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No. 97739-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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.

APPELLANTS' OPENING BRIEF

PACIFICA LAW GROUP LLP
Paul J. Lawrence, WSBA #13557
Gregory J. Wong, WSBA #39329
Kai A. Smith, WSBA #54749
1191 2nd Avenue, Suite 2000
Seattle, WA 98101
206-245-1700

Attorneys for Appellants

LARRY H. HASKELL
Spokane County Prosecuting Attorney
John F. Driscoll, Jr., WSBA # 14606
Chief Civil Prosecuting Attorney
1115 W Broadway Avenue
Spokane, WA 99260
509-477-5764

Attorneys for Appellant Spokane
County

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I. INTRODUCTION

The Legislature may not enact laws contrary to the plain language of the Washington Constitution, regardless of motive. Article XI, Sections 4 and 5 of the Constitution mandate that the Legislature adopt only uniform and general laws governing the structure of noncharter county governments and election of noncharter county commissioners. Uniformity, this Court held over 100 years ago, requires county governments to be “in all essential particulars . . . alike.” *Maulsby v. Fleming*, 88 Wash. 583, 586, 153 P. 347 (1915).

Ignoring this well-established requirement, the Legislature in 2018 enacted Substitute House Bill 2887 (Chapter 301, Laws of 2018) (“SHB 2887”), which creates a unique form of county government and county commissioner elections in only one county. Specifically, the law requires Spokane County to increase the number of its county commissioners from three to five, elect commissioners from districts rather than countywide, and establish and fund a redistricting committee comprised entirely of people appointed by statewide, partisan political caucuses, removing local control from the creation of commissioner districts. It is undisputed that every other noncharter county is subject to different requirements.

Here, the trial court erred in ruling SHB 2887 constitutional. The trial court’s error stems from its misapplication of the two express

constitutional exceptions to uniformity: the Legislature may classify noncharter counties by population only to consolidate the duties of county officials or to set their compensation. SHB 2887 does neither. And nothing in the constitutional history or case law suggests SHB 2887 otherwise should fall outside the scope of the Constitution’s mandate of uniformity.

The voters of Spokane County are empowered to change their form of government, such as by forming their own “home rule” charter government as provided for in the Constitution. But the voters of Spokane County repeatedly have rejected any deviation from the form of government it has used for over 150 years in conjunction with every other noncharter county in Washington. Overruling the voters’ choice, the Legislature decided what is “best” for Spokane County by enacting SHB 2887. But that is not a choice the Constitution permits the Legislature to make.

This Court should reverse.

II. ASSIGNMENTS OF ERROR

1. Article XI, Sections 4 and 5 require uniformity in government structure and election processes for noncharter counties. *Maulsby v. Fleming* established that uniformity requires such governments to be “in all essential particulars . . . alike.” SHB 2887 requires one specific county to

have a unique number of commissioners and method of electing those commissioners. Did the trial court err in ruling that SHB 2887 complies with the Constitution's uniformity requirement?

2. The Constitution provides only two narrow exceptions to uniformity: the Legislature may classify counties by population to set the compensation of county officers or to consolidate their duties. SHB 2887 classifies counties by population for the purpose of altering county government structure and elections. Did the trial court err in ruling that SHB 2887 comports with the Constitution's limits on classification by population?
3. *Maulsby v. Fleming* held that Section 5 permitted classification by population only for the purpose of setting compensation of county officers and not to consolidate their duties. In response to this holding, Washington voters enacted Amendment 12 to authorize classification for the additional purpose of consolidation. Did the trial court err in ruling that Amendment 12 "broadened" *Maulsby's* approach to uniformity to encompass the changes to Spokane County adopted in SHB 2887?

III. STATEMENT OF THE CASE

A. Article XI, Sections 4 and 5 Require a Uniform System of County Government Subject Only to Express Exceptions.

Article XI, Section 4 of the Constitution is titled "County government and township organization." As to county government, the original text of Section 4 provided: "The legislature shall establish a

system of county government which shall be uniform throughout the state”¹ Const. art. 11, § 4. From inception, the Constitution contemplated that all counties in the State would have the same form of government structure.

In 1948, Washington voters amended Section 4, adding a provision for local voters to create “home rule” charter counties. *Id.* (Amendment 21). This amendment established a process through which local voters may initiate, draft, vote on, and implement a county charter. *Id.* Local voters were given wide discretion in adopting the form of government, as well as the composition and compensation of elected officials. *Id.*

Article XI, Section 5 further limits the Legislature’s authority with respect to counties. The original text provided:

The legislature by general and uniform laws shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township or precinct and district officers as public convenience may require, and shall prescribe their duties, and fix their terms of office.

Const. art. 11, § 5. Section 5 specified the one instance in which the Legislature may deviate from this mandate: “It shall regulate the compensation of all such officers, in proportion to their duties, and for that

¹ The original and current text of the Constitution and all amendments referenced in this Opening Brief are available on the Legislature’s website: <http://leg.wa.gov/LawsAndAgencyRules/Pages/constitution.aspx>.

purpose may classify the counties by population.” *Id.*

This was the only permissible form of classification until 1924, when voters enacted Amendment 12, which added to Section 5 one additional authorized purpose for classification by population: “the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers.”

B. Spokane County’s Form of Government Has Been Structured the Same as Every Other Noncharter County for Over 150 Years.

Spokane County has been a noncharter county since its creation in 1858.² Like all noncharter counties, from the time of the First Territorial Law,³ Spokane has been governed by a three-member board of county commissioners. Statutes of the Terr. of Wash. (1854) at 420 § 1;⁴ RCW 36.32.010.

All noncharter counties are required to establish a process whereby the voters of the entire county elect each commissioner. RCW 36.32.050. Under this system, the county is divided into three commissioner districts

² Municipal Research and Service Center of Washington, County Form of Government, <http://mrsc.org/Home/Explore-Topics/Governance/Forms-of-Government-and-Organization/County-Forms-of-Government.aspx> (last updated January 2, 2020) (last visited January 22, 2020); Spokane County, Historic Dates & Maps, <https://www.spokanecounty.org/2244/Historic-Dates-Maps> (last visited January 22, 2020).

³ Of course, until 1948 all Washington counties were noncharter counties.

⁴ Available at <http://leg.wa.gov/CodeReviser/documents/sessionlaw/1854pam1.pdf>.

roughly equal in population.⁵ RCW 36.32.020. In the primary, candidates run in the district in which they reside and are voted on by the citizens of that same district. RCW 36.32.040-.050. The top two vote earners in the primary for each district advance to the general election, where they run countywide and are selected by the voters of the entire county. *Id.* The county commission of each noncharter county establishes the commission districts. RCW 36.32.020.

C. The Legislature Attempts to Provide an Option to Noncharter Counties to Vary the Number of Commissioners.

Beginning in 1979, the Legislature sought ways to permit noncharter counties to increase the number of their commissioners from three to five by popular vote. CP 58 (AGLO 1979 No. 8); CP 66 (AGO 1987 No. 11). One of the bills proposed that voters in noncharter counties with populations of 210,000 or more could expand their county commission to five members by popular vote. CP 66. Another bill proposed the same opportunity for expansion but applied to any noncharter county. CP 58. In both instances, the Washington Attorney General issued a formal opinion concluding that the bill “would in all probability” violate both Sections 4 and 5 of Article XI of the Washington

⁵ The only exception to this requirement is that, starting in 1970, noncharter counties comprised entirely of islands with a population of less than 35,000 were permitted to draw their commissioner districts without regard to population. RCW 36.32.020. This law has not been challenged under either Section 4 or 5 of Article XI of the Constitution.

Constitution. CP 58; CP 69 (bill “more likely than not . . . is unconstitutional”).

Nevertheless, in 1990, the Legislature passed a law to permit noncharter counties with 300,000 or more people to move to a five-commissioner format by popular vote.⁶ RCW 36.32.055. While the law exists, it never has been applied. Almost 30 years have passed and not a single county has exercised this authority to expand its commission.

Spokane County, for its part, twice considered and rejected such proposals. In 1991, the voters of Spokane County considered a proposal to expand their commission to five members.⁷ Voters defeated the measure by nearly a 2-1 ratio.⁸ More recently, in 2015, county voters considered and again soundly rejected a ballot measure proposing the same expansion, affirming once again Spokane County’s preference for a commission of three commissioners.⁹ In between these votes, Spokane County voters also rejected deviating from the uniform noncharter form of government by voting down a proposed county-city charter.¹⁰

⁶ The constitutionality of this law has not yet been litigated and is not at issue in this case.

⁷ CP 72 (Jonathan Brunt, County Officials Look at Restructuring, The Spokesman-Review, Feb. 18, 2007, 1B).

⁸ *Id.*

⁹ Spokane County Auditor, November 3, 2015 General Election Results, *available at* <https://results.vote.wa.gov/results/20151103/spokane/> (last updated Nov. 24, 2015) (last visited January 22, 2020).

¹⁰ In 1992, Spokane County followed the process set forth in the Constitution and elected 25 freeholders to consider and ultimately draft a potential home rule charter. CP 78 (Thomas Clouse, Consolidation Gets Another Look, The Spokesman-Review, Feb. 19,

D. The Legislature Mandates that Spokane County Alter its Form of Government and Election Process in SHB 2887.

Two months after Spokane County’s 2015 vote to retain its three-commissioner form of government, the Legislature began to consider Engrossed House Bill 2610 (2016 Regular Session) (“HB 2610”), which would have required Spokane County to have five commissioners.¹¹ HB 2610’s primary sponsor, Representative Marcus Riccelli, stated that he introduced the bill to address concerns raised by pro-expansion supporters whose measure the voters had just rejected.¹² Although HB 2610 did not pass, Representative Riccelli reintroduced it in substantially similar form two years later as the bill currently at issue: SHB 2887.¹³

By its terms, SHB 2887 applies to noncharter counties with a population of 400,000 or more. RCW 36.32.052. As the State has conceded, Spokane County is the only county within these parameters and thus the only county subject to SHB 2887.¹⁴ CP 12-13. As described in

2009, at 1A). After three years of deliberation, the freeholders proposed a charter to establish a unified city and county government under a 13-member governing board. CP 80 (Dan Hansen, Freeholders Will Present Minority Report As Well, The Spokesman-Review, Feb. 17, 1995, B3). In 1995, that proposal was presented to the voters of Spokane County, who overwhelmingly rejected the measure. CP 83 (Dan Hansen, Voters Reject City-County Merger, The Spokesman-Review, Nov. 8, 1995, at A1).

¹¹ CP 86-87 (Jim Camden, Bill Adds Two Seats to Govern County, The Spokesman-Review, Jan. 17, 2016, 1B).

¹² *Id.*

¹³ HB 2610 also would have required Spokane County commissioners to be elected by the voters of their districts in the general election and would have established a redistricting committee.

¹⁴ Municipal Research and Service Center of Washington, County Form of Government, <http://mrsc.org/Home/Explore-Topics/Governance/Forms-of-Government-and->

more detail below, SHB 2887 mandates three significant changes to Spokane County government: (1) increase the number of its county commissioners from three to five, (2) limit its commissioner elections to only voters within individual districts rather than countywide, and (3) establish and fund a redistricting committee comprised of partisan political caucus appointees to create and oversee the commissioner districts. All other noncharter counties in Washington are subject to different requirements. *See Supra*, Section III.B.

The Legislature was well aware that SHB 2887 was targeted explicitly at Spokane County. While legislative sponsors provided different rationales for the bill, they noted its tailoring to Spokane County. As Representative Riccelli told a Washington House of Representatives Committee, “Spokane County is the largest county. . . that only has three elected [commissioners]” and thus SHB 2887 is “a good move for Spokane County.” Hr’g on SHB 2887 Before the H. State Gov., Elections & Info. Tech. Comm., 65th Leg., Reg. Sess. (Wash. Jan. 30, 2018).¹⁵ Likewise, Representative Mike Volz, a co-sponsor of the bill,

Organization/County-Forms-of-Government.aspx (last updated January 2, 2020) (last visited January 22, 2020); Municipal Research and Service Center of Washington, Washington County Profiles, <http://mrsc.org/Home/Research-Tools/Washington-County-Profiles.aspx?orderby=countypop&dir=down> (last updated April 1, 2019) (last visited January 22, 2020).

¹⁵ Available at <https://www.tvw.org/watch/?eventID=2018011412>.

characterized it as “a solution for Spokane County.”¹⁶ And Representative Jeff Holy, another co-sponsor of the bill, stated that it “could save the county money” and “is in the financial best interests of the county.”¹⁷ Accordingly, while signing the bill into law, Governor Jay Inslee noted that he was not suggesting the change on a statewide basis.¹⁸ SHB 2887 starts to go into effect in 2021. *See, e.g.*, RCW 36.32.052.

E. The Trial Court Upholds SHB 2887.

After SHB 2887 was enacted, Spokane County, one current and one former Commissioner, and the Washington State Association of Counties (collectively “Spokane County”) filed a lawsuit challenging its constitutionality. CP 3. The parties filed cross-motions for summary judgment. CP 22, 118. Spokane County argued that SHB 2887 was unconstitutional under the reasoning set forth in *Maulsby v. Fleming*. CP 146. Spokane County also argued that under the plain language of Section 5 as amended, the Legislature could classify counties by population only for two specific purposes, neither of which apply here. CP 150.¹⁹

¹⁶ CP 88 (Washington State House Democrats, Governor Signs Changes to Spokane County Commissioner Elections, <https://housedemocrats.wa.gov/blog/2018/03/28/governor-signs-changes-to-spokane-county-commissioner-elections/> (last updated March 28, 2018) (last visited April 10, 2019) (relating changes to voting rights issues)).

¹⁷CP 93-94 (Jim Camden, New Law Expands County Commission, *The Spokesman-Review*, Mar. 29, 2018, 1A) (relating changes to voting rights issues).

¹⁸ *Id.*

¹⁹ Appellants challenge SHB 2887 as codified except for Section 8, codified at RCW 29A.76.010. A copy of SHB 2887 as enacted by the Legislature is available at CP 46.

The State declined to argue that SHB 2887 was constitutional under the uniformity analysis set forth in *Maulsby*, and instead argued that *Maulsby's* reasoning had “ossified.” CP 125 (“*Maulsby* does not remain good law”). The State also argued that Amendment 12 authorized the Legislature to classify counties by population for any purpose. CP 127. The State did not identify any authority holding that *Maulsby* was no longer good law.

Nevertheless, the trial court ruled that SHB 2887 was constitutional. CP 160-65. Although the court purported to recognize that *Maulsby* “remains good authority,” it ultimately ruled that Amendment 12 “broadened” the premise of *Maulsby*. CP 158 (ruling that Amendment 12 “demonstrates an abandonment of the rigid constrictions articulated [in *Maulsby*]”). The court also ruled that Amendment 12 authorized the Legislature to classify counties by population for any purpose. *Id.*

Spokane County timely appealed and sought direct review. Dkts. 1, 3. The State agrees that direct review is appropriate. Dkt. 4.

IV. ARGUMENT

This Court reviews summary judgment orders *de novo*, engaging in the same inquiry as the trial court. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2000). Here, the material facts are not in dispute. The issues related to constitutional and statutory

interpretation are questions of law reviewed *de novo*. *Sheehan v. Cent. Puget Sound Reg'l Transit Auth.*, 155 Wn.2d 790, 797, 123 P.3d 88 (2005).

A. SHB 2887 Establishes a Non-Uniform System of County Government in Violation of Article XI, Sections 4 and 5.

The Washington Constitution expressly limits the Legislature's power in enacting laws governing the structure of noncharter county governments and election of noncharter county commissioners. Under Article XI, Section 4 of the Washington Constitution, the Legislature is required to "establish a system of county government, which shall be uniform throughout the state" ²⁰ Const. art. XI, § 4. Likewise, Article XI, Section 5 requires the Legislature to provide for county commissioner elections in noncharter counties only by laws that apply uniformly. Const. art. XI, § 5 ("[T]he legislature, by . . . uniform laws, shall provide for the election in the several counties of boards of county commissioners.").

The purpose behind such state constitutional uniformity provisions is straightforward: "It is a matter of general knowledge that legislatures are disposed to adopt, without particular scrutiny, measures proposed by the representatives of a particular locality, affecting it only, and not the

²⁰ As noted above, the only counties exempted from the requirement of uniformity are counties that have adopted a "Home Rule" charter. Const. art. XI, § 5 (" . . . except . . . [a]ny county may frame a 'Home Rule' charter for its own government"). As described above, there is no dispute that Spokane County is a noncharter county.

state at large. The object of the provision was to prevent this character of legislation.” *State v. Boyd*, 19 Nev. 43, 5 P. 735, 735 (1885) (quoted in AGO 1987 No. 11 (CP 70)).²¹

1. This Court Interpreted What Uniformity Means Under Article XI, Sections 4 and 5 in *Maulsby v. Fleming*.

This Court first interpreted these constitutional provisions over 100 years ago in the seminal case *Maulsby v. Fleming*. 88 Wash. at 583-84. In *Maulsby*, the Court considered a statute that abolished the office of county coroner in counties under a certain population and authorized other counties’ officers to assume the duties of the abolished office. *Id.* The statute was challenged as violating Article XI, Sections 4 and 5. *Id.*

As these constitutional provisions had not been interpreted before, this Court first set out to establish guidelines for what the Constitution requires in a uniform system of government. Looking to the provisions’ plain language, and guidance from other states, the Court concluded that uniformity requires that “county governments . . . [must be] in all essential particulars . . . alike” and the systems’ “several parts . . . applicable to each county.” *Id.* at 585-86 (quoting with approval *Singleton v. Eureka Cty.*, 22 Nev. 91, 35 P. 833, 835 (1894) and *Wright v. Standford*, 24 Utah 148, 66 P. 1061 (1901)). In other words, in a uniform system, the “powers, duties,

²¹ *Boyd* also was the basis for *Singleton v. Eureka Cnty.*, 22 Nev. 91, 35 Pac. 833 (1894), which this Court cited in *Maulsby*, 88 Wash. at 585.

and obligations . . . [must] be the same in each county; otherwise the system is not uniform.” *Id.* at 585-86.²²

This Court then applied these guidelines to the specific law before it. The Court looked at the express language of the Constitution, and noted that (at the time), Section 5 permitted classification of counties by population only for “the purpose of regulating the compensation” of county officials. *Id.* at 584. This Court refused to read in additional purposes beyond those authorized by the Constitution itself and struck down the law because it classified counties for the unauthorized purpose of consolidating official duties. *Id.* at 586-87.

2. SHB 2887 Violates the Constitution’s Uniformity Provisions in Three Distinct Ways.

SHB 2887 violates the uniformity provisions of Article XI, Sections 4 and 5, in three distinct ways.

²² The concept that the term “uniform” in the Washington Constitution means the “same” is supported by this Court’s interpretation of other constitutional provisions that use the term. *See Fed. Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 524, 219 P.3d 941 (2009) (“Uniform” means that “every child shall have the same advantages and be subject to the same discipline as every other child.”) (internal quotations omitted) (interpreting Art. IX, § 2’s requirement that the Legislature “provide for a general and uniform system of public schools.”); *Belas v. Kiga*, 135 Wn.2d 913, 927, 959 P.2d 1037 (1998) (“We conclude that value averaging creates different assessment ratios for real property which, under article VII, § 1, is one class of property. This scheme therefore violates the uniformity requirement of our Constitution.”) (interpreting Art. VII, § 1’s requirement of uniformity of taxation of real property).

a.) SHB 2887 Unconstitutionally Makes Spokane County the Only Noncharter County to be Governed by Five, Rather than Three, County Commissioners.

There is no dispute that Spokane County is the only noncharter county required under SHB 2887 to have five county commissioners:

(1) Beginning in 2022, **any noncharter county with a population of four hundred thousand or more must have a board of commissioners with five members**, and must use district nominations and district elections for its commissioner positions, in accordance with RCW 36.32.050.

RCW 36.32.052(1) (emphasis added). There is likewise no dispute that every other noncharter county in Washington is required by state law to have only three county commissioners. RCW 36.32.010 (“[E]ach board of county commissioners shall consist of three qualified electors.”).²³

On its face, requiring five commissioners in Spokane County and three in every other county is not uniform.

This requirement in SHB 2887 suffers from the same constitutional infirmity as the law struck down in *Maulsby*. SHB 2887 requires two additional officials in Spokane County—the fourth and fifth commissioners—that are not required in any other county. That is a non-uniform and unconstitutional requirement. *Maulsby*, 88 Wash. at 584

²³ As described above, the only exception to the requirement of three commissioners is that noncharter counties with populations above 300,000 may vote to expand their commission to five members. In the nearly 30 years the law has been in effect, no county has chosen to do so. This law has not been challenged under either Section 4 or 5 of Article XI of the Constitution.

(holding that a system of county government under which “certain officers in one county which are not permitted in another county is not a uniform system.”). Without such a limitation, the Legislature could impose upon certain narrow classes of counties any number of commissioners. It could be 10 or even only one. That is not what the Constitution intends.²⁴

It should not surprise the Legislature that varying the number of commissioners by county is unconstitutional. The potential for wildly varying sizes and forms of county commissions is why the Washington Attorney General previously advised that permitting three commissioners in certain counties and five commissioners in other counties would in all probability violate the Washington Constitution.

As noted above, the Attorney General issued a formal opinion in 1979 on the constitutionality of a proposed bill to allow voters in noncharter counties to increase the composition of their board of county commissioners from three to five members. CP 58 (AGLO 1979 No. 8). Relying on *Maulsby* and case law from other jurisdictions addressing similar constitutional provisions, the Attorney General explained that

²⁴ In addition, the requirement of five commissioners establishes a non-uniform allocation of responsibilities. Under SHB 2887, the responsibilities of the county commissioners of Spokane County are divided among five commissioners, whereas those same responsibilities are divided among three commissioners in the other noncharter counties. This allocation of work “impos[es] duties upon [commissioners] . . . which duties are not imposed upon [commissioners]” in other counties. *Maulsby*, 88 Wash. at 584-86 (holding that under a uniform system, “the responsibilities of government [must] be divided among [commissioners] in the same manner.”).

differences in the number of commissioners among counties would not be uniform because the system would not be “applicable alike in all its parts and continuously operating equally in all of the counties of the state.” *Id.* (“uniformity means consistency, resemblance, sameness”) (quoting *Coulter v. Pool*, 187 Cal. 181, 192, 201 Pac. 120 (1921)). As the Attorney General explained, under the proposed bill “a Columbia or Wahkiakum County could end up with a board of five county commissioners while a Spokane, Clark or Yakima County remained governed by only a three-member board.” *Id.* Such an approach would lead to a non-uniform “crazy-quilt system” in violation of Sections 4 and 5 of Article XI. *Id.*

The Attorney General reaffirmed its view that such variances are unconstitutional a few years later. In 1987, the Legislature proposed a nearly identical bill except that the expansion vote would be permitted only in noncharter counties with populations of 210,000 or more. CP 66 (AGO 1987 No. 11). The Attorney General again concluded that the proposal—despite the classification by population—likely was unconstitutional for the same reasons applicable to the 1979 bill. *Id.*

Here, thirty-one noncharter counties in Washington operate using a mandatory three-member commission. Only one, Spokane County, must have a five-member commission. This provision, if left standing, starts the State down a path of creating a patchwork system of county

governments in direct contradiction to the constitutional mandate of uniformity. For this reason alone, SHB 2887 is unconstitutional.

b.) SHB 2887 Requires Only Spokane County Commissioners be Elected by Voters in Their District, Rather than Countywide.

In addition, SHB 2887 is unconstitutional because it requires only Spokane County commissioners to be elected within individual districts rather than countywide. Article XI, Section 5 specifies that “election[s] in the several counties of boards of county commissioners” must be established by “general and uniform laws.” In every other noncharter county in Washington, counties are divided into districts, with one commissioner representing each district. RCW 36.32.020. In the primary election, candidates are nominated by the voters of their district, but then run and are voted on countywide in the general election. RCW 36.32.040-.050. Thus, in the general election, voters of the entire county elect commissioners.

SHB 2887 rewrites this process for Spokane County, whose commissioners will be voted on in the general election only by voters in their district rather than countywide:

(1) Beginning in 2022, any noncharter county with a population of four hundred thousand or more must have a board of commissioners with five members, and **must use district nominations and district elections for its commissioner positions**, in accordance with RCW

36.32.050.

RCW 36.32.052(1) (emphasis added).

In other words, the Legislature requires that a candidate running for county commissioner in a general election in any other noncharter county will be voted on and selected by the voters of the entire county. In Spokane County, the Legislature requires that only the voters of the candidate's district will vote on the candidate in the general election. This requirement constitutes a separate violation of the uniformity requirements of the Constitution. *See Maulsby*, 88 Wash. at 585 (explaining that uniformity requires county governments to be “in all essential particulars . . . alike.”).

c.) SHB 2887 Strips Spokane County of its Authority to Create Districts and Requires it to Fund a Redistricting Committee.

SHB 2887 further violates the Constitution because it strips Spokane County of its authority to establish the commissioner districts and instead grants that authority to a redistricting committee comprised entirely of members directly or derivatively appointed by partisan political caucuses. As provided in SHB 2887:

(a) By April 30, 2021, the county **must establish a redistricting committee**, in accordance with RCW 36.32.053, to create, review, and adjust county commissioner districts in accordance with subsection (1) of this section. . . .

(1) A county **redistricting committee** established under this chapter **must have five members** appointed in each year ending in one, as follows:

(a) One member shall be **appointed by the members of each of the two largest caucuses, respectively, of the house of representatives** whose legislative districts are wholly or partially within the noncharter county with a population of four hundred thousand or more;

(b) One member shall be **appointed by the members of each of the two largest caucuses, respectively, of the senate** whose legislative districts are wholly or partially within the noncharter county with a population of four hundred thousand or more; and

(c) The fifth member, who shall serve as the nonvoting chair of the committee, shall be **appointed by a majority of the other four members**

(7) The legislative body of the county **will provide adequate funding** and resources to support the duties of the redistricting committee.

RCW 36.32.052-.053 (emphasis added).

No other noncharter county in Washington is required to establish such a committee. RCW 36.32.052. And no other noncharter county is required to finance such a committee—costs that will be borne by the taxpayers of Spokane County.²⁵ *Id.* Those costs are not nominal.

Although the fiscal note to SHB 2887 does not estimate a specific economic impact for Spokane County, it does identify that when Pierce

²⁵ See CP 97-98 (Chad Sokol, County Joins Lawsuit Challenging New Law, The Spokesman-Review, Feb. 28, 2019, 1C); CP 102-03 (Fiscal Note to SHB 2887).

County, a charter county, went through a redistricting process in 2012, the cost was in excess of \$350,000. CP 103.

Moreover, this requirement removes local control over the creation of commissioner districts—a power retained by every other noncharter county in Washington. As explained above, state law empowers “[t]he **board of county commissioners** of each [noncharter] county . . . [to] divide their county into three commissioner districts.” RCW 36.32.020 (emphasis added). But under SHB 2887, the Legislature has eliminated Spokane County’s role entirely from the districting process and replaced it with a committee made up completely of statewide, partisan political caucus appointees. RCW 36.32.053. This is not a uniform system.²⁶

d.) SHB 2887’s Requirements Individually and Collectively Violate the Constitution’s Uniformity Requirements.

Each of SHB 2887’s three requirements establishes a non-uniform system of county government that is unconstitutional. Collectively, the requirements fundamentally restructure Spokane County’s government form and process for electing county commissioners and strip Spokane County of core local decision-making authority retained by all other noncharter counties. SHB 2887 is not uniform and should be invalidated.

²⁶ In addition to violating the Constitution’s requirement of uniformity, allowing county commissioner districts to be drawn by appointees of statewide partisan political causes intrudes on the local control over the election of county officials that the Constitution otherwise delegates to counties.

B. SHB 2887 Improperly Classifies Counties by Population, In Violation of Article XI, Section 5.

Neither the State nor the trial court disputed that the Legislature has mandated a form of county government and elections in Spokane County that deviates from the otherwise uniform system of government applicable to all other noncharter counties. Rather, the State and trial court hid behind Article XI, Section 5's allowance for classification of counties by population for certain limited purposes. But the Constitution does not support the conclusion that counties may be classified by population generally for other purposes.

1. The Plain Language of Article XI, Section 5 Permits Classification For Only Two Purposes, Neither of Which Apply.

As previously noted, the only exception to the requirement that noncharter counties have uniform government structures is that the Legislature may classify noncharter counties by population for two limited purposes: to consolidate the duties of county officials or to set those officials' compensation. As provided in Section 5:

“The legislature, by general . . . laws, shall provide for the election in the several counties of boards of county commissioners *Provided*. That [1] the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers. [2] It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by

population

Const. art. XI, § 5.

That classification of counties by population is limited to two specific purposes is confirmed by the contrasting language used in the Constitution regarding classification of municipalities. Unlike for counties, the Legislature is directed to classify municipalities by population. Article XI, Section 10 provides:

INCORPORATION OF MUNICIPALITIES.

Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed.

The difference in language demonstrates that the framers specifically intended that counties not generally be classified by population, but that municipalities must be classified by population.

Ignoring Section 5's plain language, SHB 2887 establishes a population classification for purposes unrelated to the consolidation of county officials' duties or setting of their compensation. Rather, as shown above, SHB 2887 distinguishes among counties for the purposes of enlarging the number of commissioners as well as changing the election and districting process for selecting commissioners. Utilizing classification by population for those purposes is unconstitutional.

The improper purpose of SHB 2887’s classification is confirmed by its legislative history. As described above, when the Legislature was considering SHB 2887, Representative Riccelli confirmed the bill’s improper intent, telling a committee of the Washington House of Representatives that “Spokane County is the largest county that . . . only has three elected [commissioners]” and thus SHB 2887 is “**a good move for Spokane County.**” Hr’g on SHB 2887 Before the H. State Gov., Elections & Info. Tech. Comm., 65th Leg., Reg. Sess. (Wash. Jan. 30, 2018) (emphasis added).²⁷ The specific intent of the Legislature to address perceived issues in Spokane County continued to be revealed even after SHB 2887 was enacted. For example, Representative Mike Volz, one of the co-sponsors of the bill, described the changes as “**a solution for Spokane County.**”²⁸

In sum, SHB 2887 is not about consolidation of offices or about compensation. Rather, it is an unconstitutional and paternalistic conclusion by the Legislature that it knows better than Spokane County voters as to what is best for Spokane County. It is unconstitutional.

²⁷ Available at <https://www.tvw.org/watch/?eventID=2018011412>.

²⁸ CP 90 (noting costs that could be associated for Spokane County related to the Voting Rights Act) (emphasis added).

2. Amendment 12 Added One Specific Authorized Purpose to Classify and Was Not Enacted to “Abandon” *Maulsby’s* Approach to Uniformity.

Contrary to the plain language of Section 5, the trial court ruled that Amendment 12 authorized the Legislature to classify counties by population for any and all purposes, and that this amendment also represented an “abandonment” of *Maulsby’s* “rigid and unwavering” articulation of uniformity. CP 158. But if the trial court’s interpretation were true, then it would mean the people of Washington, in enacting Amendment 12, were in fact making two substantive changes to the Constitution: one, allowing for classification of counties by population for any and all purposes and two, allowing for consolidation of county officer duties. Such a conclusion is unfounded and makes no sense.

As an initial matter, the trial court’s reading is not supported by the language of Section 5 as amended. *See, supra*, Section IV.B.1. Furthermore, Amendment 12, like all Constitutional amendments, must be read as a whole. Here, the Legislature’s authority to “provide for the election in **certain classes** of counties” necessarily is modified by the means of classification allowed: “by **population.**” (emphasis added). Reading Section 5 in the disjunctive would leave “certain classes of counties” undefined. Nothing would prevent the Legislature from classifying counties for the purpose of consolidation on any basis

whatsoever, such as the number of highways or airstrips in a county. Such a result would be an absurd interpretation of the constitutional language.

In addition, the trial court's interpretation would render the provisions regarding consolidation and compensation redundant and irrelevant. If the Legislature has broad authority to "classify counties by population" for any purpose, then the Constitution would not need to separately authorize such classification for consolidation or compensation. But it does. To read Section 5 as the State proposes improperly would render these two provisions nugatory. Such interpretations are disfavored. *See Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 260, 11 P.3d 762 (2000) ("[E]ach word in a constitutional provision must be accorded its own separate meaning, and the court should not embrace a construction causing redundancy or rendering words superfluous.").

The history of Amendment 12 further confirms that it was enacted only to permit classification for consolidation purposes. As explained, the Court first interpreted Sections 4 and 5 in 1915 in *Maulsby v. Fleming*. 88 Wash. at 583-84. The Court ultimately held that it was unconstitutional to classify counties by population for the purpose of consolidation of offices because Section 5 (at the time) permitted classification only to "regulate the compensation of all [county] officers." *Id.*

In specific response to that holding, Washington voters enacted

Amendment 12 in 1924 to permit classification by population for the additional purpose of consolidation of duties. Amendment 12 added a single sentence to Section 5: “*Provided*, That the legislature may, by general laws, classify the counties by population and provide for the election in certain classes of counties certain officers who shall exercise the powers and perform the duties of two or more officers.” Const. art. 11, § 5. Nothing in Amendment 12 addresses *Maulsby’s* reasoning or analysis of what it means to have a uniform system of county government. Nor does it suggest authorization of classification by population for any and all purposes. Rather, the amendment, in response to the *Maulsby* decision, made the straightforward change of permitting the Legislature to classify counties by population for one additional and express purpose: consolidation of offices.

Both contemporary and retrospective news accounts and case law confirm the limited intent of Amendment 12. *See, e.g.*, CP 105-106 (Seattle Daily Times, Nov. 5, 1924 (“[T]he constitutional amendment providing for consolidation of county offices in the smaller counties”)); CP 108 (Seattle Daily Times, Nov. 6, 1924 (amendment described as “county offices constitutional amendment”)); *see also Scofield v. Easterday*, 182 Wash. 209, 218, 46 P.2d 1052 (1935) (Geraghty, J. dissenting) (“To meet the situation created by the decision in [*Maulsby*,]

the Legislature submitted Amendment 12 to the people . . .”).

Nothing in Amendment 12’s language or history suggests it was intended to allow classification by population for any and all purposes.

3. Subsequent Case Law is Consistent With the Plain Language of the Constitution and *Maulsby’s* Approach to Uniformity.

In addition, subsequent case law confirms *Maulsby’s* approach to uniformity. The trial court’s conclusion otherwise is incorrect.

The primary case upon which the trial court relied, *Mount Spokane Skiing Corp. v. Spokane Cty.*, CP 158, did not even discuss *Maulsby’s* approach to uniformity. 86 Wn. App. 165, 170, 936 P.2d 1148 (1997). In *Mount Spokane*, a state law that empowered local governments to create public corporations was challenged as violating Section 4’s uniformity requirement. *Id.* at 180. But the law at issue did not implicate any population classification; rather, the law empowered “**all** counties [with] authority to create public corporations.” *Id.* at 181 (emphasis added). This fact was critical to the Court of Appeals, which upheld the law “**because each county** has the authority available to it.” *Id.* (emphasis added). Thus, contrary to the trial court’s suggestion, *Mount Spokane* does not stand for the proposition that the Legislature has unfettered power to classify counties by population.

Similarly, in *State v. Schragg*, also cited by the trial court, CP 158,

this Court considered a law that required counties of a certain population size to elect county treasurers to perform the duties of not only treasurer but also county assessor. 159 Wash 68, 70, 292 P. 410 (1930). Because the law “classifie[d] counties” for the purpose of “fix[ing] the compensation of county officers . . . and consolidat[ing] certain county offices,” the Court upheld the law. *Id.* *Schragg* is thus illustrative of the type of law that fits within the constitutional limitations of when the legislature can classify a county by population.

Likewise, nothing in *Scofield v. Easterday*, another case cited by the State, CP 123, questioned *Maulsby’s* approach to uniformity. In *Scofield*, this Court addressed a state law that transferred certain duties of the board of county commissioner to the county engineer. 182 Wash. 209, 211, 46 P.2d 1052 (1935). The Court explained that Amendment 12 added consolidation of county offices as a permissible classification by population and then upheld the law:

[Because] the Legislature has the power . . . to prescribe the duties of the county officers and authorize one officer to perform the duties of two or more other officers, it would necessarily seem to follow that the Legislature . . . had the right to transfer [duties among county officers].

In other words, this holding was a straightforward application of the consolidation of duties contemplated by Amendment 12, not a suggestion that Amendment 12 broadened the Legislature’s power to classify by

population in general.

In sum, no Washington court decision has questioned *Maulsby's* approach to uniformity. (Indeed, until this case the Attorney General cited *Maulsby* favorably in its own advisory opinions. *See, supra*, Section III.C.) To the contrary, case law confirms that *Maulsby's* holding regarding uniformity in county government remains correct. Amendment 12 also reinforced these guidelines by authorizing one additional circumstance under which the Legislature could classify by population.

4. The Voting Rights Act Is Not Affected.

Finally, the trial court discussed the state Voting Rights Act, RCW 29A.92 *et seq.*, in its ruling as an example of the Legislature's consideration of the uniformity requirements. CP 159. While the state Voting Rights Act ("Act") is not at issue here, striking down SHB 2887 will not impact the Act.

The Act was enacted to allow compliance with "Article I, section 19 and Article VI, section 1 of the Washington state Constitution as well as protections found in the Fourteenth and Fifteenth amendments to the United States Constitution." RCW 29A.92.005. The Act was "to be consistent with federal protections [under the federal Voting Rights Act] that may provide a similar remedy for minority groups." *Id.* To accomplish these goals, the Act modifies "existing prohibitions in state

laws so that these jurisdictions may voluntarily adopt changes on their own, in collaboration with affected community members, to remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election.” *Id.* Thus, the Act in relevant part allows local governments including counties to address voting rights issues that would potentially violate the federal constitution, federal law, the state constitution, and state law without going through the expense and risk of protracted litigation.

Recognizing the constitutional requirements of uniformity, the Legislature modeled the Act to be “consistent with legal precedent from *Mt. Spokane Skiing Corp . . .*” Thus, the Act does not **require** but rather **allows** a county government to address a voting rights violation by voluntarily submitting to a local vote a plan to go to district voting. All Washington counties are authorized to take this action in the prescribed limited circumstance of potential voting rights violations. The Act, like the law at issue in *Mount Spokane* and unlike SHB 2887, does not attempt to classify counties by population. The Act, unlike SHB 2887, does not take districting out of the hands of a county and its voters. Moreover, the purpose of the Act is to insure compliance with the federal constitution and the federal Voting Rights Act which is mandatory on the State. *See* Const. art. VI, §2 (“The Constitution, and the Laws of the United States . .

. shall be the supreme Law of the Land”); *United States v. Cty. Bd. of Elections of Monroe Cty., New York*, 248 F. Supp. 316, 323 (W.D.N.Y. 1965) (Voting Rights Act “being a law of the United States enacted pursuant to the Constitution, is the Supreme Law of the Land”) (internal quotations omitted). In short, the state Voting Rights Act appropriately complies with the federal Supremacy Clause and *Mount Spokane*, and avoids the serious constitutional problems of SHB 2887.

V. CONCLUSION

SHB 2887 mandates a fundamentally different county government structure and process for electing county commissioners in Spokane County only. Such a system is not uniform and violates Article XI, Sections 4 and 5. This Court should reverse the trial court’s ruling and remand with instructions to enter summary judgment for Spokane County declaring SHB 2887 unconstitutional, null, and void.

RESPECTFULLY SUBMITTED this 3rd day of February, 2020.

PACIFICA LAW GROUP LLP

LARRY H. HASKELL
Spokane County Prosecuting Attorney

By: *s/ Paul J. Lawrence*
Paul J. Lawrence, WSBA #13557
Gregory J. Wong, WSBA #39329
Kai A. Smith, WSBA #54749

By: *s/ John F. Driscoll, Jr.*
John F. Driscoll, Jr., WSBA # 14606
Chief Civil Prosecuting Attorney

Attorneys for Appellants

Attorneys for Appellant Spokane
County

PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, over the age of 21 years, and not a party to this action. On the 3rd day of February, 2020, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the foregoing document upon the parties listed below:

Jeffrey T. Even
Attorney General's Office
1125 Washington Street SE
Olympia, WA 98504
JeffE@atg.wa.gov
LeenaV@atg.wa.gov
KristinJ@atg.wa.gov

Attorney for Respondent State of Washington

DATED this 3rd day of February, 2020.



Sydney Henderson

PACIFICA LAW GROUP

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