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No. 90545-2

SUPREME COURT
OF THE STATE OF WASHINGTON

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PUBLIC HOSPITAL DISTRICT NO. 1
OF KING COUNTY,

Petitioner,

v.

UNIVERSITY OF WASHINGTON,
U.W. MEDICINE,

Respondents.

ANSWER OF PUBLIC HOSPITAL
DISTRICT NO. 1 OF KING COUNTY
TO AMICI MEMORANDUM

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ORIGINAL

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A. INTRODUCTION

The amicus curiae memorandum of the ten legislators (“legislator amici”), from both political parties and both houses of the Legislature, only makes crystal clear why review in this case is necessary. The Court of Appeals’ decision condones an interpretation of the contracting authority of special purpose units of government that no one could have anticipated. The Court of Appeals authorized the long-term cession of the core responsibilities of the elected officials of those governments to substitute decisionmakers that are unaccountable to the voters of such governments.

Indeed, the court's approval of the Strategic Alliance Agreement (“Agreement”), here between the former commissioners of Public Hospital District No. 1 (“District”) and UW Medicine offers a template by which such long-standing cessions of core responsibilities may be accomplished. Contrary to UW Medicine's contention, this case is not confined to hospital districts. Like hospital districts, as the legislator amici note, virtually every unit of local government in Washington, whether a general or special purpose government, has similar general authorization from the Legislature to contract.

Elections are crucial in our democracy. Viewing the contracting power of the District in isolation from the legislative direction that

commissioners are *elected* was a fundamental error in the Court of Appeals' opinion.

This Court should grant review.

B. REASONS WHY THIS COURT SHOULD GRANT REVIEW

The memorandum of the legislative amici cogently supports review here in five vital respects. First, as the legislative amici note at 7-9, the Agreement reduces the District's elected Commissioners to what they describe as "silent butlers." *Id.* at 8. Contrary to the Court of Appeals' profoundly superficial analysis of the powers left to the elected Commissioners after the Agreement, *op.* at 9, and UW Medicine's claim that it provides euphemistically for "shared governance," answer at 5-8,¹ a careful reading of the Agreement reveals that the core powers of the elected Commissioners to budget, tax, and incur debt are actually or effectively transferred to the trustees, a largely unelected substitute board of decisionmakers. Petition at 4-6. For purposes of this issue on summary judgment, all facts and reasonable inferences from the facts, had to be considered in a light most favorable to the District, not UW medicine.

¹ UW Medicine notes the membership of the trustees, answer at 6, but fails to reveal that some of the trustees actually ran for Commissioner *and were defeated*, *br.* of appellants at 9, only to be appointed by UW Medicine as trustees.

Dowler v. Clover Park Sch. Dist. No. 400, 172 Wn.2d 471, 484, 258 P.3d 676 (2011).²

Second, the legislative amici also correctly note that virtually all local governments in Washington have authority that is virtually identical to that of public hospital districts in RCW 70.44.060.³ Amicus memo. at 3. Thus, for UW Medicine to assert that the impact of the Court of Appeals published opinion is confined to the parties to the Agreement, answer at 19-20,⁴ is plainly false. *Any* local government having the authority to contract provided to it by the Legislature could relinquish the core responsibilities of its elected officials by contract, just as the former Commissioners did here.⁵ This only confirms the significant public impact of the Court of Appeals' opinion under RAP 13.4(b)(4).

² In a footnote, answer at 3, n.1, UW Medicine asserts that the context to the Agreement, a factual issue, is somehow irrelevant here. The context facts *are* relevant to the interpretation of the respective powers of the trustees and the commissioners in the Agreement. Roodman and his Commissioners fully intended the trustees to supplant the elected Commissioners in the exercise of their core powers. Ironically, UW Medicine offers context evidence regarding the Agreement's negotiation at length in its answer at 4-8.

³ It is for this reason that a legislative "fix" regarding this broad interpretation of the power to contract becomes exceedingly difficult. Amicus memo. at 4-5.

⁴ UW Medicine is also oblivious to the "merger mania" taking place among hospitals both public and private, and the attendant public policy issues associated with such activity. Petition at 17 n.16.

⁵ UW Medicine mentions RCW 70.44.240 in passing. Answer at 11, 14. That statute, by its terms, does not authorize the Agreement. Petition at 9-10. It rests its argument principally on RCW 70.44.060. Answer at 10-11, 12-13.

Third, as the legislator amici make clear in their memorandum at 5, neither the language of RCW 70.44.060(7) or the Interlocal Cooperation Act, RCW 39.34, support its position.⁶ Of course, the core of the District's petition is that RCW 70.44.060 does not permit the District's elected leaders to relinquish by contract their core powers as elected officials. Petition at 8-15. UW Medicine seems to assert in discussing RCW 70.44.060(7), particularly in bolding the statutory language of "all powers" that a government is authorized to contract away the core powers of its elected officials. Such a brazen, anti-democratic analysis of the statute is belied by the statute's more appropriate interpretation by the legislator amici, who are themselves *elected* officials.

Fourth, the legislative amici make clear that *elections mean something*. Amicus memo. at 3-4. The Legislature entrusted the operation of public hospital districts, as well as a myriad of other local governments, to elected officials. The power of such local governments to contract cannot be viewed in isolation from the election of their controlling

⁶ UW Medicine asserts in its answer at 11 and 11 n.6 that the District ignored these statutory provisions and did not set them out in its petition. Both statutes were discussed at length in the District's Court of Appeals briefing. Br. of Appellant at 29-35; reply br. at 18-24. RCW 39.34.030 only authorizes public agencies to do together what they can do individually. The key, then, is whether RCW 70.44.060 authorizes a municipal corporation's elected officials to cede their legislative or discretionary powers to a board of unelected substitute decisionmakers.

officials, as UW Medicine would have this Court do.⁷ It is precisely for this reason that it is a basic principle of municipal law that the core legislative or discretionary functions of a government cannot be delegated to others. Amicus memo. at 5-7. This Court's decisions in *Roehl v. Pub. Util. Dist. No. 1 of Chelan Cy*, 43 Wn.2d 214, 240, 261 P.2d 92 (1953) and *Chemical Bank v. Wash. Pub. Power Supply Sys.*, 99 Wn.2d 772, 788, 666 P.2d 329 (1983) clearly reflect this public policy. Ultimately, the Court of Appeals, like UW Medicine, offers no limiting principle on the ability of a local government to cede its core responsibilities to substitute decisionmakers.⁸

Finally, the legislator amici also address the point that the 15-year Agreement improperly ties the hands of future elected Commissioners. Amicus memo. at 9-10. This point is re-enforced by AGO 2013 No. 4, a clear articulation of that same public policy restriction. The effect of the long-term Agreement to cede the core powers of the District's elected Commissioners to substitute decisionmakers only emphasizes again its

⁷ UW Medicine offers no analysis of elected officials' responsibility other than to patronizingly suggest that hospital districts are not "real" governments. Answer at 4.

⁸ UW Medicine rails against this assertion by the District, answer at 2, but declines *anywhere* in its answer to articulate any limiting principle. Conceivably, a city council could transfer its authority to enact ordinances to an unelected group of substitute decisionmakers by contract and that would not be a problem according to UW Medicine or the Court of Appeals.

anti-democratic purpose – to put the decisionmaking for the District outside the purview of accountability to the voters.

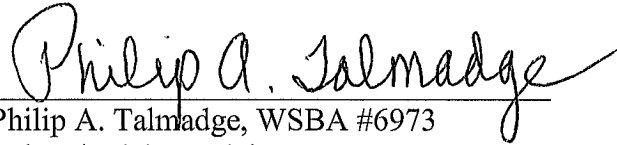
C. CONCLUSION

As is further evidenced by the legislator amici memorandum, this is a case for this Court, notwithstanding UW Medicine's patronizing attitude that a 15-year agreement in which elected officials cede their core powers to budget, tax, and incur debt on the District's behalf, destroying voter accountability, was "an entirely democratic act." (Answer at 2). Review is merited under RAP 13.4(b).

This Court should grant review and declare that the Agreement was ultra vires to the extent that the elected Commissioner's core legislative or discretionary responsibilities to manage the District were transferred on a long term basis to a largely unelected board of substitute decisionmakers. The District's *elected* Commissioners must retain the ultimate authority to run the District. The Court should reverse the trial court's summary judgment order and remand the case to the trial court with direction to grant the District cross-motion for summary judgment. Costs on appeal should be awarded to the District.

DATED this 13th day of October, 2014.

Respectfully submitted,



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DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the Answer of Public Hospital District No. 1 of King County to Amici Memorandum in Court of Appeals Cause No. 70633-1-I to the following parties:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated: October 13, 2014, at Seattle, Washington.



Roya Kolahi, Legal Assistant
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DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the corrected caption in the Answer of Public Hospital District No. 1 of King County to Amici Memorandum in Supreme Court Cause No. 90545-2 to the following parties:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated: October 15, 2014, at Seattle, Washington.



Roya Kolahi, Legal Assistant
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Subject: Public Hospital Dist. No. 1 v. University of Washington 90545-2

Good Morning:

Attached please find the corrected caption in the Answer of Public District Hospital No. 1 of King County to Amici Memorandum in Supreme Court Cause No. 90545-2 for today's filing, previously filed inadvertently with the Court of Appeals . Thank you.

Sincerely,

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