

NO.

SUPREME COURT OF THE STATE OF WASHINGTON

VICKIE LEE ANNE PARKER and
JAMES S. JOHNSON,

Petitioners,

v.

KIM WYMAN, in her capacity as
Thurston County Auditor, and
CHRISTINE SCHALLER-
KRADJAN, MARIE CLARKE, and
VICTOR MINJARES,

Respondents.

And

MARIE S. CLARKE,

Petitioner,

v.

KIM WYMAN, in her capacity as
Thurston County Auditor, and
CHRISTINE SCHALLER-
KRADJAN,

Respondents.

Thurston County Superior
Court Nos. 12-2-01730-9
and 12-2-01732-5
(consolidated)

STATEMENT OF
GROUNDS FOR
DIRECT REVIEW

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2012 SEP -4 P 4: 23
BY RONALD R. CARPENTER
CLERK

I. INTRODUCTION

Since the Territory's first Legislative Assembly met in 1854, the people of Washington have required all our elected officials-including our judges-to live in the area they were elected to serve.

Last Friday, August 31, 2012, the Thurston County Superior Court held that the laws requiring residency do not apply to superior court judges. The court ordered the Thurston County Auditor to place on the general election ballot a candidate for superior court judge in Thurston County who lives and is a registered voter in Pierce County. The court held that our Constitution prevents the people from legally requiring anything more from our judges than that they be lawyers and under the age of 75.

In so holding, the trial court erred. The issue of the people's right to insist that our judges come from among us and continue to live among us while serving is fundamental. The need to correct the trial court's error is urgent, for delay may result in the people of Thurston County being denied our right to choose who our next judge will be. This is a matter of broad public import and the issue cannot be resolved until this Court resolves it, for the

trial court's error springs from its interpretation of this Court's prior decisions.

II. NATURE OF THE CASE AND DECISION

Appellants Vicki Lee Anne Parker and James S. Johnson seek direct review by this Court of the Thurston County Superior Court's order entered on August 31, 2012, in cause number 12-2-01730-9.

In May four people filed timely declarations of candidacy for the office of Thurston County Superior Court judge, position 2: James S. Johnson, Christine Schaller, Marie Clarke, and Victor Minjares.¹ D&O at 2. All four candidates are licensed attorneys in Washington, Mr. Johnson, Ms. Clarke and Mr. Minjares are residents of and registered voters in Thurston County. Ms. Schaller is a resident of and registered voter in Pierce County. Thurston County Auditor Kim Wyman placed all four names on the primary election ballot.

In the primary election, no candidate for the office got more than 50 percent of the votes cast, and all got at least one percent. The top-two finishers in order were Ms. Schaller and Mr. Johnson; Ms. Clarke finished third, and Mr. Minjares finished

¹ Because there no facts in dispute, references to the record below will be limited citations to the trial court's decision and order, attached as Appendix 1, and referenced herein as D&O.

fourth. D&O at 2. The primary election results were certified on August 21, 2012. D&O at 2.

On August 22, 2012, Ms. Parker, a registered voter in Thurston County, and Mr. Johnson filed cause number 12-2-01730-9, contesting Ms. Schaller's right to appear on the general election ballot. D&O at 2. Ms. Parker and Mr. Johnson named as respondents Ms. Wyman, Ms. Schaller, Mr. Clarke and Mr. Minjares. That same day, Ms. Clarke filed cause number 12-2-01732-5 also contesting Ms. Schaller's right to appear on the general election. D&O at 2. Ms. Clarke named only Ms. Wyman and Ms. Schaller as respondents.

RCW 29A.68.011(3)² allows any registered voter to file a contest when someone's name is about to be placed on a ballot wrongfully. RCW 29A.36.171 provides for the top-two finishers in the primary to have their names placed on the general election ballot. But RCW 29A.20.021(3) provides that no candidate's name shall appear on the ballot unless the candidate is, at the time the declaration of candidacy is filed, a registered voter in the area that will be voting for the office. The statute gives the election officer responsible for receiving the declarations, in this case

² For this Court's convenience, every statute cited is attached as Appendix 2.

Ms Wyman, the duty of enforcing the provision. RCW 29A.20.021(3). Ms. Parker, Ms. Johnson, and Ms. Clarke asked the trial court to direct Ms. Wyman not to place Ms. Schaller's name on the general election ballot because she lived and was a registered voter in Pierce County.

On August 29, 2012, the Thurston County Superior Court, visiting Judge Sally Olsen presiding, consolidated the two cases, heard argument, and then on August 31, 2012, issued its decision, terminating the two cases. The trial court held that Wash. Const. art. IV, §§ 3(a) and 17 contain "the exclusive requirements for superior court judges." D&O at 4. The trial court ordered Ms. Schaller's name to appear on the general election ballot. D&O at 10.

III. ISSUE PRESENTED

Is a candidate for the office of superior court judge in Thurston County required by law to reside in and be a registered voter in Thurston County?

IV. GROUNDS FOR DIRECT REVIEW

Ms. Parker and Mr. Johnson seek direct review pursuant to RAP 4.2(a)(2) because the trial court effectively found three statutes repugnant to Washington's Constitution. The case

involves a fundamental and urgent issue of broad public import which requires prompt and ultimate determination. RAP 4.2(a)(4).

RCW 29A.20.021(3) requires candidates for elective office to be registered voters in the geographic area that will vote for the office at the time they file their declaration of candidacy. RCW 42.04.020 says that no person is competent to qualify for or hold any elective public office unless the person is an elector of the geographic area that votes for the office. And RCW 42.12.010 says that “[e]very elective office shall become vacant” if the holder of the office stops being “a legally registered voter” of the geographic area that voted for the office.

The language of each of these statutes is universal. Certainly it is broad enough to cover superior court judges and candidates for the office. The trial court, however, found that none of them applied because it determined that the requirements found in our Constitution for superior court judges to be attorneys and under 75 years old were exclusive. D&O at 4.

If the trial court’s ruling is allowed to stand superior court judges and candidates for the office would no longer be required to live in the county they hold or seek office in. This affects not just Ms. Schaller, but every superior court judge and candidate for the office in the State of Washington. Indeed, the ruling affects the

justices of this Court as well, as it means that candidates for the office of justice of the Supreme Court need not be residents of Washington, and holders of the office need not maintain their residence in Washington.

A. Statutes Do Require Superior Court Judges And Candidates For The Office To Live In The County The Office Serves, And They Always Have. Those Statutes Are Not Repugnant To The Constitution

The requirement that superior court judges and candidates for the office live in and be registered voters in the county they serve or seek to serve is found not just in RCW 29A.20.021, but also RCW 42.04.020 and RCW 42.12.010. The trial court ruled that RCW 42.04.020 did not apply to superior court judges. The trial court's opinion did not mention RCW 29A.20.021(3) or RCW 42.12.010. But the analysis the trial court used and the outcome reached make plain that the trial court concluded that neither could be applied to superior court judges for the same reason.

Following this Court's analysis in *Gerberding v Munro*, 134 Wash.2d 188, 949 P.2d 1366 (1998), and *In re Bartz*, 47 Wash.2d 161, 167, 287 P.2d 119 (1955), the trial court determined that the constitutional requirements for superior court judges—that they be attorneys and under the age of 75—were exclusive.

Consequently, any statute imposing additional requirements would be repugnant to the Constitution.

In *Gerberding*, this Court articulated a general rule that the Legislature cannot add to the qualifications for office found in the state constitution. 134 Wash.2d at 210. However, this Court also recognized an exception to that general rule: a statutory qualification would be acceptable if the qualification could trace its roots back to a statute in effect at the time the constitution was adopted. *Gerberding*, 134 Wash.2d at 208-209.

As was the case in *Gerberding*, in this case the Constitution does not expressly require judges to be voters in their districts, only attorneys. As was the case in *Gerberding*, in this case there is some evidence—newspaper accounts not corroborated by the journal itself—that amendments to add such a requirement for judges were proposed and rejected at the constitutional convention. Journal of the Washington State Constitutional Convention 1889, at 623 (Beverly Paulik Rosenow ed. 1962).

Yet unlike the situation in *Gerberding*, in this case there were territorial laws in place at the time the Constitution was drafted and voted on by the people that required all judicial officers to reside in the geographic area they served, and laws

requiring all holders of elective public office to reside in the geographic area that voted for them.

It is true, as the trial court observed, that because the Constitution created the superior courts, no territorial laws specifically required superior court judges to live in the county they served. But the trial court ignored two territorial laws of general application that required all office holders to live in the county they served, those two statutes being the predecessors of RCW 42.04.020 and RCW 42.12.010.

Territorial law required a person to live in the territory for six months and the county 30 days prior to an election to be eligible to hold any office. Code of 1881, ch. 238, § 3050.³ Territorial law also provided that if an office holder ceased to “be an inhabitant of the district, county, town or village for which he has been elected or appointed, or within which his duties are to be discharged,” the office would be considered vacant. Code of 1881, ch. 240, § 3063. Each section traces its origins to the election code

³ The Legislative Assembly attempted to modify the statutory language three times during the eight years between the compilation of the Code of 1881 and the adoption of the Constitution. See Laws of 1883 at 39-40, sec. 1, Laws of 1885 at 113-114, sec. 1, and Laws of 1887, ch. 51, sec. 1, at 93-94. However, all three enactments were struck down as defective. See *Harland v. Territory*, 3 Wash. Terr. 131, 13 P. 453 (1887), and *Bloomer v. Todd*, 3 Wash. Terr. 599, 19 P. 135 (1888). Thus, as the Constitutional Convention met, the section remained as shown in the Code of 1881.

adopted by the Legislative Assembly at its first session in 1854.

See Laws of 1854, ch. 1, § 1 at 64 and ch. 2 § 2 at 74.⁴

And while there were no superior courts in territorial days, the judges appointed by the president to serve as district court judges and supreme court justices were required to live in the district they served, Revised Statutes § 1865⁵, the elected probate court judges in each county were required to be qualified electors and thus live in the county that elected them, Code of 1881, ch. 95 § 1297, and the justices of the peace were required to be qualified electors in the county they served, Code of 1881, ch. 116 § 1691.

Logically, the deliberate omission from the Constitution of a residence requirement for judges can mean either one of two things: either the delegates to the constitutional convention wanted there to be no residence requirement, as the Court held regarding the term limits at issue in *Gerberding*; or the delegates were entrusting the Legislature with the issue, see *Moses Lake School District No. 161 v. Big Bend Community College*, 81 Wash.2d 551, 555, 503 P.2d 86 (1972) (“In so far as the legislative power is not limited by the constitution it is unrestrained”). Examination of the

⁴ The specific requirements for holding office were added to ch. 1 sec. 1 of the election code by Laws of 1854-55, sec. 1 at 7.

⁵ The Organic Law as it existed at the time the Constitution was adopted can be found in Laws of 1887 at v to xix.

context in which the omission occurred renders the former simply too implausible to be accepted.

The territory was not happy with the system then in place. They likened their situation to that of the American colonists suffering under King George III, Laws of 1883 at 432, and protested to the government in Washington D.C., invoking the language of the Declaration of Independence, Laws of 1875 at 305. They decried their experience of having judges appointed from other places that would absent themselves from the territory for long periods of time, and advocated for offices to be filled by experienced and capable people from among the Territory's citizens. Laws of 1865-66 at 219-20.

The Constitution the delegates drafted proposed a revolution in our courts. It did away with itinerant judges traveling large sections of the territory holding court infrequently and replaced them with judges sitting in continuous session in every county. Wash. Const. art IV § 5. This was a revolution to bring judges closer to the people, not to permit judges to distance themselves further from the people.

The revolution professionalized judges by requiring that they be attorneys and by barring them from holding other office or practicing law. Wash. Const. art IV, § 15, 17, and 19. But while

the Constitution aspired to having courts in every county, out of practical necessity it started with just three of the territory's 34 counties having their own judges, with the remaining counties being required to share judges. Wash. Const. art. IV, § 5.

The delegates could anticipate that, as courts were established in less populous counties that previously had no courts, all these changes could create a problem that a constitutional residency requirement exacerbate: all the requirements in combination would result in a pool of potential candidates for judicial office in some counties that might be unacceptably small. By omitting the residency requirement from the Constitution, the delegates were empowering the Legislature to deal with any problems that might arise. And Wash. Const. art XXVII, § 2, would ensure that until the Legislature needed to act, the existing statutes requiring residency would remain in place. Indeed, when the Legislature amended RCW 42.12.010 in 1981, it recognized that what it was amending was section 3063 of the Code of 1881. *See* Laws of 1981, ch. 180.

In *Gerberding*, this Court anticipated that there could be statutory qualifications for office not repugnant to our Constitution. *See Gerberding*, 134 Wash.2d at 208-209. This Court should accept review of the trial court's decision and find

the residential requirement in RCW 29A.20.021(3), RCW 42.04.020, and RCW 42.12.010, to be just such a requirement.

B. This Issue Must Be Resolved Now

To us lawyers, analyzing this issue may seem an interesting legal exercise. To the voters of Thurston County, it is not. The Constitution guarantees the voters the right to elect their judges. Wash. Const. art. IV, § 5 & 29. Yet the presence on the ballot of a candidate who cannot hold the office she seeks distorts the electoral process. Absent swift action by this Court, the voters' choice in the general election will be limited to voting for a candidate who can hold the office, and voting for a candidate who cannot. That is not a choice.

If this Court observes the ordinary timelines for making a decision, long after the election is concluded and the apparent winner is installed in office, this Court will announce whether one of the two candidates voters will have chosen from should have been on the ballot. If that decision is that Ms. Schaller's name should not have appeared on the ballot, what will the Court be able to do? If she won the election, this Court can declare her election void and remove her from office, thereby creating a vacancy for the Governor to fill, and the people will

have been denied their right to choose their judge. And if she loses, what remedy can the Court fashion for the injury done to the voters by presenting them with a false choice?

V. CONCLUSION

The voters of Thurston County had three qualified people declare their candidacy. Had the county auditor simply followed the laws in place, the voters would have had three names on the primary ballot, and the top two would have moved on to the general election. There is still time for this Court to correct the error of the county auditor made and that the trial court has perpetuated. But with the first ballots required to be sent out by September 21, *see* RCW 29A.40.070, the time for correcting the error in a way that preserves the voters right to choose their judge is short.

RESPECTFULLY SUBMITTED this 4th day of
September, 2012.

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Vicki Lee Anne Parker
Vick: Lee Anne Parker #7194

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 4th day of September, 2012, at Olympia,

Washington



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Appendix 1

Decision of the Trial Court

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

VICKI LEE ANNE PARKER, and JAMES
S. JOHNSON

Petitioners,

No. 12-2-01730-9
12-2-01732-5
(consolidated)

vs.

**MEMORANDUM DECISION AND
ORDER**

KIM WYMAN in her capacity as Thurston
County Auditor, et al.,

Respondents.

Marie C. Clarke,

Petitioner,

vs.

KIM WYMAN, Thurston County Auditor,
and CHRISTINE SCHALLER-KRADJAN,
Candidate for Thurston County Superior
Court, Position 2,

Respondents.

THIS MATTER came on for hearing on August 29, 2012. The paramount issue is whether the Washington Constitution requires that Superior Court judges be electors in the county they serve.

MEMORANDUM DECISION
AND ORDER

JUDGE SALLY F. OLSEN
Kitsap County Superior Court
614 Division Street
Port Orchard, WA 98366
(360) 337-7140

1 This matter was brought to the Court via two separate petitions, one brought by
2 Vicki Lee Anne Parker and James S. Johnson, and the second brought by Marie C. Clarke,
3 and under two separate cause numbers, 12-2-01730-9¹ and 12-2-01732-5,² respectively. For
4 the purposes of this ruling, these cases have been consolidated and this Court's ruling shall
5 apply to both cases.
6

7 RELEVANT FACTS

8 On May 14, 2012, Christine Schaller filed a Declaration of Candidacy for Thurston
9 County Superior Court, Position 2. It is not disputed that Ms. Schaller resides in and is
10 registered to vote in Pierce County. In her Declaration, Ms. Schaller indicated that she is a
11 resident of, and registered voter in, Pierce County. On her Declaration, she listed her name
12 as "Christine Schaller-Kradjan," the name that appears on her voter registration form. On
13 her Declaration she also indicated that "Christine Schaller" was the name she wanted
14 placed on the ballot.
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16 Subsequently, Thurston County Auditor Kim Wyman placed Schaller's name on the
17 primary ballot as a candidate for Thurston County Superior Court, Position 2. On August
18 21, 2012, Wyman certified the final results of the 2012 primary election; Schaller received
19 23,681 votes, Jim Johnson received 10,748 votes, Marie Clarke received 8,352 votes, and
20 Victor Minjares received 5,801 votes. On August 22, 2012 Clarke filed a Petition in
21 Support of Election Challenge Under RCW 29A.68.011 and Requesting Writs of
22 Mandamus and Prohibition, and supporting Affidavit.
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28 ¹ Respondents in this cause number include the following parties: Kim Wyman, in her capacity as Thurston
County Auditor; Christine Schaller-Kradjan a/k/a Christine Schaller; Marie Clarke; and Victor Minjares.

29 ² Respondents in this cause number include the following parties: Kim Wyman, in her capacity as Thurston
County Auditor; and Christine Schaller-Kradjan .

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PRELIMINARY MATTERS

Untimely Filings

On August 30, 2012, Petitioner Clarke filed Supplemental Authorities in this case. After considering the objections as to the timeliness of this filing, raised by Respondents Wyman and Schaller, the Court orders Petitioner Clarke's Supplemental Authorities to be stricken. The Court will not consider the document as a source of authority for the present decision.

Motions to Strike

Petitioner Parker first moves to strike portions of Schaller Declaration as irrelevant. The Court, consistent with its ruling in the Motion to Strike in *Clarke v. Wyman*³ grants Ms. Parker's Motion to Strike portions of Ms. Schaller's declaration relating to information about endorsements and personal circumstances. References in the declaration to Ms. Schaller's title of County Commissioner shall remain.

Petitioners also argue that RCW 7.24.110 requires service on the Attorney General for matters involving the constitutionality of statutes. RCW 7.24.110 is codified as part of the Uniform Declaratory Judgment Act. Where a proceeding does not fall under this Act, the statute is inapplicable.⁴ The cause of action in the cases at bar originates under RCW 29A.68.011 as an election challenge; Petitioners also move for Writs of Mandamus and Prohibition. Neither is a declaratory judgment. No relief is sought pursuant to the Uniform Declaratory Judgment Act. RCW 7.24.110 does not apply and Respondents' pleadings are properly before the Court.

³ Thurston County cause number 12-2-01732-5.

⁴ *City of Sumner v. Walsh*, 148 Wash.2d 490, 497 (2003).

1 ANALYSIS

2 Article 4 Sections 17 and 3(a) contain the exclusive requirements for superior court
3 judges. This is consistent with the legal presumption in favor of candidate eligibility for
4 public office and that “the constitution, where the language and context allows, should be
5 construed as to preserve [eligibility for office].”⁵ RCW 42.04.020⁶ does not apply to the
6 judiciary.
7

8 Qualifications for Washington Superior Court Judges
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10 Article 4, Section 17 of the Washington Constitution establishes the qualifications
11 for eligibility for a position as a judge on the supreme court or superior court:

12 No person shall be eligible to the office of judge of the supreme court, or
13 judge of a superior court, unless he shall have been admitted to practice in
14 the courts of record of this state, or of the Territory of Washington.

15 A second requirement that judges be 75 years or less to hold superior court or supreme
16 court office can be found in Wash. Const. art. IV, § 3(a). The constitution promulgates no
17 additional requirements to be eligible to hold office as a superior court judge. This is
18 distinct from the constitutional provisions that govern qualifications for both the legislative
19 and executive branches – both of which require officers to be US citizens as well as
20 qualified electors.⁷
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25 ⁵ *Id.* 202 (quoting *State et rel. O’Connell v. Dubuque*, 68 Wash.2d 553, 566 (1966)).

26 ⁶ The text of RCW 42.04.020, in full, states as follows:

27 That no person shall be competent to qualify for or hold any elective public office within
28 the state of Washington, or any county, district, precinct, school district, municipal
29 corporation or other district or political subdivision, unless he or she be a citizen of the
30 United States and state of Washington and an elector of such county, district, precinct,
school district, municipality or other district or political subdivision.

⁷ Wash. Const. art. III, §25 (pertaining to the executive branch); Wash. Const. art. II, §7 (pertaining to the legislative branch).

1 Respondents argue that the law forbids the legislature to add qualifications for a
2 constitutional office, absent express authority to do so. The established rule in Washington
3 is that, “[w]here the constitution has set forth qualifications for an office, either general or
4 specific, in the absence of an express grant of power to the legislature, there is an implied
5 prohibition against the imposition of additional qualifications by the legislature.”⁸

6 Petitioners argue that there were no additional qualifications granted by RCW 42.04.020
7 because those residency qualifications were adopted by Wash. Const. art. XXVII, § 2 from
8 requirements existing in territorial law. Indeed, the *Gerberding* Court recognized the view
9 that “territorial laws have a specific constitutional sanction and approval which subsequent
10 state statutes do not have.”⁹

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14 Wash. Const. art. XXVII, §2 states as follows:

15 All laws now in force in the Territory of Washington, which are not
16 repugnant to this Constitution, shall remain in force until they expire by
17 their own limitation, or are altered or repealed by the
18 legislature: *Provided*, That this section shall not be so construed as to
19 validate any act of the legislature of Washington Territory granting shore or
tide lands to any person, company or any municipal or private corporation.

20 In short, the following rules are apparent: (1) the legislature, absent authority, cannot create
21 any new qualifications for constitutional offices; and, dually (2) that qualifications
22 espoused by territorial laws were adopted by the Constitution, so long as they were not
23 “repugnant to this Constitution,” and, consequently, they are not “new qualifications.”

24 Thus, the dispositive question becomes, “Are territorial qualifications requiring elector
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29 ⁸ *In re Bartz*, 47 Wash.2d 161, 164 (1955).

⁹ 134 Wash.2d at 208-209 (quoting *State v. Estill*, 55 Wash.2d 576 (1960)).

1 status for individuals to hold elective public office repugnant with the constitution's
2 qualifications for Superior Court judges?"

3 *Washington's Territorial Laws*

4 To determine whether RCW 42.04.020 is a new qualification or merely a
5 restatement of an old qualification, this Court examines the relevant legislative history.
6 Because the constitution created the superior courts, there were no territorial laws that
7 specifically required superior court judges to be qualified electors in the county they
8 served. There were general election laws that required residence in the territory and/or
9 county prior to an election for an individual to qualify to hold office.¹⁰ And there were laws
10 requiring supreme court and district court judges to reside in their respective districts, but
11 only *after* they were *appointed*.¹¹ Thus, in 1853, at the time that Washington Territory's
12 Organic Act came into effect, judges of general jurisdiction were appointed, not elected, and
13 the subsequent laws governing eligibility for elective offices would not apply to them.
14

15 Additionally, in 1854, the territorial Legislature created the position of "probate
16 judge."¹² These judges were elected officials and who needed to have the qualifications of
17 "an elector."¹³ But these courts were of limited jurisdiction, primarily adjudicating
18 testamentary and domestic issues¹⁴ and were considered inferior courts.¹⁵ This Court could
19 find no authority or provision¹⁶ indicating that judges other than probate judges were,
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26 ¹⁰ Laws of 1855 at 7 *see also* Laws of 1881 at 530 ("[N]o person shall be entitled to hold office who is not a
citizen, inhabitant of the territory and a resident of the county.").

27 ¹¹ U.S. Stats. 32d Cong. Sess. II, ch. 90 § 9 (1853).

28 ¹² Wash. Sess. Laws 309 (1854).

29 ¹³ *Id.*

30 ¹⁴ *Id.* at 310

¹⁵ Wash. Sess. Laws 366 (1881).

¹⁶ The Court also could find no instance in the record where any party in this case cited to such authority.

1 during Washington's history as a territory, elected, so as to controvert the conclusion that
2 judicial positions in courts of general jurisdiction were filled by appointment during
3 Washington's territorial period.¹⁷

4
5 Moreover, and as an independent point for analysis, this Court returns to the
6 observation that there was no law that governed superior court judges preceding the
7 ratification of the Constitution because these positions did not exist – either explicitly or in
8 practice – prior to ratification of the Constitution. The drafters of the Constitution created a
9 new elective position when they established the superior court, and likewise created new
10 qualifications independent of any qualification that may have existed in territorial laws.
11 Thus, any attempt to liken the facts of the instant case to that of the position of Attorney
12 General – where the Supreme Court found that territorial law requirements that the office
13 was to be held by a “qualified practitioner of the supreme court” were adopted by the
14 Constitution¹⁸ – does not logically lie. The Attorney General was referred to specifically,
15 and by the same title, in the territorial laws and the Washington Supreme Court deemed
16 this existing qualification as recognized by the constitution. This conclusion cannot be
17 applied to the instant case where, because no position equivalent to the Superior Court
18 existed, no specific reference was possible.

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23 *The Constitutional Convention and Washington Constitution*

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28 ¹⁷ In reaching this conclusion, this Court reviewed the Laws of the Washington Territory from 1854 through
29 1895.

30 ¹⁸ *Gerberding*, 134 Wash.2d at 208-209

1 As discussed in *Gerberding*, “[t]he constitutional provisions establishing
2 qualifications for state constitutional officers were the subject of intense debate in the 1889
3 Constitutional Convention.”¹⁹
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5 Washington’s constitutional framers believed qualifications for state
6 constitutional officers were a matter of constitutional, not statutory concern.
7 They debated citizenship, residency in the state, age, status as qualified
8 elector, and term limits in ultimately arriving at the appropriate
9 qualifications for state constitutional officers Various constitutional
10 provisions demonstrate the framers knew how to grant, and expressly did
grant the Legislature lawmaking authority pertaining to certain
constitutional offices.²⁰

11 The *Gerberding* court considered it relevant that provisions to set term limits for the
12 legislature and governor had been considered at the Convention, and then rejected.²¹
13

14 Likewise, the Convention considered both a citizenship and a residency requirement
15 for Superior Court judges, but rejected such requirements.²²
16

17 *Gerberding* uses as an example of an express grant of legislative lawmaking
18 authority Wash. Const. art. IV, §3(a), which sets a mandatory retirement age for
19 judges, but authorizes the Legislature to fix a lesser age. Numerous instances of
20 explicit grants of Legislative power can be found in art. IV.²³ But none can be found
21 in art. IV, §17.
22
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24 ¹⁹ *Id.* at 202

25 ²⁰ *Id.* at 204

26 ²¹ *Id.* at 203

27 ²² THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION 1889, at 623 (Beverly Paulik
Rosenow ed., 1962).

28 ²³ As examples, the Court notes the following: art. IV, § 5 allows the legislature to amend the number of
29 judges per county; art. IV, § 11 grants the legislature the power to provide that any courts of the state are
courts of record; art. IV, § 12 grants the legislature the power to set jurisdiction and powers of inferior courts;
art. IV, §14 allows the legislature to increase judicial salaries; art. IV, § 30 grants the legislature the power to
determine the number, manner of election, compensation, and terms of office of Court of Appeals judges.

1 *The Structure of the Constitution*

2 There is structural evidence that the drafters of the Washington State Constitution
3 intended a separation to exist between state officers and the judiciary. As discussed in *In re*
4 *Bartz*,

5
6 [m]embers of the judiciary are constantly referred to in Art. IV as judicial
7 officers. That the framers of the constitution recognized a distinction
8 between executive state officers and judicial officers is apparent from the
9 language . . . pertaining to the election and terms of office of supreme court
judges.

10 The *Bartz* court rejected the argument that Wash. Const. art. III, § 25 – which
11 addresses the executive branch – applies to art. IV, § 17 – which addresses the
12 judiciary.²⁴ The requirements in art. III, § 25 parallel those found in RCW
13 42.04.020, and such an observation suggests that this recognized separation is
14 further evidence of an intentional omission of citizenship and residency
15 requirements on the judiciary.
16

17
18 Statutory Requirements for Candidate Names on Election Ballots

19 RCW 29A.24.060 establishes that

20
21 [w]hen filing for office, a candidate may indicate the manner in which he or
22 she desires his or her name to be printed on the ballot. For filing purposes, a
23 candidate may use a nickname by which he or she is commonly known as
24 his or her first name, but the last name shall be the name under which he or
she is registered to vote.

25 The statute is clear on its face; a candidate may indicate the manner in which his or her
26 name appears on the ballot. This sentence of the statute does not limit the candidate's
27

28 ²⁴ Note that, while the *Bartz* court held that an absence in the Constitution of qualifications for justice of the
29 peace does not necessarily forbid the legislature from creating reasonable qualifications, this ruling does not
apply in the present case, where the Constitution does provide qualifications for Superior Court judges.

1 discretion to his or her first name. The second sentence indicates, that, for filing purposes,
2 the candidate also may use a nickname – but only for his or her first name; the candidate’s
3 last name must be identical to what is written on his or her voter registration. The plain
4 language of this second sentence does not purport to control what appears on the ballot
5 itself. Ms. Schaller complied with the statute when she listed her legal name, “Christine
6 Schaller-Kradjan,” on her Declaration of Candidacy. Ms. Schaller is permitted to use the
7 name of her choosing, “Christine Schaller,” on the general election ballot.
8
9

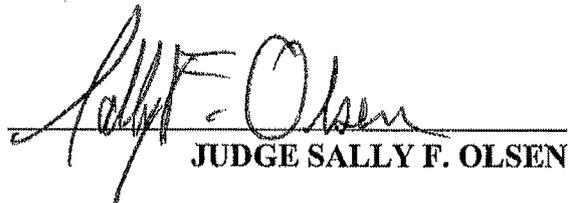
10 **CONCLUSION**

11 This Court finds that the constitution does not require superior court judges to be
12 citizens or electors of the county and that RCW 42.04.020 does not apply.
13

14 **It is hereby**

15 **ORDERED** that (1) Ms. Schaller’s name appear on the November, 2012 general election
16 ballot as a candidate for the Thurston County Superior Court, Position 2; (2) that Ms.
17 Schaller’s name shall be listed as “Christine Schaller” on the ballot; and (3) that
18 Petitioners’ Motions for Writs of Mandamus and Prohibition are **DENIED**.
19

20
21
22 Dated: August 31, 2012


JUDGE SALLY F. OLSEN

CERTIFICATE OF SERVICE

I, Gemma N. Zanowski, certify under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action, and competent to be a witness herein.

On August 31, 2012, I caused a copy of Memorandum Decision and Order, to be served in the manner noted on the following:

- Marti Maxwell: Thurston County Superior Court, Building 2, 2000 Lakeridge Dr. SW, Olympia, WA 98502, maxwellm@co.thurston.wa.us. Served via U.S. Mail and E-mail.
James S. Johnson: onlyjimjohnson@comcast.net. Served via E-mail.
Marie C. Clarke: mcclarke24@comcast.net. Served via E-mail.
Vicki Lee Anne Parker: vlaparker@aol.com. Served via E-mail.
Shawn Newman: newmanlaw@comcast.net. Served via E-mail.
Victor Minjares: victorminjaresforjudge@gmail.com. Served via E-Mail.
Phillip Talmadge: phil@tal-fitzlaw.com. Served via E-Mail.
David Klump: Klumppd@co.thurston.wa.us. Served via E-Mail.
Linda Olsen: olsenl@co.thurston.wa.us. Served via E-mail.

DATED August 31, 2012, at Port Orchard, Washington.

Handwritten signature of Gemma N. Zanowski, followed by her name and title: Gemma N. Zanowski, Judicial Law Clerk.

Appendix 2

Statutes Cited

RCW 29A.68.011
RCW 29A.36.171
RCW 29A.20.021
RCW 42.04.020
RCW 42.12.010
Code of 1881, ch. 238, sec. 3050 (two pages)
Code of 1881, ch. 240, sec. 3063
Laws of 1854, ch. 1, sec. 1 at 64
Laws of 1854, ch. 2, sec. 2 at 74
Laws of 1854-55, sec 1 at 7
Revised Statutes sec. 1865 as found in Laws of 1887 at xiii
Code of 1881, ch. 95, sec. 1297
Code of 1881, ch. 116, sec. 1691
Laws of 1883, sec. 1 at 39-40 (two pages)
Laws of 1885, sec. 1 at 113-14 (two pages)
Laws of 1887, ch. 51, sec. 1 at 93-94 (two pages)
Laws of 1883 at 432-34 (three pages)
Laws of 1875 at 304-05 (two pages)
Laws of 1865-66 at 219-20 (two pages)
Laws of 1981, ch. 180 (three pages)
RCW 29A.40.070 (two pages)

RCW 29A.68.011

Prevention and correction of election frauds and errors.

Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

- (1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or
- (2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or
- (3) The name of any person has been or is about to be wrongfully placed upon the ballots; or
- (4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or
- (5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or
- (6) An error or omission has occurred or is about to occur in the official certification of the election.

An affidavit of an elector under subsections (1) and (3) of this section when relating to a primary election must be filed with the appropriate court no later than two days following the closing of the filing period for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the official certification of the election as provided in RCW 29A.60.190, 29A.60.240, or 29A.60.250 or, in the case of a recount, ten days after the official certification of the amended abstract as provided in RCW 29A.64.061.

[2011 c 349 § 25; 2007 c 374 § 3; 2005 c 243 § 22; 2004 c 271 § 182.]

Notes:

Effective date -- 2011 c 349: See note following RCW 29A.04.255.

Nonpartisan candidates qualified for general election.

(1) Except as provided in RCW 29A.36.180 and in subsection (2) of this section, on the ballot at the general election for a nonpartisan office for which a primary was held, only the names of the candidate who received the greatest number of votes and the candidate who received the next greatest number of votes for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted, no candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary. On the ballot at the general election for any other nonpartisan office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW 29A.36.131.

(2) On the ballot at the general election for the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, judge of the district court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed under the title of the office for that position.

[2004 c 271 § 170.]

RCW 29A.20.021

Qualifications for filing, appearance on ballot.

(1) A person filing a declaration of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office shall not appear on a ballot for that office unless, except as provided in RCW *3.46.067 and 3.50.057, the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(4) The requirements of voter registration and residence within the geographic area of a district do not apply to candidates for congressional office. Qualifications for the United States congress are specified in the United States Constitution.

[2004 c 271 § 153.]

Notes:

***Reviser's note:** RCW 3.46.067 was repealed by 2008 c 227 § 12, effective July 1, 2008.

RCW 42.04.020
Eligibility to hold office.

That no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he or she be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision.

[2012 c 117 § 94; 1919 c 139 § 1; RRS § 9929. FORMER PART OF SECTION: Code 1881 § 3050 codified as RCW 42.04.021.]

Notes:

Apple commission, qualifications of members: RCW 15.24.020.

Attorney general, qualifications: RCW 43.10.010.

Cities, council-manager plan, qualifications of city manager: RCW 35.18.040.

Cities and towns, residence qualifications of officials and employees: RCW 35.21.200.

County hospital board of trustees, eligibility: RCW 36.62.140.

Court administrator: RCW 2.56.010.

Court commissioners, qualifications: RCW 2.24.010.

Dairy products commission, members, qualifications: RCW 15.44.030.

Electors, qualifications: State Constitution Art. 6 § 1 (Amendment 5).

Engineers and land surveyors' board of registration, qualifications: RCW 18.43.030.

Fire protection district commissioners, qualifications: RCW 52.14.010.

Fish and wildlife commission members, qualifications: RCW 77.04.040.

Flood control districts, qualifications of governing board: RCW 85.38.070.

Fruit commission, qualifications of members: RCW 15.28.030.

Hardwoods commission, qualifications: RCW 15.74.010.

Honey bee commission, qualifications: RCW 15.62.060.

Horse racing commission, qualifications: RCW 67.16.012.

Judges of superior court, eligibility: State Constitution Art. 4 § 17.

Judges of supreme court, eligibility: State Constitution Art. 4 § 17.

Legislators, eligibility: State Constitution Art. 2 § 7; Art. 2 § 14.

Mosquito control district board members, qualifications: RCW 17.28.120.

Municipal court judges, qualifications: RCW 35.20.170.

Prosecuting attorney, eligibility: RCW 36.27.010.

Public utility district commissioners, qualifications: RCW 54.12.010.

Religious qualification to hold public office or employment prohibited: State Constitution Art. 1 § 11 (Amendment 4).

RCW 42.12.010
Causes of vacancy.

Every elective office shall become vacant on the happening of any of the following events:

- (1) The death of the incumbent;
- (2) His or her resignation. A vacancy caused by resignation shall be deemed to occur upon the effective date of the resignation;
- (3) His or her removal;
- (4) Except as provided in RCW *3.46.067 and 3.50.057, his or her ceasing to be a legally registered voter of the district, county, city, town, or other municipal or quasi municipal corporation from which he or she shall have been elected or appointed, including where applicable the council district, commissioner district, or ward from which he or she shall have been elected or appointed;
- (5) His or her conviction of a felony, or of any offense involving a violation of his or her official oath;
- (6) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit such oath or bond within the time prescribed by law;
- (7) The decision of a competent tribunal declaring void his or her election or appointment; or
- (8) Whenever a judgment shall be obtained against that incumbent for breach of the condition of his or her official bond.

[1994 c 223 § 2; 1993 c 317 § 9; 1981 c 180 § 4; Code 1881 § 3063; 1866 p 28 § 2; RRS § 9950.]

Notes:

***Reviser's note:** RCW 3.46.067 was repealed by 2008 c 227 § 12, effective July 1, 2008.

Effective date -- 1994 c 223 § 2: "(1) Section 2 of this act shall take effect January 1, 1995.

(2) *Section 20 of this act shall take effect July 1, 1994." [1994 c 223 § 94.]

***Reviser's note:** The governor vetoed 1994 c 233 § 20.

Severability -- Effective date--1993 c 317: See notes following RCW 3.50.810.

Severability -- 1981 c 180: See note following RCW 42.12.040.

same and cause the field notes and plat of the county road to be recorded, as in case of the establishment and alteration of highways, and thereafter such records shall be received by courts as conclusive proof of the establishment and lawful existence of such county road and public highway, according to such survey and plat.

Sec. 3047. If the same, or what is equivalent thereto, has not heretofore been done, the county auditor shall within six months after this act takes effect, cause every public road in his county, the legal existence of which is shown by the records and files of his office, to be platted in a book, to be obtained and kept for that purpose, and to be called the "highway plat book." Each township shall be platted separately, on a scale of not less than four inches to the mile, and such auditor shall have all changes in or additions to the highways, legally established, immediately entered upon said plat book, with appropriate references to the files in which the papers relating to the same may be found.

Sec. 3048. The expenses, incurred by the provisions of this chapter, shall be paid out of the county funds not otherwise appropriated.

CHAPTER CCXXXVII.

STREETS AND ALLEYS IN TOWNS AND CITIES PUBLIC HIGHWAYS.

SECTION

3049. Roads, streets and alleys in towns and cities public highways.

Sec. 3049. Whenever any city or town has been surveyed and platted and a plat thereof showing the roads, streets and alleys has been filed in the office of the auditor of the county in which such city or town is located, such plat shall be deemed the official plat of such city, or town, and all roads, streets and alleys in such city or town as shown by such plat, be and the same are declared public highways: *Providing*, That nothing herein shall apply to any part of a city or town that has been vacated according to law.

CHAPTER CCXXXVIII.

ELECTION LAW.

QUALIFICATION OF ELECTORS, AND HEREIN OF RESIDENCE.

SECTION

3050. American male citizens over twenty-one years; American half breeds, further qualifications; males who have declared intentions, etc., etc.; officers and men connected with army and navy.

SECTION

3051. Employment does not affect residence.
3052. Idiots, insane and what convicts disfranchised.
3053. Absence from territory on certain business does not affect residence.
3054. Conviction of infamous crime construed.

Sec. 3050. All American male citizens, above the age of twenty-one years, and all American male half-breeds over that age, who have adopted the habits of the whites, and all other male inhabitants of this territory, above that age, who shall have declared on oath their intentions to become citizens, at least six months previous to the day of election, and shall have taken an oath to support the constitution of the United States, and the organic act of this territory, at least six months previous to the day of election, and who shall have resided six months in the territory, and thirty days in the county next preceding the day of election, and none other, shall be entitled to hold office or vote at any election in this territory: *Provided*, That no officer, soldier, seaman or marine, in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote at any election in this territory, by reason

of being in service therein, unless said territory is, and has been for the period of six months, his permanent domicile: *Provided*, He was a citizen of this territory, at the time of his enlistment: *And provided further*, That no person belonging to the army or navy of the United States shall be elected to, or hold any civil office or appointment in this territory: *Providing*, That this provision shall not apply to officers of the army or navy on the retired list.

Sec. 3051. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this territory, or of the United States, or of the high seas; nor while a student of any seminary of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison, excepting when serving out a sentence in the penitentiary for an infamous crime.

Sec. 3052. No idiot, or insane person, or persons convicted of an infamous crime, shall be entitled to the privilege of an elector.

Sec. 3053. Absence from the territory, on business, shall not affect the question of residence of any person: *Provided*, The right to vote has not been claimed or exercised elsewhere.

Sec. 3054. A crime shall be deemed infamous which is punishable by death or imprisonment in the penitentiary.

CHAPTER CCXXXIX.

TIME OF HOLDING, AND MANNER OF CONDUCTING ELECTIONS.

SECTION

3055. Time of holding proscribed.
3056. Special election may be held.
3057. What vacancies to be supplied at general election.
3058. The governor to issue proclamation, when-

SECTION

3059. Auditors of senior counties to issue notice in joint districts.
3060. Notice of general or special elections; form.
3061. Road supervisors not included.

Sec. 3055. The election of legislative, district, county and precinct officers, in this territory, shall be held on the Tuesday following the first Monday of November, Anno Domini, eighteen hundred and eighty-two, and thereafter biennially, on the Tuesday next following the first Monday in November; and all elective, territorial, legislative, district, county, and precinct officers shall hereafter be elected at the times herein specified.

Sec. 3056. Special elections are such as are held to supply vacancies in any office, whether the same be filled by the vote of the qualified electors of the territory, or any district, county or township, and may be held at such times as may be designated by the proper officer.

Sec. 3057. All vacancies which are about to occur in an office, by the expiration of the full term thereof, shall be supplied at the general election.

Sec. 3058. It shall be the duty of the governor, at least sixty days before any general election, to issue his proclamation, designating the offices to be filled by the territory at large at such election, and to transmit a copy thereof to the county auditor of each county.

Sec. 3059. It shall be the duty of the county auditors of the senior counties in any joint council or representative district, to issue to the county or counties, composing said district, thirty days before any general election, notice designating the office to be filled at each election by said district.

Sec. 3060. It shall be the duty of each county auditor to give at least thirty days' notice of any general election, and at least fifteen days previous to any special election, by posting or causing to be posted up at each place of holding election in the county, a written or printed notice thereof; said notice to be, as circumstances will admit, as follows: Notice is hereby given that on the— day of — next, at—, in the— district or precinct of— in the county of—, an election will be held for territorial, county, town or district officers (naming the offices to be filled, as the case may be,) which election will be opened at nine o'clock in the morning, and will continue until six o'clock in the afternoon of the same day. Dated this— day of—, A. D., 18—

A. B., County Auditor.

Sec. 3061. Nothing in this chapter shall be so construed as to authorize the election of road supervisor, under the provisions of the chapter.

CHAPTER COXL.

RESIGNATIONS AND VACANCIES AND SUPPLYING VACANCIES.

SECTION

3062. To whom officers shall resign.

3063. What shall create vacancies.

3064. Special elections may be ordered, when.

SECTION

3065. Vacancies in county or precinct offices.

3066. Officer filling vacancy only serves out unexpired term.

Sec. 3062. Resignations shall be made as follows: By the territorial officers and members of the legislative assembly, to the governor; by all county officers, to the county commissioners of their respective counties; by all other officers, holding their offices by appointment, to the body, board or officer that appointed them.

VACANCIES.

Sec. 3063. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such officer. First, the death of the incumbent; second, his resignation; third, his removal; fourth, his ceasing to be an inhabitant of the district, county, town or village for which he shall have been elected or appointed, or within which the duties of his office are to be discharged; fifth, his conviction of an infamous crime, or of any offense involving a violation of his official oath; sixth, his refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law; seventh, the decision of a competent tribunal declaring void his election or appointment; eighth, whenever a judgment shall be obtained against such officer for breach of the condition of his official bond.

SUPPLYING VACANCIES.

Sec. 3064. Whenever a special election is necessary to fill a vacancy in the office of delegate to congress, territorial council, house of representatives or prosecuting attorney, the governor shall issue his proclamation ordering such election, in like manner as is provided in regard to general elections, and designating also the time at which it is to be held; and the county auditor of each county in which such election is to be held, shall give notice thereof, as required in section 3060.

Sec. 3065. Whenever a vacancy occurs in any county or precinct office, except when otherwise provided by law, it shall be filled by appointment by the board of county commissioners at the first regular or special session

- SEC. 15. Person challenged to make oath.
 SEC. 16. Ballot box to be provided.
 SEC. 17. Same to be opened and examined before opening the polls.
 SEC. 18. Poll lists to be corrected at each adjournment of the polls.
 SEC. 19. Poll book to be placed in ballot box, and same to be locked, &c.
 SEC. 20. Disposition of ballot box during adjournment.
 SEC. 21. Preservation of order.
 SEC. 22. Canvass by the judges.
 SEC. 23. Mode of canvassing.
 SEC. 24. Ballots and poll list to be made to agree.
 SEC. 25. Votes to be counted; certificate of election; form of.
 SEC. 26. Disposition of poll book.
 SEC. 27. Punishment for failure or neglect to make proper disposition of poll book.
 SEC. 28. Canvass by clerk of board of county commissioners; abstract and certificates to be made out; *proviso* in case of tie.
 SEC. 29. Decision to be by lot when two or more county or precinct officers have an equal number of votes for the same office.
 SEC. 30. Return to be made to the secretary of the territory. Votes for delegate, how canvassed.
 SEC. 31. Messenger employed to procure returns.
 SEC. 32. Certain persons may resign. Vacancies, how filled.
 SEC. 33. If two or more counties are united, votes to be counted in senior county.
 SEC. 34. Compensation of judges of election, clerks, &c.
 SEC. 35. Punishment of judges, &c., for violation of election law.
 SEC. 36. Term of office, when to commence.
 SEC. 37. Persons having majority to be deemed elected.
 SEC. 38. In counting votes, misspelling and abbreviations to be disregarded.
 SEC. 39. Contests for county and precinct officers, where and how to be tried. Clerk of county commissioners to issue notice.
 SEC. 40. Board of county commissioners to determine such contest.
 SEC. 41. Election of county commissioner or clerk, how contested.
 SEC. 42. Probate judge to determine such contest.
 SEC. 43. This chapter not to be construed to impair the right of any person to contest any election in the manner otherwise provided by statute.

SEC. 1. *Be it enacted by the council and house of representatives of the territory of Washington,* That all white male inhabitants over the age of twenty-one years, who shall have resided within this territory for three months next preceding an election, shall be entitled to vote at any election for delegate to congress, and for territorial, district, county and precinct officers: *Provided,* That they shall be citizens of the United States, or shall have declared, on oath, their intentions to become such, and shall have resided three months in the territory, and fifteen days in the county where they offer to vote, next preceding the day of election: *Provided,* That nothing in this act shall be so construed as to prevent all such American half-breed Indians, as the judges of election shall determine have adopted the habits and customs of civilization, from voting.

SEC. 2. No person under guardianship, non compos mentis, or insane, nor any person convicted of treason, felony or bribery, unless restored to civil rights, shall be permitted to vote at any election.

2. Vacancies, how they shall occur.
3. Governor to declare certain offices vacant.
4. Governor to supply certain vacancies.
5. Vacancy in county or precinct officers—county commissioners to appoint.
6. Persons supplying vacancies to qualify in the same manner as their predecessors.
7. Act when to take effect.

SEC. 1. Resignations shall be made as follows :

1. By the territorial officers and by all officers elected by the legislature, to the governor ;
2. By all county officers, to the county commissioners in their respective counties ;
3. By all other officers holding their offices by appointment, to the body, board or officer that appointed them.

VACANCIES.

SEC. 2. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office :

1. The death of the incumbent ;
2. His resignation ;
3. His removal ;
4. His ceasing to be an inhabitant of the district, county, town, or village for which he shall have been elected or appointed, or within which the duties of his office are to be discharged ;
5. His conviction of any infamous crime, or of any offence involving a violation of his official oath ;
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law ;
7. The decision of a competent tribunal declaring void his election or appointment.

SEC. 3. The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

SUPPLYING VACANCIES.

SEC. 4. Whenever a vacancy shall occur during the recess of the legislature in any office which the legislature are authorized to fill by election, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

SEC. 5. When at any time there shall be in either of the county or precinct offices, no officer duly authorized to execute the duties thereof,

AN ACT ENTITLED, "AN ACT TO AMEND AN ACT DEFINING THE TIME OF HOLDING ELECTIONS;" PASSED APRIL 15, 1854.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a general election shall be held in the several precincts in this territory on the second Monday in July, in each year, at which time there shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for.

SEC. 2. All laws or acts heretofore made conflicting with this act are hereby repealed.

SEC. 3. This act to take effect from and after its passage.

Passed February 1, 1855.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT RELATING TO ELECTIONS AND THE MODE OF SUPPLYING VACANCIES."

SEC. 1. Qualification of a voter, or person holding office; soldiers or seamen not entitled to vote; Repealing clause.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all white American citizens above the age of twenty-one years, and all other white male inhabitants of this territory above that age who shall have declared on oath their intention to become citizens, and to support the constitution of the United States, at least six months previous to the day of election, and who shall have resided six months in the territory, and twenty days in the county, next preceding the day of election, and none others, shall be entitled to hold office, or vote at any election in this territory; *Provided,* that no officer, soldier, seaman or marine in the army or navy of the United States, or attached to troops in the service of the United States shall be allowed to vote at any election in this territory, and that all existing laws hitherto passed, and not in conformity with this act, be and they are hereby repealed, or so much of them as conflicts with this act.

Passed, January 25, 1855.

SEC. 1865. Every territory shall be divided into three judicial districts; and a district court shall be held in each district of the territory by one of the justices of the supreme court, at such time and place as may be prescribed by law; and each judge, after assignment, shall reside in the district to which he is assigned.

SEC. 1866. The jurisdiction, both appellate and original, of the courts provided for in section nineteen hundred and seven and nineteen hundred and eight, shall be limited by law.

SEC. 1867. No justices of the peace in any territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

SEC. 1868. The supreme court and the district courts, respectively, of every territory, shall possess chancery as well as common law jurisdiction.

[See page 33, 43d congress, 1st session.]

AN ACT CONCERNING THE PRACTICE IN TERRITORIAL COURTS,
AND APPEALS THEREFROM.

WHEREAS, By the organic acts establishing several of the territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said organic acts respectively: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be necessary in any of the courts of the several territories of the United States to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all other cases whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be, and the same are hereby validated and confirmed; *provided,* That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law.

JUSTICE PRACTICE ACT.

CHAPTER XCV.

THE PROBATE COURT, ITS POWERS AND JURISDICTION.

SECTION	SECTION
1297. Election of judge, title, etc.	1301. Powers of court to enforce its orders.
1298. Oath of office and bond.	1302. May by attachment, enforce return of writs.
1299. Jurisdiction of court; court to provide and keep seal and to be a court of record.	1303. Disqualification of judge in certain cases.
1300. Books of record to be kept.	1307. Proceedings when judge disqualified.
1301. Terms when to be held.	1308. Adjournment and special terms of court.
1302. To appoint their clerks; judge may act.	1309. Judge to be a conservator of the peace.
1303. Process from court, how attested, sealed and served.	1310. Orders in vacation.

SEC. 1297. There shall be elected at the next general election, and every two years thereafter in each county in this territory, one suitable person, who shall have the qualifications of an elector, who shall be styled the judge of the probate court, and the court hereby constituted shall be called the probate court, and such judge shall hold his office for two years, and until his successor is duly elected and qualified. The county auditors shall certify the name of the person elected to the governor of the territory, who shall thereupon commission said person judge of the probate court of the county for which he may have been elected.

SEC. 1298. Every person elected judge of the probate court shall, at the time of filing his oath of office, enter into a bond with the territory of Washington, with two or more sureties, residents of his county, to be approved by the board of county commissioners of his county, in a sum of not less than one thousand nor more than ten thousand dollars, to be fixed by the said county commissioners, conditioned that he will well and faithfully perform the duties of his office and pay over according to law any and all moneys that may come into his hands as such judge.

SEC. 1299. The said probate court shall have and possess the following powers:

1. Exclusive original jurisdiction within their respective counties in all cases relative to the probate of last wills and testaments.
2. The granting of letters testamentary and of administration, and revoking the same.
3. The appointment and displacing guardians of orphans, minors and of persons of unsound mind, and the binding of apprentices.
4. In the settlement and allowance of accounts of executors, administrators and guardians.
5. To hear and determine all disputes and controversies between masters and their apprentices.
6. To allow or reject claims against estates of deceased persons as hereinafter provided.
7. To award process and cause to come before said court all and every person or persons whom they may deem necessary to examine, whether parties or witnesses, or who, as executors, administrators or guardians or otherwise, shall be entrusted with, or in any way be accountable for any lands, tenements, goods or chattels belonging to any minor, orphan or person of unsound mind, or estate of any deceased person, with full pow-

Sec. 1690. Each precinct shall be entitled to one justice of the peace, but the board of county commissioners, at the time of organizing such precinct, or at any time afterwards, may, if they deem proper, authorize an additional justice of the peace to be elected therein.

Sec. 1691. No person shall be eligible to the office of justice of the peace who is not a qualified voter, and who has not been a resident of the county in which he is elected six months next preceding his election; nor shall any sheriff, coroner, or clerk of the district court be eligible to, or hold such office.

Sec. 1692. The election of justice of the peace shall be conducted, and return of such election made in the same manner, as other elections; and every person duly elected, shall be entitled to a certificate of election, and shall take an oath of office; which oath shall be endorsed on the back of the certificate of election, and, together with the certificate, filed in the office of the county auditor.

Sec. 1693. Every person elected a justice of the peace, shall, at the time of filing his oath of office in the office of the county auditor, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said auditor, in the sum of five hundred dollars, conditioned that he will faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace. Said bond may be in the following form:

Know all men by these presents, that we, J P, A B and C D are held and firmly bound unto the board of county commissioners of the county of —, in the territory of Washington, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals; dated this — day of —, A. D. 18—.

Whereas, the said J P has been duly elected a justice of the peace, in and for the precinct of —, in the county of —, —, A. D. 18—. Now the condition of the above obligation is such, that if the said J P shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise in full force.

J P, [r. s.]
A B, [l. s.]
C D. [l. s.]

Sec. 1694. Such bond shall be filed in the office of the county auditor; and every person aggrieved by a breach of the condition thereof, may, by an action upon the bond, have judgment against the justice and his sureties, for such sum as he may show himself entitled to, with costs and interest at the rate of twenty-five per cent. per annum; and upon any such judgment stay of execution shall not be allowed.

Sec. 1695. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified; and every justice heretofore elected and qualified, shall continue to act as such until his term of office expires, and until his successor is elected and qualified.

Sec. 1696. Whenever a vacancy shall exist in the office of justice of the peace, in any precinct of any county in this territory, the same shall be filled by election.

Sec. 1697. When any auditor of any county shall have filed with him

GENERAL LAWS.

AN ACT

TO AMEND SECTION 2752 OF THE CODE OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That section 2752 of the code of Washington be amended, by striking out the words Klickitat, Chehalis and Whatcom: *Provided,* That nothing herein shall be construed to prevent the qualified electors of said counties from electing one person to the offices of sheriff and assessor.

SEC. 2. All acts or parts of acts, in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force, from and after its passage and approval by the governor.

Approved October 26, 1883.

AN ACT

TO AMEND SECTION 2122 OF THE CODE OF WASHINGTON 1881.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That Section 2122 of the code of Washington, 1881 be, and the same is hereby amended by striking out of said section 2122, the word Kalama, where it occurs in said section, and inserting in lieu thereof the word Vancouver.

SEC. 2. That all acts or parts of acts in conflict with the provisions of this act be, and the same are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its approval.

Approved November 28, 1883.

AN ACT

TO AMEND SECTION 3050, CHAPTER 238 OF THE CODE OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That Section 3050, chapter 238 of the code of Washington, be, and is hereby amended to read as follows, to wit:

"All American citizens, above the age of twenty-one years, and all American half-breeds over that age, who have adopted the habits of the whites, and all other inhabitants of this territory, above that age,

who shall have declared on oath their intentions to become citizens, at least six months previous to the day of election, and shall have taken an oath to support the constitution of the United States, and the organic act of this territory, at least six months previous to the day of election, and who shall have resided six months in the territory, and thirty days in the county, next preceding the day of election, and none other, shall be entitled to hold office, or vote at any election in this territory: *Provided*, That no officer, soldier, seaman or marine, in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote at any election in this territory, by reason of being in service therein, unless said territory is, and has been for the period of six months, his permanent domicile: *Provided*, He was a citizen of this territory at the time of his enlistment; *And, provided further*, That no person belonging to the army or navy of the United States shall be elected to, or hold any civil office, or appointment in this territory: *Providing*, That this provision shall not apply to officers of the army or navy on the retired list."

SEC. 2. Wherever the word "his" occurs in the chapter aforesaid, it shall be construed to mean "his or her," as the case may be.

SEC. 3. This act to take effect and be in force from and after its approval by the governor.

Approved November 23, 1883.

AN ACT

ENTITLED AN ACT TO AMEND SECTIONS 2988, 2989, 2990 and 2991 OF CHAPTER 229 RELATING TO ROADS.

Be it enacted by the Legislative Assembly of the Territory of Washington: That sections 2988, 2989, 2990, 2991, 3001 of chapter 229 of the road laws be amended so as to read as follows:

"Section 2988. The supervisor of each road district in this territory, shall, at least ten days before the first Monday in January (except when the first Monday comes on the first day of the month, when the following Tuesday shall be used in lieu thereof) of each year, cause three notices to be posted up in three conspicuous places in his road district, giving notice that there will be an election held in such district, on the first Monday in January at two o'clock in the afternoon, at some convenient place in said district, to be specified in said notice, for the purpose of electing a road supervisor for the next succeeding year, at which election the old supervisor shall act as chairman if present, if not present, a chairman shall be elected from the voters present. The meeting shall also elect a secretary who shall record the proceedings of meeting, and all male persons in the districts, who are required to labor on the roads, or who have road taxes to pay, may vote at such election, and the person receiving the highest number of votes, shall be considered elected supervisor for that year, who shall within ten days and before entering upon the duties of said office, take an oath to faithfully

AN ACT

MORE SPECIFICALLY DEFINING THE JURISDICTION AND DUTIES OF DISTRICT COURTS IN THE TERRITORY OF WASHINGTON, IN REGARD TO THE NATURALIZATION OF ALIENS.

Be it enacted by the Legislative Assembly of the Territory of Washington:

SECTION 1. The district courts holding terms at the several times and places, fixed by law, in this territory, shall have jurisdiction, and it shall be their duty to hear applications and proofs by aliens to become citizens of the United States, and to grant certificates of citizenship to such applicants, in accordance with section 2165, of the revised statutes of the United States.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved January 19, 1886.

AN ACT

TO AMEND SECTION 3050, OF CHAPTER 238 OF THE CODE OF WASHINGTON TERRITORY, AS AMENDED BY AN ACT, ENTITLED "AN ACT TO AMEND SECTION 3050, OF CHAPTER 238 OF THE CODE OF WASHINGTON TERRITORY," APPROVED NOVEMBER 23, 1883.

Be it enacted by the Legislative Assembly of the Territory of Washington:

SECTION 1. That section 3050 of chapter 238 of the Code of Washington Territory, as amended by an act, entitled "An act to amend section 3050 of chapter 238 of the Code of Washington Territory," approved Nov. 23, 1883, be, and is hereby further amended to read as follows, to-wit: Section 3050. All American citizens, male and female, above the age of twenty-one years, and all American half-breeds, male and female, over that age, who have adopted the habits of the whites, and all other inhabitants, male and female, of this territory, above that age who

shall have declared, on oath, their intentions to become citizens, at least six months previous to the day of election, and shall have taken an oath to support the constitution of the United States, and the organic act of this territory, at least six months previous to the day of election, and who shall have resided six months in the territory, sixty days in the county, and thirty days in the precinct, next preceding the day of election, and none other shall be entitled to hold office, or vote at any election in this territory: *Provided*, That no officer, soldier, seaman, or marine in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote at any election in this territory, by reason of being in service therein, unless said territory is, and has been for the period of six months, his permanent domicile, provided he was a citizen of this territory at the time of his enlistment: *And provided further*, That no person belonging to the army or navy of the United States shall be elected to, or hold any civil office, or appointment in this territory: *Providing*, That this provision shall not apply to officers of the army or navy on the retired list.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act to take effect and be in force from and after its approval.

Approved January 29, 1886.

AN ACT

TO AMEND SECTIONS 1975 AND 1977 OF CHAPTER 139 OF THE CODE OF WASHINGTON TERRITORY, RELATING TO LIENS.

Be it enacted by the Legislative Assembly of the Territory of Washington:

SECTION 1. That section 1975 of chapter 139 of the Code of Washington Territory, be and the same is hereby amended to read as follows, to-wit: Section 1975. Any person who shall do labor upon any farm or land, in tilling the same or in sowing or harvesting, or laboring upon, or securing, or assisting in securing, or housing any crop or crops sown or raised thereon, during the year in which said work or labor was

DYKES AND DAMS—PROTECTION
OF.

CHAPTER L.

AN ACT

TO PROVIDE FOR THE PROTECTION OF DYKES AND DAMS IN
WASHINGTON TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory
of Washington:*

SECTION 1. That it shall be unlawful to cut or damage, break or destroy, any dyke or dam erected or maintained in this Territory for the protection of lands from overflow ; and any person or persons so offending, upon conviction thereof, shall be fined in any sum not exceeding three hundred dollars (\$300) for each and every offense, in the discretion of the court, which fine shall be paid over to the school fund of the county wherein the offense is committed [committed] ; *provided*, that the person or persons so offending shall not by this act be exempted from any suit for damages brought by any person or persons injured by the cutting, breaking, damaging or destroying of said dike or dam.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved February 2, 1888.

ELECTORS—QUALIFICATIONS OF.

CHAPTER LI.

AN ACT

PRESCRIBING THE QUALIFICATIONS OF ELECTORS IN THE TERRI-
TORY OF WASHINGTON.

*Be it enacted by the Legislative Assembly of the Territory
of Washington:*

SECTION 1. That all citizens of the United States, male and female, above the age of twenty-one years, and all

American half-breeds, male and female, over that age, who have adopted the habits of the whites, and all other inhabitants, male or female, of this Territory, above that age, who shall have declared, on oath, their intentions to become citizens of the United States at least six months previous to the day of election, and shall have taken an oath to support the constitution and government of the United States at least six months previous to the day of election, and who shall have resided six months in the Territory, sixty days in the county and thirty days in the precinct next preceding the day of election, and none other, shall be entitled to vote at any election in this Territory; *provided*, that no officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the services of the United States, shall be allowed to vote at any election in this Territory by reason of being on service therein, unless said Territory is, and has been, for the period of six months, his permanent domicile; *provided*, he was a citizen of this Territory at the time of his enlistment; and *provided further*, that nothing in this act shall be so construed as to make it lawful for women to serve as jurors.

SEC. 2. That all acts and parts of acts in conflict with this act be and the same are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved January 18, 1888.

EXECUTIONS—FOR ISSUING.

CHAPTER LII.

AN ACT

TO PROVIDE FOR AND REGULATE THE ISSUING OF EXECUTIONS
IN THIS TERRITORY.

*Be it enacted by the Legislative Assembly of the Territory
of Washington:*

SECTION 1. That the party in whose favor judgment has been given, or may hereafter be given or entered in any court of record in this Territory, may have an execution issued

MEMORIAL

PRAYING AN ENABLING ACT FOR ADMISSION OF THE STATE OF WASHINGTON
TO THE UNION.

*To the Honorable Senate and House of Representatives in Congress
Assembled:*

The people of the territory of Washington by their legislative assembly respectfully but urgently protest against the further continuance by congress of the so called territorial government—a new creation of congress unknown to the constitution of the United States—the only warrant for such a political anomaly in our institutions being based upon a custom sanctioned so long that it has grown to be regarded as the necessary method whereby territory of the nation can be prepared for future states in the Federal Union. Earnestly this people pray that congress will remove their political disabilities, and that they may enjoy the constitutional guarantee of a government republican in form when the government derives all its just powers from the consent of the government. The settlers of this territory have brought hither to establish a state the necessary intelligence, loyalty and patriotic motive. It is conceded that they possess the necessary qualifications, but still they are denied the first and most essential element of American citizenship. They dare not participate in the selection of the chief magistrate of the nation; they are denied the right to elect their own officers; they cannot sue a citizen of one of the states in the federal courts, because they are not recognized as citizens of a state; they are denied representation in the congress of the United States; they cannot make their own laws; they are mere dependents upon your honorable body who claim to adopt rules for their government under an implied power that you make rules and regulations as to the disposition of the territory and other property of the government. In fact every relation of such a government to the congress of the United States exhibits a dependence as humiliating as that so terribly denounced in that grandest of indictments drafted by the immortal Jefferson arraigning the crown of Great Britain for withholding popular rights from our ancestors. Our people are a commonwealth: We are a state, though denied such name. As a state, as a people, as a community we are entitled to demand that the congress of the United States guarantee to us a republican form of government. The state and people of a state are but equivalent forms of expression, and it is not disrespectful when we urge as the paramount duty of congress the guarantee to us of a republican form of government. In urgency of which we respectfully submit:

First. That the people are sufficient in numbers to successfully maintain a state government. The population of Washington Territory largely exceeds that of many of the states when admitted. It is not less than 125,000, and well informed and observant persons place it as high as 150,000. The immigration now and for the past year has been unexampled in the history of the growth of American states and territories. It is also worthy of remark that transition from territorial

vassalage to statehood and sovereignty have always been followed by renewed growth, and surely the circumstances and present surroundings of this territory assure that increased prosperity, importance and wealth. We beg to refer to the admission of other states: California was admitted with a population of 92,597; Colorado at the census preceding admission numbered 39,864; Florida at the census following admission had a population of 87,445, while at the previous census numbered only 54,447; Kansas came in with 107,206; Iowa at the census before admission had 42,112; Nebraska at the census before admission 28,847, in 1869, 122,993; Nevada at the census before admission 6,857, subsequent 42,491 and in 1880 boasted a population of 62,666; Oregon was admitted in 1859 and at the census of the subsequent year had a population of 52,455. These statistics establish that our population greatly outnumbers that of numerous successful applicants for statehood. By all the precedents congress is concluded upon this proposition. Washington Territory possesses the requisite population.

Second. Our people are amply able to maintain a state government. This is demonstrated by a comparison of the valuation of taxable property in this territory with those of several states in the Federal Union:

Washington Territory, in 1883.....	\$44,107,567
Colorado, in 1880.....	43,072,648
Florida, ".....	29,471,227
Nevada, ".....	29,564,675
Oregon, ".....	46,422,817

In the support of an insane asylum, a territorial penitentiary and a university the territory annually expends over \$60,000. With the exception of the trifling contribution by the United States for the expenses of trying United States causes and the salaries of three judges, the district attorney and marshal, the people pay the expenses of their courts. The expenses of legislation are partially paid by the United States; the people elect the members, but their laws are subject to congressional approval. The governor and secretary are paid by the United States, but how cordially would the people pay their salaries for the democratic privilege of electing their own rulers. All these expenses are derived from taxation for territorial purposes in addition to our county, school, road and municipal taxes. The territory devoid of sovereignty owns no property and cannot hold any from which income can be derived, and thus it is the tax payers are called upon to bear this burden to maintain a government not of their own making.

Third. Our great natural resources, our future wealth, demand such recognition, and they are entitled to congressional representation to secure their development. With requisite population in numbers who have demonstrated their ability to maintain government, we pray that our disabilities may be removed and we be restored to those rights which belong to American birthright and citizenship; the right to select our own rulers, to make our own laws. We ask for nothing that is not your duty to confer. We pray only to be allowed to consider ourselves

citizens of the United States of America, and as in right, duty and good conscience we will ever pray.

Passed the Council November 21, 1883.

SEWELL TRUAX,
President of the Council.

Passed the House November 24, 1883.

E. C. FERGUSON,
Speaker of the House.

Approved November 28, 1883.

MEMORIAL

PRAYING THE ABOLITION OF INDIAN RESERVATIONS.

To the Honorable Senate and House of Representatives, of the United States of America, in Congress Assembled:

That the continuance of race distinction by segregating a particular class of our native population, and confining them to reservations, treating them as inferiors and dependent, whether they be regarded as wards of the government, or prisoners upon such reservations, is inconsistent with the progressive spirit of the age, and the grand achieved doctrine of the republic, that all humanity are equal before the law. Discrimination on account of race which ignores manhood or equality and uniformity of right as men and women, is at variance with the theory of Democratic government, and surely native-born humanity of the United States cannot longer be regarded as aliens, nor can communities of such be treated as foreign nations.

That the the time has arrived when the Indian should be treated as other men are treated, with the same right to enjoy property, the same right to pursue happiness. That race should not be confined as prisoners upon, or be limited to reservations; nor should they enjoy rights to acquire or hold land superior to, or different from the American citizen. An Indian is human, he is neither more nor less than a native of our country, and your memorialists believe that a policy which recognizes his humanity and manhood should be adopted. They believe the reservation system of managing Indians a perfect failure, based upon principles radically wrong, uselessly expensive to the government, unjust and detrimental to the Indian, retarding alike his advancement and the settlement of the country in which such reservations have been declared. Large and valuable regions are continued as a wilderness, withheld from appropriation and cultivation by useful settlers. Indians are restricted to prison limits against their will, often kept there by the strong arm of military power, uniformly by the fear to leave. A vast amount of money is expended by the United States, intentionally for their benefit, but really in the useless employment of white persons who sign vouchers regularly, but contribute but little amelioration to those who have no desire that they shall continue among them, and who tolerate their presence because afraid to expel them. The reservation policy in no wise benefits the Indians. Reservations are by the Indians generally regarded as mere prison limits, restraining their freedom and

MEMORIALS.

be expended under the supervision of some person connected with the service of the United States Government, and as in duty bound your memorialists will ever pray.

Passed the House of Representatives October 12, 1875.

ELWOOD EVANS,

Speaker of the House of Representatives.

Passed the Council October 12, 1875.

B. F. SHAW.

President of the Council.

MEMORIAL

IN RELATION TO TERRITORIAL OFFICERS.

*To the Hon. Senate and House of Representatives
of the United States in Congress Assembled:*

Your memorialists the Legislative Assembly of the Territory of Washington, would respectfully represent, that section eighteen hundred and fifty-seven, (1857) of the Revised Statutes of the United States, takes from the people the right to elect their Territorial officers; that this right has been exercised by the people since the organization of the Territory; that the Territorial auditor, treasurer and superintendent of schools, are paid out of the Territorial treasury by the people; that by existing laws these officers are appointed by the governor; that our people are more competent to select these officers, than our governors, who too often are strangers sent among us, knowing nothing of our people, our wants, or our interests; that every principle of justice demands, that the people should have the right to select those officers, whose salary they pay; that the provisions of section 1857, in their results, are productive of principles obnoxious to freeman; that in effect, it is the

same principle against which our forefathers protested, when they charged the King with "erecting a multitude of new offices and sending swarms of officers, to harass our people and eat out their subsistence." Wherefore, we earnestly pray, that the law may be so amended, that the people may appoint those officers whose salary they pay.

And your memorialists as in duty bound will ever pray.

Our Delegate in Congress, is hereby instructed to use every means in his power, to procure the repeal of section 1857, so far as the same affects the Territory of Washington.

Passed the House of Representatives October 27, 1875.

ELWOOD EVANS,

Speaker of the House of Representatives.

Passed the Council October 25, 1875.

B. F. SHAW,

President of the Council.

MEMORIAL

ASKING FOR MAIL SERVICE FROM SEATTLE TO RENTON AND
LAKE WASHINGTON COAL MINES.

To the Hon. Post Master General of the United States:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent, the great inconvenience and expense to which the residents of Renton and Lake Washington Coal Mines of King county, Washington Territory, are subject for want of mail facilities. There are from two to three hundred men (and many have families) employed at each place, viz: Renton and Lake Washington coal mines, and they are much in need of mail facilities.

And your memorialists would respectfully recommend that

MEMORIALS.

MEMORIAL

RELATIVE TO THE ELECTION OR APPOINTMENT OF FEDERAL OFFICERS
IN THE TERRITORY OF WASHINGTON.

*To the Honorable Senate and House of Representatives
of the United States of America in Congress assembled:*

Your memorialists, the Legislative Assembly of the Territory of Washington, respectfully ask your honorable bodies so to change the organic law of this Territory, as to permit the legal voters of the Territory to elect all its officers in the same manner as the members of the Territorial Legislature and county officers are now elected. We urge your compliance with the prayer of this memorial for the following reasons:

1. Many officers, both executive and judicial, appointed by the Federal Government for this Territory, have been frequently absent from their posts of duty, and for so long a time as to seriously embarrass the Territory, and interfere at a very great degree with the administration of justice among us. During the past year two of our three judges have been absent from the Territory for many months, and both at the same time, so that in consequence of their absence the people of the Territory have suffered serious inconvenience and embarrassment. Their absence has also prevented the annual session of the Supreme Court of the Territory, and thus continued and aggravated the difficulties arising from a failure to hold court in some of the districts.

2. Our Territory is so remote from the seat of the Federal

Government, and its social and business relations of such a peculiar character as to require that they be put in charge of the best of men acquainted with them, and we are satisfied from our past experience as a Territory, that men cannot be found, as a general rule, to be sent to us from abroad, who will have, or can have that identification with our interests which is required for the intelligent and faithful discharge of the duties of office among us; and we are further convinced that the only practicable way of securing a good and faithful administration of law, is to hold the administrators to account before the people.

3. We put our prayer also on the ground of justice. We are citizens of the United States, loyal to the Government, and ready to fulfil all our obligations to it. We pay taxes under the revenue law, are represented in Congress by a delegate without a vote, thus measurably subjected to taxation without representation. Among our own people are citizens of that experience and capability in the discharge of public duties, men who have done good and faithful service to the government, and who as pioneers have borne and established its flag on these Pacific shores, who are justly entitled to whatever of privilege or emolument is connected with these offices. For these and other reasons we respectfully, though urgently, request your compliance with the prayer of this memorial. But in case your honorable bodies cannot comply with our petition, we respectfully ask you to aid and promote such legislation as will secure the appointment of citizens of this Territory only to office in the Territory.

And as in duty bound your memorialists will ever pray.

Passed the House of Representatives January 18, 1866.

EDWARD ELDRIDGE,

Speaker of the House of Representatives.

Passed the Council January 8, 1866.

HARVEY K. HINES,

President of the Council.

CHAPTER 179

[Senate Bill No. 3039]

ALCOHOL FUEL—TRANSFERS BETWEEN PLANTS, DENATURED REQUIREMENT, EXCLUSION

AN ACT Relating to alcohol fuel; and amending section 2, chapter 140, Laws of 1980 and RCW 66.12.130.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 140, Laws of 1980 and RCW 66.12.130 are each amended to read as follows:

Nothing in this title shall apply to or prevent the sale, importation, purchase, production, or blending of alcohol used solely for fuel to be used in motor vehicles, farm implements, and machines or implements of husbandry or in combination with gasoline or other petroleum products for use as such fuel. Manufacturers and distillers of such alcohol fuel are not required to obtain a license under this title. Alcohol which is produced for use as fuel shall be denatured in accordance with a formula approved by the federal bureau of alcohol, tobacco and firearms prior to the removal of the alcohol from the premises as described in the approved federal permit application; PROVIDED, That alcohol which is being transferred between plants involved in the distillation or manufacture of alcohol fuel need not be denatured if it is transferred in accordance with federal bureau of alcohol, tobacco and firearms regulation 27 CFR 19.996 as existing on the effective date of this 1981 act. The exemptions from the state liquor control laws provided by this section only apply to distillers and manufacturers of alcohol to be used solely for fuel as long as the manufacturers and distillers are the holders of an appropriate permit issued under federal law.

Passed the Senate February 27, 1981.

Passed the House April 22, 1981.

Approved by the Governor May 14, 1981.

Filed in Office of Secretary of State May 14, 1981.

CHAPTER 180

[Engrossed Senate Bill No. 3046]

PARTISAN ELECTIVE OFFICES, VACANCIES

AN ACT Relating to vacancies in partisan elective offices; amending section 2, page 28, Laws of 1866 as amended by section 3063, Code of 1881 and RCW 42.12.010; amending section 6, page 30, Laws of 1866 as amended by section 3066, Code of 1881 and RCW 42.12.030; and adding new sections to chapter 29.18 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 29.18 RCW a new section to read as follows:

If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the fourth Tuesday prior to the primary for the next general election following the occurrence of the vacancy, a successor shall be elected to that office at that general election. Except during the last year of the term of office, if such a vacancy occurs on or after the fourth Tuesday prior to the primary for that general election, the election of the successor shall occur at the next succeeding general election. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section.

NEW SECTION. Sec. 2. There is added to chapter 29.18 RCW a new section to read as follows:

Filings for a partisan elective office shall be opened for a period of three normal business days whenever, on or after the first day of the regular filing period and before the fourth Tuesday prior to a primary, a vacancy occurs in that office, leaving an unexpired term to be filled by an election for which filings have not been held.

Any such special three-day filing period shall be fixed by the election officer with whom declarations of candidacy for that office are filed. The election officer shall give notice of the special three-day filing period by notifying the press, radio, and television in the county or counties involved, and by such other means as may be required by law.

Candidacies validly filed within the special three-day filing period shall appear on the primary ballot as if filed during the regular filing period.

NEW SECTION. Sec. 3. There is added to chapter 29.18 RCW a new section to read as follows:

Where a vacancy occurs in any partisan county elective office, other than a member of the county legislative authority, the county legislative authority may appoint an employee that was serving as a deputy or assistant in such office at the time the vacancy occurred as an acting official to perform all necessary duties to continue normal office operations. The acting official will serve until a successor is either elected or appointed as required by law. This section does not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section.

Sec. 4. Section 2, page 28, Laws of 1866 as amended by section 3063, Code of 1881 and RCW 42.12.010 are each amended to read as follows:

Every elective office shall become vacant on the happening of ~~((either))~~ any of the following events ~~((before the expiration of the term of such officer. First;))~~:

- (1) The death of the incumbent; ~~((second;))~~
- (2) His or her resignation. A vacancy caused by resignation shall be deemed to occur upon the effective date of the resignation; ~~((third;))~~

(3) His or her removal; ~~((fourth;))~~

(4) His or her ceasing to be ~~((an inhabitant))~~ a legally qualified elector of the district, county, city, town ~~((or village for))~~, or other municipal or quasi municipal corporation from which he or she shall have been elected or appointed ~~((, or within which the duties of his office are to be discharged))~~; ~~((fifth;))~~

(5) His or her conviction of ~~((an infamous crime))~~ a felony, or of any offense involving a violation of his or her official oath; ~~((sixth;))~~

(6) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit such oath or bond within the time prescribed by law; ~~((seventh;))~~

(7) The decision of a competent tribunal declaring void his or her election or appointment; ~~((eighth;))~~ or

(8) Whenever a judgment shall be obtained against ~~((such officer))~~ that incumbent for breach of the condition of his or her official bond.

Sec. 5. Section 6, page 30, Laws of 1866 as amended by section 3066, Code of 1881 and RCW 42.12.030 are each amended to read as follows:

Whenever any officer resigns his office before the expiration of his term, or the office becomes vacant from any other cause, and at a subsequent special election such vacancy is filled, the person so elected to fill such vacancy shall ~~((not hold the office any longer than the original incumbent who resigned would have been entitled to hold the office))~~ hold office for the remainder of the unexpired term.

NEW SECTION. Sec. 6. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the Senate February 11, 1981.

Passed the House April 20, 1981.

Approved by the Governor May 14, 1981.

Filed in Office of Secretary of State May 14, 1981.

CHAPTER 181

[Engrossed Senate Bill No. 3049]

HOSPITAL PATIENT CARE QUALITY REVIEW COMMITTEES, CIVIL IMMUNITY—HEALTH CARE PROVIDERS, STAFF PRIVILEGE REVOCATION, RECORDS CONFIDENTIALITY

AN ACT Relating to health care institutions' confidentiality of records; and amending section 1, chapter 144, Laws of 1971 ex. sess. as last amended by section 1, chapter 17, Laws of 1979 and RCW 4.24.250.

Be it enacted by the Legislature of the State of Washington:

Date ballots available, mailed (as amended by 2011 c 10).

~~(1) Except where a recount or litigation ((under RCW 29A.68.014)) is pending, the county auditor ((shall have sufficient absentee ballots available for absentee voters of that county, other than overseas voters and service voters, at least twenty days before any primary, general election, or special election. The county auditor)) must mail ((absentee)) ballots to each voter ((for whom the county auditor has received a request nineteen days before the primary or election)) at least eighteen days before ((the)) each primary or election, and as soon as possible for all subsequent registration changes. ((For a request for an absentee ballot received after the nineteenth day before ((the primary or election, the county auditor shall make every effort to mail ballots within one business day, and shall mail the ballots within two business days.)))))~~

~~(2) ((At least thirty days before any primary, general election, or special election, the county auditor shall mail ballots to all overseas and service voters.))~~ Except where a recount or litigation is pending, the county auditor must mail ballots to each service and overseas voter at least thirty days before each primary or election. A request for a ballot made by an overseas or service voter after that day must be processed immediately.

~~(3) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each request for a replacement ballot.~~

~~(4) Each county auditor shall certify to the office of the secretary of state the dates the ballots prescribed in subsection (1) of this section were available and mailed.~~

~~((4) If absentee ballots will not be available or mailed as prescribed in subsection (1) of this section, the county auditor shall immediately certify to the office of the secretary of state when absentee ballots will be available and mailed. Copies of this certification must be provided to the county canvassing board, the press, jurisdictions with issues on the ballot in the election, and any candidates.~~

~~(5) If absentee ballots were not available or mailed as prescribed in subsection (1) of this section, for a reason other than a recount or litigation, the county auditor, in consultation with the certification and training program of the office of the secretary of state, shall submit a report to the office of the secretary of state outlining why the deadline was missed and what corrective actions will be taken in future elections to ensure that absentee ballots are available and mailed as prescribed in subsection (1) of this section.~~

~~(6))~~ (5) Failure to ((have absentee ballots available and mailed)) mail ballots as prescribed in ((subsection (1) of)) this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election.

[2011 c 10 § 38; 2006 c 344 § 13; 2004 c 266 § 13. Prior: 2003 c 162 § 2; 2003 c 111 § 1007; prior: 1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.36.270, 29.30.075.]

Notes:

Notice to registered poll voters -- Elections by mail -- 2011 c 10: See note following RCW 29A.04.008.

Date ballots mailed (as amended by 2011 c 349).

~~(1) Except where a recount or litigation ((under RCW 29A.68.014)) is pending, the county auditor ((shall have sufficient absentee ballots available for absentee voters of that county, other than overseas voters and service voters, at least twenty days before any primary, general election, or special election. The county auditor)) must mail ((absentee)) ballots to each voter ((for whom the county auditor has received a request nineteen days before the primary or election)) at least eighteen days before ((the)) each primary or election, and as soon as possible for all subsequent registration changes. ((For a request for an absentee ballot received after the nineteenth day before the primary or election, the county auditor shall make every effort to mail ballots within one business day, and shall mail the ballots within two business days.))~~

~~(2) ((At least thirty days before any primary, general election, or special election, the county auditor shall mail ballots to all overseas and service voters.))~~ Except where a recount or litigation is pending, the county auditor must mail ballots to each

service and overseas voter at least thirty days before each special election and at least forty-five days before each primary or general election. A request for a ballot made by an overseas or service voter after that day must be processed immediately.

(3) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each request for a replacement ballot.

(4) Each county auditor shall certify to the office of the secretary of state the dates the ballots (~~prescribed in subsection (1) of this section were available and~~) were mailed, or the reason and date the ballots will be mailed if the ballots were not mailed timely.

~~((4) If absentee ballots will not be available or mailed as prescribed in subsection (1) of this section, the county auditor shall immediately certify to the office of the secretary of state when absentee ballots will be available and mailed. Copies of this certification must be provided to the county canvassing board, the press, jurisdictions with issues on the ballot in the election, and any candidates.~~

~~(5) If absentee ballots were not available or mailed as prescribed in subsection (1) of this section, for a reason other than a recount or litigation, the county auditor, in consultation with the certification and training program of the office of the secretary of state, shall submit a report to the office of the secretary of state outlining why the deadline was missed and what corrective actions will be taken in future elections to ensure that absentee ballots are available and mailed as prescribed in subsection (1) of this section.~~

~~(6)) Failure to (~~have absentee ballots available and mailed~~) mail ballots as prescribed in (~~subsection (1) of~~) this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election.~~

[2011 c 349 § 16; 2006 c 344 § 13; 2004 c 266 § 13. Prior: 2003 c 162 § 2; 2003 c 111 § 1007; prior: 1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.36.270, 29.30.075.]

Notes:

Reviser's note: (1) The code reviser has determined that the 2011 amendments to this section are not mergeable under RCW 1.12.025(2).

(2) RCW 29A.40.070 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date -- 2011 c 349: See note following RCW 29A.04.255.

Effective date -- 2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Effective date -- 2004 c 266: See note following RCW 29A.04.575.

Policy -- 2003 c 162: "It is the policy of the state of Washington that individuals voting absentee and mail ballots receive their ballots in a timely and consistent manner before each election. Since many voters in Washington state have come to rely upon absentee and mail voting, mailing the ballots in a timely manner is critical in order to maximize participation by every eligible voter." [2003 c 162 § 1.]

Effective date -- Severability -- 1977 ex.s. c 361: See notes following RCW 29A.16.040.