

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
6/14/2019 3:15 PM  
BY SUSAN L. CARLSON  
CLERK

NO. 96990-6

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

NICOLE BEDNARCZYK, AND CATHERINE SELIN,  
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY  
SITUATED,

Appellants,

v.

KING COUNTY, A MUNICIPAL CORPORATION,

Respondent.

---

**RESPONDENT KING COUNTY'S ANSWER TO AMERICAN  
CIVIL LIBERTIES UNION OF WASHINGTON, THE FRED T.  
KOREMATSU CENTER FOR LAW AND EQUALITY, AND THE  
KING COUNTY DEPARTMENT OF PUBLIC DEFENSE'S AMICI  
CURIAE MEMORANDUM IN SUPPORT OF PETITION FOR  
REVIEW**

---

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

KAREN A. POOL NORBY, WSBA #22067  
JANINE JOLY, WSBA #27314  
HEIDI JACOBSEN-WATTS, WSBA #35549  
Senior Deputy Prosecuting Attorneys  
Attorneys for Respondent King County  
King County Admin Building  
500 Fourth Avenue, Suite 900  
Seattle, Washington 98104  
(206) 296-0430 Fax (206)-296-8819

**TABLE OF CONTENTS**

**I. INTRODUCTION..... 1**

**II. ARGUMENT..... 1**

**A. Racial diversity in juries is not at issue in this case ..... 1**

**B. Policy arguments should be directed to the Legislature..... 3**

**III. CONCLUSION ..... 4**

**TABLE OF AUTHORITIES**

**Cases**

*Robb v. City of Tacoma*, 175 Wash. 580, 586 (1933)..... 2

**Statutes**

RCW 2.36.150 ..... 1, 3

**Court Rules**

General Rule 37 ..... 2

**Other Sources**

Order No. 25700-A-1221 ..... 2

**Legislative History**

H.B. 1937, 61<sup>st</sup> Leg. Sess. (Wn. 2009) ..... 3

## **I. INTRODUCTION**

The American Civil Liberties Union of Washington, the Fred T. Korematsu Center for Law and Equality, and the King County Department of Public Defense (collectively Amici) raise the issue of jury diversity in Washington and argue that increasing juror pay will improve jury diversity. While King County agrees that jury diversity is an issue that needs to be addressed, the concerns raised by Amici regarding the level of juror pay set by statute are appropriately directed to the Legislature.

## **II. ARGUMENT**

### **A. Racial diversity in juries is not at issue in this case.**

The issues raised in this case are whether juror pay in King County is constrained by RCW 2.36.150 and whether such payment discriminates against Petitioners based on economic status. The issue of racial diversity in juries is *not* an issue in this case. Thus, the arguments of Amici are misplaced.

Notably, the two individual petitioners before the Court are presumed not to be Black or African-American because Petitioners conceded that their standing to raise issues of racial discrimination based on juror payment statutes dissolved when they voluntarily dismissed

former Plaintiff Ryan Rocha and all of his race-based claims.<sup>1</sup> Moreover, even if juror diversity was at issue in this case, it would not change the fact that juror pay is governed by statute and arguments regarding any statutory amendment are appropriately directed to the Legislature.

The Court may promulgate court rules, such as recently adopted General Rule 37,<sup>2</sup> that strive to eliminate the unfair exclusion of potential jurors based on race or ethnicity in the jury selection process. But where the legislature has enacted a statute, absent a constitutional challenge, the court's power is limited to interpreting the statute. *See, e.g. Robb v. City of Tacoma*, 175 Wash. 580, 586 (1933) (“Courts do not sit to review or revise legislative action, but rather to enforce the legislative will when acting within its constitutional limits.”). No such constitutional challenge to the juror payment statute is before the Court in this petition for review.

---

<sup>1</sup> *See* CP 693-697 (Plaintiff Ryan Rocha's Motion to Voluntarily Dismiss Claims Without Prejudice); CP 675-678 (Order Granting Defendant King County's Motion for Summary Judgment).

<sup>2</sup> The American Civil Liberties Union of Washington originally proposed the rule. *See* Order No. 25700-A-1221.

**B. Policy arguments should be directed to the Legislature.**

Amici cite a number of different studies in support of their argument that juror pay impacts jury diversity. Even if that is true, as the Washington State Jury Commission Report clearly recognizes, juror pay is set by statute and is therefore an issue for the Legislature to address.

“Legislation should be drafted requiring that current fees be raised, with the increase funded by the state.” Washington State Jury Commission Report (2000) at p. 23, available at [https://www.courts.wa.gov/committee/pdf/jury\\_commission\\_report.pdf](https://www.courts.wa.gov/committee/pdf/jury_commission_report.pdf) (last visited June 11, 2019).

Whether or not juror pay should be increased is an important issue, but King County cannot change state law. The Legislature has the authority to set juror payment and it can increase the pay by amending RCW 2.36.150 as it has considered doing in the past. In 2009, the Legislature considered an increase in the maximum juror pay from \$25 to \$65 per day and to require an annual adjustment to the maximum daily rate for juror pay based on changes in the consumer price index.<sup>3</sup> The bill was not successful.

---

<sup>3</sup> The bill also would have required the state to reimburse the county or city for juror pay after the first day of attendance, provided that the county or city fulfilled certain requirements and specifically appropriated funding was available. H.B. 1937, 61<sup>st</sup> Leg. Sess. (Wn. 2009).

Amici argue that “[t]he current fee structure must be changed...”  
Br. of Amicus at 9. King County does not disagree, but the fee structure is set by statute and the policy issues raised by Amici need to be addressed by the Legislature.

### III. CONCLUSION

There are no race-based claims presented in this appeal. Juror pay is governed by statute and any adjustments must be made by the Legislature. The policy arguments raised by Amici regarding the amount of juror pay set by statute are within the Legislature’s exclusive purview to consider and address and therefore do not bear on whether the Court should accept review.

DATED this 14<sup>th</sup> day of June, 2019.

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

Respectfully submitted,

*/s/ Heidi Jacobsen-Watts*

KAREN A. POOL NORBY, WSBA #22067  
JANINE JOLY, WSBA #27314  
HEIDI JACOBSEN-WATTS, WSBA#35549  
Senior Deputy Prosecuting Attorneys  
Attorneys for Respondent King County  
King County Prosecuting Attorney  
500 Fourth Avenue, Suite 900  
Seattle, WA 98104  
(206) 296-0430 Fax (206) 296-8819  
[Karen.Pool-Norby@kingcounty.gov](mailto:Karen.Pool-Norby@kingcounty.gov)  
[Janine.Joly@kingcounty.gov](mailto:Janine.Joly@kingcounty.gov)  
[Heidi.Jacobsen-Watts@kingcounty.gov](mailto:Heidi.Jacobsen-Watts@kingcounty.gov)

**CERTIFICATE OF SERVICE**

I, NADIA RIZK, hereby certify that on June 14, 2019, I electronically filed the foregoing with the Clerk of the Court for the Washington Supreme Court by using the Washington State Appellate Courts' web portal system.

I certify that all participants in the case are registered electronic users and that service will be accomplished by the appellate portal system.

Dated this 14th day of June, 2019 at Seattle, Washington.

/s/ Nadia Rizk  
NADIA RIZK  
Paralegal  
King County Prosecuting Attorney's  
Office

**KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION**

**June 14, 2019 - 3:15 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96990-6  
**Appellate Court Case Title:** Nicole Bednarczyk, et al. v. King County  
**Superior Court Case Number:** 16-2-10105-0

**The following documents have been uploaded:**

- 969906\_Answer\_Reply\_20190614150803SC196095\_1907.pdf  
This File Contains:  
Answer/Reply - Other  
*The Original File Name was KCs Answer to Amicus Curiae ACLU Fred Kore and KCPD.pdf*

**A copy of the uploaded files will be sent to:**

- Karen.pool-norby@kingcounty.gov
- admin@bjtlegal.com
- anita.khandelwal@kingcounty.gov
- changro@seattleu.edu
- cheidelberg@bjtlegal.com
- cronan@sgb-law.com
- forde@seattleu.edu
- janine.joly@kingcounty.gov
- jneedlel@wolfenet.com
- jpitre-williams@frankfreed.com
- leeme@seattleu.edu
- levinje@seattleu.edu
- msubmit@frankfreed.com
- nadia.rizk@kingcounty.gov
- talner@aclu-wa.org
- tmarshall@terrellmarshall.com
- whitehead@sgb-law.com

**Comments:**

---

Sender Name: Nadia Rizk - Email: nadia.rizk@kingcounty.gov

**Filing on Behalf of:** Heidi Joanne Jacobsen-Watts - Email: Heidi.Jacobsen-Watts@KingCounty.gov (Alternate Email: )

**Address:**

516 3rd avenue Room W-400  
Seattle, WA, 98104  
Phone: (206) 477-1120

**Note: The Filing Id is 20190614150803SC196095**