70633-1

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SUPREME COURT
OF THE STATE OF WASHINGTON

PUBLIC HOSPITAL DISTRICT NO. 1 OF KING COUNTY,

Appellant,

vs.

UNIVERSITY OF WASHINGTON AND UW MEDICINE,

Respondents.

BRIEF OF RESPONDENTS UNIVERSITY OF WASHINGTON AND UW MEDICINE

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I. INTRODUCTION

The alliance between the University of Washington and Public Hospital District No. 1 of King County represents democracy in action and government working the way it should.

The legislature created hospital districts, and it specifically gave them the power to combine with other public entities to offer services jointly. In June 2011, the District's elected commissioners exercised this power for the benefit of the District by agreeing to the Strategic Alliance Agreement with the University. The public benefits of this Alliance are undeniable, and the Agreement has been overwhelmingly supported by the community and its leaders. The University and the District formed the Alliance to achieve important goals, including "reductions in costs, increased efficiency through shared services, and improved clinical service through alignment and growth of clinical programs."

A new member has been elected to the District's board of commissioners, and three of the five commissioners are now attempting to undo the actions taken by their predecessors in office. Because there is no factual or legal basis for their claims, they attempt to build a case on overheated rhetoric. They claim the Agreement is "unlawful," but point to no law being violated. They complain about taxation without representation and voter disenfranchisement, but do not assert a single

constitutional claim. They dedicate many pages to complaining about previous board decisions, but assert no claims for breach of fiduciary duty or improper process. They do not claim the University has breached the Agreement or done anything wrong.

The District's only asserted claim is that the District itself did not have the authority to enter the Agreement in the first place. In fact, the District was exercising its express statutory authority.

Both the hospital district and the University are creatures of the legislature, authorized to exercise only those powers granted by the legislature. Among those powers is the authority to form collaborative alliances with other public entities for the effective provision of services. In the very same statute where the legislature granted hospital districts their powers, the legislature also authorized them to enter into contracts with other public entities "for carrying out ***any of the powers*** authorized by this chapter." RCW 70.44.060(6) (emphasis added). Here, the Alliance was established on the basis of this statutory authority. The District does not challenge the validity of the authorizing statutes, and it does not explain why the Agreement lacks statutory authority.

Finally, the District complains its commissioners do not constitute the majority of the new joint governing board. But the legislature has expressly addressed who must be on a board governing the activities of

any new joint entity. While a new joint board must include representatives of the public hospital district, those representatives need not constitute a majority of the board. RCW 70.44.240. Furthermore, the joint governing board is not even required to include any members of the public hospital district's board of commissioners. The District's claims to the contrary have no legal basis.

The District has expressed its disagreement with the powers the legislature has granted to public agencies to enter cooperative agreements. The District's disagreement is political, and its complaints should be addressed to the legislature. The trial court's summary judgment for the University should be affirmed.

II. STATEMENT OF THE CASE

The only facts necessary for the Court's legal analysis are the terms of the Agreement and its lawful passage by the District's commissioners in May 2011. CP 37-124 (Agreement); 223-26 (resolution approving Agreement). Nevertheless, the background facts described in this section provide useful context.

A. The Alliance Involves Two Public Institutions Focused on Providing Quality Health Care.

The University of Washington is one of the oldest state institutions on the West Coast. It existed before statehood, and long before hospital districts were created by the legislature. The University's roots date back

to the territorial legislature, and it first opened its doors to students in 1861. Today, the University serves more than 45,000 students and employs more than 40,000 people.

The University is a public institution funded by, and accountable to, the people of Washington. Pursuant to state statute, the University is controlled by a Board of Regents, whose members are appointed by the Governor with the consent of the state Senate. RCW 28B.20.100. Taxpayers entrust the University each year with more than $200 million in state funds, as well as more than $1 billion in federal funds for research and other activities. Laws of 2011, 2d Spec. Sess., ch. 9, § 602.

The University's School of Medicine was established in 1946, and University Hospital was established in 1959. Today, the University's health care activities are operated as UW Medicine, a comprehensive health care organization that includes four hospitals, primary care and specialty clinics, the UW School of Medicine, and a critical care air transport service. In fiscal year 2012, UW Medicine had approximately 64,000 patient admissions across its four hospitals and more than 1.5 million visits to clinics and other ambulatory sites. CP 32-33. UW Medicine's mission is to improve the health of the public by advancing medical knowledge, preparing the next generation of

physicians, scientists, and other health care professionals, and providing outstanding clinical care. CP 33.

The District is a public hospital district authorized by the legislature. The legislature established public hospital districts for one limited purpose: "to own and operate hospitals and other health care facilities and to provide hospital services and other health care services for the residents of [their] districts and other persons." RCW 70.44.003.

The District serves south King County, and its facilities include Valley Medical Center, which is a 303-bed acute care hospital in Renton, and a network of primary and urgent care clinics. The District exercises only the limited statutory powers necessary to provide health care services, including constructing a hospital or other health care facilities; buying, leasing and selling property for those purposes; borrowing money; issuing revenue bonds; levying property taxes up to a statutory cap;[1] and condemning property. RCW 70.44.060. The District currently levies taxes of less than $20 million, which is less than 2 percent of its gross revenue. CP 670 (annual tax revenue); Br. of Appellant at 3 (gross revenue). The District does not have powers unrelated to the provision of health care. For example, the legislature has not authorized hospital

[1] The legislature capped public hospital district taxes in RCW 70.44.060(6), and property taxes are further limited by RCW 84.52.043.

districts to pass laws, and hospital districts cannot impose taxes except in the limited amounts and manner prescribed by statute for the purpose of providing health care services. *See* RCW 70.44.060.

Among a hospital district's few powers, however, is the explicit authority to enter agreements with other public entities "for carrying out ***any*** of the [hospital district's] powers." RCW 70.44.060(7) (emphasis added). The Agreement at issue was made pursuant to that legislative grant of authority, and similar authority found in other statutes.

B. The University and the District Established the Alliance After a Thorough, Public Process Focused on Improving Health Care in the District.

The process leading to the Agreement was long, thorough, public, and driven by the changing landscape in health care delivery. Indeed, health care is continuously evolving, highly regulated, and competitive. Over the years, the District had considered combining and integrating with other entities to provide better, more efficient, and cost-effective care for its patients. In 2010, in the wake of significant national health care reform, the District considered that strategy again. CP 140. The District recognized that delivery of health care in the future will require participation in networks of health care professionals focused on delivering care that improves health, increases access, and reduces costs. CP 148.

The District formed a President's Advisory Council to assist in the investigation of options for partnership or affiliation. The Council raised 43 potential criteria for the District's consideration, and then winnowed the list down to 12 top priorities for a potential alliance. CP 140-41. With those criteria in mind, the District considered potential partners for an affiliation. The District also began discussions with medical staff and other key stakeholders. The District commissioners and the public were briefed at public meetings. *E.g.*, CP 135-50.

Ultimately, the District chose to pursue a strategic alliance with the University.[2] The District commissioners decided unanimously at a public meeting on January 18, 2011 to evaluate and negotiate a potential strategic alliance with UW Medicine. CP 143-50. The commissioners all agreed the purpose of the alliance would be to enhance services for District residents by integrating the District's health care system into the operations of UW Medicine and establishing a governance structure to oversee such operations. CP 148 (Resolution No. 960).

The parties then spent months negotiating, conducting due diligence activities, and gathering input from key stakeholders and the public. Six public meetings were held throughout the hospital district to

[2] The Agreement was entered by the University through a component organization, UW Medicine. CP 42 (Agreement §§ A-B). They will often be referred to collectively as the University throughout this brief.

discuss the proposed alliance. CP 160. Support for the alliance was overwhelming. The proposed alliance received support from more than 100 elected officials, doctors, and community members, including U.S. Senator Maria Cantwell, U.S. Senator Patty Murray, U.S. Representatives Jay Inslee, David Reichart, Norm Dicks, and Adam Smith, and mayors of cities within the District Service Area. CP 162-74.

The District commissioners were given regular updates about the progress of the negotiations, and were advised during the process by experienced legal counsel, including the District's general counsel and in-house counsel and its outside counsel Perkins Coie. CP 176-205. The District planned special meetings of the board of commissioners to "ensure ample opportunity will be afforded the Board to review the Strategic Alliance documents." CP 204 (April 18, 2011 minutes). The District considered the proposed agreement at multiple meetings, and reviewed it section by section with legal counsel. CP 207-21.

On May 23, 2011, the District voted 3-2 to approve the Strategic Alliance Agreement by passing Resolution 968. CP 223-26. The resolution found "there has been overwhelming public support for the District's entering into the Strategic Alliance" and concluded it was "advisable and fair to, expedient for, and in the best interests of the

District to enter into the Strategic Alliance Agreement, and to take the actions necessary to permit its implementation." CP 223-24.

C. The Agreement Provides for Shared Management of the New Alliance.

The Strategic Alliance Agreement spells out the terms of a 15-year agreement[3] to operate an integrated health care system (the "District Healthcare System") that incorporates the operation of the District's health care activities into UW Medicine. CP 79-80 (Agreement § 10.1). The University and the District each agreed to certain limitations, and accepted certain responsibilities, under the Agreement to carry out the alliance. The Agreement does not transfer any District assets to the University. CP 63 (Agreement § 5.1).

The University and the District decided the new integrated system would be managed by a thirteen-member Board of Trustees (the "Board"). CP 46-47 (Agreement § 3.2). Ten of the thirteen Board members must live within the District Service Area, including all five District commissioners and five community trustees.[4] *Id.* The other three Board

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[3] The Agreement can be extended only with the mutual agreement of the University and the District. CP 79 (Agreement § 10.1).

[4] The District claims the University "*admits* that ten of the thirteen do not live either within the actual District boundaries or the expanded District 'service area.'" Br. of Appellant at 38 (emphasis in original). This is untrue. The pages cited by the District contain a map of the District and District Service Area boundaries (CP 493) and brief biographies of the trustees (CP 126-30), but do not contain the residential addresses of the trustees, much less any admission by the University as claimed by the District. In fact, under the terms of the Agreement, at least eight of the thirteen Trustees must live in

members are two current or previous members of boards of other UW Medicine component entities or the UW Medicine Board, and the UW Medicine CEO or his designee. *Id.* The Agreement required that the five initial community trustees be selected after seeking nominations from the mayors of the cities within the District. CP 48 (Agreement § 3.4). Currently, the community representatives on the Board of Trustees include a member of the Metropolitan King County Council, a member of the Newcastle City Council, and a former superintendent of the Renton School District. CP 126-30.

All Trustees, whether commissioners or appointed community members, are bound by fiduciary duties to the District Healthcare System, and must act in a manner believed to be in its best interests. CP 48-49 (Agreement § 3.5). Trustees are also bound to follow the Ethics in Public Service Act and all other duties and obligations owed by public officers in Washington. *Id.* Under very limited conditions approved by the District before signing the Agreement, a commissioner can be removed from the Board of Trustees for cause, but, in such a case, the replacement Trustee would be chosen by the other commissioners, not the Board at large. CP 49-50 (Agreement § 3.7(b)).

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the District, and at least ten of the thirteen must live within the District Service Area. CP 46-47 (Agreement § 3.2), 97 (Agreement Ex. 3.2(b)).

The University and the District decided that the day-to-day operations of the newly integrated system would be handled by the Valley CEO, who reports to the UW Medicine CEO and the Board as a whole (including the District's commissioners), and whose responsibilities must be carried out consistent with the terms of the Agreement and applicable law. CP 50-52 (Agreement § 3.8(a), (c)). The Valley CEO is not, as the District now contends (without citation), given "free rein without any accountability to the elected Commissioners or the voters who selected them." Br. of Appellant at 36. In fact, the Valley CEO is responsible for "implementing the governance decisions of the Board," which includes the commissioners. CP 50 (Agreement § 3.8(a)). The Board, including the commissioners, reviews the Valley CEO's performance, sets his compensation, and can approve his removal. *Id.*

Although the University and the District decided to entrust this new Board with responsibility for daily operations, there are significant limits on the Board's authority. For example, without District consent, the Board cannot transfer or encumber any material asset of the District, relocate the hospital, reduce the licensed bed capacity of the hospital, or eliminate core services as identified in the Agreement. CP 72-74 (Agreement § 7.1).

The District's commissioners retain important responsibilities. The Agreement contains a lengthy table listing 60 powers and obligations of the District, and identifying whether those responsibilities will be retained by the commissioners alone, delegated to the new Board of Trustees, or shared jointly. CP 98-104 (Agreement Ex. 3.10(c)). Of the 60 items, 33 are listed as retained by the commissioners alone, and nine are listed as shared. *Id.*

The power to levy property taxes, for example, is reserved exclusively for the commissioners.[5] CP 77-78 (Agreement § 9.1). The District also retains the right to, among other things, annex territory into the District, control its own governance, hire a superintendent to manage its affairs, and sponsor educational programs to encourage health and wellness. CP 72-74, 98-104 (Agreement § 7.1 & Ex. 3.10(c)). Where responsibilities are assigned to the Board, the Agreement makes clear that the Board's activities are intended to satisfy the District's legal obligations. CP 52-53 (Agreement § 3.10).

In exchange for UW Medicine's agreement to integrate the District's health care activities into UW Medicine, the District also agreed to certain reasonable limitations on its future activities. For example, the

[5] The District agrees, however, not to exercise that power in a way that would hurt the new District Healthcare System. CP 77-78 (Agreement § 9.1).

District agreed it would not establish a new health care facility in the District Service Area, transfer material assets of the District Healthcare System, or de-annex property from the District if it would impair the District's ability to service its outstanding bonds. CP 74 (Agreement § 7.2). The District also agreed it would exercise its bonding powers to support certain activities specified in the Agreement. CP 62-63 (Agreement § 4.18(c)).

UW Medicine also agreed to limits on its future activities. For example, UW Medicine may not pursue new ventures within the District Service Area without the approval of the District. CP 71 (Agreement § 6.6).

Both parties agreed they had authority to enter the Agreement. The District promised it had "all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement." CP 74-75 (Agreement § 8.1(a)). The University made a similar commitment. CP 76 (Agreement § 8.2(a)). Both parties also agreed they would terminate the Agreement only by mutual agreement or under certain, limited circumstances. CP 80-82 (Agreement §§ 10.2-.5). None of those circumstances have come to pass.

D. The "Facts" Alleged by the District Are Not Supported by the Record and Are Not Related to the Validity of the Agreement.

Despite the thoroughness with which the Alliance was considered, the public nature of the process, the significant commitment made by the University, and the participation of countless other stakeholders, the District alleges this complicated and lengthy process was orchestrated by the District's CEO, Richard Roodman, to replace his allegedly "toxic" board of commissioners. *E.g.*, Br. of Appellant at 3-11. That claim belies common sense, and is unsupported by the record.[6]

The District begins its brief by complaining for page after page about Mr. Roodman and the compensation given to him by previous boards.[7] *Id.* Mr. Roodman has been the District's CEO for 30 years, so

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[6] The District cites a number of articles not made part of the record below, so the Court should not consider them. *E.g.*, *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995) (appellate courts do not consider matters outside the trial record). The articles are also inadmissible hearsay. ER 801, 802. In fact, the District's statement of the case contains a lengthy description of "facts" that are largely inadmissible. In addition to newspaper articles, the District relies on website print-outs and other unauthenticated documents attached to Dr. Joos's declaration below. CP 253-616. Dr. Joos's own declaration is riddled with hearsay, including his own out-of-court statement, and statements by the lawyers representing him in this case, fellow commissioners, District employees, and a consultant he hired. CP 255-60 (Joos Decl. ¶¶ 6, 9-16, 19 and exhibits referred to therein). The University asked the trial court to strike these inadmissible statements and exhibits from the record (CP 683-84), but the trial court did not rule on the issue before entering judgment for the University and dismissing the District's case. The Court should ignore the District's inadmissible statements on appeal.

[7] The District now complains Mr. Roodman was overpaid, and implies that the only possible basis for this would be if the elected commissioners where under his influence. It is not relevant to the legal issues in this case, and even if it were, there is no evidence in the record to hint that is the case. Indeed, even articles submitted by the

the District is essentially attempting to besmirch its own elected officials going back many years. These complaints about past board decisions pre-date the Alliance, and have no bearing on the University or this case.

Mr. Roodman is not a member of the board of commissioners, and could not vote for or against the Alliance. *E.g.*, CP 226. Regardless of what his personal intent was, it is irrelevant to the question of whether the board of commissioners acted appropriately. Although plaintiffs disparagingly claim the commissioners were "in Roodman's thrall," Br. of Appellant ¶ 36, there is no evidence of that in the record. The board meeting minutes and resolutions show conscientious board members carefully considering a proposed alliance and voting for it because of the "overwhelming public support" and the many benefits it would bring to the District. CP 135-226.

Moreover, the District does not—and cannot—allege that the University negotiated the Agreement for any purpose other than to advance its mission to improve the health of the public. Nor does the District allege any irregularities in the vote to approve the Alliance, or

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District, which the University believes should not be considered, show the genuine, entirely appropriate, motivation of the board in deciding his compensation, which included hiring a salary consultant, conducting a market analysis, and paying compensation the board genuinely believed was necessary to maintain Valley Medical Center's position as a top-notch hospital.

improprieties by the commissioners or the University leaders who exercised their independent judgment in approving the Alliance.

E. Procedural Posture.

The District sued to back out of the Agreement on October 24, 2012.[8] CP 1-5. The District claimed it lacked the authority to sign the Agreement it sought out and negotiated. *Id.* Shortly after the lawsuit was filed, the parties filed cross motions for summary judgment. CP 14-31, 227-52. After hearing argument, the trial court granted summary judgment for the University because the court correctly determined that "the State Legislature has authorized this type of transaction." RP 52.[9] The District appealed. CP 660-65.

III. ARGUMENT

The Court reviews a grant of summary judgment de novo. *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453,

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[8] The District disingenuously claims it is not opposed to the Alliance and is not trying to back out of the deal (Br. of Appellant at 15 n.10), but that is precisely the effect of the District's lawsuit. A successful ultra vires challenge would result in invalidation of the Agreement, and the strategic alliance and all its benefits to the people of the District would end. *See S. Tacoma Way, LLC v. State*, 169 Wn.2d 118, 123, 233 P.3d 871 (2010) (an ultra vires contract is void). The only question remaining for the trial court would be the University's counterclaim for damages based on the resources it has contributed to the alliance relying on the District's original representation that it had authority to enter this transaction. CP 6–13.

[9] The District's derogatory claim that the trial judge made his decision "without significant analysis" (Br. of Appellant at 18, 39) is contrary to the record. Judge Hayden reviewed more than 600 pages of legal briefing and declarations. CP 14-656 (briefing and declarations submitted by parties on cross-motions for summary judgment). He conducted a hearing that lasted more than an hour, during which he showed himself to be well prepared and actively engaged. RP 1-55.

266 P.3d 881 (2011). Summary judgment is proper where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c).

Summary judgment for the University was appropriate here. The law governing the case is clear. The District had explicit statutory authority to execute the Agreement, the District correctly represented it had such authority, and the Agreement is valid and enforceable as a matter of law. The trial court's judgment for the University should be affirmed.

A. Municipal Corporations May Enter Long-Term, Binding Contracts Requiring Them to Use Their Powers in the Future.

The District complains it lacked the authority to enter a contract that affects how the District will operate for 15 years. It is well established that municipal corporations can enter contracts, even long-term, binding contracts that necessarily constrain their behavior going forward. A municipal corporation is held to the terms of a contract just like any other party, even when those terms include important government functions, such as exercising taxing authority.

For example, in *Pierce County v. State*, 159 Wn.2d 16, 51-52, 148 P.3d 1002 (2006), the Washington Supreme Court struck down a ballot initiative that would have interfered with a contractual promise made to bondholders by Sound Transit, a municipal corporation, to use

future tax revenue to repay bonds issued to fund the first phase of the Sound Transit public transportation project. In that case, Sound Transit's pledge of tax revenue to bondholders was binding even in the face of contrary legislative preferences expressed by Washington voters in a ballot initiative. *See id.*

Similarly, in *State ex rel. Schlarb v. Smith*, 19 Wn.2d 109, 110-12, 141 P.2d 651 (1943), Pierce County and King County entered a contract to confine and improve the White River that required both counties to collect taxes each year in amounts necessary to support the project. In 1942, after more than two decades of compliance with the contract, King County decided to make a tax levy that covered only a portion of the contractually required amount. *Schlarb*, 19 Wn.2d at 112. The following year, King County refused to make any tax levy for the project. *Id.* Pierce County sued, and King County argued that the King County commissioners who originally made the contract were not authorized to enter a contract that was binding on future commissioners. *Id.* The Court disagreed, and held that since the contract was authorized by statute, King County was compelled to collect taxes as required by the contract. *Id.* at 112-14. King County was not free to ignore its contractual obligations even though its commissioners wanted to change the County's taxing priorities decades after their predecessors signed the contract.

There are numerous other examples of enforceable long-term municipal contracts. *E.g.*, *Tyrpak v. Daniels*, 124 Wn.2d 146, 157, 874 P.2d 1374 (1994) (protecting the contract between Port of Vancouver and bondholders from legislative efforts to interfere with contractual commitments); *Swinomish Indian Tribal Cmty. v. Skagit Cnty.*, 138 Wn. App. 771, 779-80, 158 P.3d 1179 (2007) (approving contract between tribe, Skagit County, and other parties, requiring those parties to take actions to manage water flows in Skagit basin, and citing statutory authority for the agreement, including the Interlocal Cooperation Act); *Concerned Citizens of Hosp. Dist. No. 304 v. Bd. of Comm'rs of Pub. Hosp. Dist. No. 304*, 78 Wn. App. 333, 340-48, 897 P.2d 1267 (1995) (approving establishment and actions of new entity and joint operating board created to administer hospitals in two public hospital districts).

Indeed, municipal entities – including the District – would be badly handicapped without the power to enter long-term contracts. Consider the impracticality of a municipal entity embarking on any major public infrastructure project, for example, without the ability to enter into binding contracts. *See Pierce Cnty.*, 159 Wn.2d at 52 ("If we accepted the intervenors' invitation to fundamentally alter our contracts clause jurisprudence, we would imperil the ability of state and local governments to finance essential public works projects such as elementary schools, fire

stations, highways, and bridges, by casting considerable doubt on the reliability of pledged funding sources.").

Accordingly, "[a] municipal corporation authorized to do an act has, in respect to it, the power to make all contracts that natural persons could make." 10 Eugene McQuillin, *The Law of Municipal Corporations* § 29.8 (3d ed. 2009). Even the District, before making the Agreement, entered contracts that plainly constrain its behavior going forward. CP 54 (Agreement § 4.2 (listing District contracts to which the new District Healthcare System must adhere, including collective bargaining agreements, other employment contracts, service contracts with vendors, bond resolutions, and financial agreements)). A one-vote change on the District's board of commissioners does not allow the District to break its union contract, stop paying its vendors, or refuse to repay its bonds. The District should also not be allowed to break the contract it signed to establish the Alliance.

B. The Agreement Is Permitted by Statute.

1. The Legislature Controls the Scope of the District's Powers.

Public hospital districts are municipal corporations. RCW 70.44.010. Washington courts have long recognized that municipal corporations are "creatures of the state" and "derive their authority and powers from the state's legislative body." *Skagit Cnty. Pub. Hosp. Dist.*

No. 1 v. Dep't of Revenue, 158 Wn. App. 426, 445, 242 P.3d 909 (2010). Indeed, "[t]he fundamental proposition which underlies the powers of municipal corporations is the subordination of such bodies to the supremacy of the legislature." Philip A. Trautman, *Legislative Control of Municipal Corporations in Washington*, 38 Wash. L. Rev. 743, 743 (1963). The legislature's "absolute control" over the powers of municipal corporations is "limited only by the constitution." *King Cnty. Water Dist. No. 54 v. King Cnty. Boundary Review Bd.*, 87 Wn.2d 536, 540, 554 P.2d 1060 (1976).

This is true nationwide. As the U.S. Supreme Court has explained, "Political subdivisions of States—counties, cities or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental function." *Sailors v. Bd. of Ed. of Kent Cnty.*, 387 U.S. 105, 107-08, 87 S. Ct. 1549, 18 L. Ed. 2d 650 (1967) (citations and quotations omitted). In *Sailors*, the U.S. Supreme Court decided an appointed county school board could properly exercise powers similar to those at issue in this case, including setting a budget, levying taxes, and hiring a superintendent. *Id.* at 110.

As a limited purpose municipal corporation, the District is authorized to do what the legislature says it can do. To determine whether the District had authority to enter the Agreement, the Court must look to the statutes giving hospital districts their powers.

2. The Statute Authorizing Public Hospital Districts, RCW 70.44, Grants Authority to Enter the Agreement.

In creating public hospital districts, the legislature was specific about the powers it conferred on them. A hospital district's limited powers are listed in RCW 70.44.060, and are carefully tailored to the particular needs of hospital districts. The powers include constructing and operating a hospital, issuing bonds to pay for health care services, and hiring physicians and other employees. RCW 70.44.060. The District has the ability to levy taxes up to a cap imposed by the legislature, but any additional taxes require voter approval. RCW 70.44.060(6). The District is markedly different from the State, a county, a city, or any other general purpose government entity. It does not, for example, have the authority to pass laws regulating the conduct of District residents, operate a police force, or engage in other activities not related to health care.

The *same* statute granting the District its limited powers also provides authority for the Agreement. RCW 70.44.060[10]. After listing the specific powers given to hospital districts, the statute explicitly authorizes any public hospital district to "enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out ***any of the powers*** authorized by this chapter." RCW 70.44.060(7) (emphasis added). Another section of the Hospital District statute grants similar authority. RCW 70.44.240 (permitting a hospital district to contract with another public entity to own, operate, or manage a health care facility or to otherwise offer health care services). These statutes, which must be "liberally construed . . . in order to carry out the purposes and objects for which [the statute] is intended," unquestionably confer broad authority on the District to enter the Agreement. RCW 70.44.900-901.

3. The Interlocal Cooperation Act, RCW 39.34, Also Grants Authority to Enter the Agreement.

A second statute, the Interlocal Cooperation Act, also authorizes the Agreement. Enacted in 1967, the Act allows any agency to combine

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[10] This statute has been on the books since 1945, and since that time the Legislature has broadened the authority of hospital districts to contract or join with others to carry out their functions. In 1967, the Legislature expanded the list of entities with whom a hospital district could contract or join by adding what is now RCW 70.44.240. Laws of 1967, ch. 227, § 3. The Legislature has continued to expand the scope of a hospital district's authority to join with others by amending Section 240 in 1974, 1982, 1997 and 2004.

with another to jointly offer services each is authorized to deliver itself. RCW 39.34.030(1). The goal of the Act was to

> permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

RCW 39.34.010. To accomplish that goal, the Interlocal Cooperation Act authorizes public agencies to jointly exercise "[a]ny power or powers, privileges or authority exercised or capable of exercise by a public agency of this state." RCW 39.34.030(1). The Interlocal Cooperation Act then authorizes public agencies to make contracts to facilitate their "joint or cooperative action." RCW 39.34.030(2). The Agreement in this case is just such a contract.[11]

4. Both Statutes Explicitly Authorize Minority Representation by Public Hospital District Commissioners on Any New Joint Governing Board.

The District's central complaint seems to be that its commissioners do not constitute a majority of the new joint Board of Trustees. The

[11] Plaintiff does not allege the Agreement failed to comply with any of the procedural requirements of the Act, which ensure agreements are clear about how these cooperative endeavors will operate. For example, the Interlocal Cooperation Act requires a cooperation agreement to include the duration of the agreement, its purpose, and how budgets will be established, all of which are addressed in the Agreement. RCW 39.34.030(3)-(4).

legislature has determined majority representation is not necessary. The statutes permitting hospital districts to contract with other public entities "for carrying out any of [the hospital district's] powers" anticipated that new boards would be necessary to govern joint entities, and specifically addressed their composition. RCW 70.44.240; *accord* RCW 39.34.030. Those statutes do *not* require that joint operating boards include commissioners, much less that commissioners hold a majority of the seats. RCW 70.44.240; RCW 39.34.030

The Public Hospital Districts authorizing statute states that "[t]he governing body of [any new] legal entity . . . *shall* include representatives of the public hospital district, which representatives *may* include members of the public hospital district's board of commissioners."[12] RCW 70.44.240 (emphasis added). In other words, hospital district commissioners need not be on new joint boards at all, and certainly may represent only a minority of seats on such boards.[13]

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[12] Before 2004, the Public Hospital District's statute did require representation—but not majority representation—by public hospital district commissioners on any joint governing boards. In Senate Bill 6485, which passed the state House and Senate unanimously in 2004, the legislature specifically removed that requirement.

[13] Because joint boards are not required to include commissioners, the District's complaint that commissioners can be removed from the joint board misses the mark. Br. of Appellant at 10. Commissioners can be removed from the Board of Trustees *only for cause*, and if removed a replacement is *selected by the remaining commissioner trustees*. CP 49-50 (Agreement § 3.7(b)). More importantly, the community is represented by ten people on the thirteen member board, which more than satisfies the statutory requirement that a public hospital district have "representatives" on a joint board. RCW 70.44.240.

The Interlocal Cooperation Act similarly requires only that public agencies in joint agreements "be represented" on any joint board. RCW 39.34.030(4)(a); *accord* RCW 39.34.030(3)(b) (requiring "membership" of a public agency in any new organization created by it pursuant to the Interlocal Cooperation Act). It does not require majority representation by any party, and therefore authorizes *minority* representation by public hospital district commissioners. RCW 39.34.030(4)(a).

The District suggests throughout its brief (without citation) that the Board is unlawfully constituted or somehow ineffective because it includes unelected Trustees. *E.g.*, Br. of Appellant at 1, 8-9. However, the statutes cited above authorize unelected representatives to sit on such boards, and do not require representation by elected officials, including the commissioners. In fact, the legislature authorizes hospital districts to contract with "the United States government or any state, municipality, or other hospital district, *or any department of those governing bodies*, for carrying out any of the [hospital district's] powers," so the legislature plainly contemplated that hospital districts would collaborate with entities run by unelected officials. RCW 70.44.060(7) (emphasis added). The relevant statutes therefore do not require representation by elected officials

on new joint boards, and certainly do not require that elected officials constitute a majority of any new joint board.

The legislature's decision makes practical sense. Two collaborating public entities cannot both have majority membership. If that were required, public entities could never join together. Such an outcome would unquestionably frustrate the legislature's intent to authorize creative, efficient joint governmental undertakings. *See*, *e.g.*, RCW 70.44.060(7); RCW 70.44.240; RCW 39.34.030. As the trial court correctly recognized in granting the University's summary judgment motion, when entities combine, "none of them are going to be able to exercise the control they could if they were running it all by themselves." RP 52. Here, the District made a knowing choice to cooperate with another public entity to more efficiently serve its residents and enhance public health. This is precisely the type of collaboration permitted by the statutes.

5. Courts Have Repeatedly Approved Joint Boards Similar to the Alliance's Board of Trustees.

Joint governing entities featuring minority representation are not new, and have been previously approved by Washington courts. In *Concerned Citizens*, a case cited by the District, two hospital districts created a joint governing entity to manage their two hospitals.

78 Wn. App. at 337. Each hospital district had minority representation on the joint governing board, which included each district's five commissioners and an eleventh member. *Id.* at 337. When that joint board chose to close down one hospital's emergency room, the court upheld that decision.[14] *Id.*

In *Roehl v. Public Utility District No. 1 of Chelan County*, 43 Wn.2d 214, 241, 261 P.2d 92 (1953), another case cited by the District, the state Supreme Court also endorsed the creation of a joint operating board, with minority commissioner representation, to manage a project undertaken cooperatively by municipal corporations. In *Roehl*, five public utility districts agreed to purchase the assets of another utility and created a joint executive board to manage it. *Id.* at 239. Each of the five utilities had one commissioner on the new joint executive board. *Id.* The executive board's duties "were far from ministerial, involving about as important discretionary power as each public utility district possessed." *Jackstadt v. Wash. State Patrol*, 96 Wn. App. 501, 511 n.27, 976 P.2d 190 (1999) (quoting Kenneth Culp Davis, *Subdelegation of Power*, ADMINISTRATIVE LAW TREATISE § 9.06, at 638-39 (1958) (discussing *Roehl*)).

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[14] Here, the Agreement contains safeguards to protect the District from dramatic changes in services, which must be approved by not only the Board of Trustees, but also by the District's board of commissioners. CP 72-74 (Agreement § 7.1).

In approving the creation of the executive board, the Supreme Court explained that "[m]unicipal corporations frequently delegate management duties to an individual officer, committee, or board. Where, as here, the operation is to be the joint responsibility of several quasi-municipal corporations, the designation of a management board seems especially necessary" and is "an arrangement clearly within the contemplation of the enabling legislation." *Roehl*, 43 Wn.2d at 241. The Supreme Court later reaffirmed the validity of such joint boards. *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. Taxpayers & Ratepayers of Snohomish Cnty.*, 78 Wn.2d 724, 730-31, 479 P.2d 61 (1971) (upholding validity of joint agreement delegating management authority and noting the delegated authority was properly approved in *Roehl*).

The District cites the WPPSS case to argue that joint governing boards are impermissible when the member entities have only minimal participation in management decisions.[15] Br. of Appellant at 22-24 (discussing *Chem. Bank v. Wash. Pub. Power Supply Sys.*, 99 Wn.2d 772, 666 P.2d 329 (1983)). This case is nothing like WPPSS.

[15] The District suggests the University "mischaracterizes" the WPPSS decision because the University points out that WPPSS represents an example of municipal corporations exceeding their legislatively granted powers. Br. of Appellant at 23 n.16. The University has not mischaracterized the decision. The Court decided the WPPSS case as it did because, although public utility districts were authorized by statute to purchase "electrical current," they were not authorized to assume an "unconditional obligation to pay for no electricity." *Chem. Bank*, 99 Wn.2d at 783-84. This is important because, in contrast to WPPSS, the District was authorized by multiple statutory provisions to make the Agreement with the University.

In *WPPSS*, 19 public utility districts and four cities (all municipal corporations) established the Washington Public Power Supply System (WPPSS, also a municipal corporation) to purchase electric power generating capacity. *Chem. Bank*, 99 Wn.2d at 776-77. The member municipal corporations assumed obligations totaling approximately $7 billion over 30 years to construct two nuclear power plants. *Id.* at 777-79. Despite assuming such a significant financial obligation, none of the member municipal corporations retained an ownership interest in WPPSS or any facilities it constructed. *Id.* at 785. The member municipal corporations had rights only to certain "amounts of electric power and energy, if any," produced by WPPSS. *Id.*

The member municipal corporations also had only limited participation in the management of WPPSS. Although WPPSS was governed in part by a "participants' committee," WPPSS procedures required 20 percent of the WPPSS participants to register their *disapproval* of any WPPSS proposal within 15 days, or the proposal was approved. *Id.* at 787. The Court held the lack of member ownership, coupled with a passive opt-in management system, failed to "satisfy the type of ownership control envisioned in" the relevant utility district statutes. *Id.*

In reaching that conclusion, the Court specifically *contrasted* the WPPSS management system with the joint governing body approved by the Court in *Roehl*. *Id.* at 787-88, 790-91. The Court explained that, in *Roehl*, an "executive board, consisting of one member from each utility, was responsible for overall project management and policy decisions" for the new joint undertaking established by the member utilities. *Id.* at 791 (citing *Roehl*, 43 Wn.2d at 240-41). The Court held that the "same degree of participant control" was not present in *WPPSS* because "most of the policy decisions and management control are delegated to WPPSS, the operating agency, rather than any executive committee." *Id.*

Here, unlike in *WPPSS*, the District retains ownership of its assets and each of its commissioners sits on the new Board of Trustees, which makes operating decisions for the new District Healthcare System, with the exception of powers reserved exclusively to the District or the University. Under Washington law, the Board is properly constituted even though commissioners are not a majority of the Board. *Id.* (citing with approval the *Roehl* five-member executive committee, on which each public utility district had only one seat); *accord, e.g.*, *Concerned Citizens*, 78 Wn. App. at 337, 348 (approving actions of joint public hospital board on which each hospital district's commissioners had five of the eleven board seats).

C. The District's Claim that the Agreement Is "Unlawful" Has No Legal Basis.

1. Even the Authorities Cited by the District Recognize Municipal Corporations Can Exercise the Powers Granted to Them by the Legislature.

The District argues it exceeded its own powers when it signed the Agreement, because "[w]ell-developed common law principles" prevent it from making the Agreement and delegating powers to the new Board of Trustees. Br. of Appellant at 19. However, there are no common law principles that override the legislature's authority to control the exercise of powers by public hospital districts.

Even the cases and treatise cited by the District show that statutory authority from the legislature is the key to determining what a municipal corporation can do. The District acknowledges that McQuillan's *Municipal Corporations* recognizes that common law limitations on municipal corporations do not apply to powers "*authorized by statute*." Br. of Appellant at 25 (discussing 2A Eugene McQuillin, *Municipal Corporations* § 10.38 at 425 (3rd ed. rev. 1996)) (emphasis added).

Similarly, Attorney General Opinion No. 4 (2012), on which the District heavily relies, does not, and cannot, identify Washington case law clearly limiting the powers of municipal boards generally "because the resolution of specific cases often turns on *specific statutory grants of authority*, rather than on the application of . . . general principle[s]." AGO

2012 No. 4 at 3 (emphasis added). For that reason, the courts in the cases cited by the District looked to *statutes* when assessing the powers of particular municipal corporations. *E.g.*, *Chem. Bank*, 99 Wn.2d 772 (agreement invalid for failure to comply with statutory requirements); *Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 78 Wn.2d at 728 ("the actions challenged in the case were permissible because "contemplated by the legislature."); *Roehl*, 43 Wn.2d at 240-41, (looking to enabling statute in determining powers of utility districts).[16]

2. The District Does Not Claim the Statutes at Issue Are Invalid or Unconstitutional.

It is well established that the legislature's grant of authority to a limited purpose municipal corporation is valid unless it is unconstitutional. *King Cnty. Water Dist. No. 54*, 87 Wn.2d at 540. In this case, the District

[16] Other authorities cited by the District also show that municipal corporations can do what the legislature authorizes them to do. *E.g.*, *State v. Plaggemeier*, 93 Wn. App. 427, 99 P.2d 519 (1999) (agreement invalid for failure to comply with statute); *Wabash R.R. Co. v. City of Defiance*, 167 U.S. 88, 100, 17 S. Ct. 748, 42 L. Ed. 2d 87 (1897) (municipal bodies "exercise only such powers as are delegated to them by the sovereign legislative body of the state" and cannot be delegated "in the absence of authority to that effect"); Vermont *Dep't of Pub. Serv. v. Mass. Municipal Wholesale Elec. Co.*, 558 A.2d 215 (Ver. 1988) (agreement invalid for failure to comply with statute); *City of Brenham v. Brenham Water Co.*, 4 S.W. 143, 149 (Tex. 1887) (municipal corporation could delegate its powers by contract "[i]f the legislature had expressly authorized the making of the contract"); AGO 2008 No. 7 at 5 (duty imposed on local official by statute may not be delegated unless "specifically authorized" by statute); AGO 1988 No. 26 at 5 (looking to "enabling legislation" for authority of governmental body to delegate); AGO 1987 No. 7 at 1 (state agency owes its powers to the legislature, and may not delegate them "absent express authorization"); AGO 1982 No. 8 at 3 (public official may not delegate functions vested in him by law "in the absence of express statutory authority"); *see also Fund for Animals v. Kempthorne*, 538 F.3d 124, 132 (2d Cir. 2008) (upholding delegation of certain authority to the Fish and Wildlife Service).

has not made or supported a constitutional challenge. The District does cite three provisions of the Washington Constitution in its brief, but does not base any claim on those provisions.[17] The District vaguely claims the Agreement "distorts due process principles of 'one person, one vote,'" but once again does not argue the statutes or conduct at issue are unconstitutional. Br. of Appellant at 8 n.5.[18] There is no constitutional issue in this case.

3. The District Ignores the Language of the Statutes at Issue.

The District claims the statutes at issue provide only limited authority to enter into specific contracts (*e.g.*, Br. of Appellant at 30-31), but there is no support for that argument. The District neither quotes nor analyzes the language of RCW 70.44.060(7), which permits the District to enter into a contract with another public entity to carry out "any" of the District's powers. *See* Br. of Appellant at 29-32. The District offers no alternative explanation for what "any powers authorized by this chapter"

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[17] The District cites Article I, Section 19 regarding free and equal elections, but makes no claim in this case about improprieties at the polls. The District also cites Article II, Section 1 and Article VII, Section 5 regarding legislative powers and taxation. Again, the District includes a passing reference to these provisions, but makes no claim of unconstitutional conduct in this case.

[18] Rather, even the case cited by the District confirms the principle applies only to bodies in which a majority of the members are elected. *Cunningham v. Municipality of Metro. Seattle*, 751 F. Supp. 885, 887, 893 (W.D. Wash.1990) (concluding one person one vote applied to METRO board with appointed and elected officials because a majority of the officials were elected). In this case, eight of the thirteen members of the Board of Trustees are appointed and five are elected. CP 46-47.

means when used in the same chapter granting the District all its limited powers. There is none. The statutory language at issue is straightforward. The same statutes used to award hospital districts their limited powers also authorize them to combine with other public entities to carry out "any" of those powers.

The District's only argument related to the language of RCW 70.44.060(7) is that it does not permit contracts with "private persons" to carry out "any" of the District's powers. Br. of Appellant at 29. The University is not a private person, and the new Board of Trustees is a joint operating body authorized by statute.

The District also implies that the District's residents were required to vote on the Agreement pursuant to RCW 70.44.190. Br. of Appellant at 29. But that statute relates only to efforts to merge two neighboring hospital districts into one hospital district. RCW 70.44.190. This case does not involve a merger at all,[19] let alone a merger between hospital districts.

The District also claims the authority to contract under RCW 70.44.240 is "narrow in scope" and limited to contracts relating only to "administrative or ministerial functions." Br. of Appellant at 31. The

[19] Although the District claims the alliance is essentially a merger, it is not. No assets are transferred under the Agreement, the District maintains separate bank accounts, and District assets cannot be used to subsidize the operation of UW Medicine. *E.g.*, CP 22-23 (Agreement § 5.1-.2).

statute contains no such limitation. RCW 70.44.240. The statute does allow contracts to jointly "own, operate, [or] manage" a hospital district's health care facilities, and the Agreement (which does not even go so far as to transfer ownership of the District's assets) fits well within those broad terms.[20]

The District cites the Interlocal Cooperation Act, RCW 39.34, but does not analyze its language or explain why it does not authorize the Agreement. Instead, the District claims that the "Act nowhere evidences an intent to permit a municipal corporation to cede the core responsibilities of its elected decision makers to unelected persons who are unaccountable to the voters." Br. of Appellant at 32-33. The District cites no legal authority for that claim. It certainly does not quote the Interlocal Cooperation Act itself, which of course broadly authorizes the joint exercise of "[a]ny power or powers" granted to public entities. *Id.* The District also mistakenly equates lack of majority with complete unaccountability. The Act requires participation by the District, which the legislature has deemed a sufficient level of accountability.

The District also contends that "public agencies may not circumvent their public obligations" by entering into interlocal

[20] Indeed, if the District's commissioners are authorized to *sell* the District's health care facilities and services, RCW 70.44.060(2), 70.44.240, they plainly are authorized to contract with the University to share management responsibilities for those same facilities and services.

cooperation agreements. Br. of Appellant at 33. But there is no circumvention in this case. The Interlocal Cooperation Act authorizes a joint entity to perform duties in satisfaction of its component entities' legal obligations, RCW 39.34.030(5), and the Agreement in this case explains that actions taken pursuant to the Agreement will be "offered by the district in satisfaction of its obligations and responsibilities under the law," CP 52 (Agreement § 3.10(a)). Because the District is not attempting to leave its legal obligations unfulfilled, its discussion of the Interlocal Cooperation Act, and the cases it cites,[21] are irrelevant.

Finally, the District claims the University offers "no limiting principle" to govern the governmental collaboration authorized by the relevant statutes. Br. of Appellant at 31. The limiting principles have already been well established in Washington law. The actions of municipal corporations are limited by the legislature and the state constitution. *King Cnty. Water Dist.*, 87 Wn.2d at 540. The District does not claim the relevant statutes are unconstitutional, so it must look to the

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[21] *E.g.*, *Harvey v. Cnty. of Snohomish*, 124 Wn. App. 806, 814, 103 P.3d 836 (2004), *rev'd on other grounds*, 157 Wn.2d 33, 134 P.3d 216 (2006) (determining County could not absolve itself of responsibility for acts of 911 operators by participating in joint 911 calling system with another public entity); *W. Wash. Univ. v. Wash. Fed'n of State Emps.*, 58 Wn. App. 433, 793 P.2d 989 (1990) (concluding university could not avoid obligations applicable to higher education employers by entering a contract). Here, the District is not avoiding its obligations; it is allowing the Board of Trustees to oversee the District Healthcare System in fulfilling certain obligations. *E.g.*, CP 54 (Agreement § 4.1) (requiring Board of Trustees to operate District Healthcare System in compliance with all healthcare and environmental laws).

legislature, not the Court, if it wants limits on its own future authority to enter into strategic alliances like this one.

Instead of addressing the language of the statute, the District attempts to rely on rhetoric it labels common law principles. There is no common law here that overrides the valid, enforceable statutes passed by the legislature.

4. The Agreement Does Not Impermissibly Delegate Core Legislative Responsibility.

The District suggests this case involves the delegation of "core legislative responsibilities" and will test the limits of delegation for all of Washington's municipal corporations, including cities and counties. Br. of Appellant at 28, 40. This case, like the powers of hospital districts, is far more limited. This is not a case in which "core legislative powers" have been, or even could have been, delegated.

The legislature has authorized the creation of public hospital districts for the sole purpose of providing health care to their constituents. RCW 70.44.003. The legislature gives hospital districts the limited tools necessary to accomplish the legislature's objectives, but hospital districts have no powers beyond that. For example, unlike cities and counties, hospital districts cannot pass laws regulating the conduct of district

residents. Hospital districts thus exist to execute the legislature's policy objectives—nothing more.

In fact, the same types of powers at issue here were deemed "administrative" by the U.S. Supreme Court in *Sailors*. In that case, the appointed county board of education had many powers, including levying taxes, setting a budget, establishing schools, deciding when to move schools from one district to another, and hiring a superintendent. *Sailors*, 387 U.S. at 110 n.7. The Court concluded "the County Board of Education performs essentially administrative functions, and while they are important, they are not legislative in the classical sense." *Id.* at 110.

The District powers delegated to the Board are similarly non-legislative. The Board sets budgets and priorities for the Healthcare System, hires and evaluates employees, and exercises other powers consistent with its "overall oversight responsibility for operation for the District Healthcare System." CP 49 (Agreement § 3.6). None of those powers can properly be characterized as "core legislative" powers.

While the District has powers often associated with legislative bodies, such as the power to levy taxes, those powers are only on loan from the legislature, and the use of those powers has been tightly constrained by the legislature. The powers can be used only in support of the hospital districts' efforts to provide health care, and the taxing

authority is capped and otherwise closely circumscribed by the legislature. Although the legislature has authorized the District to contract with another public entity for carrying out "any of [those] powers," in this case, the District has reserved many powers for itself under the Agreement.[22] CP 98-104 (Agreement Ex. 3.10(c)).

D. This Case Is Not About Alleged Mismanagement of the District.

The District goes on at length with claims of high salaries, excessive debt, and other alleged misconduct that occurred *before* the District entered the strategic alliance with the University. *E.g.*, Br. of Appellants at 3-7. The District claims it is providing this information because it will assist the court "in interpreting contract terms." Br. of Appellant at 36 n.23. No contract terms are at issue. The only question before the Court is whether the District had authority to enter the Agreement it signed in June 2011. The answer to that question is found in the Agreement and the relevant statutes, not in parsing a political dispute between the present commissioners and the commissioners who came before them.

The District also complains about recent decisions of the Board of Trustees, including decisions related to hiring bond counsel and a political

[22] It is important to note, however, that, under "long-standing authority," even the taxing power can be delegated under Washington law to unelected bodies. *Pierce Cnty.*, 159 Wn.2d at 38.

survey.[23] Br. of Appellant at 14 n.9. The District chose to enter an alliance, and to delegate these types of decisions to the Board of Trustees, which includes the commissioners. The District does not allege a breach of the Agreement, or that the Board of Trustees has acted in bad faith. Just because the views of individual commissioners did not prevail on these issues does not mean they are not part of the decision making process. The District chose to adopt a governing system that includes five additional community members and three representatives of the UW Medicine system. This structure is allowed by statute.

IV. CONCLUSION

This case is about the exercise of a hospital district's powers. The legislature has decided a hospital district has the power to join with another public entity to exercise "any of [its] powers." This District does not claim the statutes are unconstitutional, but nevertheless asks the Court to undo the District's lawful exercise of its legislatively granted powers. If the District wants governmental entities to have less flexibility to collaborate, it should take the matter up with the legislature.

The District is trying to turn back the clock, and break a contract it signed. Washington courts have long held government entities to the same

[23] The Board of Trustees had reasonable concerns about the commissioners' unbudgeted political survey, particularly after questions were raised by the State Auditor's Office. CP 608. Nevertheless, as the District acknowledges, the cost of the survey was paid. Br. of Appellant at 17 n.11.

high standards of contract compliance as ordinary people. The Agreement was the product of a thorough public process and a lawful vote by the elected commissioners to approve the Agreement. The District cannot change its mind simply because board politics have changed.

The District's claims have no legal basis. The Court should affirm judgment for the University and award the University its costs on appeal.

RESPECTFULLY SUBMITTED this 24th day of April, 2013.

HILLIS CLARK MARTIN & PETERSON P.S.

By _____
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Special Assistant Attorney General
Attorneys for Respondents

CERTIFICATE OF SERVICE

On the date indicated below, I hereby certify that I caused to be served upon all counsel of record, via email and U.S. Mail, a true and correct copy of the foregoing document.

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

DATED this 24th day of April, 2013, at Seattle, Washington.

_____
Suzanne Powers

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OFFICE RECEPTIONIST, CLERK

To: Lou Peterson
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Subject: RE: Supreme Court No. 88308-4 - Public Hospital District No. 1 of King County v. University of Washington, et al. - Respondents' Brief

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Subject: Supreme Court No. 88308-4 - Public Hospital District No. 1 of King County v. University of Washington, et al. - Respondents' Brief

Re: Supreme Court No. 88308-4
Public Hospital District No. 1 of King County v. University of Washington, et al.

Attached is a copy of the Brief of Respondents University of Washington and UW Medicine, with Certificate of Service, in the above-referenced matter.

The person submitting this motion is Louis D. Peterson, Telephone: (206) 623-1745, WSBA No. 5776, e-mail address: ldp@hcmp.com.

This brief is being served on all counsel of record by email and U.S. mail.

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