

RB

NO. 87823-4

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SUPREME COURT OF THE STATE OF WASHINGTON

VICKI LEE ANNE PARKER and JAMES S. JOHNSON,

Appellants,

v.

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

Respondents.

And

MARIE C. CLARKE,

Appellant,

v.

KIM WYMAN, Thurston County Auditor, and
CHRISTINE SCHALLER- KRADJAN,

Respondents.

**APPELLANT MARIE CLARKE'S MOTION TO STRIKE
CHRISTINE SCHALLER'S AMENDED STATEMENT OF
ADDITIONAL AUTHORITIES**

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 ORIGINAL

I. INTRODUCTION

A Statement of Additional Authorities is not to serve as a respondent's surreply brief. Unfortunately, that is precisely what Respondent Christine Schaller seeks to do. She has filed a Statement of Additional Authorities that cites no new authorities and simply uses previously referenced authorities as a vehicle to provide the Court with argumentative, false statements regarding those authorities. As a result, Appellant Marie Clarke respectfully requests that the Court strike Ms. Schaller's Statement of Additional Authorities.

II. IDENTITY OF MOVING PARTY

Marie Clarke, Appellant, asks for the relief designated in part III.

III. STATEMENT OF RELIEF SOUGHT

~~Ms. Clarke respectfully requests that the Court strike the Amended~~
Statement of Additional Authorities filed by Ms. Schaller on October 22, 2012.

IV. FACTS RELEVANT TO MOTION

Ms. Schaller filed an Amended Statement of Additional Authorities on October 22, 2012.

V. GROUNDS FOR RELIEF AND ARGUMENT

- A. All Of The "Additional Authorities" Have Been Previously Cited In This Appeal.**

This Court has held that authorities “previously noted” in a case do not constitute “additional authorities.” *Brewer v. Fibreboard Corp.*, 127 Wn.2d 512, 531, 901 P.2d 297 (1995). As such, a statement of additional authorities will not be considered to the extent it contains previously noted authorities. *Id.*

All seven of the “additional” authorities contained in Ms. Schaller’s Amended Statement of Additional Authorities have been previously noted in this appeal.¹ In fact, one of those authorities—*Town of Tekoa v. Reilly*, 407 Wash. 202, 91 Pac. 769 (1907)—was cited in *three* previous briefs and was also discussed during oral argument. As such, none of these authorities are “additional” authorities, and the Court should strike Ms. Schaller’s Amended Statement of Additional Authorities as a result.

B. Many Of Ms. Schaller’s Descriptions Of These Authorities Contain Argument Not Permitted Under RAP 10.8.

Given that the purpose of submitting these authorities was not to

¹ *State ex rel Edelstein v. Foley*, 6 Wn.2d 444, 107 P.2d 901 (1940) (cited by State of Washington at page 8); Wash. Const. art VI, § 8 (cited in Ms. Schaller’s Answer to the State of Washington at page 11); Laws of 1854, §1 p. 309-10 (cited in Ms. Clarke’s Appellant’s Brief at pages 8 and 30, and in Ms. Schaller’s Respondent’s Brief at page 38); Code of 1881 § 1297 (cited in Mr. Johnson’s Appellant’s Brief at pages 2 and 17 and his Reply Brief at page 3); *Cedar County Committee v. Munro*, 134 Wn.2d 377, 950 P.2d 446 (1998) (cited in Ms. Clarke’s Appellant’s Brief at page 7); *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 Pac. 769 (1907) (cited in Ms. Clarke’s Appellant’s Brief at pages 20 and 27, her Reply Brief at page 10, and Ms. Schaller’s Answer to the State of Washington at page 2); *State ex rel. Dyer v. Twitchell*, 4 Wash. 715, 31 Pac. 19 (1892) (initially referenced by Chief Justice Madsen during oral argument); Laws of 1854, p. 310-11 (initially referenced by Ms. Schaller’s counsel during oral argument).

inform the Court of their existence, it is thus apparent why Ms. Schaller submitted them—as a vehicle for providing argumentative parentheticals in violation of RAP 10.8. RAP 10.8 provides: (“The statement should not contain argument[.]”). Most of Ms. Schaller’s references to these authorities violate this rule by either arguing what the authority “signif[ies],”² or by arguing about what the authority does *not* contain, rather than what it *does* contain.³ As a result, this is a second, independent basis for striking Ms. Schaller’s Amended Statement of Additional Authorities.

C. Many Of Ms. Schaller’s Descriptions Of These Authorities Are False.

It is axiomatic that counsel may not make false representations of law to the Court. RPC 3.3. Unfortunately, many of Ms. Schaller’s parentheticals contain statements of law that cannot be described as anything other than false. This is a third, independent basis for striking Ms. Schaller’s Amended Statement of Additional Authorities.

Regarding *Cedar County Committee v. Munro*, 134 Wn.2d 377, 950 P.2d 446 (1998), Ms. Schaller states, “a voter is different from an elector; the latter is one who qualifies by reason of age and citizenship to be eligible to vote.” As the following quote from that case indicates, this

² (regarding Laws of 1854, p. 310-11).

³ (regarding Wash. Const. art VI, § 8, Laws of 1854, §1 p. 309-10, Code of 1881 § 1297, *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 Pac. 769 (1907)).

is false:

A “voter” is one who has become eligible to vote by reason of registration, while an “elector” is merely one who is qualified, by reasons, e.g., of age and citizenship, to vote.

Id. at 384 (emphasis added). As Black’s law dictionary explains, “e.g.” means “for example,” while “i.e.” means “that is.” By using “e.g.” in *Cedar County*, this Court was not stating that the term “elector” only relates to age and citizenship, but was rather citing a nonexclusive list of examples of qualifications required for being eligible to vote. As the Constitution itself states, there are other qualifications, such as living “in the state, county, and precinct thirty days immediately preceding the election,”⁴ and, for felons, having civil rights restored.⁵

Regarding *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 Pac. 769 (1907). Ms. Schaller states, “nothing in this case defines what repugnancy to the Constitution for purposes of article XXVII, §2 means.” As the following quote from that case indicates, this is false:

By section 2 of article 27 of the Constitution these laws and special charters were continued in force, unless repugnant to the Constitution itself.

Are all these charter provisions to be held for naught, simply because the Constitution contains the general altruistic declaration that taxes shall be uniform with respect to persons and property? Had the framers of the Constitution been dissatisfied with the existing order of things, would we not expect to find some more satisfactory

⁴ Wash. Const. art. VI, § 1.

⁵ Wash. Const. art VI, § 2.

evidence of their discontent? ...

It was said in the Ide Case that the custom of imposing such taxes since statehood could not legalize the usurpation of power. While this is true, yet, when we consider that the custom during statehood is but the continuation of a custom running all through territorial days and sanctioned by territorial laws, a court should hesitate long before declaring it a usurpation of power.

Id. at 206-07.

Regarding Article IV, Section Eight of the Constitution, Ms. Schaller states, “vacancy in judicial positions is addressed by this constitutional provision, rather than a statute.” Yet this is false because nothing in this section states that it repeals and supplants the vacancy statute, RCW 42.12.010, which would be a bizarre result in any event given that Article IV, Section Eight applies to “any judicial officer.” Under Ms. Schaller’s view, even *District Court* or *Court of Appeals* judges, for whom even she concedes county or district residency is required, could move to Oregon or Canada after their election so long as she or he came to work in Washington state and was not absent from the state longer than sixty days.

Finally, regarding *State ex rel. Dyer v. Twitchell*, 4 Wash. 715, 31 Pac. 19 (1892), Ms. Schaller states, “a judge of the superior court is a state officer for purposes of statutes pertaining to the election of state officers.” This is false, as *Dyer* held that Superior Court judges are “state officers”

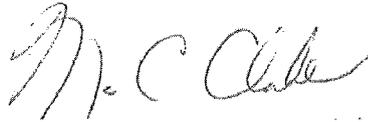
for the purposes of Article VI, Section 8 of the *Constitution*, not “for the purposes of statutes pertaining to the election of state officers.” *Id.* at 717-18, 720. Further, *Dyer* did not concern the qualifications of judges. Rather, it merely concerned whether the first election of said judges would be in 1890 or 1892, and the result was driven by the fact that Article IV, Section 5, which called for initial terms of said judges being three years from 1889, necessitated an election in 1892. Thus, as this Court later held in *State ex rel Edelstein v. Foley*, 6 Wn.2d 444, 448, 107 P.2d 901 (1940), “We have never held other than that a superior court judge occupies a dual position; that is, he is a state officer and also a county officer.”

Despite her misleading interpretation of authorities already cited, Ms. Schaller cannot avoid the requirement that for a Superior Court candidate to be eligible to seek and hold office, the candidate must have the same qualifications as an elector in the very election at issue—to include *county residency*. Otherwise, the entire election scheme set forth in Article IV, Section Five (allowing only county electors to vote), together with RCW 42.04.020 and RCW 42.12.010, statutes that are indisputably traced to territorial laws, and RCW 29A.20.021, must be violated. In the words of *Dyer*, 4 Wash. at 419: “Any other construction would not only do violence to well-settled rules, but would render the constitution inharmonious and contradictory.”

VI. CONCLUSION

For these reasons, Ms. Clarke respectfully requests that the Court strike Respondent Schaller's Amended Statement of Additional Authorities.

RESPECTFULLY SUBMITTED this 23rd day of October, 2012.



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PROOF OF SERVICE

I hereby certify that on October 23, 2012, Appellant Marie Clarke's Motion To Strike Christine Schaller's Amended Statement Of Additional Authorities was filed electronically with the Clerk of the Supreme Court and, due to the expedited briefing schedule and agreement of the parties, a copy was served via email on October 23, 2012, to the following parties or counsel of record:

1.	Supreme Court	supreme@courts.wa.gov
2.	Vicki Lee Ann Parker	vlaparker@aol.com
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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 23rd day of October, 2012, at Olympia, WA.



Marie C. Clarke

OFFICE RECEPTIONIST, CLERK

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Subject: RE: 87823-4 - Clarke v. Kim Wyman et al.; Appellant Marie Clarke's Motion to Strike Additional Authorities

Rec'd 10/23/2012

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Sent: Tuesday, October 23, 2012 7:39 AM

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Subject: 87823-4 - Clarke v. Kim Wyman et al.; Appellant Marie Clarke's Motion to Strike Additional Authorities

Good morning:

Attached for filing and service is a copy of Appellant Marie Clarke's Motion to Strike Additional Authorities. Thank you.

Marie C. Clarke
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