Supreme Court No. 100285-8
SUPREME COURT
OF THE STATE OF WASHINGTON

SHONTO PETE et al.,
Plaintiffs /Petitioners,
v.
CITY OF AIRWAY HEIGHTS WASHINGTON; CITY OF CHENEY WASHINGTON, et al.,
Defendants/Respondents

RESPONDENTS' JOINT RESPONSE TO PETITIONERS' PETITION FOR REVIEW

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I. INTRODUCTION

Petitioners request discretionary review by this Court of the Court of Appeals - Division III decision of *Shonto Pete & Monie Tulle, et al v. City of Airway Heights & City of Cheney*, No. 37845-4-III, 2021 WL 4060305, filed September 7, 2021 (hereinafter the "Decision"). Petitioners appear to request review under RAP 13.4(b)(1), (2), (3) or (4)[1]. Fundamentally, Petitioners challenge the authority of Terri Cooper, a non-lawyer, to act as a Municipal Court Commissioner for the City of Airway Heights and the City of Cheney (hereinafter collectively "the Cities"). Petitioners' request for review must be denied, as it does not meet any criteria of RAP 13.4(b).

[1] Petitioners' Petition for Review does not explicitly request review under RAP 13.4(a) or specify how review is proper under any provision of RAP 13.4(b); Respondents' presume, based upon the substantive arguments advanced by Petitioners, that they request review under any of these subsections. To the extent Petitioners' Reply more specifically argues or addresses these provisions, the Cities object, as "an issue raised and argued for the first time a reply brief is too late to warrant consideration." *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Moreover, substantively, the Decision must not be disturbed. The applicable statute – RCW 3.50.075 – by its plain language qualifies Ms. Cooper to serve as a Municipal Court Commissioner as she timely passed the qualifying examination required by that statute. Petitioners urged the trial court, Court of Appeals, and now this Court, to graft a population requirement onto RCW 3.50.075 without authority. Petitioners have failed to meet the requirements for review under any provision of RAP 13.4(b). Further, Petitioners' substantive arguments are strained and directly conflict with the plain language of the statute. If their arguments were accepted, it would lead to an absurd result, creating a statutory conflict where none presently exists. Review should be denied.

II. ISSUES PRESENTED

1. Review of the Decision is not appropriate under RAP 13.4(b).

2. With respect to lay municipal court commissioners, the Court of Appeals properly concluded and properly affirmed the Trial Court's conclusion that the reference in RCW 3.50.075(3) to RCW 3.34.060 only incorporates the

qualifying examination requirement, and does not incorporate the population limit set forth in RCW 3.34.060(2)(b).

III. STATEMENT OF THE CASE

In November 2002, Terri Cooper ("Commissioner Cooper") took and passed the qualifying examination for non-attorney judicial officers offered by the Washington State Administrative Office of the Courts. **Clerk's Papers ("CP") 85, ¶ 3.** In January 2003, she was sworn in by then-Washington State Supreme Court Chief Justice Gerry Alexander. **CP 85, ¶ 4.** Commissioner Cooper received a Certification of Qualification by mail. **CP 85, ¶ 4, Ex. B.** In May 2004, Ms. Cooper began serving as the Court Administrator/Commissioner for the City of Cheney Municipal Court and has since served in that capacity. **CP 85, ¶ 6.** In October 2018, the cities of Cheney and Airway Heights sought to attain some economies of scale by sharing court services and Ms. Cooper was appointed Commissioner to the Airway Heights Municipal Court, which was affirmed by the District Court Judge in January 2019. **CP 86, ¶ 7-8.**

Petitioners Shonto Pete and Monie Tulee (hereinafter collectively "Petitioners") sued the Cities of Airway Heights and Cheney (hereinafter collectively "the Cities") for allegedly violating their constitutional rights when Commissioner Cooper presided over their respective sentencings because she is a non-lawyer she was not and is not qualified to act as a municipal court commissioner. **CP 3-12.** The trial court dismissed Petitioners' claims for a writ of mandamus and Petitioners' claims against Commissioner Cooper and her marital community. *See* **CP 75-76.**[2] The parties then brought cross-motions for summary judgment, in part to request the Court rule on the issue of the interpretation of RCW 3.50.075, which sets forth the qualifications for Municipal Court Commissioners. **CP 55-56, 72-73, 189-190**. The trial court granted the Cities' Motions and

[2] The trial court's dismissal of these issues was not raised on appeal and are settled. *See Weyerhaeuser Co. v. Commercial Union Ins. Co.,* 142 Wn.2d 654, 693, 15 P.3d 115 (2000) (emphasis in original) ("Only issues raised in the assignments of error … and *argued* to the appellate court are considered on appeal.").

dismissed Petitioners' remaining claims. **CP 472-476.** The Court of Appeals, Division III, affirmed the trial court's ruling, stating, "[w]e will not override a statue's plan (sic) meaning based on policy preferences." *Pete*, 2021 WL 4060305, at *2.

IV. ARGUMENT

A. Petitioners' Petition for Review Does Not Meet the Requirements of RAP 13.4(b).

Petitioners' fail to address or discuss how their Petition meets any of the strict requirements of RAP 13.4. Nor do Petitioners present any specific basis or bases that would support discretionary review by this Court. In Section III of their Petition for review, Petitioners simply restate the same issue that was before the Court of Appeals.

As discussed in detail throughout this brief, the Petition fails to specify how Petitioners' meet RAP 13.4(b)(1), (2), (3), or (4). Importantly, a petition for review will be accepted by the Supreme Court *only if* one of the four criteria in RAP 13.4 is clearly met. RAP 13.4(b). Specifically, Petitioners do

not provide this Court a basis to accept review under RAP 13.4(b)(1) or (b)(2) as they fail to identify any specific decision of the Supreme Court or Court of Appeals with which the Decision in this case conflicts and in what manner the Decision conflicts. *See* RAP 13.4(b)(1), (2); *see also State v. Taylor*, 140 Wn.2d 229, 235, 996 P.2d 571 (2000) (Court granting review to resolve conflict between Division I and Division II). Next, Petitioners fails to provide a basis for this Court to accept review under RAP 13.4(b)(3) by asserting there is a "significant question of law" under either the Washington or U.S. Constitution, but failing to state what that question of law is. Further, Petitioners do not actually or affirmatively request this Court review the Decision pursuant to RAP 13.4(b)(3). Finally, Petitioners fail to provide an avenue for review under RAP 13.4(b)(4) as they fail to provide the requisite showing that the Petition involves an issue of substantial public interest. Petitioners appear to argue that the Decision warrants review under RAP

13.4(b)(4) in Section C; however, much of this section is focused on legislative history, and does not describe any "substantial public interest" that must be determined by the Supreme Court. In fact, the majority of the Petition for Review reargues the same issues that were decided by the Court of Appeals. Petitioners have failed to demonstrate review is appropriate under any provision of RAP 13.4(b).

B. Review Must be Denied as the Decision Does Not Conflict with Supreme Court or Court of Appeals Precedent and Review under RAP 13.4(b)(1)-(2) is Inappropriate.

Review under RAP 13.4(b)(1) or (2) is not appropriate as the Decision does not conflict with any prior Supreme Court or Court of Appeals decisions, but is in fact consistent with the same. At issue in this case is the interpretation of RCW 3.50.075, which states, in full:

> **Court commissioners – Appointment – Qualification – Limitations – Part-time Judge.**
>
> (1) One or more court commissioners may be appointed by a judge of the municipal court.

> (2) Each commissioner holds office at the pleasure of the appointing judge.
>
> (3) Except as provided in subsection (4) of this section, a commissioner has such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess, and must be a lawyer who is admitted to practice law in the state of Washington or a nonlawyer who has passed, by January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.
>
> (4) On or after July 1, 2010, when serving as a commissioner, the commissioner does not have authority to preside over trials in criminal matters, or jury trials in civil matters unless agreed to on the record by all parties.
>
> (5) A commissioner need not be a resident of the city or of the county in which the municipal court is created. When a court commissioner has not been appointed and the municipal court is presided over by a part-time appointed judge, the judge need not be a resident of the city or of the county in which the municipal court is created.

Petitioners contend RCW 3.50.075(3) requires nonlawyer municipal court commissioners to fulfill two requirements: (1) pass the "qualifying examination for lay judges for courts of

limited jurisdiction under RCW 3.34.060" *and* (2) work in a district with fewer than 5,000 people. "Contrary to the arguments made [by Petitioners], RCW 3.34.060 does not graft a population requirement into RCW 3.50.075." *Pete*, 2021 WL 4060305, at *2. Petitioners' contentions are erroneous and should be rejected. By its plain language, the statute at issue – RCW 3.50.075 – specifically incorporates only the first requirement, and intentionally omits any population limit or requirement with respect to nonlawyer municipal court commissioners. The prior decisions correctly concluded that Commissioner Cooper was duly appointed and properly granted and affirmed the Cities' Motions for Summary Judgment. *See Pete*, 2021 WL 4060305, at *3. These decisions should not be disturbed.

1. There is No Population Limit Applicable to Non-Lawyer Municipal Court Commissioners, and Commissioner Cooper was Lawfully Appointed.

RCW 3.50.075 is the controlling statute for the appointment, qualification, and limitations of Municipal Court Commissioners, and states, in relevant part:

> (1) One or more court commissioners may be appointed by a judge of the municipal court.
>
> (2) Each commissioner holds office at the pleasure of the appointing judge.
>
> (3) Except as provided in subsection (4) of this section, a commissioner has such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess, and *must be a lawyer who is admitted to practice law in the state of Washington or a non-lawyer who has passed, by January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060* …

RCW 3.50.075 (emphasis added). RCW 3.34.060, the statute referenced in RCW 3.50.075(3), entitled "District Judges – Eligibility and qualifications", states:

> To be eligible to file a declaration of candidacy for and to serve as a *district court judge*, a person must:
>
> (1) Be a registered voter of the district court district and electoral district, if any; and
> (2) Be either:

> (a) A lawyer admitted to practice law in the state of Washington; or
> (b) In those districts having a population of less than five thousand persons, a person who has taken and passed by January 2, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court.

RCW 3.34.060 (emphasis added).

RCW 3.50.075(3) is a reference statute in that it adopts, by reference, the part of RCW 3.34.060 that relates to the "qualifying examination" that a district court judge must also take. As a reference statute, "[t]he terms referred to, and only those terms, must be treated as if they were incorporated into the referring act" or statute. *Int'l Export Corp. v. Clallam Cnty.*, 36 Wn. App. 56, 57-58, 671 P.2d 806 (1983) (citing *Knowles v. Holly*, 82 Wn.2d 694, 513 P.2d 18 (1973)). The express mention of one thing in a statute implies the exclusion of another thing or things. *Ramsey v. Dep't of Labor and Indus.*, 36 Wn.2d 410, 412-13, 218 P.2d 765 (1950).

When interpreting a statute, the Court's fundamental objective is to determine and carry out the legislature's intent.

See In re Det. of Anderson, 185 Wn.2d 79, 85, 368 P.3d 162 (2016). "When possible, [the court] derive[s] legislative intent solely from the plain language enacted by the legislature, considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole." *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013). In determining legislative intent, the "title of the act is always a subject for consideration because the subject or object expressed in the title fixes a limit to the scope of the act." *State v. Lundell*, 7 Wn. App. 779, 782, 503 P.2d 774 (1972). When interpreting statutes and regulations, courts are not required to abandon their common sense. *Allison v. Housing Auth. of City of Seattle*, 118 Wn.2d 79, 86, 821 P.2d 34 (1991).

When applying the above well-settled principles and cannons of statutory interpretation to this matter, the statute plainly states that a non-lawyer is qualified to act as a municipal court commissioner if he/she passes, by January 1, 2003, the

same qualifying examination taken by lay district court judges as required in RCW 3.34.060. Chapter RCW 3.50 is entitled "Municipal Courts - Alternate Provisions" and deals exclusively with Municipal courts. Contained within this Chapter, RCW 3.50.075 is titled "Court Commissioners - Appointment - Qualification - Limitations - Part-Time Judge," and addresses the appointment, qualifications, and authority of municipal court commissioners. Alternatively, Chapter 3.34 RCW governs District Judges and their qualifications.

RCW 3.50.075 states that a non-lawyer is qualified to act as a municipal court commissioner as long as he or she passes, by January 1, 2003, the same qualifying examination taken by a lay district court judge as required in RCW 3.34.060. Critically, the reference made in RCW 3.50.075(3) to RCW 3.34.060 pertains exclusively to the *examination* lay municipal court commissioners are required to take. By its plain language, RCW 3.50.075 does not subject lay municipal court commissioners to

the population restriction applicable to lay district court judges found in RCW 3.34.060.

Here, Commissioner Cooper took and passed the qualifying examination for lay judges for courts of limited jurisdiction before January 1, 2003. **CP 85, ¶ 3.** Accordingly, under the plain language of RCW 3.50.075, she has, at all material times, been qualified to be a municipal court commissioner in the City of Cheney and the City of Airway Heights. The Decision and underlying trial court ruling in this regard was correct.

Petitioners contend that the reference to RCW 3.34.060 in RCW 3.50.075(3) subjects lay municipal court commissioners to both the examination and the population limitation referenced in RCW 3.34.060(2)(b). The Court should reject this argument. First, and importantly, this contention is contrary to the plain language of RCW 3.50.075(3) which refers only to the "qualifying examination" that must be taken by lay judges for district courts and does not reference the district population

restriction contained in RCW 3.34.060(2)(b). *See TracFone Wireless, Inc. v. Washington Dep't of Revenue*, 170 Wn.2d 273, 284, 242 P.3d 810 (2010) (holding where one statute refers to another for specific issue or point, the reference is restricted to that issue or point); *see also Ramsey*, 36 Wn.2d at 412-13 (the express mention of one thing in a statute implies the exclusion of another). Division III correctly recognized this misguided interpretation of the reference of RCW 3.34.060 in RCW 3.50.075(3). *Pete*, 2021 WL 4060305, at *2 ("The problem with this argument is it runs counter to the statutory text.").

If a statute "is unambiguous after a review of the plain meaning, the court's inquiry is at an end." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Petitioners have not argued that the language of RCW 3.50.075 is ambiguous. Therefore, Petitioners' arguments and discussions of legislative history are not pertinent to this Court's interpretation.

However, when reviewing other comparable statutes, the legislature has previously and explicitly *included* population limits. *See* RCW 3.34.060 (District Court Judges); RCW 3.50.040 (Municipal Court Judges). There is no similar population limit in RCW 3.50.075. When "the legislature uses certain statutory language in one statute and different language in another, a difference in legislative intent is evidenced." *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005). Courts "assume that the legislature meant precisely what it said and apply the statute as written." *Id*.

Petitioners rely on several cases to argue that the limited "qualifying examination" reference in RCW 3.50.075(3) incorporates all of the text of RCW 3.34.060(2)(b) – even the parts that have nothing to do with the qualifying examination. These cases are distinguishable and Petitioners' reliance upon the same is misplaced. Further, Petitioners' assertions that these cases are somehow contradicted by the Decision in this case, necessitating review under RAP 13.4(b) must fail.

In *State v. Weatherwax*, 188 Wn.2d 139, 392 P.3d 1054 (2017), the Court affirmed the opposite principle. In *Weatherwax*, the Court held that the proper interpretation of the statute at issue (RCW 9.94A.589(1)(b)), directed a court to consider *all* of a referenced statute because, unlike here, RCW 9.94A.589(1)(b) referenced all of the referenced statute without limitation. In this case, the reference to RCW 3.34.060 is clearly limited to the "qualifying examination" and not all other parts of that statute.

Petitioners also rely upon *Young v. Konz*, 91 Wn.2d 532, 588 P.2d 1360 (1979), but in doing so, fail to mention that *Young* concerned the constitutionality of statutes permitting a non-lawyer to serve as a district court judge in districts with a population of less than 10,000 (RCW 3.34.060) and as a municipal court judge in municipalities with a population of less than 5,000 (RCW 3.50.040). Notably, in rejecting the constitutional challenge, the *Young* court repeatedly emphasized that, unlike appellate court and superior court judges, under the

state constitution the qualification of inferior court judges is strictly a matter for the legislature to determine. Petitioners' reliance upon *Shaw v. Vannice*, 96 Wn.2d 532, 637 P.2d 241 (1981) is similarly misplaced. Like in *Young*, the Court looked solely at legislative enactments as determining the qualification of district and municipal court judicial officers. In focusing on RCW 3.34.060(2)(b), the *Shaw* court held the statute permitted a non-lawyer district court judge to preside over cases involving the violation of a municipal ordinance even though the City of Sunnyside had a population exceeding 5,000, thus refuting the Petitioners' assertions that all statutes addressing the ability of a non-lawyer to act as a judicial officer are population-based. These decisions are not contradictory to the Decision in this matter, and review under either RAP 13.4(b)(1) or (2) is inappropriate.

Reading RCW 3.50.075(3) and RCW 3.34.060 "as though they were one statute," as Petitioners' insist this Court must do, would lead to an absurd result. There are fundamental

differences between the statute and purposes of the statutes that do not comport with Petitioners' arguments. RCW 3.50.075(3) sets forth the qualifications of a municipal court commissioner. RCW 3.34.060 sets forth the qualifications of a district court judge. Under the latter statute, a district court judge must be a registered voter of the district court and electoral district, and further, district court judges are elected. But under RCW 3.50.075, commissioners are appointed by the judge of the municipal court, hold office at the pleasure of the appointing judge, and need not be a resident of the city or county in which the municipal court is created. In short, if both statutes were read together in their entirety, as Petitioners assert they must be, the statutes would directly conflict. Petitioners' interpretation of the applicable statutes is not only strained but does not comport with the basic tenets of statutory construction. "Contrary to the arguments made [by Petitioners], RCW 3.34.060 does not graft a population requirement into RCW 3.50.075." *Pete*, 2021 WL 4060305, at *2. The Decision in this matter was appropriate and

in accordance with the statutes' plain language. Review under RAP 13.4(b) should not be accepted.

C. Review Should be Denied as Petitioners Have Not Complied with RAP 13.4(b)(3).

Preliminary, it must be noted that Petitioners do not specifically request this Court accept review under RAP 13.4(b)(3), and, in fact, that Rule is not referenced anywhere in the Petition. Nevertheless, Petitioner argues that a question of law exists under the U.S. and State Constitutions in Section D of the Petition.

As discussed above, and incorporated herein, Commissioner Cooper's appointment was lawful and in accordance with the applicable statutory authority. By extension, Commissioner Cooper is vested with authority to determine and issue orders in Petitioners' criminal cases. Petitioners' arguments border on hyperbole by insinuating that significant Constitutional issues are at issue. First, Section D ignores the plain language of the statute that

requires municipal court commissioner, *by January 1, 2003*, take a qualifying examination. *See* RCW 3.50.075. By its very nature, this statute is limited in applicability. The January 1, 2003 examination deadline in RCW 3.50.075 was added in 2008. *See* 2008 ch. 227, § 8. As a consequence, when the statute was amended in 2008, any sitting lay municipal court commissioner would have had at a minimum five years of experience. By this change, the legislature effectively required any new commissioner to be a lawyer (*see* RCW 3.50.075(3)), but grandfathered in experienced, lay municipal court commissioners. In light of this, Petitioners' arguments are not persuasive. Moreover, Petitioners' arguments do not even make sense in light of their own position. Petitioners essentially argue that individuals located in jurisdictions with populations less than 5,000 should have less or different rights for the same or similar crimes than those individuals in jurisdictions with more than 5,000 people. This position is nonsensical.

Review under RAP 13.4(b)(3) requires a "*significant* question of law under the Constitution of the State of Washington or of the United States." (emphasis added). In a recent Ruling Granting Review in *In the Matter of Williams*, 197 Wn.2d. 1001 (Feb. 2021), this Court granted review of the denial of a prisoner's personal restraint petition that argued the prisoner's continued confinement during the Covid-19 pandemic constituted cruel punishment in violation of the Washington and U.S. Constitutions, noting the significant constitutional questions at issue. The Court noted the "the nightmarish situation that faces the world today" with regard to the COVID-19 pandemic raises constitutional questions previous courts had not been presented with warranting reviewing under RAP 13.4(b)(3). *See Matter of Williams*, 197 Wn.2d 1001. Comparing this recent ruling to the instant Petition and considering the limited application of RCW 3.50.075, it is clear there are not "significant" questions of law under either Constitution in this case. Petitioners fail

to demonstrate that review under RAP 13.4(b)(3) is appropriate, and denial is appropriate.

D. <u>Review Should be Denied as Petitioners Have Not Complied with RAP 13.4(b)(4).</u>

In August 2020, Petitioners sought direct review from this Court under RAP 4.2(a)(4), which permits direct review in cases "involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination." *See* RAP 4.2(a)(4). This Court denied direct review. RAP 13.4(b)(4) has similar language, permitting review: "If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." The issue here – whether a non-lawyer can act as a municipal court commissioner – is not an issue with any other municipality of which the Cities are aware.[3] Further, this case involves a local issue for two cities within the same

[3] Respondents presume Petitioners know of no other municipalities where this issue may be present, as Petitioners fail to elucidate any ramifications or facts beyond the present dispute which support their assertion this issue involves a substantial public interest.

Appellate Division (Division III), and is not of "substantial public interest." Petitioners' argument, while unclear, appears to be contained within Section C of the Petition. Much of this Section focuses on legislative intent and asserts that the Decision violates public policy. These issues have previously been discussed herein. "A petition that relies on RAP 13.4(b)(4) should, at a minimum, discuss why the particular issue has ramifications beyond the particular parties and the particular facts of an individual case." WSBA, WASHINGTON APPELLATE PRACTICE DESKBOOK § 18.2 (4th ed. 2016) (emphasis added). Petitioners do not discuss or describe what the "issue of substantial public interest" is or any broader ramifications beyond the immediate matter. As described above, Petitioners' arguments again ignore the limiting, plain language of RCW 3.50.075, and simply asserts that any non-lawyer cannot serve as a judicial officer. That position does not comport with the plain language of the statute, nor is that position what the Decision holds or implicates. Petitioners have failed to demonstrate that

review is appropriate under RAP 13.4(b)(4) and, as such, review under that provision is appropriately denied.

V. CONCLUSION

Based on the foregoing, the Cities respectfully request this Court deny the Petition for Review.

I certify that this Response to Petition for Review contains 4,041 words, in compliance with RAP 18.17.

RESPECTFULLY SUBMITTED this 8th day of November 2021.

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DECLARATION OF SERVICE

I, Margie Blaine, declare and say as follows:

I am a citizen of the United States and resident of the State of Washington, over the age of 18 years, not a party to the above-entitled action, and am competent to be a witness herein. My business address is 618 W. Riverside Ave., Ste. 210, Spokane, Washington 99201-5048, and telephone number is 509-747-9100. On November 8, 2021, I caused to be served the foregoing on the individual named below in the manner indicated.

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I declare under the penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.
Dated 8th day of November 2021, at Spokane, Washington.

Margie Blaine
Margie Blaine

ETTER, MCMAHON, LAMBERSON, VAN WERT & ORESKOVICH, P.C.

November 08, 2021 - 2:50 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,285-8
Appellate Court Case Title:	Shonto Pete et al. v. City of Airway Heights et al.
Superior Court Case Number:	19-2-04705-9

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