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NO. 953074

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals Division II – No. 49453-1-II)

END PRISON INDUSTRIAL COMPLEX,

Respondent,

vs.

KING COUNTY,

Petitioner.

MEMORANDUM OF *AMICI CURIAE*
WASHINGTON STATE ASSOCIATION OF COUNTIES AND
WASHINGTON STATE ASSOCIATION OF MUNICIPAL
ATTORNEYS IN SUPPORT OF PETITION FOR REVIEW

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

The Washington State Association of Counties (WSAC) is a voluntary, non-profit association serving all of Washington's 39 counties. WSAC members include elected county commissioners, council members and executives from all of Washington's 39 counties. The Association provides a variety of services to its member counties including advocacy, training and workshops, and a forum to network and share best practices.

The Washington State Association of Municipal Attorneys (WSAMA) is a nonprofit Washington corporation whose membership is comprised of the attorneys who represent the 281 cities and towns in this state, and that provides education and training in the areas of municipal law to its members.

This case is vitally important to the members of WSAC and WSAMA (collectively *Amici*). They, their 39 counties, and 281 cities and towns, must be able to utilize the procedures of RCW 84.55.050 to increase regular property taxes via voter approved ballot measures, and to be able to depend upon those procedures, particularly after contractual commitments have been made, moneys have been obligated, taxes have been collected, costs have been incurred and expenses paid. Additionally, if excess property tax levies can be challenged years after the fact, long after taxes have been collected, indebtedness incurred and expenditures made, then the entire framework of municipal tax financing could be placed in significant jeopardy.

Amici respectfully request that this Court grant King County's

Petition for Review and address the significant state-wide implications that could result from the decision of the Court of Appeals.

II. STATEMENT OF THE CASE

Amici adopt the Statement of Facts provided and described by King County in its Petition for Review.

III. ARGUMENT

King County has capably presented its arguments to this Court in connection with this case and the issues warranting its request for review. It is not necessary for *Amici* to reiterate those arguments. Instead, the purpose of this brief of *Amicus Curiae* is to indicate to this Court that *Amici* supports King County's arguments, to inform this Court of the state-wide impact of the decision of the Court of Appeals, and request that this Court grant review for the purpose of clarifying the law governing tax levy ballot measures and challenges to such measures.

Rule of Appellate Procedure (RAP) 13.4(b) provides the reasons for which review "will be accepted by the Supreme Court." RAP 13.4(b). "A petition for review will be accepted by the Supreme Court... if the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b). Here, the decision of the Court of Appeals performed an incomplete analysis on a matter of first impression, leaving significant legal questions unresolved and jeopardizing the substantial public interest in providing certainty for tax levies passed throughout the state.

The Court of Appeals' decision involves two issues of substantial public concern: (1) when a challenge to a ballot title for a tax levy is timely, and (2) the specific language necessary to determine how a levy limit is calculated. Both of these matters are vital to the legitimacy and stability of the tax levy collection and expenditure process that affects every Washington county, city, town, other taxing entity and citizen. The Court of Appeals addressed each of these aspects without thorough attention to the impact on public policy. The Supreme Court should accept review to provide the public with proper guidance on the law governing tax levy ballot measures.

1. The Court of Appeals rejected the application of RCW 29A.36.090 without providing courts and taxing entities throughout the state with a mechanism to identify when a claim is timely.

Here, the Court of Appeals rejected the County's argument that RCW 29A.36.090 applied without directing the parties or other taxing entities to the applicable time limitation. The Supreme Court should accept review to correct this omission and ensure that taxing entities throughout the state are able to competently collect and expend tax revenues.

The Court of Appeals held that the 10-day limitation in RCW 29A.36.090 did not preclude EPIC's claim as untimely because it accepted EPIC's characterization of its own claim as an enforcement of the ballot title, not a challenge thereto. *End Prison Industrial Complex v. King County*, 200 Wn. App. 616, 627, 402 P.3d 918 (2017). Unfortunately, the

Court of Appeals provides no additional guidance to King County, lower courts, or any other taxing entity in the state as to what limitation does apply. *Id.* Here, the ballot measure for Proposition 1 was voted upon at the primary and special election on August 7, 2012. (CP270.) But EPIC’s lawsuit was not filed until April 27, 2016, more than three and one half years later. Because the Court of Appeals did not provide any additional guidance as to the applicable time limitation for EPIC’s more than three year delay, *Amici* encourage this Court to accept review and address when a claim arising out of a tax levy ballot measure is timely.

For example, one of EPIC’s claims is that the County incorrectly used the 2013 levy amount to calculate the levy amount for 2014, 2015, and 2016. *Brief of Appellants*, p. 14; *see also* CP 280-81 ¶¶ 12-13. EPIC claims that it “discovered the County’s over-collection of property taxes in 2016.” *Id.*, p. 16. A claim brought more than two years after it reasonably should have been brought is stale, and EPIC’s claim that it “diligently brought his matter to the Court” is without merit. EPIC certainly should have known the tax levels long before it says it knew.

Counties must hold a public hearing on the preliminary budget, which inherently includes the proposed amount of levies collected, on the first Monday in October or December.¹ RCW 36.40.070; 36.40.071. Upon

¹ Local taxing districts must certify their budget requests, and therefore their levy amounts, to the County by November 30th of the year preceding the year in which the levy is collected. RCW 84.52.020; Property Tax Levy Manual, Washington State Department of Revenue. <https://dor.wa.gov/sites/default/files/legacy/Docs/Pubs/PropTax/LevyManual.doc>

conclusion of the budget hearing the County adopts the budget, based on the amount of tax levied. RCW 36.40.080. Because of these statutory requirements, the amount of 2014 tax collected under the disputed levy was discoverable by EPIC in December of 2013.² EPIC provides absolutely no explanation as to why it waited until April 2016 to file a claim for an alleged over-calculation made public knowledge in December of 2013.

Comparatively, the time limitation for an over-calculation on the assessed value of property, which determines the amount of property tax owed, is 60 days. WAC 458-14-056. Levies for tax refunds are limited to 12 months. Neither EPIC nor the Court of Appeals cite to any authority for the premise that a claim of over-calculation made two and a half years after the fact is timely.³

Cities, counties and local taxing districts throughout the state rely on tax levy ballot measures to provide critical services including: public facilities such as city halls, parks, and libraries; water, sewer, and solid waste facilities and services; electrical and other utility facilities and services; public transit; road maintenance; firefighting; police and public safety; teachers' salaries and building schools; combating homelessness; and protecting the environment. These services affect every Washington resident and visitor. But the Court of Appeals' lack of guidance as to when

² In fact, as public records under Washington's Public Records Act, the amount of tax collected under Prop. 1 was discoverable not just by EPIC, but by *anyone* in December of 2013.

³ Conceivably, RCW 84.52.085 creates a three-year limitation, but even then it is not clear that the statute creates a private right of action.

a claim is timely destabilizes the provision of these critical services. In the last five years, there were at least 709 ballot measures that were submitted to voters in Washington from taxing districts statewide, with 648 of those for tax or bond levies.⁴ Without guidance from the Court, local taxing entities face significant risk of challenges long after tax levies are approved, taxes are collected, and even after projects are well under construction. *Amici* encourage this Court to accept review under RAP 13.4(b)(4) to provide clarity for all local taxing entities that a claim of over-calculation must be brought promptly, before those entities take significant action based on collection of voted taxes and certainly not two and a half years later.

2. The Court of Appeals' conflation of the requirements of RCW 84.55.050 produces an absurd result and precludes taxing entities from consistently determining how a levy limit is calculated and spent.

In this case, King County sought guidance from the Washington State Department of Revenue to draft the language of its ballot proposition. *King County's Petition for Review*, p.14. That practice is common among practically all local governments in this state. The reason for this practice is patently simple: Title 84, RCW, creates a byzantine network of requirements for certain pieces of information in certain places while simultaneously limiting length, format, and form. The Court of Appeals' decision to move *all* statutory requirements to the title of a ballot measure,

⁴ Municipal Research Service Center, *Local Ballot Measure Database*, <http://mrsc.org/elections.aspx#results> (last visited Feb. 9, 2018). Further, while this database includes counties, cities, and a number of other special purpose taxing districts, it does not include any school district tax or bond levy.

instead of other places like the ballot proposition, creates an absurd result.

Identifying the purpose, length, initial amount, total amount, and method of calculation, among other information, creates simply too many substantive requirements to fit into the 75-word limit required by RCW 29A.36.071(1). It is for this very reason that the plain language of the statute references other components, like the “ballot proposition” and “ballot measure.” RCW 84.55.050(1), 84.55.050(5). The Court of appeals conflated the requirements of RCW 84.55.050 despite a prescription against “interpret[ing] a statute in a manner that leads to an absurd result.” *Hangartner v. City of Seattle*, 151 Wn. 2d 439, 448, 90 P.3d 26 (2004) (overruled in part by statute on other grounds, as recognized by *Doe ex rel. Roe v. Washington State Patrol*, 185 Wn. 2d 363, 374 P.3d 63 (2016)).

If the advice and guidance of the Department of Revenue, in terms of what meets the requirements of RCW 84.55.050, is deficient, and all taxing entities must instead cram all requirements into the ballot title as the Court of Appeals has required, then ballot propositions and ballot measures will become superfluous. Furthermore, the ballot measures of all taxing entities will be vulnerable to challenge and taxing entities will not have clarity as to how a levy amount is calculated and expended. *Amici* encourage this Court to accept review under RAP 13.4(b)(4) to provide clarity for all local taxing entities over when and what information must be contained in a ballot title, when and what information must be contained in a ballot proposition, and when and what information must be contained in a

ballot measure.

IV. CONCLUSION

For the reasons set forth above, and as requested by King County, *Amici* respectfully requests this Court grant review of the Court of Appeals' decision in this matter and restore clarity in Washington's law governing tax levy ballot measures.

Respectfully submitted this 12th day of February, 2018.

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CERTIFICATE OF SERVICE

I certify that on the date referenced below, I served a copy of the foregoing document and the Motion for Leave to file Memorandum of Amici to each and every attorney of record herein, as identified below, by e-mail and U.S. mail, first class, postage prepaid:

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