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SUPREME COURT OF THE STATE OF WASHINGTON

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VICKI 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.

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MARIE C. CLARKE,

Petitioner,

v.

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

Respondents.

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AMICUS BRIEF OF THE STATE OF WASHINGTON

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## I. INTRODUCTION

This Court should uphold the statutory requirement that a person must be a resident of a county in order to be eligible as a candidate in an election for that county's superior court position. The plain meaning of this long-standing requirement applies to county superior court positions, and is consistent with the Washington Constitution. As this Court recognized in *Gerberding v. Munro*, 134 Wn.2d 188, 949 P.2d 1366 (1998), the presumption in favor of eligibility for public office is an underlying legal principle that enlightens our understanding of the Washington Constitution. So too is the legal principle, reflected in Washington's long-standing statutes, that citizens must be electors of a county in order to hold public office in that county. The State respectfully requests that the Court uphold both of these principles in affirming the validity of statutes requiring a candidate to be eligible to vote for the office that the candidate seeks to fill.

## II. IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus Curiae State of Washington submits this brief at the request of the Court. The State has several important interests that may be affected by this case. First, the State has an interest in clarifying for candidates, voters, and election officials the qualifications and requirements for access to ballots for superior court judges. Second, the

State has an interest in upholding and defending, to the greatest extent possible, the constitutionality of its statutes. Third, the State has an interest in the sound construction of the Washington Constitution.

### **III. ISSUES ADDRESSED BY AMICUS**

The parties in this matter have provided thorough and well-researched briefing on the issues presented to the Court. Accordingly, the State will not present a comprehensive analysis of the issues presented in this case. Instead, rather than repeat the parties' analyses, the State will focus on issues that may not have been as fully developed by the parties. *See* RAP 10.3(e) (directing amici to avoid repetition of matters addressed in other briefs). Specifically, the State will address the following issues:

1. Whether the Court should hear this case where appeals from petitions brought pursuant to the election statutes used here are not appealable as of right, but the Court has the inherent power to review such cases, and judicial economy and other considerations favor the Court reaching the merits.

2. Whether a statute requiring county residency for "any elective public office" within such county applies to superior court judges, where the plain language of the statute encompasses judicial offices, only county residents may vote for the superior court position, and related statutes

make clear that the residency requirement is tied to the geographic area from which voters can vote for the office.

3. Whether a statute requiring candidates for a county superior court position to be residents of that county is prohibited by the Washington Constitution where the requirement is not expressly contrary to constitutional text and the principle that one must be eligible to vote for an office in order to hold the office is consistent with the presumption favoring eligibility for public office.

#### IV. ANALYSIS

##### **A. This Court Should Hear This Appeal Pursuant To This Court's Inherent Power Of Review**

The State concurs with Respondents Christine Schaller and Kim Wyman that this action is not appealable as of right. *Hatfield v. Greco*, 87 Wn.2d 780, 781, 557 P.2d 340 (1976). As recognized by respondents, the Court nevertheless retains an inherent constitutional power to review this matter. *See Kriedler v. Eikenberry*, 111 Wn.2d 828, 835-36, 766 P.2d 438 (1989) (citing Const. art. IV, § 4). This Court should exercise its inherent authority for judicial economy and to provide guidance on an issue likely to recur.

RCW 29A.68.011 provides, in its final paragraph, that in a case challenging the printing of a candidate's name on the primary or general

election ballot, the case “shall be heard and finally disposed of by the court not later than five days after the filing thereof.” This Court has held that the phrase “heard and finally disposed of” means that “no appeal is available in the special proceeding here involved.”<sup>1</sup> *Hatfield*, 87 Wn.2d at 781 (considering prior version of RCW 29A.68.011, then codified as RCW 29.04.030). The legislature recognized in enacting RCW 29A.68.011 that even expedited appellate processes could impede elections, given the short time available to election officials to prepare and print ballots. RCW 29A.68.011, therefore, simply authorizes a special proceeding to provide expedited judicial review of whether a candidate’s name should appear on the ballot. *Hatfield*, 87 Wn.2d at 781-82. Once that question is decided and the ballots are printed, the “proper and exclusive method of determining the right to public office” is a *quo warranto* action. *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 893, 969 P.2d 64 (1998). *But see In re Election Contest Filed by Coday*,

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<sup>1</sup> The petitions here were filed pursuant to RCW 29A.68.011. CP at 6-9, 63-66. Actions brought under RCW 29A.68.011(1) and (3) are not appealable. *Schillberg v. Williams*, 115 Wn.2d 809, 812, 801 P.2d 241 (1990) (referencing former RCW 29.04.030). Although their respective petitions do not cite specific paragraphs of RCW 29A.68.011, the relief they sought was to exclude Christine Schaller from the ballot, which is the relief authorized by subsections (1) and (3) of RCW 29A.68.011. CP at 9, 65-66. Because the relief sought is the relief described by subsections (1) and (3), those paragraphs form the basis of both actions. *Becker v. Cnty. of Pierce*, 126 Wn.2d 11, 20-21, 890 P.2d 1055 (1995).

156 Wn.2d 485, 495, 130 P.3d 809 (2006) (suggesting remedies other than *quo warranto* action are available under RCW 29A.68).

That does not mean that this Court is foreclosed from reviewing this appeal, and it should do so here. *Kriedler*, 111 Wn.2d at 837. The absence of a statutory right of appeal under RCW 29A.68.011(1) and (3) is rooted in the legislative intent “to obtain the speedy determination of an emergent matter because of the need for certainty as to what will appear on a ballot a reasonable time in advance of any election.” *Hatfield*, 87 Wn.2d at 782. In this case, the parties no longer seek to exclude Ms. Schaller from the ballot, but address only her eligibility to serve if elected. This concession to the reality of the election calendar removes a powerful concern that would otherwise militate strongly against this Court assuming jurisdiction. Judicial economy and the public interest also weigh in favor of resolving the merits of this action, rather than allowing them to abide a new post-election action. Regardless of the outcome of the election, the question of whether a non-county resident should have appeared on the ballot is an important, and likely recurring, issue.

If the Court exercises its inherent power of review, the standard of review would be whether “the trial court’s decision is arbitrary, capricious, or contrary to law.” *Kriedler*, 111 Wn.2d at 837. Accordingly, the standard of review is not merely whether the trial court’s action was

“arbitrary” or “capricious,” but also whether it is “contrary to law.” *Kriedler*, 111 Wn.2d at 837. In determining whether the trial court’s decision is contrary to law, the Court must also consider that a “statute is presumed constitutional and parties challenging its constitutionality must demonstrate its unconstitutionality beyond a reasonable doubt.” *Gerberding v. Munro*, 134 Wn.2d 188, 196, 949 P.2d 1366 (1998).

A related point is the appropriate remedy if this Court determines that Ms. Schaller is ineligible, but she wins the election. State law provides that in that event the office should be declared vacant. RCW 42.12.010(4); *State ex rel. Quick-Ruben*, 136 Wn.2d at 898-99. The governor could fill the position by appointment, and the position would appear on the next general election ballot, in 2013, for an election to fill the remaining unexpired term. RCW 2.08.120. Mr. Johnson’s suggestion that he should be declared the winner even if he loses the election is not sound. *State ex rel. Quick-Ruben*, 136 Wn.2d at 899 (a candidate’s electoral defeat deprives that candidate of any claim to the office); *see also State ex rel. Ewing v. Reeves*, 15 Wn.2d 75, 81-82, 129 P.2d 805 (1942) (rejecting a request to add the name of the third place candidate to the ballot after the candidate finishing first in the primary died before the general election); AGO 1999 No. 5, at 3-5 (noting weight of authority that

votes cast for disqualified candidates are not nullities and discussing choices open to voters when candidates are disqualified).

**B. RCW 42.04.020 And Related Statutes Apply To Judicial Candidates And Exclude Judicial Candidates Who Are Not Electors Of The County They Seek To Serve**

The legislature has generally required elected officials in this state to be able to vote in the jurisdiction they serve. State law provides:

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.

RCW 42.04.020. The statute unambiguously applies to “any elective public office within the state of Washington” and does not expressly exclude judges. RCW 42.04.020. The conclusion that RCW 42.04.020 applies to superior court judges is accordingly plain on the statute’s face and should be given effect. *TracFone Wireless, Inc. v. Dep’t of Revenue*, 170 Wn.2d 273, 281, 242 P.3d 810 (2010).

A second question potentially arises as to precisely what RCW 42.04.020 requires when applied to superior court judges. The statute is drafted generally to apply to all elected officials at all levels of state and local government, and requires that such officials “be a citizen of

the United States and state of Washington and an elector of such” jurisdiction.<sup>2</sup> RCW 42.04.020.

It could be argued that this statute requires a superior court judge to be an elector of Washington, and not necessarily that he or she reside within a specific county. This is because superior court judges serve both state and county functions, and are for some purposes regarded as officers of both the state and of the county in which they serve. *E.g.*, *State ex rel. Edelstein v. Foley*, 6 Wn.2d 444, 448, 107 P.2d 901 (1940) (recognizing the “dual position” of superior court judges as both state officers and county officers).

A construction that RCW 42.04.020 merely requires superior court judges to be electors of the state, rather than of the specific county, could avoid the necessity of addressing a constitutional question, at least in this case. *Duskin v. Carlson*, 136 Wn.2d 550, 557, 965 P.2d 611 (1998) (“Where possible, statutes will be construed so as to avoid any unconstitutionality.”). But reading RCW 42.04.020 in context with other, related statutes shows that it requires county elector status for superior court judges, rather than state elector status. *See Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002) (the

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<sup>2</sup> To require that an elected official be an “elector” of the jurisdiction means that the person must be qualified to vote in that jurisdiction. RCW 29A.04.061. Qualifications to vote include residence. Const. art. VI, § 1.

meaning of a statute “is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question”); *Hallauer v. Spectrum Props., Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540 (2001) (related statutes must be construed together to form unified whole).

RCW 29A.20.021(3) directs election officials to exclude candidates from the ballot based on residency. “The name of a candidate for an office shall not appear on a ballot for that office unless . . . 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.” RCW 29A.20.021(3). Subsection (3) continues by explaining that, “[f]or the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office.”<sup>3</sup> This sentence explicitly ties a candidate’s eligibility for office to the ability to vote for that same office, and precludes a candidate’s name from appearing on the ballot unless she is registered to vote in the same geographic area as are the voters who may vote for the office. RCW 29A.20.021(3). Superior court judges are elected by the voters of

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<sup>3</sup> Absent that explanation, it might be argued that RCW 29A.20.021(3) does not apply to judicial offices, because judges do not “represent” voters in the same sense that other elected officials do. *Eugster v. State*, 171 Wn.2d 839, 846, 259 P.3d 146 (2011) (“The judiciary has fundamental obligations of impartiality and independence that do not apply to elected representatives of the legislative branch.”).

specific counties.<sup>4</sup> Const. art. IV, § 5; RCW 2.08.060. Moreover, RCW 29A.20.021 provides an exception to this residence requirement only for municipal court judges and candidates for congressional office. RCW 29A.20.021(3), (4). The exclusion of municipal court judges recognizes that the legislature has, by statute, allowed municipal court judges to reside in the county where a city is located rather than in the city.<sup>5</sup> RCW 3.50.057. The exclusion of municipal court judges and congressional candidates shows that the statute applies to judicial officers and that candidates for all state offices other than municipal court judges must comply with the residence requirement. *See In re Detention of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (“to express one thing in a statute implies the exclusion of the other”).

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<sup>4</sup> In some instances, superior court judges are elected by the voters of multi-county judicial districts. *See* RCW 2.08.064, .065 (establishing multi-county judicial districts). In those instances, RCW 29A.20.021 would require a candidate for superior court to be registered to vote in any of the counties of a multi-county judicial district, because that would be the geographic area represented by the office.

<sup>5</sup> The statutory eligibility requirements for municipal court judges do not implicate constitutional concerns because municipal court judges are not constitutional officers whose qualifications are set in the constitution, and the constitution delegates authority to the legislature to set forth the jurisdiction and powers of municipal courts. Const. art. IV, § 12 (“The legislature shall prescribe by law the jurisdiction and powers of the inferior courts which may be established in pursuance of this Constitution.”). This Court has previously held that under such circumstances, the legislature may also prescribe qualifications for such judicial officers. *In re Contested Election of Bartz*, 47 Wn.2d 161, 167-68, 287 P.2d 119 (1955) (upholding statutory qualification that justices of the peace be attorneys). Similarly, any ruling by the Court in this case would not affect statutory residency requirements for Court of Appeals judges, because the constitution delegates to the legislature the authority to determine the jurisdiction and manner of election of Court of Appeals judges. Const. art. IV, § 30.

RCW 42.12.010(4) additionally provides that an office becomes vacant if the elected official “ceas[es] 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[.]” This statute, like RCW 29A.20.021(3), provides an exception to this residence requirement for municipal court judges, demonstrating that the legislature contemplated bringing judicial officers within its scope. RCW 42.12.010(4). The statute’s express reference to the county “from which he or she shall have been elected or appointed” excludes any construction other than a holding that an elected official must be a registered voter of the same geographic area as the voters eligible to vote for the office.

Reading these three statutes together confirms that RCW 42.04.020 requires a superior court judge to be an elector of the county served by the office. It also follows that RCW 29A.20.021(3) excludes a judicial candidate from the ballot unless he or she satisfies this residence requirement, and that RCW 42.12.010(4) renders the office vacant if an incumbent ceases to be a legally registered voter of the county.

**C. The State Constitution Does Not Prohibit The Legislature From Requiring Candidates For County Superior Court Positions To Be Electors In That County**

As discussed above, the plain meaning of RCW 42.04.020 and related statutes requires a particular county's superior court judges to be electors of that county, and therefore to be residents of that county. A statutory requirement is presumed constitutional, and is invalid only if "either expressly or by fair inference, it is prohibited by the state and federal constitutions." *Washington State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 300-01, 174 P.3d 1142 (2007) (quoting *State ex rel. Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 248, 88 P.3d 375 (2004)). The presumption that statutes are constitutional applies with even greater force when analyzing state constitutional restrictions because, unlike the federal constitution, a state constitution is not a grant of power but a limitation of the otherwise plenary power of the legislature. *E.g.*, *Robb v. City of Tacoma*, 175 Wash. 580, 586-87, 28 P.2d 327 (1933).

The statute at issue here is not prohibited by the express language of the Washington Constitution. *See generally* Const. art. IV (no express prohibition on statutory qualifications for judicial offices). Nor is it prohibited by fair inference, because the requirement that a person seeking to hold office be eligible to vote for that office is consistent with the

foundational legal principles underlying the presumption favoring eligibility for office. Accordingly, the statute should be upheld.

In *Gerberding*, this Court held that a statute imposing term limits on certain state constitutional officers was invalid, concluding that statutes could not add qualifications to those proscribed in the state constitution for constitutional officers.<sup>6</sup> *Gerberding v. Munro*, 134 Wn.2d 188, 191, 949 P.2d 1366 (1998). In doing so, the Court relied not on any specific language in the state constitution prohibiting statutory qualifications, but rather on an underlying legal principle favoring eligibility for public office and history of the constitutional sections addressing qualifications for office. *Id.* at 201-03.

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<sup>6</sup> Whatever the outcome of this case, the Court should be cognizant that not all statutes that affect a candidate's appearance on the ballot establish qualifications for office. The United States Supreme Court has described a qualification for office as a legal requirement that creates an "absolute bar[] to service" in office. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 828, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995). Qualifications are those provisions of law that "render[] a class of potential candidates ineligible for ballot position." *Id.* at 835. Courts have recognized two categories of statutes that affect ballot access without establishing qualifications for office, those that "simply regulate electoral procedures and [those that regulate] candidate choices." *Nat'l Comm. of the U.S. Taxpayers Party v. Garza*, 924 F. Supp. 71, 75 (W.D. Tex. 1996). In the first category, for example, a statute requiring a candidate for federal office to first resign from state office has been upheld as merely regulating the choices made by a state officeholder. *Joyner v. Mofford*, 706 F.2d 1523, 1528 (9th Cir. 1983). In the second category, courts uphold statutes that merely require candidates to demonstrate a sufficient modicum of public support to merit inclusion on the ballot, or that satisfy reasonable procedural requirements for placement on the ballot. See, e.g., *Munro v. Socialist Workers Party*, 479 U.S. 189, 193, 107 S. Ct. 533, 93 L. Ed. 2d 499 (1986) (requiring a showing of a modicum of support among the potential voters for the office); *Van Susteren v. Jones*, 331 F.3d 1024, 1027 (9th Cir. 2003) (requirement of disaffiliation from political party not a qualification).

With respect to the principle favoring eligibility for office, *Gerberding* quoted an earlier Washington opinion that demonstrates that the presumption in favor of eligibility for office ultimately derives from the right of a people to govern themselves through voting and holding public office:

Since the right to participate in the government is the common right of all, it is the unqualified right of any eligible person within the state to aspire to any of these offices, and equally the unqualified right of the people of the state to choose from among those aspiring the persons who shall hold such offices.

*Gerberding*, 134 Wn.2d at 202 (quoting *State v. Schragg*, 158 Wash. 74, 78, 291 P. 321 (1930)). The fundamental principle animating the presumption in favor of eligibility is, thus, the right to participate in government. This principle begs the question of *which* government people have a right to participate in. It makes little sense to establish as a foundational principle that a citizen of Kansas must be presumed eligible to hold office in Washington, or that a Canadian citizen must be presumed eligible to hold office in the United States. Over a century ago, the Wisconsin Supreme Court recognized this in rejecting an argument that an alien was eligible for public office because no statute or constitutional provision prohibited aliens from holding office. *State ex rel. Off v. Smith*, 14 Wis. 497, 1861 WL 1611, at \*3-4 (1861). The court reasoned that

“government is instituted by the citizens for their liberty and protection, and that it is to be administered and its powers and functions exercised only by them and through their agency” and that it would be an “enormous absurdity” that a person who may not vote for an office may be elected to the office. *State ex rel. Off*, 1861 WL 1611, at \*3, \*4.

The quotation from *Schragg* alludes to this principle with respect to state government when describing the right to hold office and to vote as applying to those “within the state.” *State v. Schragg*, 158 Wash. 74, 78, 291 P. 321 (1930). The foundation of the principle, however, is the right to vote for offices of the relevant government—state or county. Under article VI, section 1 of the Washington Constitution, residency within the county bounds the right to vote for offices of the county: “All persons of the age of eighteen years or over who are citizens of the United States and who have lived in the state, *county*, and precinct thirty days immediately preceding the election at which they offer to vote . . . shall be entitled to vote at all elections.” (Emphasis added).

The rule that a person may seek election to public office only if entitled to vote for that office is an important principle of our political system. As the Montana Supreme Court held, quoting from a legal treatise published just one year after our state constitution was adopted:

Where no limitations are prescribed, the right to hold a public office under our political system is an implied attribute of citizenship and is presumed to be coextensive with that of voting at an election held for the purpose of choosing an incumbent for that office; those, and those only, who are competent to select the officer being deemed competent also to hold the office.

*Wilson v. Hoisington*, 110 Mont. 20, 98 P.2d 369, 370 (1940) (quoting Floyd Russell Mechem, *A Treatise On The Law Of Public Office And Officers*, § 67 (Callaghan and Co. 1890)). Another treatise, often relied upon by this Court, and also published just a year after adoption of our state constitution, similarly describes the rule that only an elector can hold an office as “probably the general understanding.” Thomas McIntyre Cooley & Alexis C. Angell, *A Treatise On The Constitutional Limitations Which Rest Upon The Legislative Power Of The States Of The American Union* 748 n.1 (6th ed. Little, Brown and Co. 1890).

While the presumption that eligibility for office is co-extensive with the ability to vote for that office could be overcome by a constitutional provision or statute, this long-standing principle in our state should not be overcome merely by implication based on the presumption favoring eligibility for office. *Cf. State ex rel. Off*, 1861 WL 1611, at \*3 (quoting with approval Massachusetts Supreme Court responding to questions from the legislature that if non-citizens are to be given the right to vote, it should not be done by implication but from “clear and manifest

expressions”). This is particularly true where, as explained by this Court in *Schragg*, and embraced in *Gerberding*, the presumption in favor of eligibility for office is itself grounded in the right to participate in the relevant government through voting for offices of that government.

The principle that one must be eligible to vote for an office in order to qualify for the office has always been the rule in Washington.<sup>7</sup> It is evidenced by the statutes in existence at the time the Washington Constitution was adopted, and it continues in force today. *See, e.g.*, RCW 42.04.020 (requiring elector status to be eligible for any elective office); Laws of 1919, ch. 139, § 1 (same); Code of 1881, ch. 238, § 3050, p. 530 (same); Terr. Laws of 1855, § 1, p. 7 (second Act) (same). As both the Mechem and Cooley treatises recognize, the presumption that only those entitled to vote for an office are eligible to hold it is not universal. Mechem § 67; Cooley at 748 n.1. But our territorial and state statutory history shows that it has always governed in Washington. Moreover, statutes in existence at the time the constitution was adopted remain in force unless “repugnant” to the constitution. Const. art. XXVII, § 2. As explained above, the statutory requirement that one must be an elector of a county to hold county office, including judicial offices, is neither

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<sup>7</sup> As noted above, one exception to the rule, created by statute, allows municipal court judges to reside in the county where a city is located rather than in the city where the court is created. RCW 3.50.057.

expressly nor by inference prohibited by the Washington Constitution. Accordingly, it is not “repugnant” to the constitution and remains valid.

Washington’s long adherence to the principle recognized in the Mechem and Cooley treatises that, unless otherwise stated, a person must be eligible to vote for an office in order to fill it, is further evidenced by the fact that despite over 120 years of history since our state constitution was adopted, the issue has never before been squarely presented in a published opinion.<sup>8</sup> This long history without such a controversy further reflects the well-established understanding of this legal and political principle both by voters and candidates.

This principle was included in the original draft of the state constitution relating to Elections and Elective Rights, although more broadly stated than then-existing statutes to include appointed offices as well as elective offices. Original section 7 proposed by the Committee On Elections And Elective Rights stated: “No person except a qualified elector shall be elected or appointed to any office, civil or military.” *The Journal of the Washington State Constitutional Convention 1889*, at 290

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<sup>8</sup> In one reported decision, this Court considered a claim that a superior court judge was ineligible because he was not truly a resident of the county for which he was elected despite being a registered voter in the county. *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 902 n.10, 969 P.2d 64 (1998). The Court affirmed dismissal on other grounds and specifically stated that it was not ruling on the residency issue, but stated that residency “may not even be required” for a superior court judicial candidate. *Id.* at 902.

(Beverly Paulik Rosenow, ed., Book Publishing Co. 1962). Upon motion, the section was deleted. *Id.* at 337. However, its deletion does not indicate abandonment of the legal principle that only electors may hold elected office. First, the principle itself and the long-standing statutory requirement applicable to any elective public office remained effective in Washington. Code of 1881, ch. 238, § 3050, p. 530. Second, this Court has repeatedly declined to draw any conclusions from failed legislation because such conclusions are inherently speculative. *E.g.*, *State v. Cronin*, 130 Wn.2d 392, 400, 922 P.2d 694 (1996). Third, historical references explaining this deletion state that the section was deleted due to fears that it would prevent the appointment of underage legislative pages and women clerks, since at that time neither men under 21 years of age nor women had the right to vote. *See Tacoma Daily Ledger*, Aug. 13, 1889; *Tacoma Morning Globe*, Aug. 13, 1889.<sup>9</sup>

The principle that only electors for an office may seek election to the office has been a foundation of our state government since its inception and is consistent with the fundamental rationale behind the

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<sup>9</sup> This Court often refers to contemporary newspaper articles describing the constitutional convention to assist in interpreting the constitution. *E.g.*, *Washington Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 485, 90 P.3d 42 (2004); *Yelle v. Bishop*, 55 Wn.2d 286, 292, 347 P.2d 1081 (1959). Both newspaper articles are available at the Washington State Law Library in *Washington State Constitutional Convention 1889: Contemporary Newspaper Articles* (Marian Gould Gallagher Law Library 1998). As of this date, the *Tacoma Morning Globe* article can also be found at <http://lib.law.washington.edu/waconst/archive/Tacoma%20Globe/081389tacglo01.pdf>.

presumption in favor of eligibility for office—protecting participation in government. The statute embodying this principle should be upheld.

## V. CONCLUSION

The State respectfully requests that the Court uphold statutory requirements that a person must be eligible to vote for an office in order to be eligible to serve in that office.

RESPECTFULLY SUBMITTED this 4th day of October 2012.

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NO. 87823-4

**SUPREME COURT OF THE STATE OF WASHINGTON**

VICKI 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.

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MARIE C. CLARKE,

Petitioner,

v.

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

Respondents.

CERTIFICATE  
OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of Amicus Brief Of The State Of Washington to be served, via e-mail or U.S. mail as indicated, to those listed on the attached service list

DATED this 4th day of October 2012.

/s/

Wendy R. Scharber

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Cause No. 87823-4

Peter Gonick, WSBA No. 25616

The previous e-mail contained two copies of the Amicus Brief. We found a minor spelling error, I (Wendy Scharber) fixed it, and attached the corrected document. Unfortunately, I failed to delete the old document and replace it with the Certificate Of Service before sending it off to you.

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