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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

KEMPER FREEMAN, JIM HORN, STEVE STIVALA, KEN COLLINS,
MICHAEL DUNMIRE, SARAH RINLAUG, AL DEATLEY, JIM
COLES, BRIAN BOEHM, and EASTSIDE TRANSPORTATION
ASSOCIATION, a Washington nonprofit corporation,

Petitioners,

v.

CHRISTINE O. GREGOIRE, a state officer in her capacity as Governor
of the State of Washington, and PAULA J. HAMMOND, a state officer in
her capacity as Secretary of the Washington State Department of
Transportation,

Respondents.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY'S
ANSWER TO AMICUS BRIEFS OF
SAVE MI SOV AND NELSON TRUCKING COMPANY

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I. INTRODUCTION

Petitioners ask this Court to restrain use of the center lanes of Interstate 90 (“I-90”) based on the 18th Amendment to the Washington Constitution.¹ The 18th Amendment does not impose a mandatory or ministerial duty on Respondents to continue to operate the center lanes for automobile use. Perhaps cognizant of this, Amici Nelson Trucking Company and Save MI SOV do not address the 18th Amendment, but instead devote their briefs to general statutes pertaining to the sale or lease of highway property presumably suggesting some statutory infirmity. But there is none. Indeed, the Legislature has authorized and endorsed the use of the center lanes of I-90 for light rail.

The 18th Amendment allows for the use or transfer of property constructed or maintained with Motor Vehicle Funds, for a non-highway purpose, so long as appropriate consideration is paid (as it will be here). The 18th Amendment does not otherwise limit the use or disposition of highway property, nor does it incorporate the terms of every statute granting such authority to the Washington State Department of Transportation (“WSDOT”). Furthermore, the Legislature has enacted specific statutes granting WSDOT authority to allow Sound Transit’s use of the I-90 center lanes for light rail, and these statutes do not require a

¹ Const. art. II, § 40 (amend. 18).

showing that the center lanes are surplus property or no longer necessary for highway purposes, as Amici suggest. Finally, even if the statutes cited by Amici applied, Amici have not established any actions contrary to the statutory terms. Amici's factual assertions are based entirely on inadmissible materials outside the record (which should be stricken). The record before the Court shows that the I-90 center lanes will be replaced by two exterior high occupancy vehicle ("HOV") lanes, and that highway capacity will be essentially unchanged after the project is completed.

This Court should hold that the 18th Amendment allows the use of the I-90 center lanes for light rail because any investment of Motor Vehicle Funds in the lanes will be reimbursed, that the use of the lanes is legislatively authorized, and that Petitioners are not entitled to a writ.

II. ARGUMENT IN RESPONSE TO AMICUS BRIEFS

A. The 18th Amendment Does Not Incorporate Statutes Governing the Use or Operation of Highways.

Petitioners seek a writ of prohibition to restrain the Governor and WSDOT from exercising "their purported authority under ESSB 5352 to sell or lease I-90 to Sound Transit by December 1, 2009 in violation of [the 18th Amendment,] Washington Constitution, Art. II, § 40." Petition, ¶ 3.3.² Yet, Amici offer no argument regarding the 18th Amendment. Save

² ESSB 5352 refers to the enactment referenced and attached at Agreed Statement of Facts ("AF") ¶ 30 & Ex. G.

MI SOV expressly confines its brief to “whether the Washington Department of Transportation can lease highways lands [sic] presently needed for highway purposes in violation of its statutory authority.” Save MI SOV Br. at 2 (Issue Presented). Nelson Trucking pays lip service to the 18th Amendment, but its brief addresses the same statutes discussed by Save MI SOV.

As previously discussed in Sound Transit’s brief, compliance with the 18th Amendment is distinct from compliance with statutes. Sound Transit Br. at 40 (citing AGLO 1975 No. 62, at *2). Amici, like Petitioners in their reply brief, erroneously attempt to “constitutionalize” the provisions of legislation governing state highways. Neither Amici nor Petitioners, however, cite any authority supporting the premise that the 18th Amendment requires WSDOT to manage, use, or dispose of highway property in any particular way. The 18th Amendment is textually detailed, but its language contains no such requirement. *See* Const. art. II, § 40 (amend. 18); *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 811, 982 P.2d 611 (1999) (holding that the 18th Amendment should not be subject to “subtle and forced construction” to limit or extend its application (internal citations and quotation marks omitted)); *Malyon v. Pierce Co.*, 131 Wn.2d 779, 799, 935 P.2d 1272 (1997) (“Appropriate constitutional

analysis begins with the text and, for most purposes, should end there as well.”).

There are myriad statutes enacted since the 18th Amendment that grant WSDOT broad authority to manage highway property.³ For example, RCW 47.12.120 authorizes WSDOT to lease highway property that is “not presently needed.” But this statute is not a constitutional restraint; nor is it the only circumstance under which WSDOT constitutionally may utilize a lease. Yet, Petitioners and Amici erroneously treat RCW 47.12.120 as if it were part of the 18th Amendment and argue that this general leasing statute constitutionally prohibits the Legislature from enacting other statutes (*e.g.*, RCW 47.52.090) that grant WSDOT the discretionary authority to allow Sound Transit to use the center lanes for mass transit. This argument finds no bearing in the text of the 18th Amendment. The Legislature has broad discretion limited by the actual requirement of the 18th Amendment that highway funds be used for highway purposes. *See Heavey*, 138 Wn.2d at 813 (denying writ and rejecting application of 18th Amendment to MVET statute as contrary to common sense in light of the text and scope of the Amendment).

³ *See, e.g.*, RCW 47.01.260; RCW 47.12.063; RCW 47.12.080; RCW 47.12.120; RCW 47.12.283; RCW 47.04.080; RCW 47.04.081; RCW 47.52.090.

Use of the I-90 center lanes for light rail does not run afoul of the 18th Amendment because no Motor Vehicle Funds are being used to construct or maintain light rail, and consideration will be paid to reimburse any past Motor Vehicle Fund investment in the center lanes. AF ¶ 34 & Ex. K; *see also* Sound Transit Br. at 32-34 (citing AGLO 1975 No. 62). Amici raise no valid constitutional concerns.

B. The Legislature Has Authorized and Endorsed Use of the I-90 Center Lanes for Light Rail.

If the Constitution is satisfied, then the Legislature may otherwise grant WSDOT the authority it deems appropriate to manage, use, and dispose of highway property. *See, e.g., Moses Lake Sch. Dist. v. Big Bend Cmty Coll.*, 81 Wn.2d 551, 555, 503 P.2d 86 (1972) (“Insofar as legislative power is not limited by the constitution it is unrestrained.”). Here, the Legislature has enacted specific statutes authorizing agreement between WSDOT and Sound Transit for the use of the I-90 center lanes.

One specific grant of authority applicable to this case is RCW 47.52.090. This statute allows a state highway authority and a municipal corporation “owning or operating an urban public transportation system” to enter into agreements “respecting the financing, planning, establishment, improvement, construction, maintenance, use, regulation, or vacation of limited access facilities in their respective jurisdictions to facilitate the purposes of this chapter.” RCW 47.52.090. Agreements

under this statute “may provide for the **exclusive** or nonexclusive use of a **portion of the facility** by streetcars, **trains**, or other vehicles forming a part of an urban public transportation system and for the erection, construction, and maintenance of structures and facilities of such a system including facilities for the receipt and discharge of passengers.” *Id.* (emphasis added).

WSDOT is a state highway authority. RCW 47.01.011. Sound Transit is a municipal corporation operating an urban public transportation system. RCW 81.112.030; RCW 47.04.082. I-90 is a limited access facility. AF ¶ 1. Agreements between WSDOT and Sound Transit provide for trains to use the I-90 center lanes (subject to the payment of consideration to satisfy the 18th Amendment). AF ¶ 34 & Ex. K. This falls directly within the purview of RCW 47.52.090, and no further statutory authorization is required.⁴

⁴ *But see also* RCW 47.04.081 (“The department is empowered to join financially or otherwise with any public agency or any county, city, or town in the state of Washington or any other state, or with the federal government or any agency thereof, or with any or all thereof for the planning, development, and establishment of urban public transportation systems in conjunction with new or existing highway facilities.”); RCW 47.04.080 (“The department is empowered to join financially or otherwise with any other state or any county, city, or town of any other state, or with any foreign country, or any province or district of any foreign country, or with the federal government or any agency thereof, or with any or all thereof, for the erecting, constructing, operating, or maintaining of any bridge, trestle, or any other structure, for the continuation or connection of any state highway across any stream, body of water, gulch, navigable water, swamp, or other topographical formation requiring any such structure and forming a boundary between the state of Washington and any other state or foreign country, and for the purchase or condemnation of right-of-way therefor.”)

RCW 47.52.090 provides independent authority for the agreement between WSDDOT and Sound Transit. And as between the specific authority granted by RCW 47.52.090 to allow WSDOT to agree with local governments to use portions of limited access highways exclusively for trains (light rail), and RCW 47.12.120, the general leasing statute, RCW 47.52.090 governs because specific statutes control over more general statutes. *Hallauer v. Spectrum Props., Inc.*, 143 Wn. 2d 126, 146, 18 P.3d 540 (2001); *In re Estate of Black*, 153 Wn.2d 152, 164, 103 P.3d 796 (2004). Here, the Legislature's intent to authorize, rather than prohibit, the use of the I-90 center lanes for rail transit has been apparent since before the construction of the center lanes.

Following execution of the original Memorandum Agreement⁵ in 1976, the Legislature amended RCW 47.52.180. *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 745, 620 P.2d 82 (1980) (citing RCW 47.52.180). This amendment authorized the Highway Commission to adopt the Memorandum Agreement as a binding modification to the decision of the Board of Review, which in the words of this Court approved "the design of the highway as a limited access facility with provision for mass transit." *Id.* at 748. The Memorandum

⁵ As in Sound Transit's earlier briefing, "Memorandum Agreement" refers to the 1976 agreement described and attached at AF ¶ 5 & Ex. A.

Agreement expressly allowed WSDOT to determine the future use of the center lanes in consultation with other affected jurisdictions. AF ¶ 5, Ex. A at ¶ 1(e). WSDOT did so through a process culminating in the 2004 Amendment⁶ providing for “High Capacity Transit in the center roadway and HOV lanes in the outer roadways.” AF ¶ 16, Ex. C at 1.

The Legislature further evidenced its intent in 2009, when it passed ESSB 5352. AF ¶ 30 & Ex. G. This statute stated: “The legislature is committed to the timely completion of R8A **which supports the construction of sound transit’s east link.**” *Id.* (Laws of 2009, ch. 470, § 306(17) (emphasis added)). “East link” specifically refers to the portion of the *Sound Transit 2 Regional Transit Plan* (“ST 2”), which extends light rail to the East Side. AF ¶ 23. At the time it was adopted by voters in 2008, ST 2 included specific plans for light rail in the I-90 center lanes. *Id.*, Ex. E at 6-7.⁷

⁶ As in Sound Transit’s earlier briefing, the “2004 Amendment” refers to the 2004 agreement described and attached at AF ¶ 16 & Ex. C.

⁷ See also RCW 47.04.083 (“The separate and uncoordinated development of public highways and urban public transportation systems is wasteful of this state’s natural and financial resources. **It is the public policy of this state to encourage wherever feasible the joint planning, construction and maintenance of public highways and urban public transportation systems serving common geographical areas as joint use facilities.** To this end the legislature declares it to be a highway purpose to use motor vehicle funds, city and town street funds or county road funds to pay the full proportionate highway, street or road share of the costs of design, right-of-way acquisition, construction and maintenance of any highway, street or road to be used jointly with an urban public transportation system.” (emphasis added)).

In sum, WSDOT has ample statutory authority to agree to use of the center lanes for light rail. Of course, this authority must be exercised in a manner consistent with the 18th Amendment. By requiring Sound Transit to pay fair market value for its use of the center lanes, WSDOT's authority is being constitutionally exercised. The statutes cited by Amici do not govern, much less prohibit, Sound Transit's use.

C. Amici's Claim of Statutory Violations Does Not Justify a Writ.

Even if the statutes cited by Amici applied to the use of the center lanes, Amici fail to establish any grounds for a writ to issue based on those statutes.

Amici erroneously suggest that this Court should determine *de novo*, in an original action, whether the center lanes must remain in use for automobile traffic. The cases cited for this proposition, however, arise from appellate review of administrative orders subject to the Administrative Procedure Act ("APA"). See *Rasmussen v. Emp't Sec. Dep't of State*, 98 Wn.2d 846, 849-50, 658 P.2d 1240 (1983) (under the APA, standard of review that applies to administrative proceedings of the Employment Security Department is the "error of law" standard); *Devine v. Dep't of Emp't Sec.*, 26 Wn. App. 778, 781, 614 P.2d 231 (1980) (same); *Dana's Housekeeping, Inc. v. Dep't of Labor & Indus.*, 76 Wn. App. 600, 605, 886 P.2d 1147 (1995) (considering deference to agency's

legal interpretation under the APA). This case is not an administrative appeal under the APA.

In fact, any decision by WSDOT to sell, lease, or contract regarding the use of highway property is expressly excluded from APA review. RCW 34.05.010(3) provides that, for the purposes of the APA, an “[a]gency action does not include an agency decision regarding ... any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests.”

Moreover, the Legislature “within constitutional limitations, has absolute control over the highways of the state....” *Peden v. City of Seattle*, 9 Wn. App. 106, 108, 510 P.2d 1169 (1973) (quoting *State ex rel. York v. Bd. of Cnty. Comm’rs*, 28 Wn.2d 891, 898, 184 P.2d 577 (1947)). It has delegated this authority to WSDOT, subject to legislative directives. *Peden*, 9 Wn. App. at 108; *see also* RCW 47.01.260 (granting WSDOT “all the powers and ... all the duties necessary, convenient, or incidental to the planning, locating, designing, constructing, improving, repairing, operating, and maintaining state highways.”); RCW 47.01.011. WSDOT properly has exercised its discretion by entering into a term sheet that will allow Sound Transit’s use of the center lanes for light rail on certain terms and conditions. AF ¶ 34 & Ex. K. Separation of powers prohibits a judicial reexamination of this decision unless it is arbitrary and capricious.

See, e.g., Household Fin. Corp. v. State, 40 Wn.2d 451, 456-57, 244 P.2d 260 (1952). Such a discretionary act is also outside this Court's writ jurisdiction. *See, e.g., SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 599, 229 P.3d 774 (2010).

Nelson Trucking contends that three cases (concerning a deed, zoning in Utah, and a 19th century Wisconsin statute) transform the issue of whether property is "needed" or "used" for highway purposes, into a judicial question subject to this Court's original jurisdiction. *See Nelson Trucking Br.* at 7-11. The sole Washington case cited, *King County v. Hanson Inv. Co.*, 34 Wn.2d 112, 208 P.2d 113 (1949), says nothing about authority to determine the use of highway property. Rather, *Hanson* concerns solely the judicial construction of a deed that conveyed land to King County (*not* WSDOT) "for use of the public forever, as a public road and highway" and whether an irregularly shaped-portion of that land could be used for the park. *Id.* at 116-17. The Court confined its inquiry to the specific language in the deed and whether the parties intended that the land be used for a park, *not* whether King County could determine if the land was needed for a highway. *See id.* at 122 ("If King County now has the right to use tract 92 for park purposes, it must, of course, be by virtue of the deed of January 5, 1932."). Contrary to Nelson Trucking's suggestion, *Hanson* is limited to the specific context of deed interpretation

and has no bearing on whether courts may determine if highway property may be used for non-highway purposes in other contexts.

The out-of-state cases relied on by Nelson Trucking are equally inapposite. In *Culbertson v. Bd. of Cnty. Comm'rs of Salt Lake Cnty.*, 2001 UT 108, 44 P.3d 642, 654 (2001), a zoning case, the Utah Supreme Court considered only whether a county complied with its own ordinances in issuing a conditional use permit and in vacating certain public streets. *Maire v. Kruse*, 85 Wis. 302, 55 N.W. 389, 390 (1893), concerns the unrelated issue of whether, under a specific Wisconsin statute, a private individual may appropriate a highway that has fallen into disuse for his private use.

Whether the State's transportation needs are best served by automobile or light-rail use of the I-90 center lanes is a legislative and executive policy decision. The Legislature and WSDOT both have determined that I-90 should operate with light rail in the center lanes along with new HOV lanes on the outer roadway. As a matter of law, there is no basis to issue a writ based on general leasing or sale statutes inherently calling for the exercise of discretion by policymakers.

D. Even If Amici's Statutes Were Judicially Cognizable, Amici Fail to Establish Grounds for Relief.

Finally, even if Amici's cited statutes applied in this case, and even if those statutes provided a legal basis to issue a writ, Amici have failed to introduce any evidence on which this Court could restrain implementation of the term sheet agreement between Sound Transit and WSDOT. Amici cite extensively to materials outside the record, which should be stricken. Amici also misrepresent the content of the materials, and attempt to rely on opinion or outdated and inapplicable data. Amici attempt to embroil the Court in a policy debate between roads and transit, an invitation the Court should decline.

1. Amici's "Evidence" Should Be Stricken.

This Court's letter ruling dated August 24, 2010, provides that "[o]bjections to the contents of the briefs or appendices are referred to the court when it decides the case." Accordingly, Sound Transit incorporates by reference its objections to factual material outside the record and not subject to judicial notice. *See* Objection to Proposed Amicus Briefs of Save MI SOV and Nelson Trucking ("Sound Transit's Objections") at 1-5. The Appendices to the briefs of Amici, and all references to those Appendices, should be stricken.

Amici's responses to Sound Transit's objections are unavailing. When portions of an amicus brief rely on inadmissible facts outside the

record, those portions should be stricken. *See, e.g., Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 469-70, 229 P.3d 735 (2010) (reversing Court of Appeals decision refusing to strike portions of amicus brief that did not comply with RAP 9.11 and RAP 10.3); *United States v. Hoffman*, 154 Wn.2d 730, 735 n.1, 116 P.3d 999 (2005) (portions of amicus briefs that do not comply with RAP 10.3 and RAP 10.6 should be stricken).

Amici belatedly ask the Court to take judicial notice of these new factual materials. The standard for taking judicial notice is not, as Save MI SOV suggests, whether the material “bring[s] additional information and perspective to the Court’s attention.” Reply of Save MI SOV to Sound Transit’s Objections at 3. Rather, ER 201(b) authorizes the court to take judicial notice of a fact that is “not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 726, 189 P.3d 168 (2008) (quoting ER 201(b)). The new factual materials and appendices relied on by Amici do not meet this standard because they contain extensive data compiled from other sources, which is “subject to reasonable dispute” and is not capable of “accurate and ready determination.”

Amici rely on and append materials such as opinion pieces issued by the Washington Policy Center (“WPC Policy Piece”), an organization

whose Board of Directors includes two of the Petitioners. *See* Save MI SOV Br. at 10; Nelson Trucking Br. at 11-15, App. A.⁸ The other new factual material relied on and appended by Amici consists of reports, charts, and summaries of studies containing conclusions and compilations of data that cannot be readily verified. Such material is not subject to judicial notice.

Amici argue that this Court should take judicial notice of their new factual materials because this Court already took judicial notice of documents appended to Sound Transit's brief. Sound Transit, however, filed a formal and unopposed motion asking the Court to take judicial notice of certain documents that were publicly available and not subject to reasonable dispute, which consisted of two Washington State Highway Commission Resolutions, one Sound Transit Resolution, and a section of the Sound Move plan. *See* Sound Transit's Motion for Leave to File Appendices to Response Brief.

Nelson Trucking attempts to invoke RAP 9.11, but that rule has six required elements that are not met here. *See* RAP 9.11(a). The amicus briefs of Nelson Trucking and Save MI SOV do not comply with RAP

⁸ The cited piece, and others in the same series, were written as part of WPC's campaign in opposition to the 2007 joint transit and roads ballot proposition. *See* Nelson Trucking Br., App. A at 4.

9.11 because, among other reasons, the new facts presented are not “needed to fairly resolve the issues on review.” *See* RAP 9.11(a)(1).

Finally, Save MI SOV’s counsel claims unsupported assertions in its brief are justified because she personally has lived on Mercer Island for 16 years. *See* Reply of Save MI SOV to Sound Transit’s Objections at 7. The personal experiences of counsel do not suffice as support for unsupported factual assertions in an amicus brief.

The assertions and appendices presented by Amici are not fairly admitted to a writ proceeding weeks before argument, and with no effort to meet the rules of evidence or opportunity for the introduction of contrary evidence. They should not be considered.

2. Amici’s Appendices Do Not Establish that the I-90 Center Lanes Must Be Retained for Automobile Use.

Although there is neither time nor opportunity to address the substance of Amici’s appendices in full, an overview demonstrates their deficiencies even if admitted into evidence.

Amici rely heavily on the WPC Policy Piece to support assertions of reduced capacity or alleged freight impacts on I-90. Nelson Trucking Br. at 12-13; Save MI SOV Br. at 10. Again, however, this document is opinion, and not evidence. Moreover, the WPC Policy Piece cites information selectively “adapted” from a 2006 WSDOT study, which did not evaluate light rail in the center lanes of I-90. Nelson Trucking Br.,

App. A. at 4, n.3. The more comprehensive and recent (2008) analysis in the East Link Draft Environmental Impact Statement, however, does evaluate light rail in the center lanes, and refutes the conclusions of the WPC Policy Piece. See AF ¶ 25 (citing <http://projects.soundtransit.org/Projects-Home/East-Link-Project/East-Link-DEIS.xml>, at 3-91 (“As more people choose to use light rail, truck travel times during peak hours would improve overall and the ability for trucks to cross I-90 would be maintained”); Table 3-31 (supporting data for conclusion that East Link has a positive effect on trucking)).

Amici further assert that highway capacity will decline in peak directions if light rail is placed in the center lanes. See Nelson Trucking Br. at 12-13; Save MI SOV Br. at 9-10. Notwithstanding the fact that two additional lanes will be added to I-90,⁹ highway capacity is determined by more than counting lanes at a particular time of day. Ramp capacity, geometry, vehicle type, and merging and weaving all inform overall capacity. Applying these factors, Sound Transit and WSDOT conducted

⁹ See AF ¶ 18. Save MI SOV perpetuates Petitioners’ earlier misstatements that light rail in the center lanes will reduce the number of anticipated automobile lanes from ten to eight (*i.e.*, that the R-8A project contemplated the use of ten lanes for automobile traffic). Save MI SOV Br. at 9. Amici omit that both the FEIS and the ROD for R-8A describe the project as the first step towards the ultimate configuration of I-90, which includes High Capacity Transit (defined as light rail, monorail or substantial equivalent) in the center roadway. See AF ¶ 17 (citing Federal Highway Administration Record of Decision at http://www.soundtransit.org/documents/pdf/projects/bus/i90/I-90_Record_of_Decision_September_2004.pdf, at 10). See also pages S-20 and 2-32 of

detailed analysis of capacity in the East Link DEIS. AF ¶ 25 (citing <http://projects.soundtransit.org/Projects-Home/East-Link-Project/East-Link-DEIS.xml>). The DEIS concludes that overall vehicle capacity is essentially unchanged and person throughput increases. *See id.* at 3-35 - 3-42); *see also* Sound Transit Br. at 16 & n.13 (summarizing relevant analysis and data on these issues in DEIS).

Nelson Trucking also cites a one paragraph summary of an “HOV Action Plan” study, which states that “reliability in the high-occupancy vehicle (HOV) lanes ... are not meeting the adopted state performance standard on an increasing number of segments.” Nelson Trucking Br. at 12. The cited summary, however, addresses I-5, and not I-90, as shown by the omitted sentence that immediately follows the excerpt quoted by Nelson Trucking. Nelson Trucking Br., App. B, at 19 (“This effort is evaluating the performance of Seattle-area HOV lanes, **focusing on congestion on I-5 in the initial phase.**” (emphasis added)). Ironically, the major HOV deficiency on I-90 across Lake Washington is that there are presently no HOV lanes in the reverse peak direction – Sound Transit and WSDOT are addressing this very issue through the implementation of the R-8A project in conjunction with East Link. *See* AF ¶¶ 18-21.

the May 2004 FEIS for R-8A, described at AF ¶15, and available in full at www.soundtransit.org/x1290.xml.

If anything, the materials submitted by Amici reinforce that they and Petitioners prefer roads to transit. Opposition to light rail as a matter of politics or policy, however, does not establish that use of the center lanes is illegal or should be restrained by this Court. Whether the I-90 center lanes should remain in highway use or be converted to light rail with relocated HOV lanes is not a judicial question. The Court should decline the invitation to intrude on the legislative and executive branches' discretionary authority to decide and implement the State's transportation policy and to decide how state property, including highways, may be best used to serve the public interest. *See, e.g., Citizens Council Against Crime v. Bjork*, 84 Wn.2d 891, 893-94, 529 P.2d 1072 (1975) (for a writ to issue, "it is necessary that the acts sought to be prohibited are purely judicial, and not executive, administrative, or legislative.").

III. CONCLUSION

The use of the I-90 center lanes for light rail, subject to full and fair reimbursement of Motor Vehicle Funds invested in the lanes, satisfies the 18th Amendment. The 18th Amendment does not otherwise incorporate statutory requirements pertaining to the use or management of highways. The Legislature also has authorized and endorsed the use of the center lanes for light rail. This Court should hold that the 18th

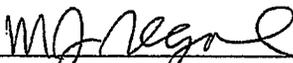
Amendment allows the use of the center lanes for light rail, that such use is authorized by statute, and that no writ should issue.

RESPECTFULLY SUBMITTED this 3rd day of September, 2010.

CENTRAL PUGET SOUND REGIONAL
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