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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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NICOLE BEDNARCZYK and CATHERINE SELIN, individually and on  
behalf of all others similarly situated,

Appellants/Plaintiffs,

v.

KING COUNTY,

Respondent/Defendant.

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**APPELLANTS' SUPPLEMENTAL BRIEF**

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## I. INTRODUCTION

The right to trial by jury is a fundamental feature of American democracy. It is rooted in the Declaration of Independence, the Sixth and Seventh Amendments to the U.S. Constitution, and art. I, § 21 of the Washington Constitution. Next to voting, juror participation is the most significant form of citizen participation in American democracy. Like voting, juror participation must not depend on the economic status of jurors.

The Juror Rights Statute, RCW 2.36.080(3), prohibits the exclusion of King County citizens from jury service on account of “economic status.” Plaintiffs filed this class action lawsuit because King County’s neutral practice of failing to compensate jurors for their service results in the systemic exclusion of low-income citizens in violation of the Juror Rights Statute. Jurors are also “employees” within the meaning of the Washington Minimum Wage Act (“MWA”), RCW 49.46.020, and are therefore entitled to minimum wage.

The trial court granted summary judgment in favor of King County, and the Court of Appeals affirmed in a split decision. *Rocha v. King County*, 7 Wn. App. 647, 435 P.3d 325 (2019). This Court should overrule the lower courts and revitalize a fundamental democratic institution in the State of Washington.

## II. STATEMENT OF FACTS

### A. There Exists a Systemic Exclusion of Jurors on Account of “Economic Status” in King County Courts.

Since 1959, individuals performing jury service in the courts of King County have received nothing more for their attendance than an expense payment of \$10 per day plus mileage or travel fare. CP 23 ¶ 5.56; CP 50 ¶ 5.56; CP 330; CP 616. In 1999, the Board for Judicial Administration established the Washington State Jury Commission to “conduct a broad inquiry” into issues such as the “adequacy of juror reimbursement” and “improving juror participation at trials.” CP 292. The Commission made numerous recommendations, but the “highest priority” was increasing compensation for jurors. CP 292, 299, 310-311. In no uncertain terms, the Commission deemed it “unacceptable that this state’s citizens are required to perform one of the most important civic duties at a rate that does not remotely approach minimum wage.” CP 330. The Commission concluded that “[i]ncreased fees will not only address the current inequity in juror compensation, but will also contribute to more economically and ethnically diverse juries by enabling a broader segment of the population to serve.” CP 292.<sup>1</sup>

In accordance with RCW 2.36.100(1) and GR 28, King County has a policy and practice of excusing individuals who have been summoned for

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<sup>1</sup> People of color, who are more likely to be of low economic status, are substantially underrepresented in King County’s jury venires. *See* CP 543-96, 598, 601-04.

jury service if they “are not being paid for jury service by their employer” and “will be unable to meet the[ir] basic needs [or those of their] family.” CP 416, 418.<sup>2</sup> King County staff members authorize and record administrative grants of financial hardship excusal requests. CP 416-525. But once jurors “are placed on the court list and provided to the court location,” staff members may not excuse jurors “unless authorized by a Judge to do so.” CP 418; *see also* CP 416. At that point, it is up to the judge to decide whether to grant an excusal request for economic hardship. CP 530. Most if not all judicial economic hardship excusals go unrecorded.

King County exempts a substantial number of prospective jurors because they cannot meet their basic needs. At the administrative level alone, King County excused more than 5,100 prospective jurors on account of financial hardship between 2011 and 2016. CP 420. A sample of emails from judges and staff underscores the severity of the problem to the administration of justice. *See* CP 526-542. As one judge wrote, “I think we have all been experiencing the 50% + hardship requests from a panel for a case that is going to last 2+ weeks.” CP 537. For longer trials, it can be necessary to have as many as 200 prospective jurors appear in order to seat a jury of twelve with two alternates, given the number of financial hardship

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<sup>2</sup> A prospective juror can request an economic hardship exemption, but King County ultimately decides whether to grant the exemption. If King County denies a requested economic hardship exemption, the citizen is compelled to serve as a juror or face criminal sanctions for failing to do so. RCW 2.36.170 (“A person summoned for jury service who intentionally fails to appear as directed shall be guilty of a misdemeanor.”).

excusals that will be sought. CP 534, CP 541. In the words of former Presiding Judge Susan Craighead: “we are spending a lot of money bringing in jurors who just cannot sit for more than two days because of their economic situations, yet I can’t remember the last time I presided over a two or three day trial.” CP 527. Many civil trials, which have a lower priority than criminal trials, are continued or delayed “due to an inability to seat enough jurors.” CP 532.

Excusals for financial hardship are only the “tip of the iceberg.” It is likely that most people of low economic status simply refuse to respond to summonses for fear that they will not receive a hardship exemption. CP 532, 543-561. Of the 510,681 people King County summoned for jury service between 2011 and 2016, only 147,743 appeared—a yield rate of less than 29 percent. CP 198 ¶ 5. The other 362,938 did not respond. *See Id.*

**B. Jurors are “Employees” Because They Satisfy the “Economic Dependence” Test.**

King County has admitted numerous facts that demonstrate jurors satisfy the “economic dependence” test and are therefore “employees” within the meaning of the MWA. These admitted facts include the following: King County instructs jurors on the time and location of their service, their roles and responsibilities, and the completion of forms. CP 54-55 ¶¶ 5.24, 5.26; CP 606-608, Nos. 1, 3. King County has the authority to excuse individuals from jury service and to dismiss them once their service is complete. CP 55 ¶ 5.27; CP 608, No. 4. King County maintains records

regarding those persons called to serve, those dismissed, those assigned to specific courtrooms, those paid reimbursements and mileage, and those who request accommodations. CP 55 ¶ 5.29; CP 609, No. 6. King County provides the premises on which jurors perform their service. CP 260 ¶ 5.30; CP 609-610, No. 7. The work of jurors is not specialized and does not require particular knowledge or ability. CP 56 ¶¶ 5.31, 5.32; CP 610, No. 8. Jurors perform a vital service for the County. CP 56 ¶ 5.34; CP 610, No. 9.

### **III. SUMMARY OF ARGUMENT**

The U.S. Supreme Court has held that “exclusion [from jury service] of all those who earn a daily wage cannot be justified by federal or state law.” *Thiel v. S. Pac. Co.*, 328 U.S. 217, 224-25 (1946). King County’s administration of justice systemically excludes low-wage earners from jury service.

Supervision of the administration of justice is a responsibility that is uniquely within the province of this Court. As a separate and co-equal branch of state government, it is the Court’s responsibility to assure that court operations afford jurors of low economic status a meaningful opportunity to participate and that litigants have their cases heard by a fair cross section of the community as guaranteed by RCW 2.36.080(1). *See* Pet. for Rev, at 10-11. It is exclusively this Court’s obligation to interpret the Juror Rights Statute, RCW 2.36.080, and the Washington Minimum Wage Act, RCW 49.46.020. If the legislature disagrees with the Court’s

interpretation of these statutes, the legislature has the power to enact different laws.

Juror participation is a form of civic duty. But there is nothing inconsistent with performing a civic duty and being compensated for that effort beyond the reimbursement of expenses. Jurors provide a public service no less valuable to democracy than state legislators or members of the national guard. Like legislators and guard members, jurors should be compensated for their service.

The failure to compensate jurors has resulted in the disproportionate exclusion of low-income people and, concomitantly, people of color from jury service. This systematic exclusion is repugnant to the American system of justice. It not only denies litigants their right to a fair trial before a cross section of the community but also denies low-income citizens and citizens of color the opportunity to participate in a process fundamental to the vitality of American democracy.

The Juror Rights Statute unambiguously provides that “[a] citizen shall not be excluded from jury service in this state on account of membership in a protected class recognized in RCW 49.60.030, or on account of *economic status*.” RCW 2.36.080(3) (emphasis added). Without an implied cause of action, the rights conferred by the Juror Rights Statute are meaningless and unenforceable. Like the Washington Law Against Discrimination (“WLAD”), RCW 49.60, and other anti-discrimination

statutes, the Juror Rights Statute recognizes a claim for disparate impact. King County's failure to compensate jurors beyond the reimbursement of expenses is a neutral practice which has a disproportionate, exclusionary impact on people of low "economic status" and thus violates the Juror Rights Statute.

The Washington Minimum Wage Act requires a liberal interpretation to fulfill its remedial purpose. This statute provides an independent basis for providing compensation to jurors. In *Bolin v. Kitsap County*, 114 Wn.2d 70, 75, 785 P.2d 805 (1990), the Court applied the "right to control" test and ruled that jurors are entitled to workers' compensation because "[j]urors are employees of the county by virtue of their responsibility to the superior court." The "economic dependence" test applicable here is less demanding than the "right to control test." Accordingly, jurors are "employees" within the meaning of the MWA.

Plaintiffs have standing to bring a claim under the Declaratory Judgment Act. Both Plaintiffs are residents of King County, have been summoned to serve as jurors in the past, and are eligible to serve as jurors in the future. Ms. Bednarczyk was unable to serve because of economic hardship, and Ms. Selin served without compensation. Both Plaintiffs fall within the zone of interests that the Jurors Rights Statute and MWA protect and will suffer an injury in fact if the statutes are violated.

## IV. ARGUMENT

### A. The Failure to Compensate Jurors for Their Service Creates an Impermissible Economic Burden.

King County’s failure to compensate jurors for their time in service creates a situation that is akin to but worse than a poll tax, which is unconstitutional. In *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 666 (1966), the Supreme Court ruled that “a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.” The Court explained:

Wealth, like race, creed, or color, is not germane to one’s ability to participate intelligently in the electoral process. *Lines drawn on the basis of wealth or property, like those of race are traditionally disfavored.* To introduce wealth or payment of a fee as a measure of a voter’s qualifications is to introduce a capricious or irrelevant factor. *The degree of the discrimination is irrelevant.* In this context—that is, as a condition of obtaining a ballot—the requirement of fee paying causes an “invidious” discrimination that runs afoul of the Equal Protection Clause.

*Id.* at 668 (internal citations omitted) (emphasis added).

To participate as jurors, people of low economic status who are not otherwise compensated by an employer must forego their income for days, weeks, or even months. This financial imposition burdens the right to jury participation far more than a poll tax burdens the right to vote. Like voting, wealth is irrelevant to the ability to serve as a juror. All citizens have the right to participate on a jury regardless of economic status. RCW 2.36.080(3); *see also Thiel*, 328 U.S. at 223 (“Wage earners, including those

who are paid by the day, constitute a very substantial portion of the community, a portion that cannot be intentionally and systematically excluded in whole or in part without doing violence to the democratic nature of the jury system.”).

King County argues that jurors of low economic status who obtain a hardship exemption voluntarily choose not to serve on a jury, and King County has no responsibility for that choice. But the fact that the citizens of Virginia could have avoided a poll tax by choosing not to vote was insufficient to save the poll tax from constitutional infirmity. *Harper*, 383 U.S. at 666. And despite the ability of Louisiana women to *opt in* to jury service, their systemic exclusion from juries violated the fair-cross-section rule of the Sixth Amendment. *Taylor v. Louisiana*, 419 U.S. 522 (1975). Accordingly, the ability of low-income citizens to request a hardship exemption in no way negates the Juror Rights Statute’s prohibition against exclusion on account of “economic status.” The proper focus of the analysis is on the *systemic exclusion* of potential jurors, not the ostensible *opportunity* those jurors have to serve. *See* Pet. for Review at 13-14; Pls.’ Reply Br. at 13-15.

**B. The Juror Rights Statute Creates an Implied Cause of Action.**

In the absence of an implied cause of action, the Juror Rights Statute would be unenforceable. To recognize such a cause of action, the Court “must determine first, whether the plaintiff is within the class for whose

‘especial’ benefit the statute was enacted; second, whether legislative intent, explicitly or implicitly, supports creating or denying a remedy; and third, whether implying a remedy is consistent with the underlying purpose of the legislation.” *Bennett v. Hardy*, 113 Wn.2d 912, 920-21, 784 P.2d 507 (1990).

The Court of Appeals agreed that jurors are within the class for whose benefit RCW 2.36.080(3) was enacted. *Rocha*, 7 Wn. App. 2d at 654-55. But the Court of Appeals refused to recognize an implied cause of action based on the conclusion that “[t]he legislature did not intend to guarantee jurors be able to serve by providing adequate financial compensation. Therefore, it would be inconsistent with the legislative intent to imply a remedy based on jurors’ financial compensation for alleged violations of RCW 2.36.080(3).” *Id.* The Court of Appeals is wrong.

This Court must harmonize the different sections of the statute to give effect to the legislature’s intent. *See King County v. Central Puget Sound*, 142 Wn.2d 543, 560, 14 P.3d 133 (2000) (“Effect should be given to all of the language used, and the provisions must be considered in relation to each other, and harmonized to ensure proper construction.”); *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631-632 (1973) (“[O]ur task in interpreting separate provisions of a single Act is to give the Act the most harmonious, comprehensive meaning possible in light of the legislative policy and purpose.”).

RCW 2.36.080(1) provides it is the policy of the State of Washington “that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity . . . to be considered for jury service in this state and have an obligation to serve as jurors when summoned for that purpose.” Systemic exclusion from jury service on account of economic status violates the fair-cross-section requirement and negates the opportunity of low-income citizens to serve.

RCW 2.36.080(2) provides that “[i]t is the policy of this state to maximize the availability of residents of the state for jury service” and “to minimize the burden on the prospective jurors, [and] their families . . . .”. The legislature recognized that one way of achieving these policies is to limit the term of jury service when possible. *Id.* That recognition, however, does not foreclose other ways of achieving these policies, including the payment of compensation. More significantly, the legislative policy of maximizing the availability of jury service and minimizing the burden on jurors must be harmonized with the statutory prohibition of exclusion on the basis of “economic status.” RCW 2.36.080(3).

Contrary to the Court of Appeals’ conclusion, compensation for jurors is consistent with all of these statutory policies set forth in the Juror Rights Statute; it will maximize the availability, minimize the burden, and prevent the systemic exclusion of jurors on the basis of economic status.

Indeed, compensation for jurors is not only consistent with these legislative purposes but also necessary to achieve the purposes.

**C. The Juror Rights Statute Recognizes Claims for Disparate Impact.**

In order to prove disparate impact under Washington law, a plaintiff must establish (1) a facially neutral practice (2) that falls more harshly on a protected class. *Shannon v. Pay’N Save*, 104 Wn.2d 722, 727, 709 P.2d 799 (1985). Significantly, a discriminatory motive is not required to prove disparate impact. *Id.*

The facially neutral practice at issue here is King County’s failure to compensate jurors beyond the reimbursement of expenses authorized by RCW 2.36.150. It is undisputed this practice falls more harshly on people of low economic status. *See Rocha*, 7 Wn. App. 2d at 653.

In June 2018, the Washington Legislature amended the Juror Rights Statute to expand the covered protected classifications. The statute now provides: “A citizen shall not be excluded from jury service in this state on account of membership in a protected class recognized in RCW 49.60.030, or on account of *economic status*.” RCW 2.36.080(3) (emphasis added).<sup>3</sup>

Under the Juror Rights Statute, the exclusion of jurors on account of

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<sup>3</sup> Before its amendment in 2018, RCW 2.36.080(3) provided: “A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.” The trial court nevertheless held the statute “does not create a protected class” in relation to “economic status.” CP 676. Inexplicably, the trial court concluded that because “economic status” is not a protected classification within the meaning of the Washington Law Against Discrimination (WLAD), there is no cognizable claim under RCW 2.36.080(3). *See* RP 18:10-12.

economic status is as unlawful as the exclusion of jurors on account of classifications protected under the WLAD. Both statutes recognize claims for disparate impact.

The common goal of the WLAD and the Juror Rights Statute is to prohibit discrimination on account of the protected classifications listed in each statute. If the legislature had intended to deny disparate impact as a remedy for a violation of the Juror Rights Statute, or to treat the protected class of “economic status” differently than the WLAD protected classifications, it could have easily said so. The amendment to RCW 2.36.080(3) leaves little doubt that the legislature intended the methods for establishing violations of the Juror Rights Statute and the WLAD to be co-extensive. *See Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987) (presuming that similar provisions in two statutes addressing similar subject, labor law, would have similar meaning); *United States v. Novak*, 476 F.3d 1041, 1051 (9th Cir. 2007) (en banc) (“Moreover, courts generally interpret similar language in different statutes in a like manner when the two statutes address a similar subject matter.”).

The Court of Appeals asserted, without citation of authority, that there exist only two sources for disparate impact claims: the WLAD and constitutional equal protection principals. *Rocha*, 7 Wn. App. 2d at 651.<sup>4</sup>

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<sup>4</sup> Contrary to the Court of Appeals’ assertion, constitutional equal protection principles cannot be enforced through a disparate impact claim. *See State v. Clark*, 76 Wn. App. 150, 156, 883 P.2d 333 (1994) (“a statistical showing of disparate impact on minorities, without more, fails to establish an equal protection violation”); *Macias v. Department of Labor &*

The Court then concluded that because Plaintiffs alleged neither, the Juror Rights Statute cannot support a disparate impact claim. *Id.* The Court of Appeals is wrong.

There is no principled basis in law for the assertion that no anti-discrimination statute other than the WLAD can support a claim for disparate impact. For example, Washington’s Equal Pay Act (“EPA”) prohibits “providing compensation based on gender between similarly employed employees of the employer . . . .” RCW 49.58.020 (previously RCW 49.12.175). Like the WLAD, the EPA prohibits policies and practices that have a disparate impact on the basis of sex, and discriminatory intent is not required to establish a violation of the statute. *Hudon v. West Valley School Dist. No. 208*, 123 Wn. App. 116, 129, 97 P. 3d 39 (2004) (Under the Equal Pay Act, “good faith is not material at this stage because the plaintiff need not prove intentional sex discrimination.”); *Maxwell v. City of Tucson*, 803 F.2d 444, 446 (9th Cir. 1986) (“discriminatory intent is not part of the employee's prima facie burden under the Equal Pay Act”); *see also* RCW 49.44.090 (prohibiting age discrimination in employment).<sup>5</sup>

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*Indus.*, 100 Wn.2d 263, 269-70, 668 P.2d 1278 (1983) (disparate impact of suspect class does not trigger strict scrutiny unless party challenging government action demonstrates element of purposeful discrimination or intent).

<sup>5</sup> Federal law has many different anti-discrimination statutes that recognize disparate impact claims. *See, e.g.*, Title VII, 42 U.S.C. § 2000e-2(k)(1)(A)(i) (disparate impact); *Smith v. City of Jackson*, 544 U.S. 228, 240 (2005) (recognizing disparate impact under the ADEA, 29 U.S.C. § 623(a)(2)); *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52-53 (2003) (recognizing both disparate treatment and disparate impact claims under the ADA).

King County argues that it fully complies with RCW 2.36.080(1), which concerns the summoning of jurors, by including all eligible citizens on its master jury list and has no further responsibility. Answer Pet. Rev. at 1-2. But the master list is irrelevant to Plaintiffs' claims. Those claims focus on King County's neutral practice of failing to compensate jurors for their service, which results in the systemic exclusion of jurors on the basis of "economic status." This showing is sufficient to state a claim for disparate impact under RCW 2.36.080(3). Discriminatory intent is not required. *Shannon*, 104 Wn.2d at 727.

**D. Jurors Are "Employees" Under the Minimum Wage Act.**

Washington State has a "long and proud history of being a pioneer in the protection of employee rights." *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300, 998 P.2d 582 (2000). Washington has adopted a "comprehensive legislative system" that reflects a "strong legislative intent to assure payment to employees of wages they have earned." *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 154, 159, 961 P.2d 371 (1998). This remedial statutory scheme is construed liberally. *Id.*; *Pellino v. Brink's Inc.*, 164 Wn. App. 668, 684-85, 267 P.3d 383 (2011). A liberal interpretation of the MWA requires the court to recognize that jurors are "employees" within the meaning of the MWA.<sup>6</sup>

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<sup>6</sup> Jurors are not excluded as "employees" under the MWA. The first sentence of RCW 49.46.010(3)(d) identifies two specific scenarios under which individuals who are engaged in the activities of a state or local governmental body or agency will be deemed exempt from the MWA's coverage: (1) where the employer-employee relationship does not in fact

In *Bolin v. Kitsap County*, this Court ruled that “[j]urors are employees of the county by virtue of their responsibility to the superior court.” 114 Wn.2d at 75. It arrived at this conclusion by applying the “right to control” test. *Id.* at 73. The Court of Appeals distinguished *Bolin* because it did not involve the economic-dependence test. 7 Wn. App. 2d at 658-59. But the economic-dependence test, which was adopted in Washington after *Bolin*, “provides broader coverage than does the right-to-control test.” *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870, 281 P.3d 289 (2012) (emphasis added). If jurors satisfy the right-to-control test, they necessarily satisfy the economic-dependence test.

The Court of Appeals also distinguished *Bolin* on the ground that the Industrial Insurance Act (“IIA”) does not exclude jurors. 7 Wn. App. 2d at 658. But jurors are not excluded under the MWA either. Thus, as the Court held in *Bolin*, “[j]urors are employees of the county by virtue of their responsibility to the superior court.” 114 Wn.2d at 75. There is no

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exist; and (2) where the services are rendered gratuitously. Neither situation applies to jurors. As the Supreme Court has held, and as the evidence here demonstrates, an employer-employee relationship between King County and jurors *does* in fact exist. *Bolin*, 114 Wn.2d at 75; CP 258-60, 606-10. Moreover, the Supreme Court has determined that jurors do not render service gratuitously but are “*involuntary* workers.” *Bolin*, 114 Wn.2d at 72, 75 (emphasis added). In 1976, the Washington Attorney General issued an opinion in which it concluded that “[v]olunteer firefighters and others who perform volunteer services for local government [and] often receive a small amount of compensation to cover expenses . . . would have to be paid the minimum wage since they are not specifically exempt from the provisions of the Minimum Wage Act.” H.R. Rep. on H.B. 104, ex. s. c 69 § 1, at (Wash. 1977) (citing Wash. AGO 1976 No. 21 (Wash. A.G.)). *See* Pls’. Opening Br. at 36-39. The same is true for jurors.

meaningful distinction between recognizing that jurors are employees within the meaning of the IIA and the MWA.<sup>7</sup>

**E. King County Must Compensate Jurors for Their Service *and* Reimburse Them for Their Expenses.**

RCW 2.36.150 provides that jurors shall be “reimbursed” for “expenses” at the rate of not more than \$25 nor less than \$10 a day. Plaintiffs do not challenge the operation of this statute in any way. Plaintiffs seek compensation for the *time* jurors spend performing their service, and such compensation is different in kind and beyond the payment authorized by RCW 2.36.150. The plain language of the statute supports this construction. *See* Pet. for Review at 17-18; Pls.’ Opening Br. at 39-41. In other words, Plaintiffs seek compensation for jury service *in addition to expenses*. Regardless of whether jurors are entitled to minimum wage, King County will still be required to reimburse jurors for their expenses pursuant to RCW 2.36.150.

Contrary to the conclusion of the Court of Appeals, Plaintiffs do not argue that the amount King County pays under RCW 2.36.150 to reimburse expenses creates a disparate impact on the basis of economic status. 7 Wn.

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<sup>7</sup> King County argues that the Court’s control over jurors is analogous to control over a subpoenaed witness. Answer Pet. at 14. But a subpoenaed witness is principally under the control of the party that subpoenaed her. The party issuing the subpoena, not the court, determines who receives the subpoena, the date of attendance, the time of attendance, and the length of testimony. The Court has far less control over a subpoenaed witness than it does over a summoned juror.

App. 2d at 653. The expense reimbursement is irrelevant to Plaintiffs' argument.<sup>8</sup>

**1. The fiscal consequences to King County of paying jurors for their time would be relatively insubstantial.**

King County has carefully considered the fiscal consequences of paying minimum wages to jurors. On December 10, 2014, the County calculated that it paid "about \$700,000 for 70,000 service days at \$10/day. If we instead paid those 70,000 jurors the current minimum wage of \$9.32 for seven hours a day, the cost would have been \$4,566,800, or almost \$5 million if you include employer related FICA tax." CP 652.

On September 29, 2016, King County recalculated the cost of paying minimum wages to jurors at a rate of \$15 an hour in Seattle and \$11.15 an hour in Kent. King County estimated that the cost for compensating jurors for their time in 2017 would have equaled \$7,409,685. CP 650.<sup>9</sup> King County's overall budget for the 2017-2018 biennial exceeds

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<sup>8</sup> Though this case is not focused on the expense reimbursement statute, it is worth noting that since 1959 King County has reimbursed jurors for expenses at the *statutory minimum* of \$10 a day, which in Seattle is insufficient to cover parking. By adopting the statutory minimum instead of the maximum of \$25 a day, King County has saved \$15 per day for every juror who has served in King County courts *for the last 60 years*. Assuming 70,000 service days a year (estimated by King County in 2014), the County has saved approximately \$1.05 million a year or \$63 million total since 1959, not including interest. This fiscal decision demonstrates a callous indifference for the welfare of jurors and the administration of justice.

<sup>9</sup> In making this calculation, King County incorrectly assumed that it would receive a credit for the expense reimbursement of \$10 a day. CP 650. The expense reimbursement, however, will be unaffected by a requirement to compensate jurors for their service, and King County will be required to reimburse jurors for expenses regardless of whether they receive minimum wage.

\$11 billion. *See* King County 2017-2018 Biennial Budget Executive Summary.<sup>10</sup>

**F. Jurors have standing under the Declaratory Judgment Act.**

The purpose of the Uniform Declaratory Judgments Act (“UDJA”) “is to settle and to afford relief from uncertainty or insecurity with respect to rights, status and other legal relations.” RCW 7.24.120. The act is “remedial” and thus “is to be liberally construed and administered.” RCW 7.24.120; *see also Sorenson v. City of Bellingham*, 80 Wn.2d 547, 559, 496 P.2d 512 (1972) (“The Declaratory Judgments Act should be liberally interpreted in order to facilitate its socially desirable objective of providing remedies not previously countenanced by our law.”) (citation omitted).

“Where a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the [management and operation of governmental systems] generally, questions of standing to maintain an action should be given less rigid and more liberal answer.” *Farris v. Munro*, 99 Wn.2d 326, 330, 662 P.2d 821 (1983). Washington courts will reach a “substantive issue presented where that ‘issue is a matter of continuing and substantial interest, it presents a question of a public nature which is likely

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<sup>10</sup> Available at [http://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/budget/2017-2018/17-18BudgetBook/17-8\\_BudgetExecSummary\\_FINAL.ashx?la=en](http://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/budget/2017-2018/17-18BudgetBook/17-8_BudgetExecSummary_FINAL.ashx?la=en).

to recur, and it is desirable to provide authoritative determination for the future guidance of public officials.” *Id.* at 330 (citation omitted).

“In order to have standing, a party must demonstrate (1) that [she] falls within the zone of interests that a statute or ordinance protects or regulates and (2) that [she] has or will suffer an injury in fact, economic or otherwise, from the proposed action.” *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 432-33, 260 P.3d 245 (2011) (citation omitted). King County argues that Plaintiffs lack standing because they are not “employees” under the MWA and cannot show an injury in fact under the Jurors Rights Statute. Answer Pet. Rev. at 20. But Plaintiffs are “employees” under the MWA. *See Bolin*, 114 Wn.2d at 75. And Plaintiffs do show an injury in fact because there exists an implied cause of action for disparate impact under the Juror Rights Statute, *See Pls.’ Opening Br.* at 42-46. “When the government causes a citizen, in this manner, to forego a right guaranteed by law, that citizen has suffered an injury in fact.” 735 P.3d at 338 (Bjorgen, J., dissenting). Plaintiffs have standing to pursue their claims.

#### **IV. CONCLUSION**

This Court should rule that the failure to compensate jurors for their time in service violates the Juror Rights Statute, RCW 2.36.080(3), and that jurors are “employees” under the Washington Minimum Wage Act, RCW 49.46.020. The Court should reverse the lower courts and remand for further proceedings.

Respectfully submitted this 30th day of August 2019.

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