No. 90996-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

YES FOR EARLY SUCCESS, a non-profit corporation, LAURA CHANDLER, and BARBARA FLYE,
Petitioners,

v.

CITY OF SEATTLE and KING COUNTY,
Respondents.

RESPONDENT CITY OF SEATTLE'S ANSWER TO MEMORANDUM OF *AMICI CURIAE* ALLIANCE FOR A JUST SOCIETY, SEIU LOCAL 925, SEIU 775, UFCW LOCAL 21, WASHINGTON COMMUNITY ACTION NETWORK, ECONOMIC OPPORTUNITY INSTITUTE, FUSE WASHINGTON, AND SEATTLE CITY COUNCIL MEMBER KSHAMA SAWANT

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I. INTRODUCTION

Amici Curiae claim that RCW 29A.36.071 conflicts with provisions of the Charter of the City of Seattle and must be interpreted in a manner that harmonizes the statute with the city charter. But arguing that state statutes must be interpreted to take account of local laws gets it exactly backwards. Washington law is clear that city charter provisions are subject to the general laws of the state and where a charter provision does not accord with state law, state law governs. A state law is not subject to a limiting interpretation to avoid conflict with a local charter provision or ordinance. No harmonizing interpretation of RCW 29A.36.071 is required or appropriate.

Regardless, Amici's proposed interpretation of the statute is flawed. The exemption described in RCW 29A.36.071(3) does not apply in this case both because Seattle's charter does not "specif[y] the ballot title for a specific type of ballot question" and because, properly read, the exemption applies only to other provisions of state law that designate a specific ballot format.

Finally, Amici have not demonstrated that this case meets the standards for discretionary review set forth in RAP 13.4(b). This case does not present a matter of "substantial public interest" simply because it is the first time the Court of Appeals has interpreted RCW 29A.36.071 or

because it involves the right of initiative. Seattle's right of initiative remains unchanged and Amici and Petitioners seek little more than an advisory opinion on a situation that has arisen once in over 100 years. The petition for review should be denied.

II. ARGUMENT

A. The law is well settled that city charter provisions are subject to the general laws of the state and not vice versa.

The Court of Appeals' interpretation of RCW 29A.36.071 does not raise an issue of "substantial public interest" that merits this Court's review. RAP 13.4(b)(4). To the contrary, the Court of Appeals applied the non-controversial principle that city charter provisions are subject to the general laws of the state. *See* Const. art. XI, § 10 (granting powers to cities to enact charters for their own local government but explicitly commanding that such charters "shall be subject to and controlled by general laws"). Where a charter's provisions are not in accord with state law, state law governs. *See, e.g.*, *Martin v. Tollefson*, 24 Wn.2d 211, 217, 163 P.2d 594 (1945) (general law amended election procedures in charter of City of Tacoma because "the overall, comprehensive grant to the cities to frame charters for their own government is limited by reserving to the legislature the right to control such charters by general laws").

Rather than acknowledging this well-established rule, Amici argue instead that state statutes must be interpreted to take account of local laws.

But such an approach would turn the structure of Washington government on its head and is wholly unsupported by case law. Amici point to no case in which a state law was harmonized with a local charter provision or ordinance. And Amici fail to address the numerous cases to the contrary. *See, e.g.*, *Oakwood Co. v. Tacoma Mausoleum Ass'n*, 22 Wn.2d 692, 695–96, 157 P.2d 595 (1945) (general law enacted in 1943 controlled despite existing provision of the 1927 charter of the City of Tacoma); *Neils v. City of Seattle*, 185 Wash. 269, 274–75, 53 P.2d 848 (1936) (general law first enacted in 1903 superseded provision of the 1890 Seattle Charter).

Instead, Amici cite to cases involving two **state** laws standing in *pari materia*. *See O.S.T v. Regence BlueShield*, 181 Wn.2d 692, 694, 335 P.3d 416 (2014) (addressing claimed conflict between two state healthcare laws—RCW 48.44.450 and RCW 48.44.341); *Walker v. Wenatchee Valley Truck & Auto Outlet, Inc.*, 155 Wn. App. 199, 210, 229 P.3d 871 (2010) (provisions of state Auto Dealer Practices Act did not supersede provisions of state Consumer Protection Act). Admittedly, where two state laws conflict courts try to harmonize them. But harmonization is a tool of statutory interpretation to help determine "legislative intent", the "presumption being that a new law relating to such subject was enacted with reference to the former laws." *White v. City of North Yakima*, 87 Wash. 191, 195, 151 P. 645 (1915). It applies to determine the

legislature's intent in adopting two laws on the same subject; it does not support applying a limiting interpretation to a state law to avoid conflicts with a local law.[1]

RCW 29A.36.071 on its face regulates local initiatives and its requirements are clear, unambiguous, and mandatory: ballot titles for local government measures "**must** conform with the requirements and be displayed substantially as provided under RCW 29A.72.050" (emphasis added). To the extent that Seattle's charter provisions addressing local initiatives do not conform to this general law, they must yield. *See Tollefson*, 24 Wn.2d at 217. No harmonizing interpretation of RCW 29A.36.071 is required.[2]

B. Amici's proposed interpretation of RCW 29A.36.071 is unsupported by the law's language and purpose.

Regardless, Amici's proposed interpretation of RCW 29A.36.071 is unsound. Consistent with RCW 29A.36.071 when read as a whole, the exemption contained in 29A.36.071(3), providing that the ballot title

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[1] The rule of harmonization also applies to a conflict between a statute and a constitutional provision under the same basic theory. The courts presume a legislature would not intend to enact an unconstitutional statute.

[2] That Seattle's charter has provided for the right of initiative for over 100 years does not change this conclusion. A city's power to frame its charter is limited "by reserving to the legislature the right to control such charters by general laws". *Tollefson*, 24 Wn.2d at 217. This rule holds true even where the general law is enacted after the city charter provision in question. *Oakwood Co.*, 22 Wn.2d at 695–96; *Neils*, 185 Wash. at 274–75.

forms of RCW 29A.72.050 do "not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition", does not apply as Amici suggest.

First, Seattle's charter does not "specif[y] the ballot title for a specific type of ballot question" such that it triggers the exemption under RCW 29A.36.071(3). Seattle's charter provides that if the City Council rejects a proposed initiative measure and passes a different measure dealing with the same subject "it shall be submitted at the same election with the initiative measure and the vote of the qualified electors also taken for and against the same[.]" Chart. Art. IV, § 1.G. The charter is silent regarding the form of ballot title that must be employed in this scenario. In other words, the charter does not "specif[y] the ballot title[.]" RCW 29A.36.071(3).

This point is particularly clear when the charter language is compared to the language of the three statutes specifically cited in RCW 29A.36.071(1) as exempt. RCWs 82.14.036, 82.46.021, and 82.80.090—addressing referenda measures intended to impose, repeal, or alter certain county or city tax ordinances—each state:

> The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the [tax, tax rate increase, or fee] being imposed and a negative answer to the

> question and a negative vote on the measure results in the [tax, tax rate increase, or fee] not being imposed.

Further examples of state laws that specify the form of ballot title abound. RCW 29A.36.210(2), for instance, provides that the ballot proposition authorizing a taxing district to impose various property or permanent tax levies "must contain in substance the following" and then outlines the required language for two "Yes / No" questions to the voters. RCW 35.61.030(3), specifying the ballot title for metropolitan park district proposals, requires the ballot to include two voting options: "For the formation of a metropolitan park district to be governed by [insert board composition described in ballot proposition]" and "Against the formation of a metropolitan park district." These statutes clearly specify the ballot title for specific types of ballot questions. Article IV, § 1.G of Seattle's charter does not. Accordingly, contrary to Amici's suggestion, RCW 29A.36.071(3) does not apply.

Second, as the Court of Appeals correctly recognized, interpreting RCW 29A.36.071(3) to exempt state **and** local laws specifying the form of ballot title would undo the purpose of RCW 29A.36.071 by creating a loophole that could exempt **all** local measures from state regulation. The legislative history of RCW 29A.36.071 demonstrates that the legislature intended the local ballot title statute to apply as written, not as Amici

propose it should be re-written. In 2000, the legislature explicitly extended the mandatory ballot titles for state and local referenda to all local measures. Laws of 2000, ch. 197, § 12. In 2003, when the legislature passed an almost 200-page bill enacting comprehensive election reform, it purposefully reenacted the law establishing mandatory local ballot titles (while choosing not to reenact other provisions of election law). Laws of 2003, ch. 111, §§ 907, 1806. If the legislature had intended RCW 29A.36.071 merely as a default, subject to bypass by any local law specifying the form of ballot title for a local measure, it had ample opportunity to express such intent. And if the legislature had believed the provision served no substantive regulatory purpose, it could have eliminated it along with the other obsolete provisions of election law it chose not to reenact in 2003. *See* S.B. Rep. on S.B. 5221, at 2, 58th Leg., Reg. Sess. (Wash. 2003) (describing repeal of "numerous statutes . . . because they are no longer used in election law or are redundant"). The legislature did neither of these things; RCW 29A.36.071 must be applied as written—to regulate the form of ballot title for all local measures.

Finally, a common-sense reading of RCW 29A.36.071 as a whole leads to the conclusion that "another provision of law" references other **state** laws that designate a specific ballot format. *See Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 238–39, 110 P.3d

1132 (2005) (in ascertaining and giving effect to the intent of the legislature courts look not only to a statute's plain language and ordinary meaning but also "to the applicable legislative enactment as a whole, harmonizing its provisions by reading them in context with related provisions and the statute as a whole"). RCW 29A.36.071(1) gives three examples of state laws that are exempt from the mandatory ballot title requirements of RCW 29A.72.050 because they specify their own ballot title format. RCW 29A.36.071(3), in turn, functions as a catch-all provision so that the legislature will not be forced to amend section (1) each time a new state law is passed that provides for a specific ballot title format in a specific context. If, as Amici claim, section (3) is properly read to exempt all provisions of state and local laws that specify a form of ballot title, the three examples provided in section (1) would be rendered superfluous—every law, of any kind, specifying a ballot title would already fall within section (3) and no examples would be necessary. *See State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.2d 196 (2005). The sounder reading is that section (1) provides examples of state laws that are exempt from the mandatory ballot title requirements and that section (3) saves the legislature from having to amend the list every time such a new state law is passed.[3]

[3] That Amici have cherry-picked language from other RCW chapters

C. This case does not involve a matter of "substantial public interest" simply because the Court of Appeals interpreted RCW 29A.36.071 for the first time or because the case involves the right of initiative.

Amici's argument that because the Court of Appeals' opinion in this matter "stands as the sole appellate decision interpreting the language and purposes of RCW 29A.36.071" it creates an issue of "substantial public interest" under RAP 13.4(b)(4) is flawed. Under such an approach, this Court would be required to take review of every case of first impression in the state and the provisions of RAP 13.4(b) would be rendered meaningless.

Nor can Amici prevail with their argument that this Court must grant review because the right of initiative is "deeply ingrained in our state's history" and "widely revered[.]" The fact that Seattle must employ the ballot title forms mandated by RCW 29A.36.071 and 29A.72.050 does not render the initiative right under Seattle's charter any less viable today than it has been historically. Seattle's charter provides for only initiatives to the City Council and allows the Council to reject a proposed initiative and "pass a different one dealing with the same subject." Chart. Art. IV, §

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wherein the legislature used the phrase "provision of state law" is of no moment. The City can just as easily provide examples where the legislature used the phrase "any other provision of law." *See, e.g.*, RCW 28A.335.140, .180; RCW 70.94.033; RCW 9.94A.533; RCW 35.21.660. Language used in wholly unrelated code provisions has no bearing on the proper interpretation of RCW 29A.36.071.

1.C. If the Council chooses this course of action it must submit both measures to the voters. *Id.*, § 1.G.

That is exactly what occurred here. Initiatives 1A and 1B were both submitted to Seattle's voters; 68 percent voted for passage of either 1A or 1B and 69 percent then voted for 1B over 1A. The final results of the election were certified on November 25, 2014.[4] Unless Petitioners are seeking to decertify the results of the election (which neither Petitioners nor Amici have requested), petitioning for review of the Court of Appeals' decision amounts to no more than asking this Court to render an advisory opinion on a situation that has arisen only once in 100 years. This Court should decline such an invitation. *See, e.g., Cooper v. Dep't of Inst.*, 63 Wn.2d 722, 724, 388 P.2d 925 (1964) ("Nor will we render advisory opinions.").

Neither Amici nor Petitioners have demonstrated that this case meets the standards for discretionary review set forth in RAP 13.4(b); accordingly, the petition for review should be denied.

III. CONCLUSION

For the foregoing reasons the City respectfully requests this Court deny review.

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[4] The certified election results are available at http://www.kingcounty.gov/elections/election-info/2014/201411/results/seattle.aspx.

RESPECTFULLY SUBMITTED this 10th day of February, 2015.

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CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 10th day of February, 2015 I caused the foregoing document to be filed with the Supreme Court and a true and correct copy of the same to be served upon the following pursuant to the electronic service agreement:

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

DATED this 10th day of February, 2015.

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Subject: Yes for Early Success et al., v. City of Seattle - Supreme Court Cause No. 90996-2 - City of Seattle's Answer to Memo of Amici Curiae Alliance for a Just Society, et al.

On behalf of Respondent, City of Seattle, attached please find Respondent City of Seattle's Answer to Memorandum of *Amici Curiae* Alliance for a Just Society, SEIU Local 925, SEIU 775, UFCW Local 21, Washington Community Action Network, Economic Opportunity Institute, Fuse Washington, and Seattle City Council Member Kshama Sawant for filing and service. Pursuant to the electronic service agreement, hard copies will not be provided.

This document is being filed by Gregory J. Wong on behalf of Respondent, City of Seattle. Greg Wong's WSBA No. is 39329. His email address is: greg.wong@pacificalawgroup.com and his direct phone number is (206) 245-1711.

Please note that our reception, address suite number and zip code have changed.

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