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STATE OF WASHINGTON
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No. 102713-3

SUPREME COURT
OF THE STATE OF WASHINGTON

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

Petitioners,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

MEMORANDUM OF *AMICUS CURIAE* WASHINGTON
STATE LABOR COUNCIL

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I. INTRODUCTION

Our Legislature has regulated public works construction to guard against corruption, ensure efficient spending, and protect Washington workers by ensuring them safe working conditions and the fair payment to which they are entitled. Petitioners Alexandria Real Estate Equities, Inc. (ARE), John Cox (an alumnus of the University of Washington (UW)), and Dean Takko (a former long-time member of Washington's Legislature) adequately brief the first of these key purposes – public bidding ensures transparent, efficient, public works construction. But *amicus curiae* Washington State Labor Council (WSLC) submits this memorandum to discuss the latter concern, which Division I completely glided past in its published opinion.

By holding that the UW's "test case" privatized lease-construction-lease-back construction funding arrangement is not a public work, the UW is now free to undertake a \$3 billion project on its Seattle campus, renovating public property using

public dollars, while ignoring the prevailing wage laws of chapter 39.12 RCW. Those key protections ensure Washington workers like the workers *amicus*' members represent receive fair compensation for performing work on public construction, which this project plainly is (at least in significant part). Review and reversal by this Court is necessary to protect Washington workers and ensure those key remedial laws protecting Washington wages are enforced.

II. IDENTITY AND INTEREST OF *AMICI CURIAE*

The identity and interest of *amicus* Washington State Labor Council (WSLC) are laid out in the contemporaneously filed motion for leave to file this *amicus* memorandum.

III. STATEMENT OF THE CASE

WSLC adopts the statement of the case in ARE's petition for review and prior briefing before Division I.

Key for purposes of this memorandum, the UW has embarked on a Public-Private Partnership model which it admits is a "test case" for future campus development projects that the

UW claims is exempt from public works laws like public bidding laws extensively briefed in this case. RCW 28B.10.350. This obviously harms contractors like ARE and it seriously harms taxpayers who are denied the protections public bidding is meant to provide, protections against corruption, overinflated public works projects, and ensuring transparent government.

But undeveloped to date in this case is the impact on the laborers, mechanics, and other construction workers represented by *amicus*' members. If the opinion below stands, and this "test case" privatized model is allowed to skirt public works laws, the UW and other government agencies can also skirt prevailing wage laws meant to ensure Washington workers are paid fairly. As discussed below, the Court should grant review to cure this (seemingly unintended) consequence of Division I's opinion.

IV. ARGUMENT IN SUPPORT OF REVIEW

Chapter 39.12 RCW requires government contractors to pay prevailing wages to workers on all public works and maintenance contracts, regardless of the dollar value of the

contract. RCW 39.12.020. This includes “every contract for the construction, reconstruction, maintenance or repair of any public works to which the state or any county, municipality, or political subdivision created by its laws is a party.” RCW 39.12.030(1).

As this Court stated decades ago, the purposes of prevailing wage laws are to “protect the employees of government contractors from substandard earnings and to preserve local wage standards.” *Everett Concrete Products, Inc. v. Dep’t of Labor & Indus.*, 109 Wn.2d 819, 823, 748 P.2d 1112 (1988) (analogizing to federal Davis–Bacon Act, 40 U.S.C. § 276a). These laws are necessary to “provide protection to local craftsmen who were losing work because contractors engaged in the practice of recruiting labor from distant cheap labor areas.” *See Washington Bldg. & Const. Trades Council v. Dep’t of Labor & Indus.*, 91 Wn.2d 41, 45, 586 P.2d 486 (1978). Prevailing wage laws are “remedial and should be construed liberally” to effect these purposes. *Everett*, 109 Wn.2d at 823.

In its published opinion, Division I ruled that the

renovation and development of the UW's West Campus in Seattle, projected to cost \$3 billion, is not "a public work" project. Op. at 14. Through a tortured analysis, Division I concluded that the UW agreeing to pay at least \$71.8 million in future rent to fund the demolition and construction of the specific building at issue, which is just the first portion of the planned \$3 billion project, is somehow not a cost "closely associated with "building, construction, renovation, remodeling, or demolition." Op. at 16 (RCW 28B.10.350(1)).

Intuitively, that makes little sense. The UW is funding construction which it will take over in fee simple ownership after a number of years, in exchange for millions of taxpayer dollars to be paid as rent. The project would not proceed without that upfront guarantee of a flow of public funds paid over time, and it is being done for the sole purpose of improving existing publicly-owned property, for the benefit of the public entity that is paying for these renovations. More importantly, however, by holding that this \$3 billion construction renovation is not "a

public work,” Division I wiped away all protections for workers afforded by the liberally interpreted prevailing wage laws. The UW’s contractors are now free to pay below market wages for what will be one of the largest publicly funded construction projects in the State.

The principle from the Court of Appeals decision that privatized construction through lease-construction-lease-back is not “a public work” has broad public impact. RAP 13.4(b)(4). It applies beyond just RCW 28B.10.350, the statute controlling construction by Washington’s higher education institutions, but would also broadly implicate other statutes that require prevailing wages for private construction projects for any state agencies under RCW 39.04.260. In other words, if lease-construction-lease-back contracts are not considered to be public works contracts for construction – as Division I held – then any state or local agency could apply this principle to evade Washington’s prevailing wage laws by using lease-construction-lease-back mechanisms to construct, renovate, and/or demolish

their buildings.

Put simply, this “test case” will likely gain traction across the state, depressing wages and subjecting construction workers to exploitation. This runs contrary to law and the statewide public policy in favor of boosting wages and protecting local craftsman from substandard wages. *Everett; Se. Washington Bldg. & Const. Trades Council; supra.*

In light of the above, review by this Court is necessary to determine this issue of substantial public importance. RAP 13.4(b)(4). Reversal is necessary to protect construction workers from the invidious effects of the stratagem the Court of Appeals approved here, which permits public entities to skirt public works laws like chapter 39.12 RCW’s protections for prevailing wages.

IV. CONCLUSION

For the foregoing reasons the Court should grant review and reverse.

This document contains 1,081 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 1st day of March, 2024.

Respectfully submitted,

A handwritten signature in black ink, reading "Dmitri L. Iglitzin". The signature is written in a cursive style with a horizontal line underneath.

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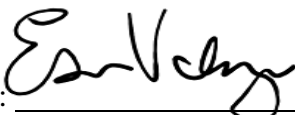
DECLARATION OF SERVICE

I hereby certify that on the date noted below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

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DATED this 1st day of March, 2024 at Seattle, Washington.

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