

NO. 83349-4

SUPREME COURT OF THE STATE OF WASHINGTON

KEMPER FREEMAN, JIM HORN,
STEVE STIVALA, KEN COLLINS,
MICHAEL DUNMIRE, SARAH
RINDLAUB, 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.

**ANSWER TO
PETITION AGAINST
STATE OFFICER**

CLERK

BY RONALD R. CARPENTER

2009 AUG 20 P 2:00

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

COMES NOW, the Honorable Christine O. Gregoire, Governor of
the State of Washington, and Paula J. Hammond, Secretary of the
Washington State Department of Transportation ("WSDOT"), by and
through their undersigned counsel, and in answer to the Petition Against
State Officer ("Petition") filed in the above-captioned matter, admit, deny,
and allege as follows:

ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

I. ANSWER TO PETITION

This Answer to the Petition is submitted pursuant to the letter from the Clerk of the Court dated July 20, 2009. In Section I of this Answer, each paragraph responds to the corresponding numbered paragraph of the Petition.

A. Parties and Jurisdiction

1.1 Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations made in Paragraphs 1.1 – 1.10 of the Petition, and therefore deny them.

1.11 Respondents admit that Christine O. Gregoire is the Governor of the State of Washington.

1.12 Respondents admit that Paula J. Hammond is the Secretary of the Washington State Department of Transportation.

1.13 Respondents deny that the Court has original jurisdiction of this action and deny that the Petition is otherwise properly brought in this Court.

B. Facts

2.1 Respondents admit that Interstate 90 is a component of the national system of interstate highways.

2.2 Respondents deny that the construction and maintenance of Interstate 90 is financed exclusively by federal and state highway funds, as local funds have been spent on Interstate 90.

2.3 Respondents admit that Interstate 90 is designated as a state route, is a limited access facility, and is designated as a highway of statewide significance.

2.4 The referenced statute RCW 47.24.020(2) speaks for itself, and its terms are as it provides.

2.5 Respondents admit that in the vicinity of Lake Washington, Petitioners' description of Interstate 90 is generally accurate, except the bridge is called the Homer M. Hadley Memorial Bridge.

2.6 Respondents admit that Interstate 90 is a key east/west corridor for the movement of people and freight. Respondents further answer that according to 2008 data, the average daily traffic was 142,500 vehicles.

2.7 Respondents admit the allegations in Paragraph 2.7, except Petitioners' phrase "by special exception," which is not defined.

2.8 Respondents admit that King County Metro Transit and Sound Transit operate bus service across Lake Washington on Interstate 90.

2.9 Respondents admit that Interstate 90 is a key corridor for movement of freight. Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore deny them.

2.10 Respondents admit that a regional transit authority was formed in 1993, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore deny them.

2.11 Respondents are without knowledge or information sufficient to form a belief as to the truth that in 1998, Sound Transit initiated preliminary engineering and environmental analysis to study two-way transit and high-occupancy vehicle ("HOV") operations on the Interstate 90 corridor across Lake Washington, and therefore deny the allegation in Paragraph 2.11.

2.12 Respondents admit that as part of an environmental review process, the Federal Highway Administration issued a Record of Decision on September 28, 2004, for the Interstate 90 Two-Way Transit and HOV Operations Project. Respondents admit Petitioners' description of Alternative R-8A as it relates to the lanes and the use of the center roadway by single occupancy vehicles. Respondents deny that "Alternative R-8A did not provide for exclusive use of the center roadway

by light rail.” The Record of Decision reads that “Alternate R-8A would accommodate the ultimate configuration of I-90 (High Capacity Transit in the center lanes).”

2.13 Respondents admit that on December 14, 2006, the Sound Transit Board identified the light rail routes, stations, and light rail maintenance facility alternatives to be studied in detail in the East Link draft environmental impact statement. Respondents further answer that Sound Transit’s plan called for light rail on the center roadway of Interstate 90 between Seattle and Bellevue Way, not between Seattle and Mercer Island.

2.14 Respondents are without knowledge or information sufficient to form a belief as to the truth that the voters in November 2008 approved a transit-only funding package, and therefore deny the allegation in Paragraph 2.14.

2.15 Respondents admit that Sound Transit (as project proponent) released a draft environmental impact statement (“DEIS”) on December 12, 2008, for the proposed East Link Light Rail Transit Project (“East Link Project”), the terms of which speak for themselves. Respondents further answer that the DEIS includes an “Anticipated Permits and Approvals” page that refers to “Air Space Lease: Interstate or State Routes” and that the document refers to the WSDOT as the issuing

agency for any such lease. By way of further answer, Respondents deny that the DEIS refers to a sale of the center roadway.

2.16 Respondents admit that if the East Link Project goes forward in its proposed configuration, light rail in the center roadway lanes of Interstate 90 would exclude all other forms of vehicular traffic. By way of further answer, Respondents deny that by virtue of the proposed East Link Project, the State of Washington is required to sell or lease the center roadway to Sound Transit.

2.17 Respondents admit, with clarification, to Petitioners' general description of the proposed configuration of Interstate 90, if the East Link Project goes forward. Respondents further answer that in some locations, the 12-foot lane widths are maintained by widening within the existing right-of-way, in other areas the right lane is 12 feet wide and the other lanes are reduced to 11 feet wide. In the tunnels and on the floating bridges, where it was not feasible to widen, lane widths are narrowed to accommodate the added HOV lane. Respondents admit to Petitioners' allegation regarding "capacity," if capacity means the number of lanes. Respondents further answer that with the one lane configuration of the entrances of the reversible lanes, the capacity is restricted by the number of vehicles that can access the two center lanes. Therefore, a more accessible HOV lane added by R-8A will carry more vehicles than one

reversible lane. There is no change to the number of lanes in the non-peak direction.

2.18 Given Petitioners' failure to cite a source for its allegation, Respondents are without knowledge or information sufficient to form a belief as to the truth, and therefore Respondents deny such allegation. Respondents further answer that in July 2006, the WSDOT published a study of future Interstate 90 operations with and without conversion of the center roadway to exclusive use for transit. The study assumed that the R-8A alternative was in place. The study indicated that vehicular throughput would decrease in the future due to increasing congestion in the corridor and conversion of the center roadway to transit use. The study also indicated that transit capacity would increase with conversion of the center roadway and that person throughput could be substantially increased depending on the high capacity transit configuration and attractiveness. The study also identified several improvements that would enhance Interstate 90 operations (i.e., increased vehicular and person throughput) if implemented.

2.19 Respondents admit that Petitioners have accurately quoted the Washington Constitution, article II, section 40, amendment 18.

2.20 The Washington Constitution, article II, section 40, amendment 18 speaks for itself, and its terms are as it provides. The

Respondents admit that the Petitioners have correctly quoted RCW 46.68.070.

2.21 The decisions in *State ex rel. Bugge v. Martin*, 38 Wn.2d 834, 232 P.2d 833 (1951), *Automobile Club of Washington v. City of Seattle*, 55 Wn.2d 161, 346 P.2d 695 (1959), *Washington State Highway Comm'n v. Pacific Northwest Bell Telephone Co.*, 59 Wn.2d 216, 367 P.2d 605 (1961), and *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 982 P.2d 611 (1999) speak for themselves, and therefore Respondents deny Petitioners' legal characterizations of such decisions.

2.22 The decision in *State ex rel. O'Connell v. Slavin*, 75 Wn.2d 554, 452 P.2d 943 (1969) speaks for itself, and therefore Respondents deny Petitioners' legal characterizations of such decision.

2.23 The formal written opinions issued by the Washington State Office of the Attorney General, AGLO 57-58 No. 104, AGLO 1975 No. 35, and AGLO 1975 No. 62, speak for themselves. Respondents deny the Petitioners' legal characterizations of these opinions.

2.24 Respondents admit that Interstate 90 was built, in part, with state motor vehicle funds.

2.25 Respondents admit that on April 25, 2009, the Washington State Legislature passed Engrossed Substitute Senate Bill ("E.S.S.B.") 5352, relating to transportation funding and appropriations, the terms of

which speak for themselves. Respondents deny that the appropriation in E.S.S.B. 5352, Section 204(3) references “determining the fair market sale or lease value of the center roadway of Interstate 90.” Instead, Respondents assert that Section 204(3) appropriates monies for “an independent analysis of methodologies to value the reversible lanes on Interstate 90 to be used for high capacity transit pursuant to sound transit proposition 1 approved by voters in November 2008.” Respondents deny that the appropriation sets a “date certain by which the sale or lease to Sound Transit is to be accomplished.” Instead, E.S.S.B. 5352, Section 306(17) sets December 1, 2009, as the deadline for WSDOT and Sound Transit to complete an agreement on the value of the reversible lanes on Interstate 90, following the completion of the independent analysis of valuation methodologies to value referred to in Section 204(3).

2.26 Respondents admit that Petitioners accurately quote E.S.S.B. 5352, Section 204(3).

2.27 Respondents admit that Petitioners accurately quote E.S.S.B. 5352, Section 307(17), but deny Petitioners’ allegation that the section refers to the “sale or lease of the center roadway of Interstate 90.”

C. Writ Standard

3.1 Respondents deny that Petitioners have met the standards for the issuance of writs of prohibition.

3.2 Respondents deny that Petitioners lack a plain, speedy and adequate remedy in the ordinary course of law.

3.3 Respondents deny that E.S.S.B. 5352 provides authority to the Governor or the Secretary of WSDOT to sell or lease Interstate 90 to Sound Transit, and deny that the Governor or the Secretary will exercise authority to sell or lease Interstate 90 to Sound Transit pursuant to E.S.S.B. 5352. Respondents further deny Petitioners' allegations with respect to undue delay if their Petition is dismissed.

D. Relief Requested

4.1 Respondents deny that this Court should issue a writ of prohibition against Christine O. Gregoire, in her capacity as Governor of the State of Washington, as requested by Petitioners.

4.2 Respondents deny that this Court should issue a writ of prohibition against Paula J. Hammond, in her capacity as Secretary of WSDOT, as requested by Petitioners.

4.3 Respondents deny that Petitioners are entitled to an award of attorneys' fees and costs.

4.4 Respondents deny that Petitioners are entitled to any relief.

II. AFFIRMATIVE DEFENSES

By way of further answer and affirmative defense, Respondents allege as follows:

1. The Court lacks jurisdiction over the subject matter of this action;
2. The Petition fails to state a claim upon which relief may be granted;
3. This action is not justiciable; and
4. This action is not ripe.

III. REQUEST FOR RELIEF

Respondents respectfully request relief as follows:

1. That this Petition be dismissed, and that no relief be granted to Petitioners;
2. That each party bear its own costs; and
3. For such other and further relief as this Court deems just and appropriate.

RESPECTFULLY SUBMITTED this 20th day of August, 2009.

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