

73303-6

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No. 73303-6

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

Andrew Pilloud,
Petitioner,

vs.

King County Republican Central Committee

and

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

Respondents.

BRIEF OF APPELLANT

Andrew Pilloud
Petitioner, Pro Se.

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I. Introduction

In 2014, Petitioner Andrew Pilloud took office as a Republican Precinct Committee Officer in King County Precinct SEA 36-1772. As holder of that office, RCW 29A.80.061, entitles Pilloud to take part in electing a Republican legislative district chair for the 36th Legislative district. With full knowledge of the statute, the King County Republican Central Committee (KCRCC) adopted bylaws in conflict with the statute. Pilloud exhausted all paths of appeal within the KCRCC and lacking a plain, speedy and adequate remedy in the ordinary course of law, Pilloud filed an Application for Alternative Writ of Mandamus with the King County Superior Court. The superior court denied the Writ on grounds of Res Judicata and Collateral Estoppel.

II. ASSIGNMENTS OF ERROR

The trial court erred by quashing the Application for Writ of Mandamus.

Issues Pertaining to Assignment of Error

1. Must the statute under which the action is brought be considered as part of the identity of the cause of action when applying Res Judicata?

2. Must a change in statute be considered as part of determining if issues are identical when applying Collateral Estoppel?

3. Should Collateral Estoppel and Res Judicata be applied even when it would serve to work an injustice?

III. Statement of the Case

Pilloud filed an Application for Alternative Writ of Mandamus with the King County Superior Court on January 15, 2015. CP1-66

The hearing was set for March 5, 2015. CP72 The issue at question was whether the 1967 and 1993 decisions are binding under the principles of res judicata and collateral estoppel. RP4 The Respondents, Lori Sotelo and the King County Republican Central Committee were the prevailing party and the court issued as the final judgment an order quashing the writ. RP14 CP67-68

IV. Argument

The claims of Res Judicata should have been rejected due to a substantial change in the governing statute since the 1967 ruling.

The issue in this case is whether the present action is the same as the 1967 King County Superior Court case of Austin V. Rogstad. The 1967 case ended with a ruling that Chapter 32, Extraordinary Session

of 1967 was unconstitutional. CP 32 The relevant section of the 1967 statute reads as follows:

Within forty-five days after the state-wide general election in even-numbered years, or within thirty days following the effective date of this 1967 enactment for the biennium ending with the 1968 general elections, the county chairman of each major political party shall call separate meetings of all elected precinct committeemen in each legislative district **a majority of the precincts of which are within a class AA county** for the purpose of electing a legislative district chairman in such district. The district chairman shall hold his office until the next legislative district reorganizational meeting two years later, or until his successor is elected.

The legislative district chairman can only be removed by the majority vote of the elected precinct committeemen in his district.

The statute has since been revisited by the legislature and was passed again in 2004 as RCW 29A.80.061. The present statute reads as follows:

Within forty-five days after the statewide general election in even-numbered years, the county chair of each major political party shall call separate meetings of all elected precinct committee officers in each legislative district for the purpose of electing a legislative district chair in such district. The district chair shall hold office until the next legislative district reorganizational meeting two years later, or until a successor is elected.

The legislative district chair may be removed only by the majority vote of the elected precinct committee officers in the chair's district.

The 1967 ruling specificity cites the dropped clause, bolded in the quote above, stating "If a district chairman is to be elected in Class AA

counties only... then we have one type of political party in King County, and another type of political party in all the rest of the legislative districts and counties in the state. Certainly, in my opinion, this matter of division is not constitutional...” Austin V. Rogstad, KCSC 684587 (1967) CP 28-29 Given the present statute, it is entirely impossible for an identical ruling if the same matter were to be decided today.

“The purpose of the doctrine of res judicata is to ensure the finality of judgments. Under this doctrine, a subsequent action is barred when it is identical with a previous action in four respects: (1) same subject matter; (2) same cause of action; (3) same persons and parties; and (4) same quality of the persons for or against whom the claim is made.” Hayes v. Seattle, 131 Wn.2d 706, 934 P.2d 1179 (1997). The key phrase here being “identical”. The cause of action is not identical to the action in 1967. In 1967, RCW 29.42.070 only applied to legislative districts in King County. In 2014, RCW 29A.80.061 applies to all county and legislative districts within the state. This change may have only dropped a few words from the original statute, but it has a substantial change in it's meaning. This makes the cause of action far from identical and the King County Superior Court erred by not

rejecting the claim of Res Judicata. Res Judicata can not bar an action when the same outcome can not be possibly obtained, as that would require the subject matter or cause to have changed.

The claims of Collateral Estoppel should have been rejected due to a substantial change in the governing statute since the 1967 ruling.

Collateral Estoppel requires: “(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.” Hadley v. Maxwell, 144 Wn.2d 306, 311-12, 27 P.3d 600 (2001). As before, collateral estoppel can not apply as the issues brought in both cases were not identical.

“In summary, the injustice prong of the collateral estoppel doctrine calls from an examination primarily of procedural regularity. This is not to rule out substantive analysis entirely, as when, for instance, there is an intervening change in the law” Thompson V. Licensing, 138 Wn.2d 783 (1999). The court failed to make the required substantive analysis as required by the intervening change in the law. The court

should have taken the time to consider the claim. That would have easily been accomplished by granting Pilloud's application and issuing an order for Alternative Writ of Mandamus. Unlike the peremptory form, the Alternative Writ of Mandamus requires no action to be taken other than to show cause. Issuing the writ and ordering the show cause hearing was the only path the court could have taken to adequately consider the change in statue.

The claims of Res Judicata and Collateral Estoppel should have been rejected as applying them in this case would serve to work an injustice.

By upholding it's 1967 decision on the present law, the King County Superior Court is creating the very situation the 1967 decision was intending to avoid: "one type of political party in King County, and another type of political party in all the rest of the legislative districts and counties in the state."Austin V. Rogstad, KCSC 684587 (1967) CP 28-29 This is a clear violation of both the equal protection clause of the 14th Amendment to the Constitution of the United States, and the special privileges and immunities provision of Article I, Section 12 of the Constitution of the State of Washington. The King County Republican Central Committee should not be granted special

immunities from the law just because they were involved in a lawsuit that found a prior incarnation of the law unconstitutional.

Prior to the law taking its present form, there was a conflicting ruling from a higher court. “RCW 29.42.070 merely requires the county chair of each major political party to call separate meetings of all elected precinct committee officers in each legislative district for the purpose of electing a legislative district chair.” *Washam v. Democratic Cent. Comm.* 69 Wn. App. 453, 849 P.2d 1229 (1993) The Court of Appeals Division Two was faced with a dispute much like this one, except between a Pierce County Precinct Committee Officer and his party. They found not that the law was unconstitutional, but that the central committee was in compliance. They also gave a stern warning to “take such steps as it deems appropriate to ensure that notice and organization of future party meetings is beyond reproach.” This conflicting 1993 opinion from the court of appeals calls into question the 1967 opinion from the superior court. Not only has the statute changed, but there is also a differing court opinion on the previous version of the statute: The 1967 ruling ordering the parties to disregard the law and a 1993 ruling ordering the parties to take steps to better follow the law in the future.

By applying the 1976 ruling on the present law, as was done in this case, the King County Democratic and Republican Central Committee are granted special privilege to deny Precinct Committee Officers their statutory rights by a simple majority vote of the committee. "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." Article I Section 12, Washington State Constitution. This privilege is granted merely by having the same names as the parties involved in a 1967 lawsuit. Such a privilege doesn't exist for the Pierce County Republican Central Committee or the King County Libertarian Central Committee, and given today's statute, such a ruling could not possibly be obtained.

V. Conclusion

Based on the forgoing argument, the court should overturn the order quashing the application for writ of mandamus, order the writ granted, and remand to the superior court for trial.

Respectfully submitted on August 6, 2015,



Andrew Pilloud
Appellant, Pro Se

Proof of Service / Declaration of Mailing

I, Andrew Pilloud, certify that I mailed a true and correct copy of the foregoing **Brief of Appellant** postage prepaid, on **August 6th, 2015** to the following counsel of record: **John J White Jr, PO BOX 908, Kirkland WA 98083, Atty. For Respondents.**

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

Aug 6, 2015 Las Vegas, NV
(Date and Place)


(Signature)

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