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SUPREME COURT
OF THE STATE OF WASHINGTON

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ALEXANDRIA REAL ESTATE ENTITIES INC., JOHN JOSEPH COX, and DEAN A. TAKKO,

Petitioners,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

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# MEMORANDUM OF *AMICI CURIAE* LEGISLATORS BRIAN BLAKE AND VINCENT BUYS

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases** **Page(s)**



**Other Authorities**

## I. INTRODUCTION

This Court should grant Alexandria Real Estate Entities' ("ARE's") petition for review. Former Legislators Brian Blake and Vincent Buys fully support their petition, because Division II's decision is untenable, with the potential to dismantle public bidding laws in Washington. These issues are important to Legislators Brian Blake and Vincent Buys constituents and Washingtonians across the state. Review under RAP 13.4(b)(4) is necessary to ensure the public's interest in public, competitive bidding is championed, not eroded.

## II. IDENTITY AND INTEREST OF *AMICI CURIAE*

The identity and interest of *amici* Legislators Brian Blake and Vincent Buys are described in their motion for leave to file this *amici* memorandum.

## III. STATEMENT OF THE CASE

Legislators Blake and Buys have nothing to add to the statement of the case laid out in ARE's petition.

## IV. ARGUMENT IN SUPPORT OF REVIEW

As former legislators, and recently active public figures representing broad constituencies across the political aisle, Legislators Blake and Buys have concerns over how state funds are used by governmental entities, whether those entities have complied with public works statutes, and transparency and fairness in public contracting.

Public bidding is a key right that protects all taxpayers from governmental corruption and waste. It traces its origins back to the founding of our country, when public procurement was necessary to arm and supply the Continental Army during the Revolutionary War. *See* Christopher R. Yukins, *The U.S. Federal Procurement System: An Introduction*, GWU LAW SCHOOL PUBLIC LAW RESEARCH PAPER NO. 2017-75; GWU LEGAL STUDIES RESEARCH PAPER NO. 2017-75 (2017), available at SSRN: https://ssrn.com/abstract=3063559. From that moment forward, we inherited and learned a series of hard-fought lessons that culminated in laws codifying a process for notice,

competition, and public award in public procurement and construction. *Id.*

Public bidding is vital to guard against fraud, collusion, favoritism, imprudence, extravagance, public waste, and ultimately corruption. *Savage v. State*, 75 Wn.2d 618, 621, 453 P.2d 613, (1969) (citing 10 McQuillin, *Municipal Corporations* (3d ed. 1966) s 29.29). As former members of the House of Representatives, Legislators Blake and Buys know how important these protections are to all Washingtonians, regardless of geographic location or political affiliation. Washingtonians are united in believing that wasteful government should be checked and corruption should be prevented at all costs.

The opinion before this Court for potential review fails to appreciate these statewide concerns. It is senseless that the courts have so far condoned the University of Washington awarding a contract to a developer to construct and lease-back a $400M building for UW (on UW property), with an estimated $71.8 million capital cost to UW, without competitive bidding.

Millions and potentially billions of public dollars, given UW's grander plans for redeveloping its campus, will flow to a developer, without a competitive bidding process. There is great potential for waste, mismanagement, and future favoritism in this partnership with private interests, if the proper bidding process is not played out. Notably, the developer UW chose has never bid for a construction project in Washington before, further highlighting how novel this arrangement is.

This Court should grant review because the taxpayers, voters, and citizens of this state demand competitive procurement. If the Court of Appeals' decision is not overturned, the result is that public entities that use the lease-construction-leaseback method for construction can circumvent all laws governing public works projects. This is an issue important to the whole state that demands this Court's attention. RAP 13.4(b)(4).

Moreover, in 2018, during Legislators Blake and Buys' tenures, a bill was considered by the legislature to allow a P3

project like the one UW used here: H.B. 2726 ("AN ACT Relating to public-private partnerships for alternative public works contracting"). Legislators Blake and Buys monitored H.B. 2726, which failed to reach a vote, much less be enacted into law. The fact that the Legislature failed to pass proposed legislation that would have given UW the authority to use Public-Private Partnership ("P3") contracting for the project at issue, shows that the Legislature did not intend to and did not grant the UW authority to proceed the way it is now attempting. It is concerning that UW used the P3 method anyway, and even more concerning that the Court approved this process without input from the Legislature, which has made competitive bidding the default for large projects undertaken by a host of public entities.

This is a case worthy of this Court's attention. It has broad public impact implicating public bidding protections that Legislators Blake and Buys' constituents unilaterally favor. Left unchecked, Division II's decision has the chance to undo the lessons regarding corruption and government waste that we as a

state and country have spent the last several centuries learning. This is a case worthy of review under RAP 13.4(b).

## V. CONCLUSION

The Court should grant review and reverse. Division II's decision is untenable, and harms citizens across Washington by weakening, if not all together eviscerating, public competitive bidding.

This document contains 816 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 4th day of March, 2024.

Respectfully submitted,

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## Transmittal Information

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| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | 102,713-3 |
| **Appellate Court Case Title:** | Alexandria Real Equities Inc. John J. Cox, Dean A. Takko v. University of WA |
| **Superior Court Case Number:** | 21-2-01005-2 |

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