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SUPREME COURT  
OF THE STATE OF WASHINGTON

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 304, dba  
UNITED GENERAL HOSPITAL,

Respondent,

v.

SKAGIT COUNTY PUBLIC HOSPITAL DISTRICT NO. 1, dba  
SKAGIT VALLEY HOSPITAL,

Appellant.

*AMICUS CURIAE* BRIEF  
OF KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 2,  
d/b/a EVERGREENHEALTH

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## I. IDENTITY AND INTEREST OF AMICUS

*Amicus curiae* is King County Public Hospital District No. 2, d/b/a EvergreenHealth (“Evergreen” or “the District”). The District covers much of northeast King County – from Lake Washington and Kenmore in the west to Duvall in the east, and from the King-Snohomish County line in the north to the border areas of Kirkland and Bellevue in the south. Evergreen’s interest is to correct errors of law by the trial court that add restrictions on public hospital district operations beyond the limitations of RCW 70.44.060.

Evergreen seeks to assist the Court’s understanding of the implications of the questions presented beyond the litigants, particularly public hospital districts serving urban residents. Evergreen supports reversal of the trial court’s decision regarding the authority of hospital districts to establish extraterritorial facilities, as directly contrary to RCW 70.44.060 (3). Alternatively, if the Court affirms the trial court, Evergreen asks that the Court limit the scope of any decision to “rural public hospital districts” as defined in RCW 70.44.460. Finally, the trial court erred by entering a writ of prohibition where the question was how Skagit Valley exercised its statutory authority to maintain extraterritorial operations, not whether the authority existed at all.

Evergreen was formed in 1968. Since its formation, the communities Evergreen serves have grown explosively. The District's 1970 population was about 32,000. The 2010 census population was approximately 280,000, and its current population is estimated at over 287,000 residents. Just as the District's population has grown, so too have the physical boundaries of the cities Evergreen serves.

In 1968, the city of Bothell included only King County residents. Today, Bothell includes significant portions of Snohomish County as well. The Canyon Park area of Bothell is in Snohomish County and offers easy access to major roadways, public transit and office space. The University of Washington's Bothell campus was established near Canyon Park for these reasons. Evergreen operates a primary care center in the Canyon Park neighborhood – outside the District's physical boundaries – but still serving the Bothell community historically served by Evergreen.

Evergreen also has a facility within the city of Woodinville. Woodinville was unincorporated when Evergreen was formed. Today, Woodinville is a city and its boundaries cover portions of both King and Snohomish Counties. At the present time, Evergreen's site is in the King County portion of the city (and therefore within Evergreen's boundaries). As Woodinville grows and its needs change, however, so too may the location of Evergreen's medical facilities in that community change.

The District includes portions of other cities, including nearly all of the city of Redmond. In 2000, the residents of Duvall voted to be annexed into the District. Evergreen also encompasses portions of Carnation, Fall City, and even Bellevue. The commercial and population centers of the communities Evergreen serves have changed over time. The locations best suited to serve the District's residents may lie outside the physical boundaries of the District.

Evergreen draws patients from the 831,000 residents of east King County and south Snohomish County to its flagship hospital and medical center in Kirkland. In 2011, only a little over half (52%) of Evergreen's hospital discharges were District residents. By drawing patients from outside the District, Evergreen can build enough volume to continue adding depth and breadth to its services and offer more niche services for residents, such as its Parkinson's disease program and its Twin-to-Twin transfusion program.

Evergreen's territorial boundaries are close to other public hospital districts. If these districts were to expand their boundaries, Evergreen's existing operations could be subject to challenge under the trial court's analysis. If the cities served by Evergreen expand, or their commercial centers shift again, Evergreen might, if the trial court decision stands, be

unable to relocate clinics or other facilities to new sites that would better serve its residents.

## II. ISSUES

A. Did the trial court err by grafting an additional restriction on the express statutory power of public hospital districts to have extraterritorial operations or by holding that power is overridden by RCW 70.44.450, which exempts “rural public hospital districts” from prohibitions against anticompetitive conduct?

B. Does RCW 70.44.450 restrict the powers of urban public hospital districts to operate extraterritorially?

C. Given the express authority for public hospital districts to operate extraterritorially, is a writ of prohibition the appropriate remedy, or should a challenger be required to pursue other available relief?

## III. STATEMENT OF THE CASE

United General and Skagit Valley Hospital are adjacent public hospital districts serving Northwest Washington residents. The two districts engage in some common activities, including provision of hospice services, both within the two districts and in the territory of other neighboring districts.<sup>1</sup> CP 110-11, CP 132. The districts serve some of the same cities, including Mt. Vernon, which lies partially in each district.

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<sup>1</sup> The two districts have never sought the consent of the other neighboring districts for the extraterritorial operation of hospice services. CP 110-11.

CP 721. Skagit Valley offers a much broader range of services than United General. CP 151-52.

This dispute arose because doctors who had been providing services from offices located in both districts sought to sell their practice to one or both of the public hospital districts. In 2009, Skagit Valley Hospital began negotiating to purchase the medical practice. CP 620. United General offered to buy the condominium unit where the practice was located, but not the practice itself. CP 620. The districts considered a possible interlocal agreement regarding the medical practice, but United General rejected the interlocal agreement, concerned about loss exposure. Respondent's Rebuttal Br. at 9. Following the merger of the medical group into Skagit Valley Hospital, United General's Board of Commissioners adopted a resolution objecting to the continued operation of the medical group clinic located within its boundaries. CP 609-12.

The specific issue before the Court is whether the former medical group's office in Sedro Wooley, staffed by the same physicians, but who now practice as employees of Skagit Valley Hospital, may continue to operate. The broader issues presented are the ability of public hospital districts to serve their residents and adapt to the population, traffic and other changes in the communities they serve, and to adapt to economic changes in the health care industry.

#### IV. ARGUMENT

- A. **The plain language of the public hospital district statute authorizes extraterritorial operations, provided that the hospital district meets its residents' needs. The trial court amended the statute by adding additional restrictions on the powers of public hospital districts.**

RCW 70.44.060(3) expressly authorizes a public hospital district to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions . . . : PROVIDED, That it must at all times make adequate provision for the needs of the district . . .

The trial court's decision violated a basic canon of statutory construction, and in doing so usurped the legislature's function. It restricted the exceptionally broad grant of authority to district commissioners by adding a second proviso to the statute that would read approximately: "PROVIDED FURTHER, that the facility cannot be located within the boundaries of another hospital district unless the consent of the second district is obtained." A court cannot add words to a statute. *State v. Thompson*, 151 Wn.2d 793, 801, 92 P.3d 228 (2004).

The legislative grant permits operation "outside the boundaries of said district . . . by contract or in any other manner said commissioners may deem expedient or necessary." RCW 70.44.060(3) (emphasis added). Courts give words in a statute their ordinary meaning. *Davis v. Dep't of*

*Employment Sec.*, 108 Wn.2d 272, 277-78, 737 P.2d 1262 (1987). Here, the trial court did not.

Where the legislature has used expansive terms in a grant of particular kinds of power to a municipal corporation, the grant is to be interpreted liberally. *Sundquist Homes, Inc. v. Snohomish Cnty. Pub. Util. Dist. No. 1*, 140 Wn.2d 403, 410, 997 P.2d 915 (2000). This Court has noted:

We have traditionally allowed municipal corporations discretion in exercising their proprietary powers so long as their actions are not arbitrary, capricious or unreasonable:

if municipal utility actions come within the purpose and object of the enabling statute and no express limitations apply, this court leaves the choice of means used in operating the utility to the discretion of municipal authorities. We limit judicial review of municipal utility choices to whether the particular contract or action was arbitrary or capricious, or unreasonable, . . .

*Hite v. Public Util. Dist. No. 2*, 112 Wn.2d 456, 463, 772 P.2d 481(1989) (quoting *City of Tacoma v. Taxpayers*, 108 Wn.2d 679, 695, 743 P.2d 793 (1987)). There is no express limitation on a hospital district's extraterritorial operation other than meeting the needs of its residents. There is nothing in the record to suggest that Skagit Valley Hospital's merger with the medical practice was arbitrary or unreasonable.

The trial court was wrong to rely on *Alderwood Water Dist. v. Pope & Talbot, Inc.*, 62 Wn.2d 319, 382 P.2d 639 (1963), to graft an additional

restriction onto RCW 70.44.060(3). That decision specifically focused on water districts and turned on the specific language of the water district statutes, which prohibited overlapping districts. *Id.* at 321-22. In *Alderwood Water*, this Court rejected application of the “so-called general rule” that two municipal corporations could not operate in the same geographic area, noting that Washington’s case law had “emasculated” the doctrine. *Id.* at 321. The general rule’s value was to express the goal of avoiding duplication of “public” functions, “unless it is provided for in some manner by statute.” *Id.* The hospital district statute *does provide* in some manner for potential duplication of function. Further, medical services and hospital operations are not an exclusively public function in any hospital district.

The *Alderwood Water* Court noted that courts should “examin[e] in toto statutory provisions conferring authority upon the potentially competing municipal corporations.” *Id.* at 321. RCW 57.08.044, like RCW 70.44.060(3), contains a proviso regarding extraterritorial service, but it is a very different proviso:

A [water] district may enter into contracts . . . for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the district, and necessary or desirable to carry out the purposes of the district . . . except that if the area to be served is located within another existing district . . . then . . . service may not be so provided by

contract or otherwise without the consent by resolution of the board of commissioners of that other district.

A review of the public hospital district statutes shows no corresponding prohibition to overlap as found in water district statutes. Other powers granted to water and hospital districts vary. Water districts can condemn private water works, and have done so. RCW 57.08.005(1); *Water Dist. No. 97 v. Wash. Waterworks Corp.*, 58 Wn.2d 537, 364 P.2d 431 (1961). Public hospital districts, despite holding the power of eminent domain, cannot condemn another health care facility. RCW 70.44.060(2). Unlike water districts, hospital districts must live with private sector competition within their boundaries. Providing extraterritorial service by a water district is subject to review by boundary review boards. RCW 57.08.047. No such restriction applies to hospital districts.

The *Alderwood Water* Court also suggested that another basis for its decision was a concern that permitting one water district to operate in another's territory could impede "an orderly and economically well-planned development and utilization of public water service in rapidly expanding suburban residential areas." 62 Wn.2d at 320. In health care, there is a robust private sector that co-exists and competes with public hospitals. Restricting operation of public hospitals outside their geographic boundaries will not protect another district from market forces.

In fact, it may impede meeting the needs of district residents. Providing health care is fundamentally different from providing public water, where captive customers and geographic monopoly is the norm. People may travel to obtain medical care. The hospital district statutes recognize this, empowering a district to survey hospital and health care facilities both within and without the district's territory. RCW 70.44.010.

The 1988 Attorney General Opinion that applied *Alderwood Water* to hospital districts is faulty and should be disregarded. In general, this Court accords little deference to Attorney General opinions on questions of statutory construction. *Amalgamated Transit Union Legislative Council v. State*, 145 Wn.2d 544, 554, 40 P.3d 656 (2002).

Attorney General Opinion 1988 No. 15, cited by the trial court, should be given no deference. It assumes that hospital districts and water districts are *in part materia*. They are not. Public water districts are an alternative to provision of water by a private utility. Utilities are localized monopolies. *See, e.g., People's Org. for Wash. Energy Res. v. Utils. & Transp. Comm'n*, 104 Wn.2d 798, 828, 711 P.2d 319 (1985). Water districts are exempt from *rate* regulation by the Washington Utilities and Transportation Commission. RCW 80.04.500. Exemption from rate regulation, however, does not alter their nature as monopolies. Hospital districts are not monopolies.

The AGO failed to recognize the real world differences between providing water utilities and medical care. It ignored the substantial private sector in health care. It incorrectly assumed that if one public hospital is prohibited from having a facility in another's geographic area, the second may plan as if there are no outside forces that may impact its plans. Attorney General Opinion 1988 No. 15 at 4-5. It ignored that planning for the "probable health care needs of the residents of the district, population changes and demographics," *id.* at 4, might require locating a facility outside the district, as Evergreen has done with its Bothell facility -- precisely because of changes in population and demographics. The analytical flaws in the AGO regarding public hospital districts are even more apparent today than in 1988.

**B. The antitrust exemption granted to rural public hospital districts does not apply to public hospital districts in urban areas, so neither should any implied limitation on extraterritorial operations.**

The trial court based its decision, in part, on a statutory grant of *permission* to rural public hospital districts to enter into agreements that could stifle competition. RCW 70.44.450. When construing a statute, the harm sought to be addressed must be considered. *State ex rel. Public Util. Dist. v. Wylie*, 28 Wn.2d 113, 127, 182 P.2d 706 (1947). The legislature adopted RCW 70.44.450 to permit rural public hospital districts to engage

in what would otherwise be anticompetitive conduct. 1992 Wash. Sess. Laws, Ch. 161, § 1. Municipal corporations are exempt from federal antitrust prohibitions on anticompetitive conduct, if carried out according to clearly expressed state policy. *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 40, 105 S. Ct. 1713, 85 L. Ed. 2d 24 (1985). The legislature’s goal to insulate joint ventures between rural public hospital districts from antitrust challenges is no basis to construe the provision as a prohibition on extraterritorial services.

The grant of authority to engage in anticompetitive conduct is limited to “rural public hospital districts.”<sup>2</sup> It does not apply to other public hospital districts. To the extent that RCW 70.44.450 acts as a constraint on the general power of hospital districts to operate extraterritorially, it should not be extended to hospital districts that do not enjoy the antitrust protection it provides.

**C. Issuance of a writ of prohibition means an act is completely beyond a body’s power. Given the statute’s authorization of extraterritorial operations, and the trial court’s recognition that Skagit Valley had conditional power to operate the clinic, it should have denied the writ of prohibition.**

A writ of prohibition is an “extraordinary extraordinary remedy available only where the [body] is clearly and inarguably acting in a matter where there is an inherent, entire lack of jurisdiction.” *Barnes v.*

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<sup>2</sup> “Rural public hospital districts” are those whose boundaries do not include a city of more than 50,000 people. RCW 70.44.460.

*Thomas*, 96 Wn.2d 316, 319, 635 P.2d 135 (1981). Further, there must be no adequate remedy by appeal or otherwise for the asserted harm. *Id.* To sustain the trial court's writ, a public hospital district must "entire[ly] lack [ ] jurisdiction" to operate in the territory of another. *Id.* The trial court did not find a total lack of jurisdiction; it found conditional jurisdiction at least. In addition, RCW 70.44.450's express authorization of joint operations between districts necessarily recognizes operations within another hospital district's boundaries.

Jurisdiction means the power to determine. *State ex rel. McGlothern v. Superior Court, King Cnty.*, 112 Wash. 501, 505, 192 P. 937 (1920). RCW 70.44.060 confers general authority on hospital districts to establish extraterritorial operations. The trial court concluded that Skagit Valley Hospital could operate the medical facility if United General consented. That conclusion is inconsistent with the prerequisite to a writ of prohibition – a total lack of power.

Reversal of the trial court's decision is important because left uncorrected, its decision would open the door to expanded use of the writ of prohibition to challenge municipal corporations and other public bodies about how they exercise clearly granted authority. United General would not be left without remedy. As Skagit Valley points out in its briefing, United General could pursue injunctive relief. Appellant's Opening Br. at

19-22. While Evergreen argues that no relief would be appropriate here because Skagit Valley's acts comported with the hospital district statute, the inability of United General to prevail on the merits is different from whether a possible remedy exists.

## VI. CONCLUSION

The trial court's decision creates a conflict between two portions of Washington's public hospital district statutes where no conflict exists. Neither the language of RCW 70.44.450 nor its legislative history suggests that when the legislature crafted protections for rural public hospital districts from antitrust lawsuits, it intended to restrict their basic powers under RCW 70.44.060(3). The trial court compounded the error by adding a new restriction on the ability of public hospital districts to establish extraterritorial operations. The potential unintended consequences of the trial court's amendment to the statute illustrates why adding language to a statute is a legislative, not judicial, function. The trial court should be reversed.

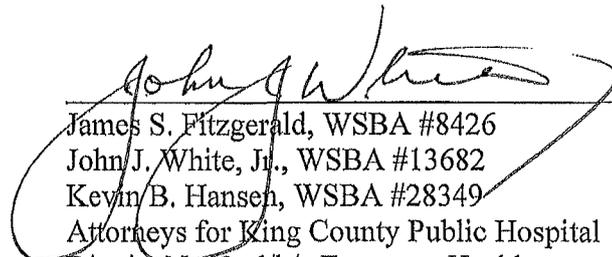
If the trial court is upheld, the Court should expressly limit the scope of a decision to "rural public hospital districts" which are protected by RCW 70.44.450.

The trial court's grant of a writ of prohibition, in abbreviated proceedings, was the wrong remedy. United General had other adequate

remedies at law or equity. There was no need to resort to the extraordinary writ and good reason to avoid apparent expansion of its availability.

Respectfully submitted this 14<sup>th</sup> day of September, 2012

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## DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I e-filed the original of this document with the Supreme Court, and e-mailed to the attorneys listed below and mailed, postage prepaid thereon, via regular U.S. Mail, a copy of this documents to the following attorneys:

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Dated this 14<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
Lee Wilson, Legal Assistant

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Dear Clerk,

Case Name: Skagit County Public Hospital District No. 304, dba United General Hospital v. Skagit County Public Hospital District No. 1  
Case No. 86796-8

Attached, for filing in this matter, are Motion of King County Public Hospital District No. 2, d/b/a Evergreen Health, to File Brief as *Amicus Curiae* and *Amicus Curiae* Brief of King County Public Hospital District No. 2.

By Ms. Lee Wilson, Assistant to:  
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