Is Not Affected and Is Constitutional

As Spokane County and the State previously explained, the constitutionality of the WVRA is not before the Court. Opening Br. at 30-32; Resp. at 10 n.5. Amici appropriately recognize the parties' agreement on this point and add their concurrence. *See* Amici Br. at 8. The Court therefore need not address the constitutionality of the WVRA.

Regardless, a decision holding that SHB 2887 is non-uniform would not implicate the WVRA because the Act is uniform. As Amici correctly point out, the "WVRA is a . . . uniform law as required by the Constitution . . . [because] the Act grants the same authority **to all counties.**" Amici Br. at 10 (emphasis added); *id.* at 6 ("[T]he WVRA grants every county the same authority to adopt a remedy that is locally appropriate."). And the WVRA empowers all counties to "voluntarily adopt changes on their own." *Id.* at 6-7 (quoting RCW 29A.92.005) (explaining that the WVRA "authorizes each non-chartered county to" choose from among several potential remedies "'in collaboration with affected community members,' RCW 29A.92.005").

Amici appropriately note that the Legislature specifically modeled the WVRA to be “consistent with legal precedent from *Mt. Spokane Skiing Corp.*” RCW 29A.92.005. The law at issue in *Mt. Spokane Skiing Corp.* “was uniform because it provided ‘all counties . . . the authority to create public corporations.’” Amici Br. at 10 (quoting *Mt. Spokane Skiing Corp. v. Spokane Cty.*, 86 Wn. App 165, 181, 936 P.2d 1148 (1997)). This fact was central to the court, which explained that “[b]ecause **each county has the authority** available to it, the system should be **deemed uniform.**” *Mt. Spokane Skiing Corp.*, 86 Wn. App. at 181 (emphasis added). Accordingly, the WVRA, like the law in *Mt. Spokane Skiing Corp.*, allows—rather than requires—any Washington county to voluntarily take the prescribed actions. Reply at 11. In contrast, SHB 2887 does not grant uniform authority to **all** counties. Rather, SHB 2887 **mandates** a unique form of county government and process for electing county commissioners that applies to only one county. *Id.* That system, unlike the WVRA’s, is neither uniform nor consistent with *Mt. Spokane Skiing Corp.* Opening Br. at 28; Reply at 7-8.

Moreover, the authorization under the WVRA is limited to situations of potential or actual violation of the voting rights of members of a protected class. RCW 29A.92.020-040. The WVRA was enacted to insure that counties can address voting rights violations of the federal and

state constitutions on a uniform basis. *See* Opening Br. at 31. In contrast, there is no countervailing constitutional concerns that justify SHB 2887. Neither the structure of nor intent behind the WVRA is similar to SHB 2887. Striking down SHB 2887 will have no bearing on the constitutionality of the WVRA.

**B. The Constitutional Requirement of Free and Equal Elections is Not At Issue**

Amici’s remaining argument that SHB 2887 must be interpreted consistent with the requirement of free and equal elections under Article I, Section 19 of the Washington Constitution is misplaced. Amici Br. at 10-11. As this Court has explained, that constitutional provision “ha[s] historically [been] interpreted . . . [by this Court] as prohibiting the complete denial of the right to vote to a group of affected citizens.” *Eugster v. State*, 171 Wn.2d 839, 845-46, 259 P.3d 146 (2011) (listing instances where citizens had been denied right to vote as falling within ambit of Article I, Section 19, and noting that provision did not require voting districts for judicial elections to have “equal populations”); *see also Carlson v. San Juan Cty.*, 183 Wn. App. 354, 374, 333 P.3d 511 (2014) (“Because Proposition No. 1 does not deny the right to vote in council elections, article I, section 19 is not implicated.”). SHB 2887 did not attempt to remedy a denial of the right to vote, and therefore Article I,

Section 19 is not implicated.

This Court avoids interpreting constitutional provisions when not necessary to decide a case. *See State v. Hall*, 95 Wn.2d 536, 539, 627 P.2d 101 (1981) (“A reviewing court should not pass on constitutional issues unless absolutely necessary to the determination of the case.”). This Court should decline the invitation to further interpret Article I, Section 19 given its inapplicability to SHB 2887 here.

Amici’s reliance on *Gold Bar Citizens for Good Gov’t v. Whalen*, 99 Wn.2d 724, 730, 665 P.2d 393 (1983) is similarly misplaced. As this Court has since clarified, the *Gold Bar* decision did not analyze Article I, Section 19. *Becker v. Cty. of Pierce*, 126 Wn.2d 11, 18, 890 P.2d 1055 (1995) (“The *Gold Bar* court analyzed neither RCW 29.62 nor any of the constitutional provisions cited by Becker [including Article I, Section 19].”). Regardless, *Gold Bar* addressed a situation involving individuals who lived outside the town of Gold Bar lawfully voting in Gold Bar town elections. 99 Wn.2d at 730. SHB 2887, in contrast, is not directed toward rectifying unauthorized voting or vote dilution. Rather, SHB 2887 is a paternalistic conclusion by the Legislature that it knows better than Spokane County voters what is best for Spokane County. Opening Br. at 24.

**III. CONCLUSION**

Amici are correct that the WVRA is not at issue here. Striking down SHB 2887 would not disturb the WVRA. This Court should declare SHB 2887 unconstitutional under Article XI, Sections 4 and 5, and reverse the trial court.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of June, 2020.

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June 08, 2020 - 2:19 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97739-9  
**Appellate Court Case Title:** Spokane County, et al. v. The State of Washington  
**Superior Court Case Number:** 19-2-00934-3

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