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SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

No. 95959-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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JANELLE RIDDLE, YAKIMA COUNTY CLERK,

Petitioner,

v.

DAVID A. ELOFSON, KEVIN S. NAUGHT, MICHAEL G.  
MCCARTHY, DOUGLAS L. FEDERSPIEL, BLAINE G. GIBSON.  
RUTH E. REUKAUF. GAYLE M. HARTHCOCK, and RICHARD H.  
BARTHFIELD, Judges of the Superior Court of the State of Washington  
for Yakima County.

Respondents.

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**PETITIONER'S SUPPLEMENTAL BRIEF**

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## I. INTRODUCTION

This original action before the Supreme Court addresses limits on the authority of Yakima County Superior Court Judges to order the elected Yakima County Clerk, Ms. Janelle Riddle, to provide additional bonding or forfeit her elected office for her failure to do so, and the procedure required for the Judges to lawfully issue such an order.

This original action is not about whether Ms. Riddle is a “good” clerk or a “bad” clerk, whether she should be subjected to recall, or whether a lawsuit should be commenced against her official bond. The manner in which Ms. Riddle has exercised her duties as Yakima County Clerk is not relevant to the issues before this Court.

Ms. Riddle’s petition requests the Supreme Court grant the following relief:

1. Rule that the action taken against Ms. Riddle by the Judges is unlawful and exceeds their constitutional and statutory authority.
2. Rule that the action taken against Ms. Riddle by the Judges is void as a violation of procedural due process, having been issued ex parte without notice to Ms. Riddle and without providing her an opportunity to be heard and defend against their action.

3. Enjoin the Judges from declaring the elected office of Ms. Riddle vacant, or otherwise taking action to remove Ms. Riddle from her elected office, based up Ms. Riddle's refusal or failure to file an additional \$200,000 bond.

## II. ASSIGNMENTS OF ERROR

### Assignment of Error No. 1

The Judges of the Yakima County Superior Court erred when they issued an order directing the Yakima County Clerk to provide a \$200,000 supplemental official bond or have her elected office declared vacant by the Judges.

### Issue Pertaining to Assignment of Error No. 1

Do the Superior Court Judges have legal and constitutional authority to require the County Clerk to provide an additional official bond that results in the Clerk's total official bonding exceeding the maximum amount allowed by RCW 36.16.050(3)?

### Assignment of Error No. 2

The Judges of the Yakima County Superior Court erred when they issued an order directing the Yakima County Clerk to provide a \$200,000 supplemental official bond or have her elected office declared vacant by

the Judges, without prior notice to the Clerk and without an opportunity for the Clerk to be heard prior to issuance of the order.

Issue Pertaining to Assignment of Error No. 2

Is an order of the Superior Court Judges directing the County Clerk to provide a \$200,000 supplemental official bond or have her elected office declared vacant by the Judges, without prior notice to the Clerk and without an opportunity for the Clerk to be heard prior to issuance of the order, void as a violation of procedural due process?

III. STATEMENT OF THE CASE

This is an original action against the Judges of the Superior Court of the State of Washington for Yakima County, in the nature of a writ of prohibition, pursuant to the Washington Constitution, Article IV, §4, RAP 16.1(b) and RAP 16.2, and RCW 7.16.290.

The Supreme Court has retained the petition of Ms. Riddle for a decision on the merits. (*Order* entered September 6, 2018.) The stay issued by Commissioner Johnston remains in effect. (*Ruling Granting Stay* entered June 18, 2018)

The parties filed an *Agreed Statement of Facts and Record* on September 28, 2018.<sup>1</sup> The facts and exhibits material to Ms. Riddle's petition and her requests for relief are as follows:

1. Petitioner, Janelle Riddle, is the duly elected Clerk of Yakima County for the term of January 1, 2015, through December 31, 2018. ASFR ¶1.

2. On January 13, 2015, Ms. Riddle filed her required public official's bond. The bond is no. 62256399 issued by Western Surety Company on January 8, 2015, and the amount of the bond is \$200,000. ASFR ¶2, Ex 1.

3. The Respondents are the Judges of the Superior Court of the State of Washington for Yakima County: David A. Elofson, Kevin S. Naught, Michael G. McCarthy, Douglas L. Federspiel, Blaine G. Gibson. Ruth E. Reukauf. Gayle M. Harthcock, and Richard H. Bartheld ("the Judges"). ASFR ¶3.

4. On May 4, 2018, the Judges, with Judges Douglas L. Federspiel and Blaine G. Gibson not present, issued an ex parte Order Directing Yakima County Clerk to Provide Supplemental Bond ("the Order"). The Order directed Ms. Riddle to "secure and provide proof of a supplemental bond in the sum of \$200,000" on

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<sup>1</sup> The *Agreed Statement of Facts and Record* is cited as ASFR.

or before June 6, 2018, to be maintained for the remainder of her term as elected Yakima County Clerk. ASFR ¶9, Ex 5.

5. The Order was issued without prior notice to Ms. Riddle and without an opportunity to be heard prior to issuance of the Order. ASFR ¶9.

6. The Order issued by the Judges was not issued as part of a Superior Court case and was not filed with the Clerk's office.

7. On May 4, 2018, Presiding Judge David A. Elofson issued a letter transmitting the Order to Ms. Riddle on behalf of "the judges of the Yakima County Superior Court," advising Ms. Riddle of the contents of the Order, and further advising Ms. Riddle that failure to comply with the Order "will require Yakima County Superior Court to declare your position vacant" pursuant to RCW 36.23.020. ASFR ¶11, Ex 6.

8. Ms. Riddle was personally served the Judges' Order and letter on May 7, 2018. ASFR ¶13.

9. The Yakima County Treasurer is required to maintain an official bond in the amount of \$250,000. ASFR ¶14.

10. On June 5, 2018, counsel for Ms. Riddle wrote to the Yakima County Prosecuting Attorney, who represented the Judges at that time. Ms. Riddle's counsel explained Ms. Riddle's

objections to the action taken by the Judges. Ms. Riddle requested the Judges reconsider their action, and vacate or withdraw their Order. ASFR 16, Ex 7.

11. On June 13, 2018, Presiding Judge David A. Eloffson issued a letter to the Prosecuting Attorney. The Judges affirmed their position that Ms. Riddle was required to provide a \$200,000 bond by June 18, 2018, or have her elected office declared vacant. ASFR 18, Ex 9.

12. Ms. Riddle has not requested additional time or secured an additional bond. ASFR ¶17.

13. On June 14, 2018, Ms. Riddle filed this original action against the Judges in the Supreme Court.

#### IV. ARGUMENT

##### A. *This Original Action is Properly Before the Supreme Court*

The Supreme Court has original jurisdiction in quo warranto, prohibition and mandamus actions against state officers. Wash. Const. art. IV, § 4; RAP 16.2(a).

A superior court judge is a state officer for the purposes of the Supreme Court's original jurisdiction under Article IV, §4. *State ex rel. Edelstein v. Foley*, 6 Wn.2d 444, 448, 107 P.2d 901 (1940); *Washington*

*State Council of County & City Employees, Council 2, AFSCME, AFL-CIO, Local 87 v. Hahn*, 151 Wn.2d 163, 167, 86 P.3d 774 (2004) (footnote 3); *Parker v. Wyman*, 176 Wn.2d 212, 221, 289 P.3d 628 (2012).

Each county's clerk is also the clerk of the superior court. Wash. Const. art. IV, §26.

This original action by Ms. Riddle challenges the action by the Judges, not as decision-makers in the context of a case, action, proceeding or other matter brought as a civil action in the superior court, but as an independent, direct action of the Judges as state officers. Ms. Riddle has no plain, speedy and adequate remedy in the ordinary course of law to prevent the Judges from unlawfully vacating her elected office as County Clerk, other than this original action in the Supreme Court. *Commanda v. Cary*, 143 Wn.2d 651, 655, 23 P.3d 1086 (2001); *City of Seattle v. Holifield*, 170 Wn.2d 230, 244-245, 240 P.3d 1162(2010); *Blomstrom v. Tripp*, 189 Wn.2d 379, 389, 402 P.3d 831(2017).

***B. The Judges' Order Directing the Clerk to Provide an Additional \$200,000 Bond Exceeded the Judges' Authority***

Ms. Riddle has a \$200,000 official bond. ASFR ¶2, Ex 1. The Judges' directed Ms. Riddle to provide a second \$200,000 official bond, thereby increasing her total bonding to \$400,000. ASFR ¶9, Ex 5. The

total bonding required by the Judges clearly exceeded the maximum amount the Judges may require of the Ms. Riddle under RCW 36.16.050(3).

The filing of official bonds by county elected officers is governed by RCW 36.16.050. All bonds of county officers must be approved by the county's legislative authority, except for the office of clerk. The judge, or the majority of judges, approves the clerk's bond:

Every county official before he or she enters upon the duties of his or her office shall furnish a bond conditioned that he or she will faithfully perform the duties of his or her office and account for and pay over all money which may come into his or her hands by virtue of his or her office . . . . Bonds of elective county officers shall be as follows:

\* \* \*

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his or her hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he or she is clerk: **PROVIDED, That the maximum bond fixed for the clerk shall not exceed in amount that required for the treasurer in the same county;**

\* \* \*

(8) Treasurer: Sureties to be approved by the proper county legislative authority and the amounts to be fixed by the proper county legislative authority at double the amount liable to come into the treasurer's hands during his or her term, **the maximum amount of the bond, however, not to exceed:**  
(a) **In each county with a population of two hundred ten thousand or more, two hundred fifty thousand dollars . . . .**

RCW 36.16.050. (Emphasis added.)

RCW 36.16.050 was codified as part of the Revised Code of Washington in 1963. The legislative history of RCW 36.16.050 demonstrates the narrowing discretion of judges to set the amount of the clerk's official bond.

The original language at RCW 36.16.050(3), applicable to the clerk, provided:

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his hands and sureties **to be approved by the judge or a majority of the judges presiding over the court of which he is clerk;**

(Emphasis added.)

As originally codified, judges had broad discretion setting the amount of the Clerk's official bond. However, RCW 36.16.050(3) was amended by Laws of 1971, ch. 71, §1, to provide:

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he is clerk: **PROVIDED, That the maximum bond fixed for the clerk shall not exceed in amount that required for the treasurer *in a county of that class*;**

(Emphasis added.)

This 1971 amendment to RCW 36.16.050(3) limited the discretion of judges in setting the official bond of the clerk, so as not to exceed the amount required for a treasurer *in a county of the same class*.

The statute was again amended in 1991 to incorporate gender neutral language. Laws of 1991, ch. 363, §49.

The most recent amendment to RCW 36.16.050(3) was at Laws of 2010, ch. 26, sec. 5. The language “shall not exceed that required for the treasurer *in a county of that class*” was changed to the current language: “shall not exceed that required for the treasurer *in the same county*.” (Emphasis added)

The maximum amount that may required for the official bond of the Yakima County Treasurer is \$250,000. RCW 36.16.050(8). The Yakima County Treasurer’s bond is set at \$250,000. ASFR ¶14.

The discretion of the Judges to determine the sufficiency of the Ms. Riddle’s official bond is limited by RCW 36.16.050(3). The Judges’ order requiring Ms. Riddle to provide a second bond in the amount of \$200,000, for total bonding of \$400,000, exceeds their authority. The maximum amount of bonding the Judges may require of Ms. Riddle is \$250,000: the amount actually required of the Yakima County Treasurer.

The Judges expressly based their action against Ms. Riddle on RCW 36.23.020, which provides as follows:

When the judge or judges of any court, or a majority of them, believe that the clerk of the court does not have a good and sufficient bond on file, or that the bond is not large enough in amount, such judge or judges shall enter an order requiring him or her, within such time as may be specified in the order, to execute

and present to them a good and sufficient bond, in such sum as may be fixed by the order. In case of his or her failure to file the bond within ten days from the expiration of the date fixed the judge or judges shall declare the office vacant.

RCW 36.23.020 was codified 1963 with adoption of the Revised Code of Washington, having originally been enacted in 1895. The statute has not been amended since 1963, other than as part of a major “technical corrections” bill enacted in 2009 to incorporate gender neutral language. Laws of 2009, ch. 549, §4028. There are no Washington cases applying, interpreting or otherwise citing RCW 36.23.020.

The Judges claim RCW 36.23.020 confers unfettered discretion, based upon their belief as to sufficiency of Ms. Riddle’s current bond, to order a new bond be obtained in the amount they believe sufficient.

*Response to Petition*, pp. 4-6.

The Judges’ interpretation of RCW 36.23.020 not only results in unfettered discretion, it renders the limitations of RCW 36.16.050(3) meaningless. The statute provides no criteria for what constitutes “a good and sufficient bond.” Their interpretation would allow the Judges to approve the clerk’s initial official bond in the maximum amount of \$250,000 and immediately thereafter require additional bonding as a condition of the elected clerk remaining in office.

Ms. Riddle's official bond in the amount of \$200,000 has been on file since January 13, 2015, and covers her term of office from January 1, 2015, through December 31, 2018. ASFR ¶¶ 1, 2, Ex 1. Yakima County was required to purchase and pay for Ms. Riddle's bond under RCW 48.28.040. Similarly, Yakima County would be required to purchase and pay for any supplemental or additional official bond obtained by Ms. Riddle for her remaining months in office.

In the Judges' letter to Ms. Riddle, the Judges cite to Washington State Auditor reports as the basis for requiring an increase in her official bond. ASFR Ex 6, p. 1. The monetary claims asserted by the Judges are unproven and characterized by the Judges as "potential claims that may be made against your bond." ASFR Ex 6, p. 2. The State Auditor did not recommend taking action against *Ms. Riddle's* official bond. ASFR Ex 4, p. 5.

Ms. Riddle's official bond continues to provide surety in the amount of \$200,000. No judgment has been entered against Ms. Riddle's official bond causing a forfeiture and vacancy of her elected office pursuant to RCW 42.12.010(8).

The Judges' interpretation of RCW 36.23.020, which stands upon their "belief" regarding "potential claims" as sufficient for ordering an increase in the Clerk's bond, is clearly unreasonable. It is only more

unreasonable when the prospective coverage of any new official bond is considered, covering Ms. Riddle's remaining months of her term ending December 31, 2018.

The Judges' order and accompanying letter requiring Ms. Riddle to provide a second bond in the amount of \$200,000, for total bonding of \$400,000, exceeds their lawful authority.

C. The Judges' Action Violated Due Process

Relying upon the language of RCW 36.23.020, the Judges issued their Order and letter to Ms. Riddle without any prior notice and without providing Ms. Riddle an opportunity to be heard and to defend against the Judges' allegations.<sup>2</sup> ASFR ¶9.

The Judges' action and the authority conferred under RCW 36.23.020 upon which they rely violate procedural due process. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); *In re Hendrickson*, 12 Wn.2d 600, 606, 123 P.2d 322 (1942); *Matter of Deming*, 108 Wn.2d 82, 102, 736 P.2d 639 (1987); *Geidra v. Mount Adams School Dist. No. 209*, 126 Wn.App. 840, 847-848, 110 P.3d

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<sup>2</sup> Compare RCW 42.08.110, which authorizes the Board of County Commissioners to require an additional bond from a county officer only after issuing a summons, supported by an affidavit, to show cause at a hearing before the Board why the additional bond should not be provided.

232 (2005). The Judges' action, taken without prior notice to Ms. Riddle and without providing her an opportunity to be heard and defend against their action, is unconstitutional and void.

The elected office of County Clerk is authorized by the Washington Constitution and Washington statutes. Wash. Const., Art. IV, §26, and Art. XI, §5; RCW 2.32.050; RCW 36.16.020; RCW 36.16.030. Ms. Riddle has a property right in her elected position as the Yakima County Clerk and has the expectation and right to hold such office, employment and salary until the expiration of her four-year term.

The voters elected Ms. Riddle. The voters have the power of recall. The Judges' action as Ms. Riddle runs for reelection raises questions related to the doctrine of separation of powers and interference with the political process. In *State ex rel. Johnston v. Melton*, 192 Wash. 379, 73 P.2d 1334 (1937), this Court acknowledged the role of voters in selecting their county officials:

The people are the source of all governmental power, and, in setting up a constitutional government, they provided that certain of their powers should be exercised through county governments, governments close to the people, and they further provided, in section 5 of article 11 of the Constitution, that the powers to be thus exercised through county governments should be exercised only through officials elected by themselves.

*Melton*, 192 Wash. at 385-386.

The right of an elected county official to hold office and exercise the rights and duties of such office was recognized by this Court in *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 385 P.3d 769 (2016), as amended (Feb. 8, 2017), reconsideration denied (Feb. 9, 2017) :

This is a claim for usurpation of the office of a public official; quo warranto claims specifically permit prosecuting attorneys to patrol for unconstitutional delegations of public officials' authority. RCW 7.56.020. Moreover, **any person in public office may file an information where the action concerns the person's own office.** *Id.*

*Drummond*, 187 Wn.2d at 169. (Emphasis added)

Article XI, section 5 provides, in part, as follows: “The legislature, by general and uniform laws, shall provide for the election in the several counties of ... prosecuting attorneys.” **When the voters choose an elected official, they necessarily choose who will be responsible for the duties of that office.** It would be fruitless to delegate the selection of county officers to the voters if the duties of those officers could be freely delegated to officers appointed by other government branches.

*Drummond*, 187 Wn.2d at 179–80. (Emphasis added)

The reasoning of *Drummond* is equally applicable to Ms. Riddle’s elected office as Clerk. Her position was created under the same constitutional and statutory scheme for elected county officers.

In *Matter of Deming*, 108 Wn.2d 82, 102, 736 P.2d 639, 650 (1987), this Court held that a district court judge facing disciplinary removal from office was entitled to due process, even though a judicial disciplinary proceeding is not criminal in nature, because of the potentially

severe consequences to the judge. Quoting at length from *Olympic Forest Products v. Chaussee Corp.*, 82 Wn.2d 418, 422-424, 511 P.2d 1002 (1973), this Court explained the nature of the judge's right to and interest in due process:

For over a century it has been recognized that "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 [17 L.Ed. 531] (1864). The fundamental requisites of due process are "the opportunity to be heard," *Grannis v. Ordean*, 234 U.S. 385, 394, 58 L.Ed. 1363, 34 S.Ct. 779 [783] (1914), and "notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 94 L.Ed. 865, 70 S.Ct. 652 [657] (1950). Thus, "at a minimum" the due process clause of the Fourteenth Amendment demands that a deprivation of life, liberty or property be preceded by "notice and opportunity for hearing appropriate to the nature of the case." *Mullane*, at 313. Moreover, this opportunity "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 14 L.Ed.2d 62, 85 S.Ct. 1187 [1191] (1965).

Synthesizing decisions "representing over a hundred years of effort," the United States Supreme Court recently refined these fundamental requirements of procedural due process into the following standard:

[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.

*Boddie v. Connecticut*, 401 U.S. 371, 377, 28 L.Ed.2d 113, 91 S.Ct. 780 [785-86] (1971).

*Matter of Deming*, 108 Wn.2d at 96–97.

Also, in determining the specific procedures required by due process under any given set of circumstances we must consider:

The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, [and] the balance of hurt complained of and good accomplished . . . .

*Joint Anti-Fascist Refugee Comm. v. McGrath*, [341 U.S. 123] at 163 (Frankfurter, J., concurring.)

*Matter of Deming*, 108 Wn.2d at 97–98.

The due process rights of Ms. Riddle, facing threat of removal from her elected office as Yakima County Clerk, are no less than those of an elected judge of the District Court.

The Judges' action implementing RCW 36.23.020 violated Ms. Riddle's right to procedural due process pursuant to the U.S. Const., Amend. V and XIV. *Cleveland Bd. of Educ. v. Loudermill*, *supra*; *Matter of Deming*, *supra*; *In re Hendrickson*, 12 Wn.2d at 606 (The essential elements of the constitutional guaranty of procedural due process is notice and the opportunity to be heard or defend); *Geidra v. Mount Adams School Dist. No. 209*, 126 Wn.App. at 847-848 (Discharge of teacher based on probable cause requires notice and an opportunity to be heard or defend against the allegations).

The Judges' action against Ms. Riddle is void.

V. CONCLUSION

Petitioner Janelle Riddle, Yakima County Clerk, respectfully requests the Supreme Court grant the following relief:

1. Rule that the action taken against Ms. Riddle by the Judges is unlawful and exceeds their constitutional and statutory authority.

2. Rule that the action taken against Ms. Riddle by the Judges is void as a violation of due process, having been issued ex parte without notice to Ms. Riddle and without providing her an opportunity to be heard and defend against the Judges' action.

3. Enjoin the Judges from declaring the elected office of Ms. Riddle vacant, or otherwise taking action to remove Ms. Riddle from her elected office, based up Ms. Riddle's refusal or failure to file an additional \$200,000 bond.

4. Such other and further relief as this Court shall deem just and equitable.

Respectfully submitted this 8th day of October, 2018.



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Attorney for Petitioner Riddle

**DOUGLAS COUNTY PROSECUTING ATTORNEY**

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