

Court of Appeals No. 351742
(Grant County Superior Court Cause No. 17-2-00228-0)

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

FRED MEISE, DOUG BIERMAN, PAT HOCHSTATTER, MIKE
COUNSELL, JASON MELCHER, AND JARED POPE,

Petitioners,

v.

MICHELE JADERLUND, GRANT COUNTY AUDITOR,

Respondent,

and

KATIE PHIPPS, MICHELLE KITTRELL, KRISTA HAMILTON,
SUSAN MOBERG, CRAIG HARDER, DENNIS KEARNS, and
BARBARA KEARNS,

Intervenors.

**MOSES LAKE SCHOOL DISTRICT'S
AMICUS BRIEF**

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I. INTRODUCTION

This case concerns the February 14, 2017 election on Moses Lake School District's construction bonds. The legal question is whether Washington law requires that election's certified results to be nullified.

The fiscal reality, however, is that school construction bonds cannot be sold to finance school construction if a suit contesting the bond election's validity has not been terminated. This case thus highlights the importance to school districts of the Court properly interpreting and applying the *promptness*, *proof*, and *finality* requirements of Washington law in an election contest suit like this one.

With respect to *promptness*, elections have strict time limits. An election ballot must be postmarked by election day. A day late is too late. An election contest must be filed within 10 days of the certified result being contested. A day late is too late. The election contest in this case is two days too late. As a matter of law, the dismissal in this case must therefore be affirmed. *Part III.A below.*

With respect to *proof*, the statute under which petitioners brought their case specifies what they must show to annul the bond measure's election results: "If in any such case it shall appear that the results of a measure are reversed, said court shall declare the change in result." RCW 29A.68.050. Petitioners candidly stipulate they cannot show the

results of this bond measure would be reversed. As a matter of law, the dismissal in this case must therefore be affirmed. *Part III.B below.*

With respect to *finality*, Washington law recognizes that school bond elections need certainty – for fiscal reality dictates that a school construction bond is a worthless piece of paper if bond buyers cannot be certain the election authorizing that bond was valid. The multi-billion dollar WPPSS bond default made the national bond market acutely aware that a bond issued by a Washington government entity is worthless as long as the validity of that bond’s issuance is in question.¹ As a matter of law, the dismissal in this case must therefore be swiftly and with finality affirmed. *Part III.C below.*

II. IDENTITY & INTEREST OF AMICUS CURIAE

The School District: The Moses Lake School District has over 8,600 students attending its ten elementary schools, three middle schools, and one high school.²

¹ See generally, https://www.washingtonpost.com/archive/politics/1984/12/05/after-default-the-questions-of-blame-and-duty-linger/d87bc3ae-8350-4dec-847a-ac7be5b0478f/?utm_term=.21f435a4927b (December 5, 1984 Washington Post, *After Default, the Questions of Blame and Duty Linger*) (1984 WLNR 916596) (“In June 1983 the highest court in the state of Washington wiped out contracts between Whoops and the major utilities sponsoring the plants. That reading of law by an elected tribunal turned the world upside down. It destroyed the value of bonds held by more than 78,000 people and paved the way for a \$2.25 billion default.”).

² See Washington State Superintendent of Public Instruction Report Card for this school district at <http://reportcard.ospi.k12.wa.us/summary.aspx?groupLevel=District&schoolId=75&reportLevel=District&orgLinkId=75&yrs=2016-17&year=2016-17>(shows May 2017 Student

The Construction Bonds: Washington law vests the school district's publicly elected school board with the primary responsibility for providing public education to the district's students. RCW 28A.150.230.

In November 2016, the district's school board found and determined that:

Overcrowding (including enrollment demands and State of Washington class size reduction initiatives), educationally outdated infrastructure and classrooms, student safety, and the institution of new educational programs require that the District construct a new second high school, construct a new elementary school, renovate Moses Lake High School, and make health, safety, security and infrastructure improvements, all as more particularly defined and described in Section 2 herein....³

The school board then authorized the bond measure at issue in this case to finance that work.⁴

The Ballot Measure: The February 14 ballot measure at issue asked voters to approve the sale of bonds to pay for the above work and a

count of 8637; drop-down menu at "Summary" section lists the 10 elementary schools, 3 middle schools, and 1 high school).

³ *Moses Lake School District Resolution No. 2016-10 at Section 1(a)* [[http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N7Q5C92D9/\\$file/2016-10%20Bond%20Resolution%20signed.pdf](http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N7Q5C92D9/$file/2016-10%20Bond%20Resolution%20signed.pdf)]; see also *Moses Lake School District Resolution No. 2017-02 at Section 1(a)* ("Moses Lake students can no longer wait for essential school facility improvements. Enrollment demands, State of Washington class size reduction initiatives and overcrowding require more classrooms. New educational programs for today's economy and educationally-outdated infrastructure and classrooms require renovation and health, safety, security and infrastructure improvements") & *Section 1(b)* [[http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/\\$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf](http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf)].

⁴ *Moses Lake School District Resolution No. 2016-10 at Section 1(b)-(e)* [[http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N7Q5C92D9/\\$file/2016-10%20Bond%20Resolution%20signed.pdf](http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N7Q5C92D9/$file/2016-10%20Bond%20Resolution%20signed.pdf)]; see also *Moses Lake School District Resolution No. 2017-02 at Section 1(b)* [[http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/\\$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf](http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf)].

property tax to repay those bonds.⁵ The certified election results show this bond measure passed with 5678 yes votes and 3781 no votes (meaning the measure passed with 1897 more yes votes than no votes).⁶

The School District's Interest: The school district (and its over 8,600 students) have a substantial interest in this case because the election nullification demanded in this case – and the ongoing pendency of this appeal – effectively block the above financing for the school construction that the district's duly elected school board determined is needed for the safe and effective education of Moses Lake School District students. Neither the petitioners, the defendant, nor the intervenors have that substantial interest. The school district offers its front-line, on-the-ground perspective on how the interpretation and application of Washington election law in a case like this impacts school districts and their students.

⁵ *Moses Lake School District Resolution No. 2017-02 at Section 1(c)* [[http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/\\$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf](http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf)]. *Our State's Constitution and school statutes authorize school districts to submit such ballot measures to voters to support a district's public education mission. See, e.g., Washington Constitution, Article VII, §2; RCW 28A.530.020, 39.36.050, 84.52.053, 84.52.056. School districts rely on such ballot measures to fund capital projects, maintenance, and operations for the education of its students. On school district ballot measures, see generally <http://www.k12.wa.us/safs/PUB/LEV/1617/levy16.pdf> (State Office of Superintendent of Public Instruction, School District Property Tax Levies, 2016 Collections at i).*

⁶ *CP 58-61 (February 24, 2017 Certification of the Canvassing Board for 5678 votes "approved" and 3781 votes "rejected")*. Accord, <https://wei.sos.wa.gov/county/grant/en/CurrentElection/Documents/Recount%202017.pdf>.

III. LEGAL DISCUSSION

The election contest petition demands that the court annul the school district's bond election pursuant to RCW 29A.68.050.⁷ That statute states the court "shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, *according to the law* and right of the case." RCW 29A.68.050 (bold italics added).⁸ The following pages present the school district's direct perspective on why the election contest petition in this case fails *as a matter of law* under a proper interpretation and application of the election contest statute petitioners invoke.

⁷ Election Contest Petition at ¶6.2 (Relief Requested: "Judgment pursuant to RCW 29A.68.050, annulling and setting aside the February 14, 2017 special election regarding Moses Lake School District #161 Proposition No. 1.").

⁸ The full text of that statute states: "The clerk shall issue subpoenas for witnesses in such contested election at the request of either party, which shall be served by the sheriff or constable, as other subpoenas, and the superior court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend if they fail to do so. The court shall meet at the time and place designated to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling and setting aside such election, according to the law and right of the case. If in any such case it shall appear that another person than the one returned has the highest number of legal votes, said court shall declare such person duly elected. If in any such case it shall appear that the results of a measure are reversed, said court shall declare the change in result." RCW 29A.68.050.

A. Required Promptness

1. The Law: election contest statute of limitations (10 days)

Elections have deadlines. There's a deadline to submit election ballots. And there's a deadline to file election contests. Election contests must be filed within ten days of the election's official certification:

An affidavit of an elector under this subsection shall be filed with the appropriate court no later than ten days following the official certification of the election.

RCW 29A.60.013.⁹

2. The Legally Relevant Fact: 12 days is more than 10 days

The official certification of the February 14 election was issued on February 24, 2017.¹⁰ Ten days later was March 6.

This suit's election contest petition was filed twelve days after that certification: March 8.¹¹

Twelve is more than ten.

⁹ *Washington law reiterates the importance of such a bright line statute of limitations rule for election challenges. E.g., Reid v. Dalton, 124 Wn.2d 113, 122, 100 P.3d 349 (2004) ("Statutes of limitation assume particular importance when swift resolution of potential legal uncertainties is in the public interest. And the public interest demands that any challenge to the validity of the election be speedily filed and resolved. The trial court acted correctly in upholding the bright-line time limitation of elections challenges.") (citations omitted).*

¹⁰ CP 58-61(February 24, 2017 Certification of the Canvassing Board for 5678 votes "approved" and 3781 votes "rejected").

¹¹ CP 3-7.

3. The Legal Conclusion: petition filed too late

The election contest petition in this case must be dismissed as a matter of law because it was filed after the 10-day election contest statute of limitations had expired. RCW 29A.60.013.

4. Irrelevant Fact: there was a recount after the untimely petition was filed

Petitioner's appeal briefing refers to the March 10 recount that did not change the election result.¹² That March 10 recount is a fact.

But it's a legally irrelevant fact, because the March 8 election contest petition in this case does not challenge the March 10 recount.

Moreover, since Washington law prohibited any of the 31 ballots not counted in the February 24 count from being counted in the March 10 recount, the March 10 recount was irrelevant to the counting or not counting of those 31 ballots.¹³

In short: the fact that a March 10 recount confirmed the February 24 count does not change the fact that the March 8 petition in

¹² *The March 10, 2017 certification of that hand recount confirmed that exact same result as the original count. See <https://wei.sos.wa.gov/county/grant/en/CurrentElection/Documents/Recount%202017.pdf>. Accord, Moses Lake School District Resolution No. 2017-02 at Section 1(d)-(f), [[http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/\\$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf](http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf)].*

¹³ *E.g., McDonald v. Washington Secretary of State, 153 Wn.2d 201, 204, 103 P.3d 722 (2004) (“ ‘Recount’ means the process of retabulating ballots.... ballots are to be ‘retabulated’ only if they have been previously counted....”); In re Coday, 156 Wn.2d 485, 489, 130 P.3d 809 (2006) (“Washington law requires a recount of only those ballots actually tabulated in the initial count”); RCW 29A.60.165(3) (“A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.”).*

this case was filed two days after the statute of limitations had expired for contesting the election result that the March 8 petition contests – i.e., that the bond measure passed with 1897 more yes votes than no votes.

B. Required Proof

1. The Law: the election contest statute petitioners invoke

The election contest petition demands that the court annul the school district’s bond election pursuant to RCW 29A.68.050.¹⁴ That statute specifies what petitioners must show in this case to annul the bond measure’s election results: “If in any such case it shall appear that the results of a measure are reversed, said court shall declare the change in result.” RCW 29A.68.050.¹⁵

¹⁴ *Election Contest Petition at ¶6.2 (Relief Requested: “Judgment pursuant to RCW 29A.68.050, annulling and setting aside the February 14, 2017 special election regarding Moses Lake School District #161 Proposition No. 1.”).*

¹⁵ *Washington case law has long applied such high proof requirements to void an election result based on administrative errors. E.g., Murphy v. City of Spokane, 64 Wash. 681, 684–85, 117 P. 476 (1911) (“Certain rules as to notice of elections have become well settled; and none of them are better settled than that the formalities of giving notice, although prescribed by statute, are directory merely, unless there is a declaration that, unless the formalities are observed, the election shall be void.”) (quoting Seymour v. City of Tacoma, 6 Wash. 427, 431, 33 P. 1059 (1893)). This directory-rather-than-mandatory rule applies even if the statute assigns the duty with the word “shall.” See Seattle v. Auto Sheet Metal Workers, 27 Wn. App. 669, 693, 620 P.2d 119 (1980) (construing “shall” as directory rather than mandatory when consistent with legislative intent), overruled on other grounds by City of Pasco v. Pub. Emp’t Relations Comm’n, 119 Wn.2d 504, 511-12, 833 P.2d 381 (1992). The Washington Supreme Court has long applied this high proof requirement to validate elections despite a violation of notice requirements. E.g., Seymour, 6 Wash. at 431 (untimely notice); State v. Doherty, 16 Wash. 382, 389, 47 P. 958 (1897) (not timely); Hesseltine v. Town of Wilbur, 29 Wash. 407, 410-11, 69 P. 1094 (1902) (earlier notice); Rands v. Clarke Cnty., 79 Wash. 152, 159, 139 P. 1090 (1914) (not timely); Groom v. Port of Bellingham, 189 Wash. 445, 447, 65 P.2d 1060 (1937) (failed to post or publish notice); School District No. 81 of Spokane County. v. Taxpayers, 37 Wn.2d 669, 671, 225 P.2d 1063 (1950) (not timely);*

**2. The Legally Relevant Fact:
petitioners agree they can't show a different election result**

Petitioners candidly stipulate that they cannot show any change in result arising from the defendant County Auditor's conduct in this case:

It is stipulated that it would not be appropriate to speculate or attempt to determine how the results of the election would have been different if the Grant County Auditor had attempted to notify voters by telephone in this case, nor would it be appropriate to open the secret ballots that were not counted, nor would it be appropriate to conduct discovery regarding how the voters whose ballots were not counted actually voted.¹⁶

(Petitioners' stipulation in this Grant County Superior Court election contest case contrasts with, for example, the litigants in the Rossi-Gregoire election contest case in Chelan County Superior Court, where parties submitted the testimony of voters on how they had voted to prove a change in the election results – which caused the court to declare a change

Long v. City of Olympia, 72 Wn.2d 85, 90, 431 P.2d 729 (1967) (not timely). This same directory-rather-than-mandatory principle applies to other election official duties as well. See, e.g., *Dumas v. Gagner*, 137 Wn.2d 268, 291, 971 P.2d 17 (1999) (upholding election certification where auditor assigned winning candidate to incorrect port commission district); *Vickers v. Schultz*, 195 Wash. 651, 657, 81 P.2d 808 (1938) (upholding election where notice was not posted at each polling place); *Loop v. McCracken*, 151 Wash. 19, 20, 274 P. 793 (1929) (upholding bond election where notice was posted outside of polling precinct); *Murphy v. City of Spokane*, 64 Wash. 681, 684-85 (1911) (upholding bond election where election officers did not preside over the opening of all polling locations); see also *McCormick v. Okanogan County*, 90 Wn.2d 71, 80, 578 P.2d 1303 (1978) (reiterating *Murphy* and listing cases where elections officials did not strictly comply with legal requirements, but the election was not set aside).

¹⁶ CP 32 at ¶4 (March 15, 2017 Stipulation by Petitioners with the County Auditor).

in the 2004 Gubernatorial election results by a net total of four votes between candidates Rossi and Gregoire.¹⁷⁾

3. The Legal Conclusion: the statute petitioners invoke does not authorize the nullification they demand

The election contest petition in this case must be dismissed as a matter of law because petitioners did not – and admit they cannot – show that the County Auditor’s conduct in this case changed the result of the election petitioners ask the court to annul. RCW 29A.68.050.

4. Irrelevant speculation & hyperbole: “disenfranchisement” of eligible “voters”

Petitioner’s appeal briefing repeatedly references the Auditor’s “disenfranchisement” of 31 “voters”, and depriving 31 “voters” of an “opportunity to exercise their franchise”.¹⁸ Those are sympathetic characterizations to use.

¹⁷ See *Borders v. King County*, Oral Decision, No. 05–2–00027–3, Dkt.1258 at p.2193 (Chelan County Superior Court July 12, 2005) (“... the Court received testimony from four of them who indicated that they voted for Mr. Rossi in this election. ... The Court finds that each of these votes was an illegal vote which should be deducted from Mr. Rossi’s total.”); see also *In re Coday*, 156 Wn.2d 485, 490–91, 130 P.3d 809 (2006) (“The contestants further alleged that “errors, omissions, mistakes, neglect and other wrongful acts” by county election officials affected the outcome of the election and necessitated its nullification. ... On June 6, the Chelan County Superior Court judge presiding over the case dismissed the contest. After weighing the evidence, he concluded that the contestants had failed to prove that grounds for nullification of the election existed. See generally *Borders* Oral Decision. Specifically, he ruled that, while the contestants had proved that errors and omissions by county election officials had occurred, and that illegal votes were cast, they had not proved that the outcome of the governor’s election was changed as a result.”).

¹⁸ E.g., Petitioner’s Opening Brief at 1 (“disenfranchisement of 31 voters”), at 2 (“disenfranchisement of eligible voters”), at 5 (“disenfranchising 31 voters”), at 16 (“deprivation ... of the opportunity to exercise their franchise”), at 17 (“denial of the

But they're not facts in this case.

One, with respect to “voters”, there is no evidence in the record that a single one of the 31 ballots was in fact filled out and submitted by the voter to whom the ballot had been addressed. Indeed, the reason for the signature verification requirement is to evidence it truly is that voter’s ballot – evidence not presented for any of the 31 ballots in this case.¹⁹

Since the voters to whom those 31 ballots were mailed is a matter of public record,²⁰ petitioners could have easily obtained a sworn declaration from any of them stating that they had in fact filled out and submitted the ballot envelope associated with their name. But petitioners chose not to do that. Saying the 31 ballots were submitted by “voters” is therefore a speculative assumption rather than an actual fact in this case.

franchise”), at 18 (“denial of the right to vote”), at 18 (“disenfranchised 31 voters”), at 18 (“disenfranchisement”), at 19 (“31 voters were disenfranchised”), & at 19 (depriving them “of the opportunity to exercise their franchise”); Petitioners’ Reply Brief at 1 (“31 voters ... were disenfranchised”), at 1 (“disenfranchised”), at 4 (“disenfranchised”), at 6 (“disenfranchised”)(twice), at 7 (“denial of the franchise”), & at 10 (“disenfranchised”).

¹⁹ *The County Auditor’s corresponding signature verification process is at CP 63-37.*

²⁰ *See RCW 29A.60.165(4) (“A record must be kept of all ballots with missing and mismatched signatures. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.”). The election contest petition accordingly acknowledged that the Grant County Auditor’s office provides daily reports identifying the registered voters associated with ballots that have missing or irregular signatures. CP 3-4 at ¶1.1 (petitioners’ suit is based in part on the school district’s use of those daily reports to contact voters associated with ballots submitted with missing or irregular signatures).*

Two, with respect to “disenfranchisement”, that word means to take away the right to vote.²¹ There is no evidence in the record that the right to vote was taken away from any voter. First, there’s no dispute that the Auditor mailed the 31 ballots to the registered voter with instructions explaining the signature requirement for the ballot to be valid.²² Second, there’s no dispute that the Auditor also mailed a follow-up letter to each of those 31 voters explaining that if the ballot that had been submitted really was that voter’s ballot, the signature requirement had to be satisfied for that ballot to be valid.²³ The Auditor’s not attempting to also add a follow-up telephone call might have failed to comply with the notice statute’s attempt-a-follow-up-call clause – but it did not take away any voter’s right to vote.

If one of the 31 ballots actually was the registered voter’s ballot (a fact not in the record for any of the 31 ballots), that voter had been notified twice in writing that a ballot lacking valid signature verification is

²¹ E.g., *Black’s Law Dictionary* 567 (10th ed. 2014) (defining “disenfranchisement” as “The act of taking away the right to vote in public elections from a citizen or class of citizens”, and defining “disenfranchise” as “To deprive (someone) of a right, esp. the right to vote; to prevent (a person or group of people) from having the right to vote”); see also *The American Heritage Dictionary* 404 (2d. college ed. 1985) (defining “disenfranchise” as “to disfranchise”, and defining “disfranchise” as “To deprive (an individual) of a right of citizenship, esp. of the right to vote”); *Webster’s Third New International Dictionary* 649 (1993) (defining “disfranchise” as “to deprive of a statutory or constitutional right; esp: to deprive (a person) of the right to vote”).

²² See WAC 434-230-015(2) (“Each ballot must include instructions....”) and -015(3) (“Instructions that accompany a ballot must ... (c) Explain how to complete and sign the ballot declaration....”).

²³ CP 63-67; accord CP 31 at ¶1.

defective – and Washington law confirms that a voter is not deprived of his or her right to vote when their vote is not counted because they submitted a manifestly defective ballot.²⁴ Calling the Auditor’s failure to attempt a follow-up call “disenfranchisement” is appealing hyperbole, but it’s not a fact in this case.

Three, with respect to the Auditor denying 31 “voters” the “opportunity” to vote, the above paragraphs confirm that the opportunity to vote was not denied. The signature verification requirement for a ballot to be valid was explained with the ballot’s original mailing as well as the Auditor’s follow-up letter.²⁵ The opportunity to vote by submitting a valid ballot was provided. If any of the 31 ballots actually had been filled out and submitted by the voter to whom it had been mailed, that voter simply chose to not use his or her opportunity to submit a valid ballot.

In short, the use of speculative hyperbole about the “disenfranchisement” of 31 eligible “voters” does not change the fact that petitioners admit they did not show what the statute they invoke requires –

²⁴ E.g., *State ex rel. Morgan v. Aalgaard*, 194 Wash. 574, 578-583, 78 P.2d 596 (1938) (rejecting 3 votes for Mr. Morgan – despite the 3 voters’ testimony that wanted to vote only for Mr. Morgan – because the ballots they voted on did not also list the candidate those 3 voters testified they did not want to vote for, making the ballots those voters submitted “manifestly defective”); accord, *Petitioners’ Reply Brief at 11* (stating that in *Morgan* “The court rejected an argument that the failure to count invalid ballots disenfranchised voters because they were ‘manifestly defective.’”).

²⁵ *Supra* footnotes 22 & 23.

i.e., that the County Auditor’s conduct in this case changed the result of the school bond election they ask the court to annul. RCW 29A.68.050.

C. Required Finality

1. The Law: courts must promptly bring finality to school bond elections

The Washington Supreme Court has long recognized that once the validity of a school bond election is challenged in court, delays in the final resolution of that legal challenge effectively block the school construction which the sale of those bonds was going to finance.²⁶ This judicial recognition makes sense. Especially now, after the Washington Public Power Supply System (“WPPSS”) bondholders were left with worthless pieces of paper when a court challenge in our State invalidated the WPPSS bonds – for the national bond market now knows all too well that a bond issued by a government entity here in Washington can be worthless until the legal challenge to its validity is finally resolved by the Washington courts.²⁷

Thus, for example, when a voter challenged the validity of the school bonds in *Lopp v. Peninsula School District*, the Washington

²⁶ *Lopp v. Peninsula School District*, 90 Wn2d 754, 756-757, 585 P.2d 801 (1978).

²⁷ *Supra* footnote 1.

Supreme Court accelerated the entire appeal process and terminated the litigation within three months of when plaintiff filed suit.²⁸

2. The Legally Relevant Fact: this suit's already delayed final resolution of the school bonds' validity by over six months

Petitioners filed the election contest petition in this case on March 8, 2017.²⁹ Although the superior court promptly dismissed that election contest petition with prejudice on March 24,³⁰ petitioners' appeal has now delayed final resolution of the school bonds' validity (and thus the financing of school construction) by over six months.³¹

3. Legal Conclusion: this Court should expedite resolution of the appeal to bring finality to the February 14 school bond election

This court should expedite its resolution of this appeal because prompt finality in challenges to the validity of school construction bonds is crucial. The Moses Lake School District respectfully requests such expedited resolution because the school district and its over 8,600 students are directly impacted by litigation delays which effectively block the school construction that the sale of these bonds would finance.

²⁸ *Lopp v. Peninsula School District*, 90 Wn2d 754, 757, 585 P.2d 801 (1978).

²⁹ CP 3-7.

³⁰ CP 133-134.

³¹ *The delay thus far is not entirely of petitioners' making, for it is in part due to the series of extension requests made over the summer by defendant as well as petitioners.*

IV. CONCLUSION

Washington's election contest statute limits the circumstances in which a court can nullify the certified results of an election. This case is not one of those limited circumstances.

To the contrary, the proper interpretation and application of Washington law requires the trial court's dismissal of the election contest petition in this case to be promptly affirmed for each of the three reasons outlined above (promptness, proof, and finality). As the publicly elected school board's Resolution succinctly summarized with respect to the bond election at issue in this case:

Moses Lake students can no longer wait for essential school facility improvements. Enrollment demands, State of Washington class size reduction initiatives and overcrowding require more classrooms. New educational programs for today's economy and educationally-outdated infrastructure and classrooms require renovation and health, safety, security and infrastructure improvements.³²

For the reasons explained in this brief, the Moses Lake School District respectfully urges this Court to promptly terminate this case so the public education of the district's over 8,600 students can proceed as planned without additional waiting or delay.

³² *Moses Lake School District Resolution No. 2017-02 at Section 1(a)* [[http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/\\$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf](http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N8D5CF1B5/$file/Resolution%202017-02%20Repeal%202017-01%20signed.pdf)]; see also *Moses Lake School District Resolution No. 2016-10 at Section 1(a)* [[http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N7Q5C92D9/\\$file/2016-10%20Bond%20Resolution%20signed.pdf](http://www.boarddocs.com/wa/moseslake/Board.nsf/files/AR7N7Q5C92D9/$file/2016-10%20Bond%20Resolution%20signed.pdf)].

DATED this 14th day of September, 2017.

s/ Thomas F. Ahearne

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**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III**

FRED MEISE, DOUG BIERMAN, PAT HOCHSTATTER, MIKE
COUNSELL, JASON MELCHER, AND JARED POPE,

Petitioners,

v.

MICHELE JADERLUND, GRANT COUNTY AUDITOR,

Respondent,

and

KATIE PHIPPS, MICHELLE KITTRELL, KRISTA HAMILTON,
SUSAN MOBERG, CRAIG HARDER, DENNIS KEARNS, and
BARBARA KEARNS,

Intervenors.

**ACKNOWLEDGEMENT OF TYPO IN
MOSES LAKE SCHOOL DISTRICT'S
AMICUS BRIEF**

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The opening argument in the Petitioners' December 6, 2017 Answer To Amicus Curiae Moses Lake School District dwells on a statute citation in the District's amicus brief having a typo – specifically, the amicus brief's citation of “RCW 29A.60.013” (a statute that does not exist) instead of “RCW 29A.68.013” (the statute at issue in this case that does exist) (underlines added to identify the “0” instead of “8” typo).

The undersigned counsel acknowledges and apologizes for his failure to catch that typographical error before filing the amicus brief.

DATED this 7th day of December, 2017.

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CERTIFICATE OF SERVICE

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

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