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No. 97599-0

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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RONALD WASTEWATER DISTRICT, et al.,

Petitioner,

v.

OLYMPIC VIEW WATER AND SEWER DISTRICT, et al.,

Respondents.

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**SUPPLEMENTAL BRIEF OF PETITIONER KING COUNTY**

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**A. INTRODUCTION**

The legislature has plenary power over the formation and annexation of sewer districts. In 1984, the legislature enacted a process by which a sewer system could be transferred from a county to a sewer district. This process was followed in 1985 when the King County Superior Court approved the annexation of Point Wells, an area served by King County sewer systems since the 1970s, to Ronald Wastewater District (“Ronald”). Although Point Wells is in Snohomish County, sewer service had always been provided by King County sewer systems. Relying on the 1985 order, which was not appealed, both Ronald and King County made substantial investments to maintain sewer service to Point Wells. That 1985 order was valid. Even if the superior court erroneously interpreted the scope of its statutory authority, the Court of Appeals erred by transforming a mere error of law into a jurisdictional bar that has undone almost 35 years of settled expectations.

**B. ISSUES PRESENTED FOR REVIEW**

1. Whether the 1985 King County Superior Court order approving transfer of a sewer system from King County to Ronald Wastewater District, and annexing the area served by the system to the district, was valid where RCW 36.94.420 authorized annexation of “the area served by the system” upon transfer, thus maintaining continuity of service?

2. Whether any error by the superior court in interpreting the phrase “the area served by the system” in RCW 36.94.420 was an error of law and not a jurisdictional defect?

**C. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

On June 29, 2016, Ronald brought a declaratory judgment action with the King County Superior Court, seeking a declaration that a 1985 King County Superior Court “Order Approving Sewer System Transfer” was a legal and valid order, and that as a result of the order the Point Wells area in Snohomish County was annexed to Ronald, and Ronald has the exclusive right to continue to provide sewer service to that area. CP 1, 61-86. Ronald moved for partial summary judgment. CP 1746-76. Defendants also filed motions for summary judgment, arguing that any annexation of territory in Snohomish County to Ronald was not valid. CP 506-30, 1637-67. Olympic View Water and Sewer District (hereinafter “Olympic”) opposed Ronald’s motion for summary judgment. CP 3319-40.

The trial court granted Ronald’s motion for partial summary judgment and concluded that the 1985 order lawfully transferred the sewer system to Ronald and annexed the area served by the system, including Point Wells, to Ronald’s corporate boundary. CP 8152-54. Olympic and

Woodway appealed. CP 8176, 8210.<sup>1</sup> The Court of Appeals reversed, concluding that the 1985 Order was void (in part) because the superior court lacked subject matter jurisdiction to grant an annexation of the Point Wells territory to Ronald's corporate boundary. This Court accepted review.

2. RONALD AND ITS PREDECESSORS HAVE BEEN PROVIDING SEWER SERVICE TO THE POINT WELLS AREA SINCE IN THE 1970s

The Richmond Beach Sewer System (hereinafter "RBSS") was built around 1940 and King County assumed responsibility over the system and administered it as King County Sewer District #3 (hereinafter "KCSD #3). CP 802, 1751. RBSS encompassed 350 acres in the northwest corner of King County. CP 802-03.

Prior to 1970, KCSD #3 provided sewer service only to properties in King County. CP 802-03. In 1970 and 1971, KCSD #3 entered into agreements with Standard Oil Company to provide sewer service through the RBSS to Standard's facility in Point Wells, an unincorporated area in the southwest corner of Snohomish County. CP 160, 901-02, 2146-47. Standard constructed a lift station and then conveyed ownership to KCSD #3. *Id.* In 1972, KCSD #3 also agreed to provide sewer service to the Briggs residence adjacent to Point Wells. CP 3005. In 1981, Ronald agreed

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<sup>1</sup> The Superior Court stayed proceedings pending a final resolution of the appeal. CP 8147-50.

to provide sewer service to a proposed subdivision of three additional residential lots on that property, referred to as the Briggs subdivision. CP 3005-08. KCSD #3 continued to provide sewer service to Point Wells and the Briggs subdivision through the mid-1980s. CP 160.

In the 1980s, King County proposed to transfer county-operated sewer systems to local water and sewer districts in order to lower sewer rates. CP 829-30, 1116, 1624-25, 2297-3000. King County sought and obtained written consent from Chevron USA, Inc., who was now operating the Point Wells petroleum facility, for the transfer of the RBSS from KCSD #3 to Ronald. CP 1054. King County held public hearings and mailed notice to all the ratepayers of KCSD #3 and Ronald. CP 829-30, 1076-77.

Transfer of the RBSS from KCSD #3 to Ronald involved a two-step process. First, KCSD #3 and King County filed a petition with the King County Superior Court seeking approval of the transfer of the RBSS from KCSD #3 (which was being operated pursuant to RCW 85.08) to King County (to be operated pursuant to RCW 36.94). CP 1115-16, 1121-25. The superior court held a hearing and issued an order approving the transfer. CP 1117-20. The validity of this transfer has never been questioned.

Next, King County and Ronald entered a transfer agreement to transfer the RBSS from King County to Ronald. CP 1091-95. The agreement provided that the area served by the RBSS, including Point Wells

and the Briggs subdivision, would be deemed annexed to Ronald upon completion of the transfer. CP 1095-96. While these properties had long been served by the RBSS, they had not been formally annexed to KCSD #3's corporate boundary. King County and Ronald filed a petition with the King County Superior Court seeking approval of the transfer of the RBSS from King County to Ronald. CP 1088-90. Notice of the court hearing was published. CP 1086-87, 1113-14. At the conclusion of the hearing, the court issued the 1985 "Order Approving Sewer System Transfer." CP 1082-83. The Order stated that "the area served by the System shall be annexed to and become a part of the District on the effective date of the transfer." CP 1083. No appeal was filed, and this order became final.

Ronald has been the sole provider of sewer service to Point Wells and the Briggs subdivision ever since 1986. CP 160. It has made substantial investments to maintain and operate this service. CP 71, 1754.

3. OLYMPIC AND SNOHOMISH COUNTY WERE AWARE OF KCSD #3'S SERVICE TO POINT WELLS, AND THEN RONALD'S, BUT DID NOT OBJECT UNTIL 2014.

It was not a secret that KCSD #3, and then Ronald, were providing sewer service to Point Wells in unincorporated Snohomish County. In 1971, Olympic advised KCSD #3 that it had no objection to KCSD #3 providing service to the Point Wells lift station in Snohomish County. CP 910, 912. In 1994, Snohomish County granted Ronald a utility franchise to

use the rights of way on certain county roads to maintain its system. CP 5934. In 2007, the Snohomish County Prosecuting Attorney issued a formal legal opinion to the county auditor that Point Wells and the Briggs properties had been annexed to Ronald and the Snohomish County customers being served by Ronald were therefore Ronald electors. CP 2840-43. In 2007, Olympic adopted a sewer plan amendment recognizing that Point Wells was served by Ronald. CP 1434, 1448. In addition, Snohomish County approved Ronald's sewer plans in 2007 and 2010. CP 1466, 1918-19, 1928.

In 2009, the new owner of Point Wells applied for approval from Snohomish County to designate the land as an "urban center" and redevelop the land into a mixed-use community consisting of 45 multi-story buildings. CP 5982. Ronald's 2010 sewer plan included plans to institute millions of dollars of upgrades that would allow it to service the planned urban center. CP 2221. If completed, the Point Wells service area would generate substantial revenues for the sewer district serving the area.

In 2014, with the proposed new development on the table, Olympic and Snohomish County first challenged Ronald's right to continue to provide sewer service to Point Wells. CP 2858-63. In proceedings before the Boundary Review Board, Snohomish County and Olympic questioned whether Point Wells was legally included within Ronald's corporate

boundary. *Id.* In 2015, Olympic View amended its sewer plan to begin providing sewer service to Point Wells. CP 1517-20. Snohomish County then approved that amendment despite the 1985 court order. CP 1540-41.<sup>2</sup> Ronald then filed this action seeking declaratory relief. CP 81-83.

**D. ARGUMENT**

1. THE 1985 ORDER ANNEXING POINT WELLS TO RONALD WAS STATUTORILY AUTHORIZED AND VALID.

- a. The Legislature Has Plenary Power To Enact Processes And Procedures For Annexation Of Territory By Municipal Corporations And May Provide Alternative Processes.

The legislature enjoys plenary power to adjust the boundaries of municipal corporations and may authorize annexation of territory by a variety of means. *Grant County Fire Protection Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 813, 83 P.3d 419 (2004); *Wheeler School Dist. No. 152 of Grant County v. Hawley*, 18 Wn.2d 37, 43, 137 P.2d 1010 (1943); “The sovereign power in a state to create, organize and classify cities includes the power to enlarge their limits by annexation.” *Grant County Fire*, 150 Wn.2d at 813 (quoting *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 679–80, 409 P.2d 458 (1965)). The State may delegate the power of annexation to municipal corporations and prescribe the mode, method and

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<sup>2</sup> Subsequent to the filing of the present action, the Growth Management Hearing Board found that the Snohomish County amendment was invalid. CP 2941-42.

conditions under which the delegated authority is exercised. *Id.* The legislature's plenary power allows it to authorize annexation of territory without the consent and even against the remonstrance of the majority of persons in the annexed territory or the corporation to which it is being joined. *Id.* Citizens have no fundamental right to seek or prevent annexation. *Id.; Wheeler*, 18 Wn.2d at 43. The power to annex rests entirely with the legislature, and the legislature may delegate it to municipal corporations. *Grant County Fire*, 150 Wn.2d at 814. The legislature has provided alternative ways to annex territory to sewer districts.

b. Title 36 Provides A Process for Transferring A Sewer System from A County to A Municipal Corporation and Annexing Territory in The Process.

In 1985, both Title 36 RCW and former Title 56 RCW provided processes for annexing territory to a sewer district. Title 36 RCW governs counties generally. Chapter 36.94 RCW governs sewerage, water and drainage systems operated by counties. RCW 36.94.020 grants counties the power to operate and maintain sewer systems. RCW 36.94.190 allows counties to contract with other entities within or outside the county, including municipal corporations, for the maintenance and operation of sewer systems.

RCW 36.94.310-.360, enacted in 1975, provides a process by which a municipal corporation can transfer a sewer system to a county. RCW

36.94.310 contains a limitation: all of the municipal corporation's territory must lie within the county that the system is being transferred to. This transfer process requires a written agreement between the county and the municipal corporation, and a petition filed with and approved by the superior court. RCW 36.94.340. The superior court may approve the petition for the transfer once the court determines, after a hearing, that the transfer is in the public interest. *Id.* RCW 36.94.360 states that this transfer process is "an alternative method for the doing of the things therein authorized," plainly expressing the legislature's intent that this process is an alternative process to other statutory processes.

In 1984, the legislature enacted a parallel process to allow transfer of a sewer system from a county to a municipal corporation. Laws of 1984, Ch. 147, §§1-4. This parallel process is contained in RCW 36.94.410-.440. RCW 36.94.410 provides that a sewer system operated by a county may be transferred to a sewer district using the same process provided in RCW 36.94.310-.340. It contains no county-based geographical limitation regarding the boundaries of the municipal corporation. The transfer is accomplished by a petition approved by the superior court. RCW 36.94.420 provides that "the area served by the system shall, upon completion of the transfer, be deemed annexed to and become part of the water-sewer district acquiring the system." Notice of the proposed transfer and notice of the

hearing must be provided to all ratepayers served by the system as well as by notice in a newspaper of general circulation. RCW 36.94.420. Like the other transfer process, RCW 36.94.430 states that the transfer process provided in RCW 36.94.410-440 is “an alternative method of accomplishing the transfer permitted by those sections.” RCW 36.93.105 provides that “annexations of territory to a water-sewer district pursuant to RCW 36.94.410 through 36.94.440” are not subject to review by a boundary review board. Laws of 1984, Ch. 47, §5.

- c. In 1985, Former Title 56 RCW Governed Sewer Districts, But Did Not Provide the Sole Process of Transferring and Annexing Territory.

In 1985, former Title 56 RCW governed sewer districts and Title 57 RCW governed water districts.<sup>3</sup> Former 56.04.020 allowed the construction and operation of sewer districts not operated by a county. That statute allowed such districts to “include within their boundaries portions or all of one or more counties.” Former Title 56 RCW provided alternative ways to form a sewer district. Under former RCW 56.04.030-060, 25 percent of electors could petition the board of county commissioners, and an election would be held. In the alternative, former RCW 56.04.065 provided that the owners of 60 percent of the property to be included in a district could file a

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<sup>3</sup> In 1996, former Title 56 was repealed, and Title 57 was amended so that districts providing either water or sewer service, or both, are now water-sewer districts, and are governed by the same laws. Laws of 1996, Ch. 230.

petition to be approved by the county legislative authority without an election.

Similarly, former chapter 56.24 RCW provided alternative methods of annexing territory to an existing sewer district. Under former RCW 56.24.070-100, 20 percent of registered voters residing in the territory to be annexed could file a petition with the district commissioners, and an election of only qualified electors residing in the territory to be annexed would be held. In the alternative, former RCW 56.24.110-150 provided that the owners of not less than 60 percent of the area to be annexed could petition for annexation, to be approved by the board of commissioners without an election.

Neither of the two processes in former chapter 56.24 RCW purported to be the sole process by which territory could be annexed to a sewer district. These statutes did not foreclose the legislature's ability to provide an additional process in RCW 36.94.410-.440.

Nor did former RCW 56.02.060 require all annexations to be approved by a boundary review board, as Olympic has claimed. By its plain terms, RCW 56.02.060 required boundary review board approval for the annexation of territory by a sewer district "under chapter 56.24 RCW." The annexation process used by Ronald was not the annexation provided by

former chapter 56.24, and by the plain terms of RCW 36.93.105 did not require boundary review board approval.

- d. RCW 36.94.420 Authorized Annexation Of “The Area Served” Upon Approval By The Superior Court Of A Transfer Of The System, And Point Wells Was Part Of The Area Served By The Sewer System.

RCW 36.94.420 provides that “If so provided in the transfer agreement, *the area served by the system* shall, upon completion of the transfer, be deemed annexed to and become part of the water-sewer district acquiring the system.” (Emphasis added.) Pursuant to this statute, the superior court had authority to approve the transfer of the RBSS, which had serviced Point Wells for 15 years, from King County to Ronald Wastewater District and to annex the area served by the system to Ronald Wastewater District. The 1985 Order was statutorily authorized and did not need to also comply with the provisions of former chapter 56.24 RCW.

The Court of Appeals erred in concluding that because there was no role for the superior court in the processes set forth in former chapter 56.24 RCW, the superior court could not have jurisdiction to approve annexation of the Point Wells territory to Ronald Sewer District in 1985. That conclusion fails to harmonize the statutes in question and fails to afford them a liberal construction.

- e. This Court Should Not Add Language to The Plain Language of RCW 36.94.420.

The Court of Appeals noted that “the area served by the system” in RCW 36.94.420 was not defined by the legislature. *Ronald Wastewater District v. Olympic View Water and Sewer District*, 9 Wn. App.2d 1046, 2019 WL 2754183, 2019 WL 2754183, at \* 7 (July 1, 2019). The Court of Appeals concluded that “the area served” must mean “only the area of the sewer system within the boundaries of the county making the transfer.” *Id.* at \* 12. The Court of Appeals improperly added words to the statute that the legislature chose not to include and ignored the plain meaning of the statute.

Plain meaning “is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009). If the statute is unambiguous after a review of the plain meaning, the inquiry ends. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). To discern the plain meaning of undefined statutory language, courts give words their ordinary meaning. *AllianceOne Receivables Mgmt., Inc. v. Lewis*, 180 Wn.2d 389, 395-96, 325 P.3d 904 (2014). Courts may not add language to a clear statute. *State v. Sims*, 193 Wn.2d 86, 95, 441 P.3d 262 (2019); *State v. Glas*, 147 Wn.2d 410, 417, 54 P.3d 147 (2002).

Moreover, a statutory mandate of liberal construction requires courts to avoid constructions that would narrow the coverage of the law. *Shoreline Community College Dist. No. 7 v. Employment Sec. Dept.*, 120 Wn.2d 394, 406, 842 P.2d 938 (1992). RCW 36.94.910 mandates that the chapter be “liberally construed to accomplish its purpose.”

The ordinary meaning of the “area served by the system” is the area that is actually being served by the sewer system. The Court of Appeals erred in adding “within the boundaries of the county making the transfer” to RCW 36.94.420 to import a limitation that was not contained in the plain language of the statute. By adding language to RCW 36.94.420 that would limit its application, the Court of Appeals not only violated plain construction rules, but also disregarded the legislature’s mandate of liberal construction.

- f. With Liberal Construction of Both Title 36.94 And Former Title 56 RCW There Is No Conflict Between the Statutes Because They Provide Alternative Processes for Annexation of Territory.

When ascertaining a statute’s plain meaning, this Court looks to related statutes. *Porter v. Kirkendoll*, 194 Wn.2d 194, 212, 449 P.3d 627 (2019). Courts harmonize related statutory provisions to effectuate a consistent statutory scheme and to give effect to each statute. *Id.*; *BNSF Railway Company v. Clark*, 192 Wn.2d 832, 840, 434 P.3d 50 (2019). The provisions of RCW 36.94.410-.440 can be harmonized with the provisions

of former chapter 56.24 RCW by recognizing that the legislature intended to provide alternative processes for annexing territory to a sewer district, not one exclusive process.

Central to Olympic View’s argument, and the Court of Appeals opinion, is the contention that there was a conflict between RCW 36.94.410-.440 and former Title 56 RCW, and that the legislature must have been unaware of the conflict. *Ronald*, 2019 WL 2754183, at \*11. The Court of Appeals concluded that the legislature could not have intended to exempt the transfer and annexation process in RCW 36.94.410-.440 from requirements for annexation set forth in former Title 56 (boundary review board approval). *Id.* This conclusion is unwarranted. First, courts presume that the legislature is aware of its own enactments. *ATU Legislative Council of Washington State v. State*, 145 Wn.2d 544, 552, 40 P.3d 656 (2002); *Little v. Little*, 96 Wn.2d 183, 189, 634 P.2d 498 (1981). Moreover, the legislature enacted RCW 36.94.410-.440 and amended former Title 56 in the same session law. Laws of 1984, Ch. 147, secs. 1-6.

Interpreting “the area served” in RCW 36.94.420 as meaning the area provided sewer service by the system at the time of transfer is consistent with the plain meaning and the statutory scheme. Other statutes allow sewer districts to include territory in more than one county. In 1971, the legislature enacted ESSB No. 542, which amended various provisions

of former Title 56 RCW and was titled, in part, “An act relating to sewer and water districts; providing that sewer districts may include within their boundaries parts of more than one county.” Laws of 1971, Ch. 272. Specifically, the legislature amended RCW 56.04.020 to provide that “such districts may include within their boundaries portions or all of one or more counties, incorporated cities or towns or other police subdivisions.” *Id.*, §1. In 1975, the legislature made further changes to former Title 56 RCW allowing for multi-county sewer districts. Laws of 1975, Ch. 86. For example, former RCW 56.32.010 was amended to allow two or more sewer districts adjoining in or close proximity to each other to be joined, whether or not they were in the same county. Laws of 1975, Ch. 86, sec. 1. The legislature approved of annexations that would expand a sewer district across a county line.

In 1981, the legislature declared orderly development of water and sewer service the public policy of the state, as well as avoiding duplication of services. Laws of 1981, Ch. 45, sec. 1. It declared “the principle that the first in time is the first in right where districts overlap.” *Id.* In 1996, it furthered the “first in time, first in right” policy by amending RCW 57.08.065 to provide as follows:

Where any two or more districts include the same territory as of the effective date of this section, none of the overlapping districts may provide any service that was *made available* by any of the other

districts prior to the effective date of this section within the overlapping territory without the consent by resolution of the board of commissioner of the other district or districts.

RCW 57.08.065(2) (enacted by Laws of 1996, Ch. 230, sec. 313) (emphasis added).

This Court can harmonize and give effect to all the related statutes by recognizing that the legislature provided alternative methods for annexing territory to a sewer district. RCW 36.94.410-.440 provided one of those methods, which occurs when a system is being transferred from a county to a sewer district. The annexation that occurs through this process does not expand the system's service area. The only territory annexed is area already being served by the system. Thus, the process rationally provides continuity of sewer service for existing customers. This is consistent with the legislature's declared public policy to provide "orderly growth and development" and reduce duplication of service by giving precedence to districts that are the first to provide service to an area. Laws of 1981, Ch. 45, §1.

The provision of alternative processes of annexation did not create a conflict between the statutes.<sup>4</sup> Former Title 56 RCW provided processes

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<sup>4</sup> Even if there was a conflict between the annexation provision of RCW 36.94.420 and the annexation processes provided in former chapter 56.24 RCW, the more specific statute must control. Under the general-specific statute rule, a

for annexation when residents petitioned to be annexed to a sewer system they had not been previously served by. RCW 36.94.420 provided a process for annexation when a system was transferred from a county to a municipal corporation to allow for continuity of service.

In sum, the statutory process prescribed by RCW 36.94.410-.440 was followed. The 1985 order annexing areas already being served by the KCSD #3 to Ronald as part of the transfer from KCSD #3 to Ronald was a valid order.

## 2. THE SUPERIOR COURT HAD SUBJECT MATTER JURISDICTION TO ENTER THE 1985 ORDER.

Although the 1985 order correctly followed the governing statutes, it is important to point out that this action is *not* an appeal from that order. The 1985 order has long been final and can be challenged only if it was wholly void, entered without jurisdiction, rather than merely wrong. Even

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specific statute will prevail over a general statute. *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 309, 197 P.3d 1153 (2008). If the general statute standing alone includes the same matter as the specific statute, and there is a conflict, the specific statute will be considered an exception to or qualification of the general statute. RCW 36.94.420 is the more specific statute because it applies to annexations that result from a transfer of a sewer system from a county to a municipal corporation. Former chapter 56.24 RCW applies more generally to annexations involving other types of sewer districts not operated by counties. Moreover, if there is an apparent conflict, the more recently enacted statute is preferred. *American Legion Post # 149 v. Wash. State Dept. of Health*, 164 Wn.2d 570, 585-86, 192 P.3d 306 (2008). As the more specific and more recently enacted statute, RCW 36.94.420 prevails.

if the superior court order is incorrect it is legal interpretation, it is nonetheless effective and must be respected. *See State v. Coe*, 101 Wn.2d 364, 369-70, 679 P.2d 353 (1984) (collateral bar doctrine requires adherence to erroneous or invalid order unless order was entered without jurisdiction).

Whether a court has subject matter jurisdiction is a question of law reviewed de novo. *Dougherty v. Dept. of Labor & Industries*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003). The critical concept in determining whether a court has subject matter jurisdiction is the “type of controversy.” *Id.* at 316. “Type” means the general category without regard to the facts of the particular case. *Id.* at 317. If the court has jurisdiction over the type of controversy at issue, then all other defects or errors go to something other than subject matter jurisdiction. *Id.* at 316.

In order to show that a court’s order is void, and subject to attack years after it has become final, a party must show that the court lacked either personal or subject matter jurisdiction. *Marley v. Dept. of Labor & Industries*, 125 Wn.2d 533, 538, 886 P.2d 189 (1994). While subject matter jurisdiction has in the past been confused with the court’s authority, a court does not lack subject matter jurisdiction solely because it lacks the authority to enter a given order. *Id.* at 539. “Courts do not lose subject matter jurisdiction merely by interpreting the law erroneously.” *Id.* (quoting *In re*

*Major*, 71 Wn. App. 531, 534-35, 859 P.2d 1261 (1993)). “Subject matter jurisdiction refers to a court’s ability to entertain a type of case, not to its authority to enter an order in a particular case.” *Bueckling v. Bueckling*, 179 Wn.2d 438, 448, 316 P.3d 999 (2013). If a court can hear a particular class of case, then it has subject matter jurisdiction. *Id.*

When a superior court makes an error of law and exceeds its authority, as Olympic alleges happened here, the error does not deprive the court of subject matter jurisdiction. *Stallsmith v. Alderwood Water Dist.*, 37 Wn.2d 198, 198-200, 222 P.2d 836 (1950), is instructive. In that case, landowners located in a new local improvement district sought a declaratory judgment that the formation of the district was void for want of jurisdiction. The landowners complained about various procedural irregularities. Although the trial court determined that the initial petition did not have enough signatures, the trial court concluded that this was an irregularity, not a jurisdictional defect, and dismissed the action. *Id.* at 207-08. In affirming the trial court, this Court explained the failure to meet a statutory requirement does not render the exercise of power by a municipality without jurisdiction if the requirement could have been constitutionally dispensed with by the legislature. *Id.* at 209. *See also State v. Lundquist*, 103 Wash. 339, 341-42, 174 P. 440 (1918) (imperfections in petition and notice of the

hearing in forming a drainage district were “mere irregularities” and not jurisdictional).

Pursuant to *Stallsmith*, even if the legislature did not authorize annexation of territory in another county in RCW 36.94.420, if it *could* have, then the superior court made an error of law but did not lack subject matter jurisdiction. The 1985 order is not void. The Court of Appeals erred in concluding otherwise. Accepting the Court of Appeals approach opens long-final court orders to untimely collateral attack thereby undermining substantial long-term public investments made in reliance upon those orders.

### 3. OLYMPIC’S REMAINING ARGUMENTS AGAINST THE 1985 ORDER ARE WITHOUT MERIT.

In Olympic’s opening brief in the Court of Appeals, it argued without citation to legal authority that the 1985 order was not a final judgment. The Court of Appeals did not address this argument. It is without merit. The 1985 was a final judgment in that it determined the rights of the parties in the action, was entered in writing, was signed by the judge and was filed. CR 54(a)(1). *State ex rel. Lynch v. Pettijohn*, 34 Wn.2d 437, 446, 209 P.2d 320 (1949). “Whether an order constitutes a judgment is determined by whether it finally disposes of a case and was intended to do

so.” *Bank of America, N.A. v. Owens*, 173 Wn.2d 40, 51, 266 P.3d 211 (2011).

Olympic also argued in the Court of Appeals that the 1985 was invalid for failure to join necessary parties pursuant to CR 19. The Court of Appeals did not address this argument. This argument fails because of the plenary power of the legislature to authorize the procedures for annexation of territory by municipal corporations. *Grant County Fire*, 150 Wn.2d at 813. Unless granted by the legislature, no citizens or municipal corporations have the right to seek or prevent annexation. *Id.* As long as the 1985 judicial proceeding was authorized by statute, it was proper.

Finally, Olympic argued that RCW 36.94.410-.440, violated article I, section 28 of the Washington Constitution. The Court of Appeals did not address this argument. This argument fails as well. A legislative enactment violates the prohibition on special legislation if it operates upon a single person or entity. *Brower v. State*, 137 Wn.2d 44, 60-61, 969 P.2d 42 (1998). General legislation, in contrast, operates on all entities within a class. *CLEAN v. State*, 130 Wn.2d 782, 802, 928 P.2d 1054 (1996). RCW 36.94.410-.440 is not special legislation because the process provided may be used by any county and water and sewer district. It contains no limitation. *Compare CLEAN*, 130 Wn.2d at 802 (Stadium Act was not

special legislation simply because it only applied to counties of a certain size).

E. **CONCLUSION**

This Court should reverse the Court of Appeals and affirm the trial court.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of February, 2020.

DANIEL T. SATTERBERG  
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Respectfully submitted,  
*/s/ Ann Marie Summers*

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## PROOF OF SERVICE

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That I am over the age of 18 years, not a party to this action, and competent to be a witness herein; That on February 3, 2020, I caused the foregoing document to be e-filed and e-served electronically through Washington State Supreme Court's web portal as follows:

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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.

Dated this 3<sup>rd</sup> day of February, 2020.



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