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NO. 96200-6

SUPREME COURT OF THE STATE OF WASHINGTON

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TERESA BANOWSKY,

Petitioner,

v.

GUY BACKSTROM, D.C.,

d/b/a Bear Creek Chiropractic Center,

Respondent.

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RESPONDENT'S SUPPLEMENTAL BRIEF

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## I. INTRODUCTION

Teresa Banowsky petitioned for review of the Court of Appeals' decision in *Banowsky v. Backstrom*, 4 Wn. App. 2d 338, 421 P.3d 1030 (2018), claiming that when a plaintiff files a complaint in district court explicitly seeking an amount in excess of its statutorily defined monetary limit on jurisdiction, the district court must transfer the matter to the superior court under CRLJ 14A(b). This Court granted Ms. Banowsky's petition. In this supplemental brief, Respondent Backstrom further explains why the Court of Appeals' affirmance of the district court's dismissal order was correct.

Central to all Ms. Banowsky's arguments is her claim that a district court may exercise its judicial power over a personal injury action initiated by a complaint explicitly alleging "damages in an amount exceeding \$100,000.00," despite the Legislature's affirmative grant of jurisdiction to district courts only "[i]f, for each claimant, the value of the claim or the amount at issue does not exceed one hundred thousand dollars." CP 107; RCW 3.66.020. Although she focuses on interpreting a procedural court rule and seeking a "practical" solution to a problem her own choices created, she fails to identify any authority allowing a district court to exercise any judicial power, beyond entry of an order of dismissal, in the absence of an affirmative legislative grant of jurisdiction. *In re Adoption*

of *Buehl*, 87 Wn. 2d 649, 655, 555 P.2d 1334 (1970) (a court lacking jurisdiction, that is, “the authority of the court to hear and determine the class of actions to which the case belongs,” “may do nothing other than enter an order of dismissal”). Because the Legislature has not affirmatively granted the district court jurisdiction over claims for “an amount exceeding \$100,000.00,” the district court did not acquire subject matter jurisdiction over the action when Ms. Banowsky filed her complaint. CP 107. Therefore, the Court of Appeals correctly concluded that the district court could do nothing other than dismiss the action. Its decision should be affirmed.

## II. SUPPLEMENTAL STATEMENT OF THE CASE

The relevant facts are not in dispute. Shortly after Ms. Banowsky filed her complaint in district court, her attorney appeared and filed a motion to “transfer” her case to superior court under CRLJ 14A(b),<sup>1</sup> alleging that she intended to seek more than \$100,000 in damages and “was unaware of the limitation of damages in District Court” when she filed her complaint pro se. CP 95-96, 105-07. The district court heard

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<sup>1</sup> CRLJ 14A(b) provides for a case to be “removed to superior court” “[w]hen any party in good faith asserts a claim in an amount in excess of the jurisdiction of the district court.” *See also* RCW 4.14.010 (authorizing defendant to remove actions from district court to superior court to acquire jurisdiction over third party defendant); CRLJ 14A(a), (c), and (d) (citing chapter 4.14 RCW).

argument and dismissed the case for lack of subject matter jurisdiction over “the initial filing.” CP 27-28, 136. The parties did not present testimony or evidence at the hearing and did not ask the court to make factual findings as to Ms. Banowsky’s reasons for choosing to file her complaint in district court. CP 126-37.

### III. SUPPLEMENTAL ARGUMENT

A. The Court Of Appeals Correctly Held That A District Court Does Not Acquire Subject Matter Jurisdiction Over An Action Initiated By A Complaint Seeking An Amount Exceeding Its Statutory Limit.

In Washington, our constitution “grants sole authority in the Legislature to govern the jurisdiction and powers of inferior courts.” *State v. Hastings*, 115 Wn.2d 42, 52, 793 P.2d 956 (1990); *see also* Const. art. 4, § 1, § 10 (amend. 65), § 12.<sup>2</sup> District courts are legislatively-created

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<sup>2</sup> Const. art. 4, § 1 provides:

The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

Const. art. 4, § 10 (amend. 65) provides in pertinent part:

The legislature ... shall prescribe by law the powers, duties, and jurisdiction of justices of the peace: Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record...

Const. art. 4, § 12 provides:

courts of limited jurisdiction and their subject matter jurisdiction “is therefore limited to that affirmatively granted by statute.” *Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 104, 52 P.3d 485 (2002). Whether a district court has subject matter jurisdiction of a particular matter is a question of law reviewed de novo. *Id.*

“To understand a district court’s authority,” this Court reviews “the relevant statutory grants of authority.” *State v. Granath*, 190 Wn.2d 548, 551, 415 P.3d 1179 (2018). The affirmative grant of subject matter jurisdiction in this case is RCW 3.66.020, which provides in pertinent part:

If, for each claimant, the value of the claim or the amount at issue does not exceed one hundred thousand dollars ... the district court shall have jurisdiction and cognizance of ... [a]ctions for damages for injuries to the person[.]

This Court has acknowledged that the Legislature may refer to a dollar amount to “carve out” the district court’s jurisdiction from “the original universal jurisdiction of the superior court,” granting concurrent jurisdiction to the district court over a certain class of cases. *See, e.g., Strenge v. Clarke*, 89 Wn.2d 23, 26-27, 569 P.2d 60 (1977) (former RCW 3.66.020(3) provided district courts with concurrent jurisdiction with superior courts over civil penalties “not exceeding one thousand dollars”).

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The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this Constitution.

This Court has also held that a court of limited jurisdiction does not acquire jurisdiction of a matter by the filing of a complaint seeking recovery of a dollar amount greater than that specified in the relevant affirmative statutory grant of subject matter jurisdiction. *State ex rel. Egbert v. King County Superior Court*, 9 Wash. 369, 369-71, 37 P. 489 (1894) (where statute affirmatively granted justices of the peace jurisdiction when amount claimed “did not exceed the sum of one hundred dollars,” the court “got no jurisdiction of the subject matter by reason of the filing of” a complaint seeking a sum of \$109).

Ms. Banowsky has not argued that RCW 3.66.020 is ambiguous. She does not claim, *Pet.* at 18, that her theory of jurisdiction “over the first \$100,000 claimed” in her complaint has any basis in the language of RCW 3.66.020 or any interpretation of that statute by a Washington court. She does not point to any other affirmative grant of jurisdiction by *the Legislature* to justify any of her arguments. And, she does not identify any Washington authority suggesting that a court of limited jurisdiction acquires subject matter jurisdiction by the filing of a complaint explicitly stating a claim for a dollar amount exceeding the Legislature’s affirmative grant of jurisdiction.

Because RCW 3.66.020 necessarily excludes a personal injury action for an amount “exceeding \$100,000.00,” CP 107, from the limited

jurisdiction of the district court, the Court of Appeals properly concluded that the district court did not acquire subject matter jurisdiction with the filing of Ms. Banowsky's complaint. *Banowsky*, 4 Wn. App. 2d at 346.

B. The Court Of Appeals Correctly Concluded That CRLJ 14A(b) Cannot Extend The Subject Matter Jurisdiction Of The District Court.

To the extent Ms. Banowsky argued that CRLJ 14A(b) is unambiguous and “purports to compel a transfer when ‘any party’ asserts a claim beyond the amount-in-controversy limit, which would include the plaintiff’s initial complaint,” the Court of Appeals agreed. *Banowsky*, 4 Wn. App. 2d at 346. For this reason, the Court of Appeals did not address Ms. Banowsky’s arguments regarding the comments to CRLJ 14A(b) or the drafters’ intentions, *id.* at n.21; *Pet.* at 7-9, holding instead that a plain language application of that rule in this case would conflict with other court rules and would violate settled authority providing that procedural court rules apply only after commencement of an action and cannot extend the court’s jurisdiction, *Banowsky*, 4 Wn. App. 2d at 346-47.

Ms. Banowsky’s arguments regarding CRLJ 14A(b), however, all fail for the more fundamental reason this Court has repeatedly explained -- according to the Washington constitution, the subject matter jurisdiction of the district court is determined only by *the Legislature* and must appear in an affirmative *statutory* grant of authority. *See, e.g., Granath*, 190 Wn.2d

at 551; *Smith*, 147 Wn.2d at 104; *Hastings*, 115 Wn.2d at 52; *Young v. Konz*, 91 Wn.2d 532, 542, 588 P.2d 1360 (1979) (“the people, through our constitution, have” “explicitly recognized and accepted justices of the peace as well as such inferior courts as the legislature may create” and “authorized only the legislature ... to prescribe the powers, duties, and jurisdiction of such courts”). Although the Court of Appeals was not so explicit, this Court has repeatedly interpreted our constitution to exclude the possibility that its own adoption of a procedural court rule could ever constitute an affirmative grant of subject matter jurisdiction to the district courts. In other words, whether the language is plain or ambiguous, whether it can apply in other circumstances or is meaningless, or whether there are other more general or specific procedural court rules, the result in this case does not turn on the meaning of CRLJ 14A(b) or what this Court intended when it adopted the rule. Whatever it means, it is not an affirmative grant of jurisdiction by the Legislature. The plain language of RCW 3.66.020 excludes from the subject matter jurisdiction of the district court an action, like Ms. Banowsky’s, that seeks an amount exceeding one hundred thousand dollars. There is no statute affirmatively granting the district court “jurisdiction and cognizance” of a case where a plaintiff files a complaint seeking more than one hundred thousand dollars. *See* RCW 3.66.020.

Moreover, this Court has explicitly stated that its rules for the district courts “shall not be construed to extend ... the jurisdiction of the courts of limited jurisdiction[.]” CRLJ 82. Ms. Banowsky’s CRLJ 14A(b) arguments are all based on a construction that would extend the district court’s jurisdiction beyond that stated in RCW 3.66.020. And, her suggestion, *Pet.* at 13-14, that CRLJ 14A(b) supersedes RCW 3.66.020 under CRLJ 81(b) is not just unpersuasive, *see Banowsky*, 4 Wn. App. 2d at 350, it is wrong as a matter of law. CRLJ 81(b) (providing that court rules “supersede all procedural statutes and other rules that may be in conflict”). RCW 3.66.020 is not a procedural statute. It does not describe how a court is to exercise its authority; it is an affirmative grant of subject matter jurisdiction to the district courts that describes types and classes of civil actions. *See, e.g., Strenge*, 89 Wn.2d at 26-27; *Dougherty v. Dep’t of Labor & Indus.*, 150 Wn.2d 310, 316, 76 P.3d 1183 (2003) (jurisdiction refers to “type” or “general category” or “nature” of a case and relief sought “without regard to the facts of a particular case”; all other defects or errors as to where or how the power to adjudicate is to be exercised “go to something other than jurisdiction”); *see also James v. Kitsap County*, 154 Wn.2d 574, 588, 115 P.3d 286 (2005) (a court’s “judicial power” is separate from specific procedures required for resolution of a particular type of dispute). Not only does this Court lack authority to supersede

RCW 3.66.020 by court rule, it has also explicitly stated that its rules should not be so construed. CRLJ 82.

For the same reason, the outcome here does not turn on an interpretation of CRLJ 14A(b) based on *Howlett v. Weslo, Inc.*, 90 Wn. App. 365, 951 P.2d 831 (1998). *See Pet.* at 10-17. The Court of Appeals did not analyze *Howlett* to interpret the meaning of CRLJ 14A(b) because it was decided before the rule was amended, but it did agree with *Howlett's* essential holding that “a case must be dismissed when it exceeds the court’s subject matter jurisdiction.” *Banowsky*, 4 Wn. App. at 350; *see Howlett*, 90 Wn. App. at 368.

More fundamentally, the court in *Howlett* did not examine any procedural court rule. Instead, the court considered “whether a district court has the specified or implied power to transfer jurisdiction over a case to the superior court when an amended complaint is filed alleging damages exceeding the district court’s jurisdictional limit,” by looking to affirmative statutory grants of jurisdiction and judicial powers including RCW 2.28.150, RCW 3.66.010, and RCW 3.66.020. *Howlett*, 90 Wn. App. at 367-68. Because these other statutory provisions did not “contain[] any power to transfer a civil case *exceeding its subject matter jurisdiction* to the superior court,” the *Howlett* court held that the district court’s order transferring the case to superior court was void for lack of

subject matter jurisdiction. *Id.* at 368 (italics added).

Although Ms. Banowsky tries to connect the procedural facts of *Howlett*, which considered the district court's jurisdiction over an *amended* complaint after the plaintiff had properly invoked the jurisdiction of the district court with her initial complaint and the development of the amendment to CRLJ 14A(b), *see Pet.* at 12-17, the court rule still cannot change the source of the district court's subject matter jurisdiction. Whatever the drafters of the rule intended with regard to a situation like that in *Howlett*, the only source of district court jurisdiction is an affirmative statutory grant by the Legislature. *Smith*, 147 Wn.2d at 104. Although the Legislature has amended RCW 3.66.020 several times and RCW 3.66.010 twice since *Howlett* was decided,<sup>3</sup> no such amendment has expanded the jurisdiction of the district court to allow the exercise of judicial powers, beyond entry of a dismissal order, in a case in which the plaintiff's complaint explicitly includes a demand for an amount exceeding the district court's jurisdiction. The Legislature is presumed to be aware of its past legislation as well as past judicial interpretation of statutes. *Bixler v. Bowman*, 94 Wn.2d 146, 149, 614 P.2d 1290 (1980). Because the Legislature has not seen fit to address *Howlett* by amending

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<sup>3</sup> *See, e.g.*, Laws of 2000, ch. 49, § 1; Laws of 2003, ch. 27, § 1; Laws of 2008, ch. 227, § 1; Laws of 2015, ch. 260, § 1; Laws of 2000, ch. 111, § 2; Laws of 2005, ch. 282, § 15.

RCW 3.66.020 to allow district courts to exercise judicial power in cases where the value of the claim or the amount at issue exceeds one hundred thousand dollars, the Court of Appeals correctly concluded that its decision was not inconsistent with *Howlett*.

In sum, Ms. Banowsky's arguments about CRLJ 14A(b) must be rejected. The Court of Appeals correctly affirmed the district court's dismissal of her action for lack of subject matter jurisdiction.

C. The Court Of Appeals Correctly Concluded That Public Policy Favors Dismissal Of Ms. Banowsky's Lawsuit.

The Court of Appeals observed that allowing Ms. Banowsky "to ignore the district court amount-in-controversy limitation and force a transfer even though she demanded an amount over the district court limit" would undercut the clear public policy of our state constitution and "open the door to potential abuse." *Banowsky*, 4 Wn. App. 2d at 347-48.

Indeed, our constitution has included a demarcation of the jurisdiction of justices of the peace, which are now known as district courts, RCW 3.30.015, based on dollar amount since 1952. *See* Const. art. 4, § 10 (1952); Const. art. 4, § 10 (amend. 65); *Banowsky*, 4 Wn. App. 2d at 344. The Legislature made a clear public policy choice to define jurisdiction of justices of the peace and district courts according to dollar values both before and after the adoption of such constitutional language.

*See, e.g., Egbert*, 9 Wash. at 369-71; RCW 3.66.020; *Streng*, 89 Wn.2d at 26-27. Ms. Banowsky’s claim that it is “absurd” that she “should lose her cause of action for claiming as little as one cent over the jurisdictional limit,” *Pet.* at 17, cannot overcome the Legislature’s clear decision otherwise. RCW 3.66.020 must be read to preclude district court jurisdiction over a claim for more than one hundred thousand dollars. Only the superior court, with its “original universal jurisdiction” has jurisdiction over such a claim. *Streng*, 89 Wn.2d at 27; *see also* Const. art. 4, § 6 (amend. 87). Ms. Banowsky’s disagreement over the wisdom of the Legislature’s choice is not grounds for a different result. Even this Court’s disagreement with the wisdom of this legislative policy choice would not be grounds for re-writing RCW 3.66.020. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003) (courts “cannot add words or clauses to an unambiguous statute”); *Saucedo v. John Hancock Life & Health Ins. Co.*, 185 Wn.2d 171, 180, 369 P.3d 150 (2016) (legislature “is the body that gets to make policy” decisions and courts “have no authority to read a new exception into [a] statute on policy grounds”).

Similarly, Ms. Banowsky cannot defeat the Legislature’s sole authority to define the jurisdiction of the courts of limited jurisdiction by claiming, *Pet.* at 17-18, that there is a logical conflict between requiring a district court to acquire subject matter jurisdiction before applying CRLJ

14A(b) and the procedural history in *Howlett*, where she claims the district court “lost” jurisdiction after the plaintiff amended her complaint. As she has throughout this case, Ms. Banowsky conflates questions of procedure with questions of subject matter jurisdiction.

According to procedural court rules, the district court may evaluate its jurisdiction in an action whenever it is raised (“by the suggestion of the parties or otherwise”) and must dismiss the action if it “lacks jurisdiction of the subject matter.” CRLJ 12(h)(3). Here, Dr. Backstrom raised the issue of subject matter jurisdiction in response to Ms. Banowsky’s motion to transfer. CP 45-52. The district court then determined that it lacked jurisdiction and dismissed the case. CP 27-28, 136. In *Howlett*, the district court granted the plaintiff’s motion “to amend her complaint to allege damages in excess of the district court’s jurisdictional limit of \$25,000 and to transfer the case to superior court.” *Howlett*, 90 Wn. App. at 367. Four years later, when considering arguments raised by the defendants, the superior court “decided the district court lacked transfer authority and dismissed the case.” *Id.*

Despite differences in the details of procedural history, the district court in this case and the superior court in *Howlett* confronted the same jurisdictional question: did the district court have the subject matter jurisdiction required to exercise judicial power over an action where the

value of the claim or the amount at issue exceeded the dollar limit contained in the relevant affirmative statutory grant of jurisdiction? *See Buehl*, 87 Wn. 2d at 655. This is not a procedural question to be resolved by court rule; it is a question of constitutional and statutory interpretation that can only be resolved with an examination of RCW 3.66.020. *See, e.g., Granath*, 190 Wn.2d at 551; *Smith*, 147 Wn.2d at 104; *Hastings*, 115 Wn.2d at 52; *Young*, 91 Wn.2d at 533; *Egbert*, 9 Wash. at 369-71; *cf. Dougherty*, 150 Wn.2d at 316-17 (statute specifying superior court in a particular county as place to file appeal was procedural issue; subject matter jurisdiction of superior courts does not vary from county to county). Neither this case or *Howlett* raised a question of *how* a district court should exercise its judicial power according to the facts of a particular case; both raised a question as to whether the Legislature had affirmatively granted the district court the authority to exercise judicial power in a particular type of controversy, that is, actions seeking more than the dollar limit identified by the Legislature as the upper limit of the district court's jurisdiction.

Ultimately, Ms. Banowsky's claims regarding the particular circumstances in her case cannot provide grounds for reversal for the same reason -- subject matter jurisdiction of courts of limited jurisdiction must be found in an affirmative grant of statutory authority. The district court

lacks authority to adjudicate the class of civil cases where a personal injury claimant initiates an action with a complaint explicitly seeking more than one hundred thousand dollars. *See, e.g., Egbert*, 9 Wash. at 369-71; RCW 3.66.020. The subject matter jurisdiction of a court does not turn on “the facts of a particular case.” *Dougherty*, 150 Wn.2d at 317. Thus, the subject matter jurisdiction of the district court here does not turn on why Ms. Banowsky decided to represent herself, CP 73, why she waited until the day before the statute of limitations expired to file her complaint, *id.*, whether she “was unaware of the limitation of damages in District Court,” *id.*, whether she filed in district court as the result of an “error” “made in good faith,” CP 74, or why she stated in her complaint that she was seeking “damages in an amount exceeding \$100,000.00,” CP 107. Public policy, as expressed in our constitution and RCW 3.66.020, requires dismissal of her case for lack of subject matter jurisdiction regardless of any such facts.

#### IV. CONCLUSION

The Court of Appeals properly concluded that the district court lacked subject matter jurisdiction over Ms. Banowsky’s action against Dr. Backstrom. This Court should affirm the decision of the Court of Appeals.

RESPECTFULLY SUBMITTED this 28th day of December 2018.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 28th day of December, 2018, I caused a true and correct copy of the foregoing document, “Respondent’s Supplemental Brief,” to be delivered in the manner indicated below to the following counsel of record:

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## Transmittal Information

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