

No. 81271-3

**SUPREME COURT
OF THE STATE OF WASHINGTON**

CITY OF SPOKANE,
Plaintiff/Petitioner,

v.

LAWRENCE J. ROTHWELL
HENRY E. SMITH
Defendants/Respondents.

DEFENDANTS' SUPPLEMENTAL BRIEF

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A. INTRODUCTION

The City of Spokane by ordinance chose to establish a municipal court as a department of the Spokane County District Court. In doing so, it was under an express legislative mandate to ensure that full-time municipal court judges serving in that department were elected by city voters only. Instead, the City bargained away its citizens' voting rights through a contract which allowed a Spokane County District Court judge to usurp the people's right to select their own municipal court judges. The City's failure to protect this right is contrary to express law and strips authority from those judges acting in violation of the law.

B. STATEMENT OF THE CASE

Procedural History

In April of 2005, the City of Spokane charged Henry Smith and Lawrence Rothwell (hereinafter Defendants) with crimes under the Spokane Municipal Code (SMC).¹ (*Smith* AR Am. Compl. at 1; *Rothwell* AR Am. Compl. at 1.) Both cases were assigned to Judge Patti Walker in Department Four of the Spokane County District Court ("District Court"). (*Smith* AR Mot. to Dismiss for Lack of Jurisdiction; *Rothwell* AR Mot. to Dismiss for Lack of Jurisdiction.) Defendants filed pretrial motions to dismiss for lack of jurisdiction, arguing that Judge Walker had no authority to hear their cases because the Municipal Department was not

¹ The Administrative Record (AR) consists of the records from the Spokane Municipal Court for Henry E. Smith (Muni. Ct. No. B42847) and Lawrence John Rothwell (Muni. Ct. No. B040445). Many of the records for Mr. Smith and Mr. Rothwell are duplicative. Therefore, to avoid unnecessary repetition when the records are the same, only Mr. Smith's records will be cited.

created and maintained as required by chapter 3.46 RCW and because she was never elected as a municipal court judge as required by RCW 3.46.063. *Id.* Judge Walker denied both motions and Defendants were convicted as charged. (*Smith* AR Mem. Op. Den. Def.'s Mot. to Dismiss; *Rothwell* AR Mem. Op. Den. Def.'s Mot. to Dismiss; CP 3-8; *Rothwell* AR J.) Defendants appealed to superior court and again challenged the judge's authority in consolidated appeals. (*Smith* AR Notice of Appeal to Superior Ct.; *Rothwell* AR Notice of Appeal to Superior Ct.)

Finding that the failure to hold elections for municipal court positions was not a matter of "real consequence," Superior Court Judge Rebecca Baker rejected Defendants' jurisdictional arguments and both were convicted. (*Smith* CP at 4; *Rothwell* CP at 4.)² Defendants appealed once more and the Court of Appeals accepted discretionary review on the issue of jurisdiction. (*Smith* CP at 22; *Rothwell* CP at 22.)

On November 8, 2007, the Court of Appeals ruled that Judge Walker had no authority to preside over Defendants cases because "she was not elected to the position of municipal court judge by the citizens of Spokane."³ The court also found that no municipal court had been created in compliance with chapter RCW 3.46.⁴ The City petitioned for review in this Court which review was accepted on September 3, 2008.

² See also *City of Spokane v. Rothwell*, 141 Wn. App. 680, 683, 170 P.3d 1205 (2007).

³ *Id.* at 685, 170 P.3d 1205 (2007).

⁴ *Id.* at 687.

Operational Facts

At all times relevant herein, the City of Spokane's Municipal Court ("Municipal Court") was organized as a municipal department under chapter 3.46 of the Revised Code of Washington. Spokane Municipal Code (SMC) 05.01.010; 05.01.030.⁵ The Spokane Municipal Court was created pursuant to the Justice Court Act in 1961.⁶ In 1961, the City of Spokane petitioned the County of Spokane to create a municipal department within the District Court under chapter 3.46 RCW.⁷ In response to this petition, the Spokane County Council adopted the Justice Court Districting Plan ("Districting Plan") setting forth the different court districts in 1962. (*Smith* AR Mot. to Dismiss for Lack of Jurisdiction, Aff. in Support of Writ of Review of Katherine Knox (hereinafter "Aff. Knox") Ex. A.)

Under the original 1962 plan, one of the District Court departments was designated as a municipal department and the corresponding judicial official was designated as a part-time municipal judge.⁸ In 1970, the Districting Plan was amended to provide that all five of the District Court departments served as municipal departments and all District Court justices functioned as part-time municipal judges.⁹ In 1982, the

⁵ The Spokane City Council adopted chapter 3.46 RCW once more on April 16, 2007. See SMC 5.01.010; -.030.

⁶ *Nollette v. Christianson*, 115 Wn. 2d 594, 601, 800 P.2d 359 (1990). *Nollette* provides a detailed history of the establishment of the City's Municipal Court.

⁷ *Id.*

⁸ *Id.* at 602, 800 P.2d 359.

⁹ *Id.*

Districting Plan was altered again.¹⁰ Spokane County agreed to provide the services of judicial officials equivalent to “two full time judges on a year around [sic] basis” for the Municipal Court for an agreed amount of compensation by the City of Spokane.¹¹ The agreement specifically stated: “Judges shall be provided for the two Spokane Municipal Divisions on a rotating basis from those District Court Judges assigned by the District Court Presiding Judge.”¹² In 1993, chapter 3.46 was amended to require all full-time equivalent municipal court judges to be elected by city voters only.¹³

The current Districting Plan provides for ten full-time elected district court judges, but only nine are filled. (*Smith* AR Aff. Knox Ex. B at 3.) The plan designates all nine judges as “a municipal department,” and provides that their time and salary is to be allocated between the City and County as agreed to in writing.¹⁴ Although all nine have been designated as full-time municipal court judges since 2002, only 3.7 serve as full-time equivalent judges pursuant to a 2004 Interlocal Agreement between the City and County. (*See Smith* AR Aff. Knox Ex. A at 32; *Smith* AR Mot. to Dismiss for Lack of Jurisdiction, Decl. Terri Pfister (hereinafter “Decl. Pfister”) at 6.)¹⁵ Although the agreement expired by its

¹⁰ *Id.* at 603.

¹¹ *Id.*

¹² *Id.*

¹³ RCW 3.46.063 (1993 c 317 § 3); RCW 3.46.070.

¹⁴ Spokane County Code (SCC) 1.16.050.

¹⁵ *See also* SCC 1.16.050.

own terms on December 31, 2004, it apparently remained operative at all times relevant herein. (*Id.* at 2; *Rothwell*, 141 Wn. App. at 683.)

At the time of Defendants' convictions, there were two district court departments and judges serving in full-time municipal capacities: Department Four held by the Judge Walker and Department One held by the Judge Vance Peterson. (*Smith* AR Aff. Knox Ex. C at 1, Ex. D at 1.) The other 1.7 Municipal Court positions were filled by two other district court judges, Judge Derr in Department Two and Judge Wilson in Department Seven. *Id.*

Prior to Defendants' trials, the most recent district court elections were in 2002. The 2002 election ballot did not include any positions for municipal court positions, whether full or part-time. (Smith AR Mot. to Dismiss for Lack of Juris., Decl. Paul Brandt (hereinafter "Decl. Brandt" at 2.)) Rather, district court judges were elected by qualified voters from the entire County of Spokane and municipal court judges selected in a manner agreed upon by the City and County.¹⁶ Although the Court of Appeals found no evidence in the record of the specific selection process,¹⁷ both the City in its briefing and Judge Walker in her Memorandum Opinion stated that the District Court Presiding Judge selects municipal court judges. (AR Bf. of Resp. at 4, Feb. 2, 2007; *Smith* AR Aff. Knox Ex. E at 8,9.)¹⁸ This arrangement directly contravenes the

¹⁶ *Id.*; SCC 1.16.050.

¹⁷ *Rothwell*, 141 Wn. App. at 682-83.

¹⁸ This too was the arrangement in 1982. *Nollette*, 115 Wn. 2d at 603.

legislative mandate requiring full-time equivalent chapter 3.46 municipal court judges to be elected by city voters only.

C. ISSUES PRESENTED FOR REVIEW

- A. Whether the City of Spokane was required to strictly comply with the statutes regarding the creation of a municipal office under chapter 3.46 RCW and its officers;
- B. Whether the acts of district court judges acting as municipal court judges under chapter 3.46 RCW are a nullity where such judges were not elected to municipal court positions.

D. ARGUMENT

The Court of Appeals correctly decided that Judge Walker did not have jurisdiction to hear municipal court cases. When statutes provide particular procedures for creating a judicial office, including municipal officers, there must be strict compliance with those procedures. Here, the statutes require election of full-time equivalent municipal court judges by city voters only. Allowing selection through an undisclosed administrative process not only disenfranchises the citizens of the City of Spokane, but is contrary to law.

Because Judge Walker, a Spokane County District Court Judge, was not elected as a full time municipal court judge by city voters only, she had no authority to act in that capacity. Judge Walker was not acting within the color of law – she was acting in express violation of law. Judge Walker did not have *de facto* authority as a municipal court judge and

hence her actions in these cases are void. For these reasons, this Court should uphold the decision of the Court of Appeals, Division III.

Standard of Review

The standard of review on questions of law regarding a court's jurisdiction under state law is *de novo*.¹⁹

1. Selection of full-time equivalent chapter 3.46 RCW municipal court judges requires election by city voters only.
 - a. Creation of a judicial office in inferior courts requires strict compliance with statutory law.

“Under the Washington Constitution, the legislature has the sole authority to prescribe the jurisdiction and powers of district and municipal courts.”²⁰ Strict compliance with statutes governing the establishment of municipal courts is required in order to ensure judicial accountability.²¹ Likewise, when statutes provide particular procedures for creating a judicial office, including municipal officers, there must be strict compliance with those procedures.²² Strict compliance is necessary to ensure that judicial officers are held directly accountable to voters of the jurisdiction and failure to follow such procedures frustrates legislative

¹⁹ *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

²⁰ *City of Spokane v. County of Spokane*, 158 Wn. 2d 661, 671, 146 P.3d 893 (2006) (citations omitted). See also *City of Medina v. Primm*, 160 Wn. 2d 268, 157 P.3d 379 (2007) (citing *Smith v. Whatcom County Dist. Court*, 147 Wn. 2d 98, 104, 52 P.3d 485 (2002); Const. art. IV, § 1 (judicial power of state vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature provides); Const. art. IV, § 12 (“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.”)).

²¹ *State v. Moore*, 73 Wn. App. 805, 813-14, 871 P.2d 1086 (1994).

²² *Id.* (citing *In re Eng*, 113 Wn.2d 178, 189-91, 776 P.2d 1336 (1992)).

intent.²³ Thus, the procedures for establishing a municipal department in the Spokane County District Court set forth in chapter 3.46 RCW *must be followed* unless they are deemed unconstitutional.²⁴

- b. The City failed to strictly comply with the requisite procedures for creating a municipal office and selecting judicial officers in its municipal court.

The legislature has provided that “each county, city, and town is responsible for the prosecution, adjudication, sentencing and incarceration of misdemeanors and gross misdemeanors committed by adults in their respective jurisdictions, whether filed under state law or city ordinance.”²⁵

A city has three ways to accomplish this duty. It may create its own independent municipal court under chapter 3.50 RCW; it may establish a chapter 3.46 RCW municipal department within the district court; or it may contract with a county district court to hear criminal and other cases under chapter 3.66 RCW.²⁶ Where a city chooses the latter option, cases are filed in district court directly; there is no municipal court.²⁷ However, where cities choose to establish municipal courts, these have exclusive jurisdiction over matters arising from city ordinances.²⁸

²³ *Moore*, 73 Wn. App. at 813-14, 871 P.2d 1086.

²⁴ *State v. Oakley*, 117 Wn. App. 730, 736-37, 72 P.3d 1114 (2003 (emphasis added)).

²⁵ RCW 39.34.180(1).

²⁶ *City of Spokane v. County of Spokane*, 158 Wn. 2d, 661, 671, 146 P.3d 893 (2006) (citation omitted).

²⁷ RCW 3.66.060(1).

²⁸ RCW 3.46.030. *See also City of Spokane*, 158 Wn. 2d at 681 (legislature vested exclusive jurisdiction to municipal courts when enforcing municipal ordinances); *Ledgerwood v. Landsdown*, 120 Wn. App. 414, 420, 85 P.3d 950(2004) (where a municipal court is created, all cases originating out of ordinance violations should be enforced there and nowhere else.)

The City of Spokane is a charter city and as such all legislative acts must be by ordinance.²⁹ Here, the City, by ordinance chose to establish a chapter 3.46 municipal court.³⁰ Thus cases such as Defendants' could only be heard by a municipal court judge duly elected or appointed as required by statute.

Chapters 3.38 (District Court Districts) and 3.46 (Municipal Departments of District Courts) RCW govern the establishment and administration of judicial departments. To create a municipal department within a district court, the city's legislative body must first petition the county legislative authority.³¹ The petition must include 1) the number of full-time and part-time judges required for the municipal department, 2) the amount of time for which a part-time judge will be required for the municipal department, and 3) whether full-time judges will be elected or appointed.³²

The petition is then forwarded to a districting committee which includes the mayor or her representative, the chair of the county legislative body, a superior court and district court judge, and the county auditor, among others.³³ The organization of the municipal department as determined in this petition must be incorporated into the districting plan.³⁴ The districting plan must also include, in pertinent part, the number of

²⁹ *City of Spokane City Charter*, Art. III § 13.

³⁰ SMC 5.01.010; .020; .030.

³¹ RCW 3.46.030.

³² RCW 3.46.040.

³³ *Id.*; RCW 3.38.010.

³⁴ RCW 3.46.040.

judges to be elected in each district, the departments into which the district court will be organized, including municipal departments, and the “allocation of the time and allocation of salary of each judge who will serve part time in the municipal department.”³⁵

Under chapter 3.46, election is required for district court judges who wish to serve the municipal department as full-time equivalent judges.³⁶ Judges in a municipal department are elected for a four year term.³⁷ In judicial districts with more than one judicial position, the county auditor must designate each such office separately.³⁸ At the time of filing, each candidate must designate the office for which he or she is running.³⁹ All municipal court judges must be a judge of the district court where the municipal court is located.⁴⁰ Thus, district court judicial candidates running for a full-time equivalent municipal court position must file declarations of candidacy *for municipal court positions* and the county auditor must designate these on the ballot.⁴¹ Although county-wide voters may vote for district court positions, only voters of the city may vote for municipal court positions.⁴²

³⁵ RCW 3.38.020.

³⁶ RCW 3.46.063(1). For an explanation of what constitutes a full-time equivalent judge see *Rothwell*, 141 Wn. App. at 684-85.

³⁷ RCW 3.46.080.

³⁸ RCW 3.34.050.

³⁹ *Id.*

⁴⁰ RCW 3.46.020.

⁴¹ RCW 3.46.070; 3.34.050. See also Attorney General Opinion (AGO) 1995 No. 9, p. 8 (“It is clearly now necessary for the ballot to disclose that one or more positions on the district court will serve the municipal department, whether full-time or part-time.”)

⁴² RCW 3.46.070.

None of the nine Spokane County District Court Judges declared candidacy for these positions, the county auditor did not place the names of any candidates for municipal court offices on the ballot and no election was held for any municipal court officer, including Judge Walker. (Decl. Brandt, App. B at 29.) Instead, the Presiding Judge assigned district court judges to municipal court positions to serve for some undisclosed term.

The provisions requiring elections for municipal judges and giving these judges exclusive jurisdiction over municipal cases are unambiguous. Therein, the legislature made it clear who elects full-time equivalent municipal court judges – city voters *only* – and who hears municipal court cases – *municipal court judges*. If the legislature had intended to give all district court judges authority over municipal court cases in chapter 3.46 courts without election, it would have said so.⁴³

Here, the City not only failed to comply with the procedures necessary to create its municipal officers, it failed to comply with the procedures necessary to create the municipal office. The current Districting Plan does not incorporate the organization of the municipal court. Although it creates a Municipal Department, it does not designate the number of full-time and part-time judges required for the municipal department or their manner of appointment, the salary and time allocations for part-time judges, or their manner of appointment. Instead, it merely designates all nine District Court positions as the municipal department

⁴³ *State v. Roggenkamp*, 153 Wn. 2d 614, 106 P.3d 196 (2005) (Courts “must assume the legislature meant precisely what it said and apply [statutes] as written.”)

and delegates all other statutory requirements to a written agreement between the City and County.⁴⁴ Thus, the City failed to strictly comply with the legislative procedures for the creation of municipal judicial offices and as well as its officers.

2. Judge Walker did not act under color of law because she was not elected by city-wide voters as a municipal court judge.
 - a. This Court has expressly ruled that, without following the statutory procedures for appointment, Spokane County District Court judges do not have *de facto jurisdiction* to hear municipal court cases.

In *Nollette*, this Court rejected the proposition that all district court judges have *de facto* jurisdiction to hear municipal court cases simply because a districting plan designated them as a municipal department. “Such a declaration would be facially at odds with the statutory provision providing for the appointment of part-time municipal judges and at odds with the city code provision for appointment of municipal judges.”⁴⁵ Instead, this Court found the Districting Plan merely established the pool of judges eligible to for appointment as required by statute to municipal court positions.

As in *Nollette*, Judge Walker was simply one of nine judges eligible to run for office as a municipal court judge. The fact that she was a District Court Judge is irrelevant to her authority to act as a municipal

⁴⁴ SCC 1.16.050, .060.

⁴⁵ *Id.* at 605. At that time, appointment by the mayor was required for municipal court judges.

court judge in a chapter 3.46 court which has exclusive jurisdiction over violations of the City code.⁴⁶ Judge Walker was not elected as a municipal court judge. She was selected by the Presiding Court Judge. She could not gain authority or color of title through this selection process where neither the Presiding Judge nor the City had the authority to usurp the people's right to vote. "To constitute a person as a *de facto* officer, he must be in actual possession of the office, exercising its functions and discharging its duties under color of title. Color of title distinguishes him from a usurper."⁴⁷ Barring election as a municipal court judge, Judge Walker was a usurper with no *de facto* jurisdiction to hear municipal court cases.⁴⁸

- b. The failure to hold elections is not a mere "procedural defect" but instead a violation of the right to vote.

Finding no *de facto* jurisdiction, the Court of Appeals held it unnecessary to reach the issue of whether a municipal court had been validly created.⁴⁹ Although Messrs. Smith and Rothwell maintain the City also failed to create a valid municipal office, they agree this Court need

⁴⁶ See *Moore* 73 Wn. App. at 811 (fact that District Court Commissioner was also a Superior Court Judge was irrelevant to issue of whether judge, acting as commissioner, had authority to issue warrant); *Ledgerwood*, 120 Wn. App. at 420.

⁴⁷ *Barrett-Smith v. Barrett-Smith*, 110 Wn. App. 87, 91, 38 P3d. 1030 (2002).

⁴⁸ Judge Walker could not gain authority through this selection process where neither the Presiding Judge nor the City had the authority to usurp the people's right to vote. As a usurper, she had no color of title and hence no *de facto* authority.

⁴⁹ *Rothwell*, 141 Wn. App. at 686.

not reach this issue here.⁵⁰ *De facto* jurisdiction exists to provide authority where a judicial officer “exercises the duties of the judicial office under color of authority pursuant to an appointment or election, and for the time being performs those duties with public acquiescence, though having no right in fact, because the judge’s actual authority suffers from some procedural defect.”⁵¹ The failure to hold elections in direct violation of statutory authority cannot be deemed a mere procedural defect or irregularity. It is instead a denial of the right to vote.

According to the United States Supreme Court, it is undeniable that

“the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as federal elections...The right to vote freely for the candidate of one’s choice is the essence of a democratic society, and any restrictions on that right strikes at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of franchise.”⁵²

The legislature gave the right to vote for full-time equivalent municipal court judges not to the City, the County or the District Court Presiding judge. It gave it to the citizens of Spokane. As the City stated in its briefing below, “An elected judiciary from the constituents they

⁵⁰ Because the City failed to strictly comply with the statutes required to create the municipal office, the office itself was invalid. Where there is no valid or *de jure* office, there can be no *de facto* officer. *State v. Canady*, 116 Wn. 2d 853, 856-57, 809 P.2d 203 (1991) For Defendants’ legal arguments on this issue, see Defendants’ briefing below at *Def’s. Answer. To Pet. for Review* 5-14; *Br. of Pet.* 12-24; *Pets’. Ans. To City’s Mot. for Recon.* 7-12.

⁵¹ *Barrett-Smith v. Barrett-Smith*, 110 Wn. App. 87, 38 P.3d 1030 (2002) (citations omitted).

⁵² *Reynold v. Sims*, 377 U.S. 533, 554, 555, 84 S.Ct. 1362, 12 L.Ed. 506 (1964). See also Wash. Const., art. 1 § 19 (all elections shall be free and equal and no power, civil or military, shall interfere with this right.)

serve is critical. It insures the independence of the bench and preserves power to the people – bedrock principles to the justice system of this State.”⁵³ Yet, the City interfered with that right when it failed to give its citizens notice and an opportunity to vote for municipal court judges and allowed voters outside the City to dilute that vote.

City voters cannot elect a judge for a particular position where there is no notice of candidacy and no opportunity to vote for that position. The failure to give notice of what one is actually voting for makes a mockery of elections. It’s a classic bait and switch. Requiring candidates to declare the positions for which they are running requires them to tailor their election campaign to the intended constituency. Requiring designation on the ballot allows voters to make an informed choice. There is simply no evidence the citizens of Spokane, with proper notice of Judge Walker’s actual candidacy, would have voted the same way. Without notice, a political choice is neither knowing nor voluntary.

This is not a minor inconsistency between state statutes, a districting plan and an interlocal agreement. Nor is it a procedural irregularity. It is instead a complete failure to act. Such an interpretation not only nullifies legislative requirements, it disenfranchises the voters of Spokane.

3. The failure to hold elections in direct contravention of the law implicates separation of powers concerns and threatens the integrity of the judicial system.

⁵³ (AR Bf. Respondent at 2, Feb. 2, 2007) (citing *In Re Judicial Discipline of Hammerstein*, 139 Wn. 211, 249, 985 P.2d 924 (1999) (J. Talmadge, concurring)(citations omitted).

“The doctrine of separation of powers comes from the constitutional distribution of the government’s authority into three branches,” the executive, legislative, and judicial.⁵⁴ This distribution is intended as an expression and protection of the “political power’ that is “inherent in the people.” *Id.*

Similarly, the delegation doctrine, a subset of the separation of powers doctrine, was developed to keep our representatives from forsaking their duties.⁵⁵ As the United States Supreme Court explained in *Loving v. United States*,

“The fundamental precept of the delegation doctrine is that the lawmaking function belongs to Congress, *U.S. Const., Art. I, § 1*, and may not be conveyed to another branch or entity... ‘The true distinction ... is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law.’”⁵⁶

In general, separation of power issues arise where one branch encroaches on the powers of another. Here, however, the three local branches abdicated their duty to protect the political power of the people. The legislative mandate to hold elections for full-time municipal court judges has been in effect since 1993.⁵⁷ Neither the executive, legislative or judicial branches of the City and County can plead ignorance of these

⁵⁴ *State v. Moreno*, 147 Wn. 2d 500, 505, 58 P.3d 26 (2006)(quoting *Carrick v. Locke*, 25 Wn. 2d 129, 505, 135, 882 P.2d 173 (1994).

⁵⁵ *Loving v. United States*, 517 U.S. 748, 758, 116 S.Ct. 1737, 1744 (1996) (citations omitted.)

⁵⁶ *Id.*

⁵⁷ RCW 3.46.063 (1993 c 317 § 3.)

laws. Indeed, they not only had the benefit of two Washington State Supreme Court cases dealing with jurisdiction in the Spokane County District Courts – *Nollette* and *City of Spokane v. County of Spokane*⁵⁸ - the 1995 Attorney General’s Opinion (AGO) unequivocally found, “It is clearly now necessary for the ballot to disclose that one or more positions on the district court will serve the municipal department, whether full-time or part-time.”⁵⁹ Moreover, representatives of all three local branches serve on the districting committee which has the power and duty to amend the Districting Plan to conform to the current operation of the municipal court. Although each of these branches was given authority in part to implement these laws, not one was given the right to bargain away the people’s right to vote and in effect, write new law.

It is particularly troublesome that Spokane’s District Court judges, whose integrity is an issue of vital importance to the state, concurred in this arrangement for years. As stated by the United States Supreme Court,

“Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen's respect for judgments depends in turn upon the issuing court's absolute probity. Judicial integrity is, in consequence, a state interest of the highest order.”⁶⁰

⁵⁸ For a discussion of the jurisdictional issues in *City of Spokane* see below at 18.

⁵⁹ AGO 1995 No. 9, p. 8.

⁶⁰ *Republican Party of Minn. v. White*, 536 U.S. 765, 793, 122 S.Ct. 2528 (2002) (J. Kennedy, concurring).

In Washington State, judges are deemed “highly visible symbols of government under the rule of law” and as such each takes an oath to uphold the laws of the state.⁶¹ They are expected to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.⁶²

Each year, the Spokane County District Court Judges hold numbers of Spokane citizens accountable for violations of city and state law, none of whom can plead ignorance of the law. By refusing to follow express law applicable to them, these judges appear to hold themselves above the law and in so doing, jeopardize the integrity and public reputation of their office.

This is not the first time the Spokane County District Court has needed the guidance of this Court to curtail legislative encroachment. In *City of Spokane*, the City and County asked this Court to construe statutes governing the termination of chapter 3.46 municipal courts and the establishment of an independent municipal court under chapter 3.50 RCW.⁶³ Therein, the District Court argued it had continuing subject matter jurisdiction over cases pending in its municipal department and that transferring these cases at termination would violate the Presiding Judge’s authority under General Rule (GR) 29.⁶⁴ This Court held that, although

⁶¹ RCW 3.34.080.

⁶² Code of Judicial Conduct, Canon 2 (2002).

⁶³ *City of Spokane*, 158 Wn 2d. at 665.

⁶⁴ *Id.* at 670.

GR 29 grants the Presiding Judge authority to delegate the judicial and administrative duties set forth in that rule, it does not grant the judge the right to determine the existence and thus jurisdiction of municipal courts. This right is reserved by the legislature to city and county legislative bodies.⁶⁵

In her Memorandum Opinion, Judge Walker appears similarly mistaken as to the power of the local judiciary. "By entering into this Interlocal Agreement, the City abdicated to the Presiding Judge its ability to choose, designate, and dictate which judicial positions would be dedicated solely to hear City cases for the entire four-year term." (AR Smith, Knox Aff., Ex. E at 7,8.) Such an abdication is unlawful.

CONCLUSION

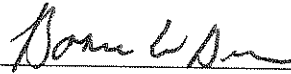
The failure to hold elections for municipal court judges is not, as Judge Baker stated, a matter of no "real consequence."⁶⁶ To the contrary, it is a grave injustice. It not only disenfranchises the citizens of Spokane, it debases democracy. The City of Spokane, in concert with the County, had no right to place the people's right to vote in the hands of a district court judge. Because no municipal court elections were held, the Spokane County District Court Judges, acting as full-time equivalent Municipal Court Judges, were usurpers with no jurisdiction to hear municipal court

⁶⁵ *Id.* at 678-80.

⁶⁶ *Rothwell*, 141 Wn. App. at 683-84.

cases, including those of Defendants. Therefore, Defendants Mr. Smith and Mr. Rothwell respectfully ask this Court to affirm the ruling of the Court of Appeals which invalidated the acts of Judge Walker.

Respectfully submitted this 3rd day of November, 2008.



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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANTS' SUPPLEMENTAL BRIEF** on November 3, 2008, by the following indicated method or methods:

by **hand-delivering** a full, true, and correct copy thereof addressed to the person shown below, the last-known address of the person on the date set forth below.

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by causing full, true, and correct copies thereof to be **mailed** in sealed, first-class postage-prepaid envelopes for filing at:

The Supreme Court State of Washington
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AND TO:

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DATED this 3rd day of November, 2008.



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