

1 EXPEDITE:  
2  Hearing Set:  
3 Date: February 5, 2010  
4 Time: 9:00 a.m.  
5 Judge Hicks  
6

7 STATE OF WASHINGTON  
8 THURSTON COUNTY SUPERIOR COURT

9 STEPHEN K. EUGSTER,  
10  
11 Plaintiff,

12 v.

NO. 09-2-02873-4

13 STATE OF WASHINGTON;  
14  
15 WASHINGTON COURT OF APPEALS  
16 and DIVISIONS I, II and III, thereof;  
17  
18 JUDGES OF WASHINGTON COURT  
19 OF APPEALS, DIVISION III, namely,  
20 STEPHEN BROWN, KEVEN M.  
21 KORSMO, TERESA C. KULIK, JOHN A.  
22 SCHULTHEIS, and DENNIS J.  
23 SWEENEY;

DEFENDANTS'  
ANSWER TO  
PLAINTIFF'S  
COMPLAINT FOR  
DECLARATORY  
JUDGMENT

24 JUDGES OF WASHINGTON COURT OF  
25 APPEALS, DIVISION I, namely, SUSAN  
26 R. AGID, MARLIN J. APPELWICK,  
MARY KAY BECKER, RONALD E.  
COX, STEPHEN J. DWYER, ANNE  
ELLINGTON, C. KENNETH GROSSE,  
LINDA LAU, J. ROBERT LEACH and

1 ANN SCHINDLER; and,  
2  
3 JUDGES OF WASHINGTON COURT OF  
4 APPEALS, DIVISION II, namely, DAVID  
5 ARMSTRONG, C.C. BRIDGEWATER,  
6 ELAINE HOUGHTON, J. ROBIN HUNT,  
7 JOEL  
8 PENOYAR, CHRISTINE QUINN-  
9 BRINTNALL, and MARYWAVE VAN  
10 DEREN,  
11  
12 Defendants.

13 COME NOW Defendants by and through the undersigned counsel, and  
14 admit, deny, and allege as follows with regard to Plaintiff's Complaint For  
15 Declaratory Judgment.

- 16 1. Defendants admit that Plaintiff is a citizen, taxpayer, and elector of the  
17 United States of America and of the state of Washington. The  
18 remaining allegations in Paragraph 1 of the Complaint are denied.
- 19 2. Defendants admit that Plaintiff resides in the City of Spokane, Spokane  
20 County, state of Washington. Defendants have no knowledge as to the  
21 truth of the remaining allegations in Paragraph 2 of the Complaint and  
22 therefore deny them.
- 23 3. Paragraph 3 is admitted.
- 24 4. The Court of Appeals is a court created by statute pursuant to the  
25 constitutional power of the legislature, with jurisdiction and duties  
26 defined by law. Any remaining allegations in Paragraph 4 are denied.
5. Paragraph 5 is admitted.
6. By law, the Court of Appeals is a single court. Paragraph 6 is denied.

- 1 7. Paragraph 7 is admitted.
- 2 8. Paragraph 8 is admitted.
- 3 9. Paragraph 9 is admitted.
- 4 10. Paragraph 10 is admitted.
- 5 11. Paragraph 11 is a characterization of the action and requires no answer.
- 6 To the extent it contains factual allegations, they are denied.
- 7 12. Paragraph 12 is admitted.
- 8 13. Paragraph 13 is in part a summary and description of what Plaintiff
- 9 seeks in his Complaint, and requires no answer. Defendants deny that
- 10 Plaintiff has been denied any constitutional rights or that any statutes
- 11 cited violate the state constitution.
- 12 14. Paragraph 14 is denied. There are no controversies between Plaintiff
- 13 and the judges of the Court of Appeals as to the matters set forth in the
- 14 Complaint.
- 15 15. Paragraph 15 is denied.
- 16 16. Paragraph 16 is admitted.
- 17 17. Paragraph 17 is admitted.
- 18 18. Paragraph 18 is admitted.
- 19 19. Defendants are aware that Plaintiff has represented clients in the
- 20 Washington Court of Appeals, but have no knowledge as to which
- 21 divisions of the Court Plaintiff has appeared in and therefore denies any
- 22 remaining allegations.
- 23 20. Paragraph 20 is denied.
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- 1 21. Paragraph 21 consists entirely of a description of the legal basis for the  
2 creation of the Court of Appeals. To the extent an answer is required,  
3 the allegations are denied.
- 4 22. Paragraph 22 consists entirely of a quote from the state constitution and  
5 requires no answer.
- 6 23. Paragraph 23 consists entirely of a quote from the state constitution and  
7 requires no answer.
- 8 24. Paragraph 24 is admitted.
- 9 25. Paragraph 25 consists entirely of a quote from the state constitution and  
10 requires no answer.
- 11 26. Paragraph 26 is admitted.
- 12 27. Paragraph 27 is admitted.
- 13 28. In response to Paragraph 28, Defendants admit that the paragraph  
14 contains a quote from part of RCW 2.06.010. Any remaining allegations  
15 are denied.
- 16 29. Paragraph 29 consists of a paraphrase or summary of the law and  
17 requires no answer. To the extent an answer is required, the allegations  
18 are denied.
- 19 30. Paragraph 30 consists of a paraphrase or summary of the law and  
20 requires no answer. To the extent an answer is required, the allegations  
21 are denied.
- 22 31. Paragraph 31 consists of a paraphrase or summary of the law and  
23 requires no answer. To the extent an answer is required, the allegations  
24 are denied.
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- 1 32. Paragraph 32 consists of a paraphrase or summary of the law and  
2 requires no answer. The paragraph includes a quote from RCW  
3 2.06.020. Any remaining allegations are denied.
- 4 33. Paragraph 33 consists of a paraphrase or summary of the law and  
5 requires no answer. To the extent an answer is required, the allegations  
6 are denied.
- 7 34. Paragraph 34 consists of a paraphrase or summary of the law and  
8 requires no answer. To the extent an answer is required, the allegations  
9 are denied.
- 10 35. Paragraph 35 consists of a paraphrase or summary of the law and  
11 requires no answer. To the extent an answer is required, the allegations  
12 are denied.
- 13 36. Paragraph 36 consists of a paraphrase or summary of the law and  
14 requires no answer. To the extent an answer is required, the allegations  
15 are denied.
- 16 37. Paragraph 37 consists of a paraphrase or summary of the law and  
17 requires no answer. To the extent an answer is required, the allegations  
18 are denied.
- 19 38. Paragraph 38 consists of a paraphrase or summary of the law and  
20 requires no answer. To the extent an answer is required, the allegations  
21 are denied.
- 22 39. Paragraph 39 consists of a paraphrase or summary of the law and  
23 requires no answer. To the extent an answer is required, the allegations  
24 are denied.
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1 40. Paragraph 40 consists of a description of the methods or processes for  
2 selecting Court of Appeals panels. Defendants deny that the process for  
3 selecting panels is material in any way to the issues in this case.  
4 Defendants have no knowledge as to the accuracy of the descriptions  
5 contained in Paragraph 40, and therefore deny any remaining  
6 allegations.

7 41. Paragraph 41 is a summary or characterization and commentary on the  
8 panel selection process. Defendants deny that Paragraph 41 accurately  
9 describes the facts or the law.

10 42. Paragraph 42 is denied.

11 43. Paragraph 43 is a characterization of a point of law. Defendants deny  
12 that the characterization is accurate or complete.

13 44. Paragraph 44 consists of a paraphrase or summary of the law and  
14 requires no answer. To the extent an answer is required, the allegations  
15 are denied.

16 45. Paragraph 45 is a characterization of a point of law. Defendants deny  
17 that the characterization is accurate or complete.

18 46. Paragraph 46 consists of a paraphrase or summary of the law and  
19 requires no answer. To the extent an answer is required, the allegations  
20 are denied.

21 47. Paragraph 47 is denied.

22 48. Paragraph 48 consists of a paraphrase or summary of the law and  
23 requires no answer. To the extent an answer is required, the allegations  
24 are denied.

- 1 49. Paragraph 49 consists of a paraphrase or characterization of the law,  
2 which requires no answer, and includes a quote from RCW 4.04.010.  
3 Any remaining allegations are denied.
- 4 50. Paragraph 50 is a characterization of a point of law. Defendants deny  
5 that the characterization is accurate or complete.
- 6 51. Paragraph 51 consists of partial quotes from RCW 2.06.040. Any  
7 remaining allegations are denied.
- 8 52. Paragraph 52 consists of a quote of part of General Rule 14.1(a) and  
9 requires no answer. Any remaining allegations are denied.
- 10 53. Paragraph 53 is argument on a point of law and requires no answer. To  
11 the extent an answer is required, the allegations are denied.
- 12 54. In response to Paragraph 54, Defendants note that the current population  
13 of the state is a matter of public record and need not be the subject of  
14 factual pleading. Defendants deny that the population of the state is  
15 material to this case.
- 16 55. In response to Paragraph 55, Defendants deny that the “apportionment”  
17 of divisions of the Court of Appeals is a meaningful or legally  
18 cognizable concept, and therefore deny the allegations contained therein.
- 19 56. Paragraph 56 consists of a paraphrase or summary of the law and  
20 requires no answer. To the extent an answer is required, the allegations  
21 are denied.
- 22 57. Paragraph 57 consists of a paraphrase or summary of the law and  
23 requires no answer. To the extent an answer is required, the allegations  
24 are denied.
- 25 58. Paragraph 58 is denied.
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- 1 59. In response to Paragraph 59, Defendants deny that the “population” of a  
2 division of the Court of Appeals is a meaningful or legally cognizable  
3 concept, and therefore denies the allegations therein.
- 4 60. In response to Paragraph 60, Defendants deny that the “population” of a  
5 division of the Court of Appeals is a meaningful or legally cognizable  
6 concept, and therefore deny the allegations therein.
- 7 61. Paragraph 61 consists of summary or characterization of the law, citing  
8 case precedent. Defendants deny that Plaintiff’s characterization is  
9 accurate or complete, and deny any remaining allegations therein.
- 10 62. Paragraph 62 consists of summary or characterization of the law, citing  
11 case precedent. Defendants deny that Plaintiff’s characterization is  
12 accurate or complete, and deny any remaining allegations therein.
- 13 63. Paragraph 63 consists of a table which is based on the faulty notion that  
14 the case law concerning election of legislative bodies could be applied to  
15 elections for judges of the Court of Appeals. Defendants deny that the  
16 table is accurate or meaningful, and deny any factual allegations  
17 contained therein.
- 18 64. Paragraph 64 is a restatement requiring no answer.
- 19 65. Paragraph 65 consists of a paraphrase or summary of the law and  
20 requires no answer. Any allegations of fact therein are denied.
- 21 66. Paragraph 66 is denied.
- 22 67. Paragraph 67 is a restatement requiring no answer.
- 23 68. Paragraph 68 is denied.
- 24 69. Paragraph 69 is denied.
- 25 70. Paragraph 70 is denied.
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- 1 71. Paragraph 71 is a restatement requiring no answer.
- 2 72. Paragraph 72 is denied.
- 3 73. Paragraph 73 is a restatement requiring no answer.
- 4 74. Paragraph 74 is denied.
- 5 75. Paragraph 75 is denied.
- 6 76. Paragraph 76 is denied.
- 7 77. Paragraph 77 is denied.
- 8 78. Paragraph 78 is denied.

9 **DEFENSES**

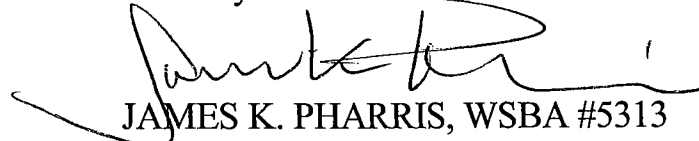
- 10 1. The Complaint fails to state a claim on which relief can be granted.
- 11 2. The Defendant judges of the Court of Appeals are not proper parties to
- 12 this action.
- 13 3. This action is frivolous and brought without any basis in law.


14 WHEREFORE, the Defendants pray (1) that the Court deny the  
15 declaratory and other relief sought by the Plaintiff; (2) that the Court dismiss  
16 this action, with prejudice; and (3) that the Court grant such relief in favor of the  
17 Defendants as the Court deems just and equitable.

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1 DATED this 29<sup>th</sup> day of December, 2009.

2  
3 ROBERT M. MCKENNA  
4 Attorney General

5   
6 JAMES K. PHARRIS, WSBA #5313  
7 Deputy Solicitor General

8   
9 ANNE E. EGELER, WSBA #20258  
10 Deputy Solicitor General

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1 **CERTIFICATE OF SERVICE**

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3 I certify that I caused to be served a copy of Defendants' Answer to  
4 Plaintiff's Complaint for Declaratory Judgment on the following counsel on the  
5 date below via United States First Class Mail, postage prepaid, and e-mail, as  
6 follows:

7

8 Stephen Eugster  
9 2418 W. Pacific Avenue  
10 Spokane, WA 99201  
eugster@steveeugster.com

11 I certify under penalty of perjury under the laws of the state of  
12 Washington that the foregoing is true and correct.

13 DATED this 29 day of December, 2009 at Olympia, Washington.

14   
15 \_\_\_\_\_  
16 Becky Waldron, Legal Assistant