SPOKANE COUNTY COURT HOUSE

Superior Court of the State of Washington
For the County of Spokane

Department No.7

Maryann C. Moreno
Judge

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RE: Spokane County, *et al.*, v. State of Washington
Cause No. 19-2-00934-32
Motion and Cross-motion for Summary Judgment

Dear Counsel:

I heard argument on May 31, 2019 and took the matter under advisement. The motion filed by Spokane County, Al French, John Roskelley and the Washington State Association of Counties (County) seeks summary judgment and a determination by this court that Substitute House Bill 2887 (Chapter 301, Laws of 2018) (SHB 2887) enacted by the Legislature in 2018 is unconstitutional, null and void. The State of Washington (State) seeks summary judgment and a determination by this court that SHB 2887 properly executes the authority of the Legislature and that therefore the County's challenge should be rejected.

A party challenging the constitutionality of a statute must prove that the statute is unconstitutional beyond a reasonable doubt.[1] The "beyond a reasonable doubt" standard, when used to challenge the constitutionality of a statute, requires the moving party to convince the court that there is no reasonable doubt that the statute violates the constitution.[2] It is the judiciary's decision, as a matter of law, whether a given statute is within the legislature's power to enact or whether it violates a constitutional mandate.[3]

SHB 2887, codified in RCW 36.32.052, provides as follows:

> (1) Beginning in 2022, any noncharter county with a population of four hundred thousand or more must have a board of commissioners with five members, and must use district nominations and district elections for its commissioner positions, in accordance with RCW 36.32.050.
> (a) By April 30, 2021, the county must establish a redistricting committee, in accordance with RCW 36.32.053, to create, review, and adjust county commissioner districts in accordance with subsection (1) of this section. The commissioner districts established by the redistricting committee must be designated as districts numerically one through five. Any districting plan adopted by the redistricting committee must designate the initial terms of office for each of the county commissioner positions, as provided in RCW 36.32.030(2).
> (b) Beginning in 2022, district elections for all county commissioners in a noncharter county with a population of four hundred thousand or more must be held in accordance with any districting plan adopted by a redistricting committee that is established in accordance with RCW 36.32.054.
> (2) After 2022, by April 30th of each year ending in one, each qualifying county must establish a redistricting committee in accordance with RCW 36.32.053. The redistricting committee must review and adjust as necessary the boundaries of the county's commissioner districts.

By its terms, SHB 2887 requires counties with a population of 400,000 or more to increase its county commissioners from three to five, limit commissioner elections to individual districts, and establish a redistricting committee to create and oversee newly created commissioner districts. Only one noncharter county with a population exceeding 400,000 exists; currently, SHB 2887 would apply solely to that one county, Spokane. The County argues that application of a law in this fashion violates the uniformity requirement contained in Article XI, § 4 of the Washington Constitution, which requires the Legislature to "establish a system of county government, which shall be uniform throughout the state..." The County further submits that limiting county elections to individual districts is violative of Article XI, § 5, which specifies that "elections in the several counties of boards of county commissioners must be established by general and uniform laws." No other noncharter county in Washington would require such district elections.

The question posed relates to what a uniform system of government is pursuant to Article XI, § 4 and 5.

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[1] *Island County v. State*, 135 Wash.2d 141, 146, 955 P.2d 377 (1998).
[2] *Island County*, supra, at 147.
[3] *Id.*

> The word "system," as employed in the constitution, means an organized plan or scheme in keeping with which the constituent parts thereof are rendered similar and are connected and combined into one complete, harmonious whole, and it necessarily imports both a unity of purpose and entirety of operation....As previously indicated, uniformity means consistency, resemblance, sameness, a conformity to one pattern....In this resemblance, in this sameness, in this conformity of a class to one pattern, consists the uniformity of system which is essential to the creation and continuity of a uniform system. And, therefore, the constitutional mandate to establish a uniform system of county government throughout the state means one system applicable alike in all its parts and continuously operating equally in all of the counties of the state.[4]

Mount Spokane Skiing Corp. v. Spokane County addressed the issue of system uniformity.[5] The statute in that case withstood constitutional challenge because it gave to all counties the authority to create public corporations. All counties are granted discretion under the statute; exercising that discretion is not required under uniformity provisions of Article XI, § 4. Here, all counties with a population exceeding 400,000 are subject to SHB 2887; all those same counties, governed by the state's general law, are therefore required to elect five-member boards or they may elect to adopt their own county charters.

Attorney General Opinion 1987 No. 11 (1987) and Attorney General Opinion 1979 No. 8 (1979), both cited by the County in support of its position, addressed this concept of uniformity among counties, envisioning a "crazy quilt" system of government that might result from leaving the number of county commissioners in any given county up to a majority of its voters. While relevant on some level to the issues here, both AGO's ultimately leave open the current question: whether the Legislature can vary the number of commissioners in noncharter counties based upon population without running afoul of our state's uniformity-in-government requirement.

The premise of *Maulsby v. Fleming*[6], heavily relied on by the County and discussed by all parties, has been broadened by the passage of Article XI, § 5. While *Maulsby,* decided in 1914, defined uniformity as allowing no variation at all among counties, subsequent constitutional amendment has broadened the Legislature's authority to allow variance in structure based upon population. XI, § 5, as amended, now allows the Legislature to "classify counties by population..." Permissible variation by county based upon population addresses *Maulsby's* rigid and unvarying interpretation of governmental uniformity applicable at the turn of the century. While *Maulsby* remains good authority, the Legislature's passage of XI, § 5, demonstrates an abandonment of the rigid constrictions articulated there.

The County points out that by operation of SHB 2887, Spokane would be the sole county required to have five commissioners. However, *State v. Schragg* makes clear that a statute "is not unconstitutional because at the time of its enactment only one county happened to be at the

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[4] *Coulter v. Pool*, 187 Cal. 181, 192, 201 P. 120 (1921).
[5] 86 Wash. App. 165, 180-81, 936 P.2d 1148 (1997).
[6] 88 Wash. 583, 152 P. 347 (1915).

time within one of the classifications."[7] Because SHB 2887 applies to all counties within the class of counties with a population greater than 400,000 and thus operates upon all persons or things constituting a class, the law remains general even though only one county currently falls within the class. Here, although the facts manifest differently in the various counties and thus differ as to how each system operates within those counties, the law itself is general and uniform.

Although not subject to challenge here, the recently enacted Voting Rights Act is worth mentioning, as it provided the impetus for legislative changes to the system of electing county commissioners.[8] The intent of the Act is to provide a remedy for disproportionality in electoral systems that deny minority groups their right to the free and equal election of candidates of their choice and by allowing noncharter counties to deviate from a single, uniform system of government while providing the "same 'authority available' to be deemed uniform."[9] I mention this only in the context of apparent Legislative consideration of the constitutional requirements of § 4 and 5 before said Act was adopted.

I have in mind the heavy burden associated with a challenge to the constitutionality of a statute. The "beyond a reasonable doubt" standard is:

> [a] "demanding standard of review..." justified because, as a coequal branch of government that is sworn to uphold the constitution, we assume the Legislature considered the constitutionality of its enactments and afford great deference to its judgment... Additionally, the Legislature speaks for the people and we are hesitant to strike a duly enacted statute unless fully convinced ... that the statute violates the constitution."

I am not convinced that SHB 2887 violates the Washington State Constitution. I am not satisfied that the County has met its burden beyond a reasonable doubt. Therefore, the motion for summary judgment is denied.

Mr. Even is directed to prepare the appropriate form of order reflecting my ruling and to circulate for signature. **A presentment without oral argument is set for Friday, September 13, 2019, at 9:00 A.M.**

Yours truly,

Judge Maryann Moreno

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[7] *State ex rel. Allen v. Schragg*, 159 Wash. 68, 71, 292 P. 410 (1930).
[8] RCW 29A.92.005.
[9] *Id.*