

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12/15/2017 11:33 AM  
BY SUSAN L. CARLSON  
CLERK

No. \_\_\_\_\_

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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

END PRISON INDUSTRIAL  
COMPLEX,

Respondent,

v.

KING COUNTY,

Petitioner.

**KING COUNTY'S MOTION  
FOR JUDICIAL NOTICE &  
IN THE ALTERNATIVE  
TO EXPAND THE  
APPELLATE RECORD  
UNDER RAP 9.11**

**I. INTRODUCTION, IDENTITY OF MOVING PARTY,  
& RELIEF SOUGHT**

King County has included 19 sample ballot titles as an appendix to its Petition for Review, 17 of which are not part of the Court of Appeals record.<sup>1</sup> Because the ballot titles are legislative facts that may assist the Court in deciding whether to grant review and in interpreting the levy lid lift statute at issue, this Court may take judicial notice of them.

Alternatively, this Court may consider the ballot titles as a “statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like” under RAP

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<sup>1</sup> Because “Proposition No. 1 Regular Tax Levy Including Seattle Public Libraries,” King Cnty.’s Pet. for Review, App. D at 8, and the Department of Revenue’s “Sample Ballot Measures—Single Year Lid Lift,” *id.* at 14, are part of the Clerk’s Papers, the Court may consider them separately from this motion. *See* CP 467, 472.

10.4(c). But even if the Court finds that the ballot titles do not fall under RAP 10.4(c), the Court should expand the appellate record under RAP 9.11 to include this additional evidence.

## **II. FACTS RELEVANT TO MOTION**

King County voters approved a nine-year excess property tax levy to fund a new Children and Family Justice Center (“CFJC”). More than three and a half years later, End the Prison Industrial Complex (“EPIC”) challenged the vote by claiming deficiencies in the ballot title. The Court of Appeals agreed with EPIC that King County’s ballot title did not meet the requirements of RCW 84.55.050, the levy lid lift statute. As a result, the Court of Appeals interpreted RCW 84.55.050 to require the ballot title to include specified highly detailed information. Many other jurisdictions in Washington have passed excess levies using similar language in their ballot titles to the ballot title at issue.

## **III. ARGUMENT**

### **A. The 17 Ballot Titles Meet the Judicial Notice Requirements.**

Washington courts may take judicial notice at “any stage of the proceeding,” ER 201(f), and routinely take judicial notice of “‘legislative facts’ social, economic, and scientific facts.” *See Wyman v. Wallace*, 94 Wn.2d 99, 102, 615 P.2d 652 (1980). Legislative facts “‘supply premises in the process of legal reasoning’” and assist courts in interpreting statutes.

*See id.* (quoting *Houser v. State*, 85 Wn.2d 803, 807, 540 P.2d 412 (1975)); *see also State ex rel. T.B. v. CPC Fairfax Hosp.*, 129 Wn.2d 439, 454, 918 P.2d 497 (1996).

The 17 ballot titles are legislative facts of which the Court may take judicial notice.<sup>2</sup> Because the 17 ballot titles use similar language to the ballot title in this case, consideration of them will assist the Court in deciding the substantial public interest component of RAP 13.4 and in interpreting the requirements of the levy lid lift statute, RCW 84.55.050. The Court should therefore take judicial notice of the 17 ballot titles.

**B. The 17 Ballot Titles Satisfy RAP 10.4(c) and, Alternatively, RAP 9.11.**

An appendix may include materials not contained in the record on review as provided in RAP 10.4(c). RAP 10.3(a)(8). RAP 10.4(c) provides that, “If a party presents an issue which requires study of a statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like, the party should . . . include them by copy in the text or in the appendix to the brief.” Alternatively, a court may consider additional evidence on review under RAP 9.11, which states,

The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review

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<sup>2</sup> The ballot measure details, including the jurisdiction, the ballot title, the subject of the measure, and the election results are social and economic facts, i.e., legislative facts, that are readily available to the Court. *See Local Ballot Measure Database*, MUN. RESEARCH SERVS. CTR., <http://mrsc.org/Elections.aspx>.

if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

Here, the Court need not expand the appellate record because the 17 ballot titles are an exhibit or the like under RAP 10.4(c). Alternatively, the Court may expand the appellate record to include the 17 ballot titles because inclusion of them satisfies RAP 9.11.

First, additional proof that many other jurisdictions have used similar language in their ballot titles is necessary to understand the broad impact of this case and to interpret the levy lid lift statute, RCW 84.55.050. Second, the additional 17 ballot titles would probably result in reversal of the Court of Appeals' decision because the ballot titles state only the first year tax rate and the number of years of the levy, which is all that has been traditionally required. That the Department of Revenue, the Municipal Research and Services Center, and many other jurisdictions interpreted RCW 84.55.050 as asserted by King County and have gone without any legal challenge for years is a relevant consideration for this Court. Third, it is equitable to excuse King County's failure to present the 17 ballot titles to the trial court because this is a case of first impression

and several of the ballot titles had not yet been passed when EPIC filed this suit. Fourth and fifth, a granting of a new trial from the trial court or the appellate court would be unnecessarily expensive given that construction of the CFJC is well underway and King County has spent tens of millions of dollars on the project. Lastly, it would be inequitable to decide the case solely on the evidence already in the record because the 17 ballot titles demonstrate that the Court of Appeals' decision subjects other voter-approved levies to late-filed attacks, creating significant uncertainty for numerous public entities engaged in multi-million dollar infrastructure projects. The Court should therefore consider the 17 ballot titles under RAP 10.4(c) or RAP 9.11.

#### **IV. CONCLUSION**

Because the ballot titles are subject to judicial notice and reviewable under RAP 10.4(c) or RAP 9.11, the Court should grant King County's request to consider the 17 additional ballot titles on review.

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RESPECTFULLY SUBMITTED this 13th day of December,  
2017.

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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, and not a party to this action. On the 13<sup>TH</sup> day of December, 2017, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the foregoing document upon the parties listed below:

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Attorneys for Respondent  
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DATED this 13<sup>th</sup> day of December, 2017.



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Sydney Henderson

**PACIFICA LAW GROUP**

**December 15, 2017 - 11:33 AM**

**Filing Petition for Review**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** End Prison Industrial Complex, Appellant v. King County, Respondent (494531)

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**Comments:**

Motion for Judicial Notice

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