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NO. 96990-6

SUPREME COURT OF THE STATE OF WASHINGTON

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

Petitioner-Plaintiffs,

v.

KING COUNTY, A MUNICIPAL CORPORATION,

Respondent-Defendant.

RESPONDENT KING COUNTY'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

Plaintiffs' case is like an old sweater that looks interesting, but quickly unravels once you try it on. To be sure, Washington's jury system – from the master list, to the show up rate, to the seated jury's diversity – continues to require substantial attention from this Court as well as purposeful collaboration with the other two branches of government. However, a plaintiffs' putative class action that seeks to recast a juror's civic duty as an employment matter is counterproductive to this collaborative effort. This case is a poor vehicle for finding solutions to the highly complex problem of why many citizens chose to avoid jury duty. Because Plaintiffs' case has no colorable legal grounds and distracts from the serious work of reforming our jury system, the Court of Appeals should be affirmed.

II. JUROR EXCUSALS AND POSTPONEMENTS

There is no doubt that citizen jurors play a crucial role in our judicial system. Along with judges, jurors are indispensable components. *See* U.S. Const. Sixth Amend. (trial by jury); Wash. Const. art. I, §22 (same). As such, “[p]rospective jurors take an oath and are officers of the court until discharged.” *State v. Vega*, 144 Wn. App. 914, 917 (2008). Once jurors are sworn in, “they are no longer members of the public, but officers of the court.” *State v. Price*, 154 Wn. App. 480, 487 (2009) Jury service “invests each citizen with a kind of magistracy.” *Powers v. Ohio*, 499 U.S. 400, 407

(1991) (*quoting* Alexis de Tocqueville, 1 Democracy in America 334-337 (Schocken 1st ed. 1961)). During their period of appointment by the court, Washington jurors are “public servants,” RCW 9A.04.110(23), and “public officials” under 18 U.S.C. §201. Like judges, jurors are afforded absolute immunity from suit. *See In re Castillo*, 297 F.3d 940, 948 (9th Cir. 2002) (discussing judicial and quasi-judicial immunity).

The selection and investiture of jurors is under the control of our Superior Court and District Court judges. County clerks function as clerks of the superior court when assisting in this process. *See* Wash. Const. Art. IV, § 26 (“The county clerk shall be by virtue of his office, clerk of the superior court.”). It is the duty “of the judges of the superior court to ensure continued random selection of the master jury list and jury panels.” RCW 2.36.065. The judges’ duties include reviewing the jury selection process and keeping a description on file with the clerk. *Id.*

Persons selected for jury service are issued a summons. RCW 2.36.095. The ability of the court to release prospective jurors from service is limited: “Except for a person who is not qualified for jury service under RCW 2.36.070, no person may be excused from jury service *by the court* except upon a showing of undue hardship, extreme inconvenience, public necessity, or any reason deemed sufficient *by the court* for a period of time the court deems necessary.” RCW 2.36.100(1) (emphasis added). The court may designate its staff to exercise the court’s authority to excuse or

reschedule potential jurors. *Id.* at §(2).

General Rule 28 establishes the procedures for postponing and excusing persons from jury service. The rule provides that the “judges of a court may delegate to court staff and county clerks their authority to disqualify, postpone, or excuse a potential juror from jury service.” GR 28(b)(1). The “[p]ostponement of service for personal or work-related inconvenience should be liberally granted when requested in a timely manner.” *Id.* at §(c)(1). Outright “[e]xcusal from jury service shall be limited and shall be allowed only when justified by the criteria established in RCW 2.36.100(1).” *Id.* at §(d)(1).

In accord with GR 28(b), the King County Superior Court judges have “delegated to jury staff the authority to disqualify, postpone or excuse potential jurors from jury service for hardship.” CP 416 (Superior Court Excusal Policy). The filed policy establishes standards for the exercise of these delegated powers. *Id.* Financial burden merits excusal or postponement of service when jurors “who are not being paid for jury service by their employer . . . will be unable to meet the basic needs of the juror and the juror’s family.” *Id.* A similar policy has been promulgated by the King County District Court judges. CP 418.

Once jurors in either court system appear for service, any further juror requests for excusal are decided by the judge. CP 129. Jurors “may ask the judge to excuse them for a variety of circumstances, including

economic hardship” and the judge has the discretion to grant the excusal for a sufficient reason. *Id.*

III. PLAINTIFFS’ SPECULATIVE CLAIMS SHOULD BE DISMISSED FOR LACK OF STANDING UNDER THE UDJA.

With the exception of Plaintiff Selin’s claim for back wages under the Washington Minimum Wage Act (“MWA”), RCW ch. 49.46, Plaintiffs’ remaining claims for declaratory and injunctive relief rest on an unspecified “fear” of a future jury summons. Fear of a future speculative event, however, does not confer standing for prospective relief. Standing under Washington’s Uniform Declaratory Judgments Act (“UDJA”), RCW ch. 7.24, requires the existence of a “justiciable controversy” between the parties, including “*an actual, present and existing dispute, or the mature seeds of one*, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement.” *To–Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411 (2001) (emphasis added). Inherent in justiciability are the traditional limiting doctrines of standing, mootness, and ripeness, as well as the federal case-or-controversy requirement. *To–Ro Trade Shows*, 144 Wn.2d at 411. *See also Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 203 (2000) (Under the UDJA, “the requirement of standing tends to overlap justiciability requirements.”).

The strength of Plaintiffs’ claims are limited to the sparse and conclusory declarations submitted in response to King County’s motion for

summary judgment.¹ CP 653-54 (Selin Decl.); CP 655-59 (Bednarczyk Decl.). Although Plaintiffs disingenuously refer to themselves as “prospective jurors,” the record is undisputed Plaintiffs were not facing jury service when this case was filed. With over 2.2 million residents, a summons for jury service in King County is a sporadic occurrence. If plaintiffs are again summonsed, it is entirely speculative whether their jobs, income and financial situation will be the same as it was when they were last summonsed. This court has “repeatedly refused to find a justiciable controversy where the event at issue has not yet occurred or remains a matter of speculation.” *To-Ro Trade Shows*, 144 Wn.2d at 415-16 (collecting cases). The prospect of future jury service is simply too speculative to support Plaintiffs’ standing for declaratory and injunctive relief.² See *Hummel v. St. Joseph Cty. Bd. of Comm'rs*, 817 F.3d 1010, 1021 (7th Cir. 2016) (“The prospect of jury service remains too speculative to support standing to challenge juror facilities.”); *Soc’y of Separationists, Inc. v. Herman*, 959 F.2d 1283, 1285 (5th Cir. 1992) (Plaintiff lacked standing to bring prospective claim based on jury service because Travis County had

¹ See *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225–26 (1989) (In the face of summary judgment, nonmoving party cannot rely on pleadings and must submit declarations).

² Plaintiffs’ desire to be representatives of a putative class does not alter the standing analysis. Washington law requires that proposed class representatives establish their own standing, independent of class certification. *Doe v. Spokane & Inland Empire Blood Bank*, 55 Wn. App. 106, 115, 780 P.2d 853, 859 (1989). An individual “named as a party in a class action cannot assert the action merely because the class has a claim if he himself does not.” *Washington Educ. Ass'n v. Shelton Sch. Dist. No. 309*, 93 Wn.2d 783, 790 (1980).

over half a million residents with 20 judges and chance of being selected again for jury service before the same judge was “slim.”). As such, plaintiffs’ requests for prospective relief should be dismissed.³

IV. BY STATUTE, COUNTIES ARE LIABLE ONLY FOR JUROR EXPENSES OF \$10-25 PER DAY PLUS MILEAGE.

The Superior and District Courts are part of Washington’s judicial branch of government. *See* Wash. Const. Art. IV, § 1 (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.”) (emphasis added). To fund these courts, the Legislature specifically allocates expenses between counties and the state. For example, with regard to the Superior Courts, the Legislature makes counties responsible for half of the judge’s salary (RCW 2.08.100), costs related to court house operations (RCW 2.28.139), court reporters (RCW 2.32.210), bailiffs (RCW 2.32.360, .370), and costs to maintain records (RCW 36.23.030). Statutes also specify what District Court costs are borne by counties. *See, e.g.* RCW 3.58.030 (salaries of court personnel); RCW 3.58.050 (court operations).

For both courts, the Legislature has specified the county contribution to jury costs. Under RCW 2.36.150, jurors are owed a *per diem*

³ Plaintiffs cannot avoid their standing problems by resort to the “public importance” exception to justiciability. This exception applies only when a dispute is ripe, *League of Educ. Voters v. State*, 176 Wn.2d 808, 820 (2013), but Plaintiffs will not have a ripe dispute *until* they are again summoned for jury service *if* their service works a financial hardship.

of “up to twenty-five dollars but in no case less than ten dollars” for superior and district court jury service. Jurors can also claim mileage expenses. *Id.* When jury costs arise from a criminal case related to a state correctional facility, the state is required to “fully reimburse” the county. *Id.* Thus, through RCW 2.36.150, the Legislature caps county liability for juror costs at \$10-25 per day (plus mileage).

Without engaging in any meaningful construction of RCW 2.36.150, plaintiffs claim that this statute “does not foreclose compensation beyond reimbursement for expenses” and that payment of wages for each hour worked under the MWA is consistent with the statute. Pet. at 18. They are wrong.

It is well established that the “goal of statutory interpretation is to discern and implement the Legislature's intent.” *State v. Armendariz*, 160 Wn.2d 106, 110 (2007). The key to interpreting RCW 2.36.150 is understanding the meaning of “expense payments.” Contrary to Plaintiffs’ assertions, the Legislature’s use of this term is not readily apparent because the statute *separately* calls out mileage reimbursements under RCW 43.03.060 – an item that would normally be included within “expense payments.” *See* RCW 43.03.060(2) (using term “transportation expenses”). Because the Legislature uses “expense payments” in a non-standard manner – one that includes some “expenses,” but not others – the term is ambiguous within the context RCW 2.36.150 and the referenced 43.03.060. *See State*

v. Evergreen Freedom Found., 192 Wn.2d 782, 789 (2019), *cert. denied*, 139 S. Ct. 2647, 204 L. Ed. 2d 284 (2019) (“if more than one interpretation of the plain language is reasonable, the statute is ambiguous”).

In discerning legislative intent behind RCW 2.36.150, legislative history provides substantial assistance in resolving this ambiguity. *Id.* In 2004, Substitute Senate Bill (“SSB”) 6261 replaced the word “compensation” with “expense payments” and “compensation paid” with “expense payments paid to.” Laws of 2004, ch. 127 §1. The bill passed both houses unanimously. Its purpose, however, was not to change the nature of the *per diem* paid to jurors and open the door to wages under the MWA. Instead, the prosaic purpose of the bill was to allow federal employees who served as jurors “to retain expense payments for jury service, rather than being required to remit jury compensation to the federal government.” Final Bill Report SSB 6261; *see Biggs v. Vail*, 119 Wn.2d 129, 134 (1992) (use of legislative reports to discern intent). Before the amendment, it cost federal employers about \$65 to process each \$10 juror payment. House Bill Report SSB 6261 at 2. The amendment was designed merely to “avoid the hassle and costs currently incurred.” *Id.*

The proper meaning of RCW 2.36.150 is further supported by the related statutes allocating superior and district court costs between the state and counties. *Jametsky v. Olsen*, 179 Wn.2d 756, 762 (2014) (Court should consider “related statutes which disclose legislative intent about the

provision in question.”). Because these courts are part of the judicial branch of state government, it is necessary for the Legislature to specify what costs are the responsibility of counties. As noted above, these statutes address every cost related to operation of the courts from stationery to light bills to buildings. *See, e.g.*, RCW2.28.139. With all costs for court operations meticulously allocated between the state and counties, it is inconceivable that the Legislature would have intended RCW 2.36.150 to allow for additional juror wages under the MWA, but then fail to provide for any allocation of this additional cost.

Finally, Plaintiffs’ claim that the 2004 amendments to RCW 2.36.150 allow for application of the MWA crumbles in the face of 2006 amendments to the same statute, which created a pilot project whereby jurors would temporarily receive \$62 dollar per day. *See* Laws of 2006 ch. 372 §903. It turns out that the minimum wage in 2006 was \$7.63 per hour,⁴ which is close to the \$62 *per diem* established for the pilot project. This makes Plaintiffs’ interpretation of RCW 2.36.150 untenable. If the 2004 legislation had already amended the statute to require a minimum wage payment under the MWA, the 2006 amendments would be entirely unnecessary and the pilot project would make no sense. *See State v. Dennis*, 191 Wn.2d 169, 173 (2018) (Court must interpret a statute so as to “render

⁴ <https://lni.wa.gov/WorkplaceRights/Wages/Minimum/History/default.asp> (last accessed 8/30/2019).

no portion meaningless or superfluous.”).

In sum, RCW 2.36.150 is correctly interpreted to set a *per diem* for jurors at \$10-25 per day plus mileage, which represents both the total available compensation and the cost legislatively allocated to counties. Whatever the wisdom of setting juror pay at \$10-25, this specific juror pay statute serves as an absolute bar to Plaintiffs’ suit. *See Residents Opp. to Kittitas Turbines v. State Energy Facility Site Eval. Council*, 165 Wn.2d 275, 309 (2008) (“Under the general-specific rule, a specific statute will prevail over a general statute.”).

V. JURORS ARE EXCLUDED FROM THE MWA.

The plethora of reasons why the MWA has no application to jurors is extensively detailed in briefing before this court. *See* Opening Brf. at 17-29; Resp. to Pet. at 12-19. It is well-established that the government may require the performance of “civic duties,” including jury service, without pay. *Immediato v. Rye Neck Sch. Dist.*, 73 F.3d 454, 459 (2d Cir. 1996). Whether witness or jury, “[t]he personal sacrifice involved is a part of the necessary contribution of the individual to the welfare of the public.” *Blair v. United States*, 250 U.S. 273, 281, 39 S. Ct. 468, 471, 63 L. Ed. 979 (1919). Indeed, “[j]ury service is a duty as well as a privilege of citizenship; it is a duty that cannot be shirked on a plea of inconvenience or decreased earning power.” *Thiel v. Southern Pac. Co.*, 328 U.S. 217, 222–24 (1946). In short, jury service can be imposed without any compensation other than what the

Legislature provides. *State v. Lamping*, 25 Wash. 278, 282 (1901).

Even if the constitutional role of citizen-juror is properly called an “employment,” the MWA definition of “employee” excludes jurors. As pointed out in previous briefing, jurors fall within the RCW 49.46.010(3)(d) exclusion to the MWA definition of “employee.” Unlike any other employee, jurors can be arrested and charged with a crime for failing to appear for jury service. RCW 2.36.170. This fact alone is an irrefutable indication that “the employer-employee relationship does not in fact exist” for purposes of RCW 49.46.010(3)(d).

In addition, jurors are excluded from application of the MWA under RCW 49.46.010(3)(1), which precludes application of the MWA to “[a]ny individual who holds a *public . . . appointive office*.” (Emphasis added). A juror is appointed by the judge to serve as an officer of the court for the term of the trial. Thus, during her period of service, the juror is an appointed officer of the judicial branch, vested with the authority to determine guilt or innocence and exempt from application of the MWA under .010(3)(1).⁵

Plaintiffs’ attempt to use *Bolin v. Kitsap County*, 114 Wn.2d 70 (1990), to make themselves “employees” under the MWA is a classic case

⁵ Deeming jurors “employees” under the WMA would lead to numerous unintended consequences and potentially interfere with the judicial branch operations. For example, if jurors were employees, would they have the right to unionize for better pay and working conditions? Would they be entitled to temporary benefits? Would deliberations become evidence in employment-related lawsuits? Would a juror be able to delay a trial by asserting employment-protected leave? Would dismissal from the jury contort into a wrongful termination claim (where judges generally do not enjoy immunity)? These are only some of the questions that would arise in subsequent litigation.

of confusing apples with oranges. As the Court of Appeals pointed out below, *Bolin* is “inapplicable” because it “interpreted the status of jurors as employees under the IIA [Industrial Insurance Act], not the MWA.” *Rocha v. King Cy.*, 7 Wn. App. 2d 647, 658 (2019). The list of excluded employments under the IIA differs dramatically from the exclusions contained in the MWA. *Compare* RCW 51.12.020 *with* RCW 49.46.010(3). For example, persons holding appointive office fall within the IIA, but are outside the MWA. The Court of Appeals should be affirmed because there is no basis in the MWA for concluding that jurors are “employees” subject to the act.⁶

VI. PLAINTIFFS HAVE NO IMPLIED CAUSE OF ACTION UNDER RCW 2.36.080 FOR “ECONOMIC STATUS” DISCRIMINATION.

Plaintiffs’ claim that RCW 2.36.080 creates an implied, private right of action where a summonsed juror can sue for “economic status”

⁶ Even if Plaintiffs’ somehow showed that jurors were employees under the MWA, they have failed to answer the equally crucial question of whose employees would they be? Jurors are appointed by the judge and serve a state judicial branch function. Court staff working with jurors do so at the direction of the judge. Jurors comings and goings during trial are strictly controlled by the judge, they can be dismissed by the judge, and they are literally “instructed” by the judge on exactly how they are to perform their functions. The determination in *Bolin* that jurors were employees of the county turned on unique aspects of the IIA (the need to provide IIA coverage), but this Court explicitly recognized that jurors were “under a superior court judge’s control.” *See Doty v. Town of S. Prairie*, 155 Wn.2d 527, 545–46 (2005) (explaining *Bolin*). Indeed, it is state judicial branch judges, not counties, who run courtrooms and utilize the services of jurors. But Plaintiffs have sued no judges, nor have they named the State of Washington. The absence of the juror’s proper “employer” from this lawsuit leaves this Court without any ability to provide Plaintiff Selin with effective relief – even *if* she somehow qualifies as an MWA “employee.” As such, Plaintiff Selin’s minimum wage claims should be dismissed as moot. *State v. Hunley*, 175 Wn.2d 901, 906, 287 P.3d 584, 588 (2012) (Case moot when court cannot provide effective relief).

discrimination if their own request for a hardship excusal is granted by a judge or designated court staff. Of course, such an implied right of action requires this court to accept the untenable premise that the Legislature intended to make lawful compliance with RCW 2.36.150 (jury pay) and 2.36.100 (hardship excusal) an actionable lawsuit under RCW 2.36.080. The Court of Appeals correctly recognized that the purpose of RCW 2.36.080 is to ensure that the master jury list is assembled without discrimination. *Rocha*, 7 Wash. App. 2d at 656. Because this statute does not apply to judicially-granted voluntary excusal requests, there is no private right of action. *Id.*

Plaintiffs call RCW 2.36.080 the “juror rights statute,” but this statutory renaming is created out of whole cloth. Rather, the statute governs composition of the jury master list. It reads, “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.”⁷ RCW 2.36.080(1). It also provides that “all qualified citizens have the *opportunity* in accordance with chapter 135, Laws of 1979 ex. sess. to be *considered* for jury service in this state and have an obligation to serve as jurors when summoned for that purpose.” RCW 2.36.080(1) (emphasis added). Such an *opportunity* to be *considered* arises from inclusion on the master list, while the obligation to serve is

⁷ In contrast to summonses off the master jury list, which are selected at random, the final sitting jury is winnowed through various purposeful excusals, including challenges for cause and peremptory challenges. RCW 2.36.080 could have no application to this process, which is under the control of the judicial branch.

triggered by a summons from that list. By extension, the important language of .080(3) also applies only to “jury service” – the same term used to reference the master list and summons process in .080(1).

Plaintiffs’ argue that RCW 2.36.080 applies not only to the master list and summons process, but also to judicially authorized, post-summons excusals for “undue hardship.” This argument fails.

First, there is nothing in the record that would give Plaintiffs any standing whatsoever to challenge judicially-granted hardship excusals based on “economic status.” Plaintiff Selin, who does not identify herself as a member of any protected economic class, was not excused and served on a jury. CP 653-54. Plaintiff Bednarczyk, whose income is well above the federal and state poverty levels (even without taking into account her apparent status as a student and voluntary care giver for her relatives) also presents no evidence that she is a member of any protected economic class. CP 655-57. When she requested a hardship excusal, she cited the operational needs of her employer, her role as a primary care giver to relatives, and the possible financial impact of jury service. CP 659-60. But this falls *far short* of what standing requires. Because jury service is financially adverse for anyone who does not have an employer-based jury service benefit – rich or poor – Plaintiff Bednarczyk’s declaration fails to establish either a protected “economic status,” or any discrimination based on that status due to the superior court’s grant of her excusal request.

Second, it would patently violate the separation of powers if RCW 2.36.080 were interpreted to create a cause of action for judicially-granted hardship excusals. Following issuance of a summons off the master list, the voluntary exclusion of a juror under RCW 2.36.100 based on a claim of hardship falls within the court’s discretion. *Thiel*, 328 U.S. at 224. Hardship excusals do not deprive a litigant of a fair cross-section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 534 (1975). Under these circumstances, the creation of a *cause of action* against a judicial officer for the proper exercise of judicial branch powers would represent an unfathomable incursion on judicial branch authority.⁸ See *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 504 (2009) (Separation of powers “ensures that the fundamental functions of each branch remain inviolate.”). Because there can be no implied cause of action for properly following other statutes and exercising judicial powers, Plaintiffs’ claim that RCW 2.36.080 applies to judicially-authorized excusals following the issuance of a summons off the master list should be denied. The Court of Appeals should be affirmed.

VII. IT WOULD VIOLATE THE SEPARATON OF POWERS FOR THIS COURT TO MANDATE ADDITIONAL LEGISLATIVE APPROPRIATIONS FOR JUROR PAY.

In their Petition for Review, Plaintiffs attempt to “invoke this

⁸ Plaintiffs’ position also fails because such a cause of action would be barred by judicial immunity. It is highly unlikely that the Legislature intended an implied cause of action that would be barred by common law judicial immunity.

Court's responsibility to supervise the administration of justice" and ask this court to use its "power to mandate compensation for low-income jurors." Pet. at 1-2, 10. This argument was never raised below, nor did Plaintiffs' challenge the constitutionality of RCW 2.36.150, or claim that a payment of \$10 per day was *constitutionally* deficient. See CP 155-196 (Resp. to MSJ). Before the trial court, counsel unambiguously disavowed any constitutional challenge: "We agree that this is a matter for the legislature, and we are asking this Court to interpret the statute." VRP 8/4/2017 at 6. Because this is a wholly new argument absent from prior briefing, this court should reject Plaintiffs' effort to invoke the Court's inherent powers. See *Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 252 (1998) (Supreme Court generally does not consider issues raised for first time in petition for review.).

Given the Legislature's decision to set jury pay at \$10-25 per day plus mileage expenses, Plaintiffs' request for additional compensation requires this Court to intrude on legislative prerogative by forcing an additional appropriation for jury service. See *Matter of Salary of Juvenile Dir.*, 87 Wn.2d 232, 236-37 (1976) (Separation of powers implicated where court is asked to override legislative appropriation and set higher pay for judicial branch employees). This Court has strongly cautioned against interfering with legislative appropriation powers:

The legislative branch generally has control over appropriations. . . .
While we may find a waiting period of years [for legislative action]

to be intolerable, *we would find it even more intolerable for the judicial branch of government to invade the power of the legislative branch.* Just because we do not think the legislators have acted wisely or responsibly does not give us the right to assume their duties or to substitute our judgment for theirs.

Hillis v. State, Dep't of Ecology, 131 Wn.2d 373, 390 (1997) (emphasis added; citations omitted).

Due to separation of powers principles, this Court has recognized only a narrow “inherent power” where the judiciary may act “to ensure its own survival when insufficient funds are provided by the other branches.” *Juvenile Dir.*, 87 Wn.2d at 245. Such a power must be exercised with extreme caution and restraint because the “unreasoned assertion of [judicial] power to determine and demand their own budget is a threat to the image of and public support for the courts.” *Id.* at 248. “By in effect initiating and trying its own lawsuits, the judiciary's image of impartiality and the concomitant willingness of the public to accept its decisions as those of a fair and disinterested tribunal may be severely damaged.” *Id.* at 249. By its very nature, such litigation also “ignores the political allocation of available monetary resources by representatives of the people elected in a carefully monitored process.” *Id.* at 248.

The exercise of this Court’s inherent powers to force additional appropriations for jury pay is inappropriate in this case. Crucially, Plaintiffs’ do not have standing to assert judicial branch rights. Such suits are properly initiated by judges against the legislative branch. *See, e.g.*,

Juvenile Dir., 87 Wn.2d 232 (suit by Superior Court against county commissioners); *Matter of Special Deputy Prosecuting Attorney*, ___ Wn.2d ___ (Aug. 8, 2019) (Suit by superior court judges against county clerk). Otherwise, private litigants risk skewing issues that are already being addressed through branch-to-branch negotiations and accommodations. *See generally Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650, 198 L. Ed. 2d 64 (2017) (Standing “serves to prevent the judicial process from being used to usurp the powers of the political branches.”).

The exercise of inherent powers to force an appropriation is also inappropriate when addressing a statutorily-created right. The only Plaintiffs in this case are former jurors who have no constitutional right to compensation. *Immediato*, 73 F.3d at 459. Ordering additional appropriations beyond the \$10-25 granted by the Legislature in RCW 2.36.150 falls outside this Court’s inherent power because right to pay, as noted above, is purely statutory. *Hillis*, 131 Wn.2d at 390. With no constitutional mandate for juror pay, the Legislature has plenary authority to both grant juror compensation for public policy reasons and determine its amount.

Even if this was a possible case for the exercise of inherent powers, Plaintiffs have failed in their proof. A “high standard” must be met before it is appropriate for the judiciary to exercise its inherent power. *Juvenile*

Dir., 87 Wn.2d at 249-50. The “burden is on the court to show that the funds sought to be compelled are reasonably necessary for the holding of court, the efficient administration of justice, or the fulfillment of its constitutional duties.” *Id.* Such relief is available “**only** when established methods fail or when an emergency arises.” *Id.* at 250 (emphasis added). Further, the court must satisfy “the highest burden of proof in civil cases” - - “clear, cogent and convincing proof of a reasonable need for additional funds.” *Id.* at 251. Plaintiffs cannot meet these standards.

The exercise of inherent judicial power to compel additional funding for jurors is inappropriate here because avenues for continued collaboration between the branches remain viable. The work of the Washington State Jury Commission (“Commission”), which culminated in its July 2000 report, represented the combined efforts of judicial, legislative and executive branch officials. CP 304 (listing membership). In accord with Commission’s recommendations, the Legislature funded a pilot project to test the effects of juror pay. *See* RCW 2.36.150; CP 111 (pilot project). A 2008 study from the Administrative Office of the Courts to the Legislature, however, reported that “[l]ittle impact was seen on jury yield” due to increased juror pay. CP 111. Consistent with other studies of this highly complex problem, juror compensation is only “one of several factors affecting juror participation.” *Id.* More recently, collaboration by the three branches is reflected in the 2019 Interim Report by the Minority and Justice

Commission Jury Diversity Taskforce,⁹ which identifies *multiple* strategies for improving minority representation on juries, including “pursuing a statewide juror pay increase.” Report at 3-7. Under *Juvenile Division*, it would be inappropriate to short-circuit these collaborative efforts by judicially forcing a legislative appropriation.

Using this Court’s inherent power to mandate additional appropriations for jury pay also fails because the evidence before this Court falls far short of “clear, cogent, and convincing proof.” Plaintiffs’ “evidence” consists primarily of old reports from 1996 and 2000. They presented no expert testimony or conclusive studies. At best, the limited materials submitted by Plaintiffs show that juror pay is just one factor among many in a highly complex civic and social problem that no jurisdiction has solved. Plaintiffs submitted no evidence, much less clear and convincing proof, that imposition of minimum wage alone would solve, or even improve, juror diversity and show up rate issues. Given Plaintiffs’ failure to submit clear and convincing proof, the exercise of inherent judicial power to force additional appropriations would “have an adverse effect on working relations between other branches of government and weaken public support for the judiciary.” *Juvenile Dir.*, 87 Wn.2d at 247-48. Judicial action would be imprudent.

⁹ A copy of the report is located on the judicial branch website: <http://www.courts.wa.gov/subsite/mjc/docs/Jury%20Diversity%20Task%20Force%20Interim%20Report.pdf> (last accessed 8/29/2019). Taskforce membership is listed. *Id.* at 1.

VIII. CONCLUSION

For these reasons, the lower court decisions dismissing Plaintiffs' action should be affirmed.

DATED this 30th day of August, 2019.

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Respectfully submitted,

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I, RAFAEL A. MUNOZ-CINTRON, hereby certify that on August 30, 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 30th day of August, 2019 at Seattle, Washington.



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