NO. 102713-3

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

ALEXANDRIA REAL ESTATE EQUITIES, INC.,
JOHN JOSEPH COX, and DEAN A. TAKKO,

Petitioners,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

UNIVERSITY OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

PACIFICA LAW GROUP
Paul Lawrence, WSBA #13557
Zachary Tomlinson, WSBA # 35940
W. Scott Ferron, WSBA # 61154
1191 Second Avenue, Suite 2100
Seattle, WA 98101
(206) 245-1700

Attorneys for University of Washington

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I. INTRODUCTION

Upon losing a competitive selection process to choose a developer for the Site W27 project, Petitioner Alexandria Real Estate Equities, Inc. ("Alexandria"), along with two taxpayers (collectively "ARE"), filed this lawsuit. The project involves a lease/lease-back structure in which UW ground leases property to a developer, which then finances, constructs and owns the building. The developer then leases a portion of the building back to UW for use as research facilities. ARE lost on all claims before the trial court. The Court of Appeals correctly affirmed dismissal of this suit because UW's actions (1) were within its plenary power to control UW's property and (2) did not trigger competitive bidding requirements.

ARE now seeks this Court's review but fails to identify a meaningful basis for review under RAP 13.4. Instead, ARE attempts to create conflicts in the law where none exist and misleadingly cites the record in an effort to increase the stakes of the development of one building. The legal questions in this case are matters of statutory interpretation that were correctly resolved by the Court of Appeals consistent with existing

precedent. The Petition should be denied. The Site W27 development should be permitted to proceed without further delay.

II. COUNTERSTATEMENT OF ISSUES

1. UW seeks to develop research facilities on its campus at what is known as Site W27. Site W27 is being designed and constructed at the sole cost of the private developer, who will also bear the sole risk of cost overruns as well as the risk of leasing up the building. Did the Court of Appeals correctly rule that because Site W27 is not being constructed at the cost of UW and that post-construction rental lease payments from UW are not construction or demolition costs, the project is not subject to public bidding requirements?

2. UW has broad statutory authority to lease and otherwise manage its property. No statute limits UW from engaging in a lease/lease-back project for it to lease space for research facilities on campus. Did the Court of Appeals correctly rule that UW was authorized to lease its property to a developer and then lease-back a portion of a newly constructed building for use as research facilities?

III. COUNTERSTATEMENT OF THE CASE

A. Site W27

UW seeks to develop Site W27, a 1.5-acre property on UW's West Campus. CP 160 ¶¶4-5. Site W27 will include a mix of tenants, including UW research facilities and other public, private, and non-profit tenants. *Id.*

UW will lease roughly 30 percent of the facility, primarily to house UW's Center for Advanced Materials and Clean Energy Technologies. CP 161 ¶¶9-10. This center will dramatically expand UW's clean energy program and support student and faculty research in areas such as battery fabrication and solar panel manufacturing. *Id.* The remainder of the facility is to be leased to tenants "that have activities, research, and/or products focused on sustainable solutions and are complementary with the UW's education and research mission." CP 107.

Site W27's construction costs will not be publicly funded. CP 160-61 ¶6. UW is using a lease/lease-back structure for Site W27, a mechanism that shifts project construction risk and costs to a private developer. *Id.*[1] Under this structure:

[1] ARE uses the phrase "lease-construction-leaseback." UW uses the term "lease/lease-back" because that term accurately conveys

- UW ground leases Site W27 to a developer for a period of 80 years.
- The developer designs, finances, constructs, owns and leases to tenants a 340,000 square foot building on Site W27 for the life of the ground lease.
- The developer bears full responsibility for all project risks and construction costs (including cost overruns).
- The developer bears the risk of leasing the facility to tenants, including UW. UW does not make lease payments until after construction is completed. The lease payments are fixed and not subject to adjustment if construction costs exceed the developer's budget.
- At the end of the 80-year ground lease term, long beyond the end of the building's useful life, the developer returns Site W27 to UW.

See CP 160-61 ¶6.

This lease/lease-back structure has been used successfully on multiple UW projects. UW's Chief Real Estate Officer

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actions that UW takes in the transaction and is the term used by industry experts. *See* CP 83 ¶5.

identified a non-exhaustive and unrebutted list of four separate UW projects that have successfully used a similar structure. CP 161 ¶7. The Managing Director of Jones Lang LaSalle Americas, Inc., UW's real estate advisor for Site W27, similarly identified six examples of other universities engaging in lease/lease-back transactions that he has personally worked on, as well as eight examples of public entities in Washington using similar lease/lease-back structures. CP 83-84 ¶¶9-10. ARE's citation to one interview where a UW official referred to Site W27 as "a bit of a test case" does not accurately describe the project. Petition at 3 (citing CP 603).

B. UW's Selection of the Site W27 Developer

To assist in choosing a developer for Site W27, UW evaluated responses to a Request for Qualification before issuing a Request for Proposals ("RFP") to four developers, including Alexandria. CP 1427-28 ¶¶14, 17.

The RFP sought a developer with which UW intended to negotiate a series of leases to implement the lease/lease-back structure described above. CP 1428 ¶18. The RFP made no commitment to award the Site W27 leases to the selected

developer, instead reserving UW's right to enter into negotiations with another developer if lease negotiations did not go well. *Id.* The RFP also referenced the *possibility* of working with the selected developer on other similar projects in the future. CP 109 (stating UW "may elect" "at its sole discretion" to work directly with the chosen developer if the project is successfully completed). But UW made no commitments to do so. ARE's contentions that this RFP was somehow for the development of the entire West Campus, and its repeated assertion that it was worth $3 billion, is unsupported by the record. *Compare* Petition at 3, 5, 24, 28, 29, 30 (referring to a $3 billion development of an entire neighborhood), *with* CP 96-98 (making clear that the RFP is for one facility, Site W27).[2]

Three developers, including Alexandria, submitted proposals responding to the RFP. CP 1432 ¶35. UW selected

[2] ARE cites a GEEKWIRE article that was subsequently factually corrected on this point. *See* Lisa Stiffler, *Univ. of Washington Set to Break Ground on 69-Acre Redevelopment to Create Seattle Innovation Hub*, GEEKWIRE, Jan. 4, 2024, https://www.geekwire.com/2024/univ-of-washington-set-to-break-ground-on-69-acre-redevelopment-to-create-seattle-innovation-hub/.

Wexford Science & Technology, Inc. ("Wexford") as the winning developer. CP 162-63 ¶¶11-18; CP 1437 ¶31.

UW and Wexford negotiated and executed the lease documents governing the parties' rights and obligations. UW and Wexford executed an Agreement to Lease in March 2022, and an Amended and Restated Agreement to Lease, a Ground Lease, and an Office Lease (collectively, the "Leases") in May 2022. CP 1437 ¶34; Trial Exs. 157, 158, 159. Under the Leases, UW ground leases Site W27 to Wexford; Wexford designs, finances, constructs, leases, and maintains Site W27's roughly 340,000 square foot building; and Wexford leases back roughly 100,000 square feet of space to UW for use as research facilities. CP 1438 ¶35.

Upon learning UW selected Wexford, Alexandria began attacking the award. Far from contending the process was "illegal," Alexandria's lawyer wrote to UW's President asking that UW "reconsider" its decision and select Alexandria. CP 152-55. UW declined to reconsider the award. CP 158.

Alexandria then changed its strategy. It recruited two taxpayer plaintiffs—including Alexandria's Senior Vice

President—and wrote to the Washington Attorney General, asking the Attorney General to "enjoin the execution/performance of the illegal contracts." CP 756-69. After the Attorney General declined to respond, ARE filed suit. CP 727.

ARE initially asserted that UW's contracting process was "illegal" under two theories. ARE claimed UW lacked the authority to enter into the Leases for Site W27 (the "First Claim"). CP 13-16. ARE also claimed that UW failed to follow public works laws in the selection of the developer (the "Second Claim"). CP 16-19. ARE later amended its complaint to allege UW's selection of Wexford was arbitrary and capricious (the "Third Claim"). CP 742-51.

C. The Court of Appeals Affirms the Trial Court's Judgment in Favor of UW

The trial court granted summary judgment in favor of UW and dismissed the First and Second Claims. CP 932-34. Alexandria and UW then proceeded to trial on the Third Claim, where the court ruled in UW's favor, concluding that Alexandria (1) lacked standing to pursue the Third Claim; (2) failed to

establish arbitrary and capricious conduct on the part of UW; and (3) requested equitable relief that would harm Washington's taxpayers. CP at 1424–44.

ARE appealed, and the Court of Appeals affirmed on all claims. First, the Court of Appeals ruled that UW had statutory authority to enter in the Site W27 transaction. Op. at 10-13. Specifically, it determined that RCW 28B.20.130 grants UW's Board of Regents broad authority to control UW's property, permitted the transaction, and that no other statutes limited that authority. *Id.*

The Court of Appeals also determined that UW's lease to rent space in the building *after* Wexford completed construction did not constitute a "cost" of construction under RCW 28B.10.350(1), the public bidding statute. This is because "UW will not incur any risk for the building or costs for the state construction activities—all those costs are incurred by the developer, as is the nature of the ground lease development structure." *Id.* at 16. Accordingly, "[b]ecause UW will not incur any costs for, or closely associated with, 'building, construction, renovation, remodeling, or demolition,' former RCW

28B.10.350(1) and its competitive bidding requirements do not apply." *Id*.

Finally, the Court of Appeals affirmed the dismissal of ARE's Third Claim, holding ARE lacked standing. *Id*. at 16-24. ARE does not seek review of this ruling regarding the Third Claim.

IV. ARGUMENT

A. ARE Cannot Meet the Standard for Obtaining Review

Review is not appropriate under RAP 13.4(b). ARE cannot identify a single case in this Court or the Court of Appeals that holds a public entity entering into real estate leases must use a public competitive bid process. Nor can ARE identify a case that holds UW or any public university is limited in its authority to enter into a lease/lease-back transaction. At the end of the day, ARE is left to argue about public policy that, while undisputed, does not apply to the transactions at issue. Finally, ARE cannot show that the issues here are of substantial public interest requiring this Court's review.

B. The Court of Appeals' Determination that Competitive Bidding Requirements Do Not Apply to UW's Lease Is Consistent with the Statute and neither Conflicts with Precedent nor Implicates Public Policy Concerns

Site W27 is a private real estate development constructed solely at the cost—and risk—of a private developer. The trial court and the Court of Appeals correctly determined that RCW 28B.10.350 does not apply because UW's future rental payments are not costs of "building, construction, renovation, remodeling or demolition." Entering into a long-term lease for rent does not fall within the scope of the competitive bidding statute. The Court of Appeals' straightforward application of the competitive bid statute does not conflict with any prior Washington decisions nor raise significant issues of public interest.

Former RCW 28B.10.350 requires competitive bidding if a state university will incur over $90,000 of costs for construction:

> (1) When *the cost* to . . . any regional or state university of any *building, construction, renovation, remodeling, or demolition, other than maintenance or repairs,* will equal or exceed the sum of ninety thousand dollars, . . . complete plans and specifications for the work shall be prepared,

> the work shall be put out for public bid, and the contract shall be awarded to the responsible bidder who submits the lowest responsive bid.

(emphasis added). As an unambiguous matter of statutory interpretation, "if the construction is not being done at the cost of the university, then the construction is not for a public work and the statute would not apply." Op. at 14. The only thing that ARE identifies as "costs" to UW are its commitment to rent space in the building post-construction. Simply put, future rent payments—paid after construction is completed and with no adjustments based on the costs that Wexford actually incurs for constructing the building—are not construction costs. Accordingly, "[b]ecause UW will not incur any costs for, or closely associated with 'building, construction, renovation, remodeling, or demolition,' former RCW 28B.10.350(1) and its competitive bidding requirements do not apply." *Id*. at 16.

ARE's arguments that this decision conflicts with precedent fail. First, ARE points to cases stating the public policy in favor of competitive bidding requirements. Petition at 10-12 (citing, *inter alia*, *Manson Const. & Eng'g Co. v. State*, 24 Wn. App. 185, 190, 600 P.2d 643 (1979)). The Court of Appeals

recognized this public policy consideration. Op. at 13 ("Generally, public policy favors competitive bidding laws in Washington.") (citing *Manson Constr.*, 24 Wn. App. at 190). But, as the Court of Appeals correctly recognized, the asserted public policy does not change the plain meaning of RCW 28B.10.350 or the fact that UW will not incur any costs or risks of construction. *Id.* at 14-16. *See also Matter of Adoption of T.A.W.*, 186 Wn.2d 828, 840, 383 P.3d 492 (2016) ("If the statutory language is both plain and unambiguous, the meaning we give the statute must be derived from the statutory language itself."). The Court of Appeals' plain reading of RCW 28B.10.350 does not conflict with cases stating the public policy in favor of competitive bidding or directing that such statutes be construed broadly. A post-construction rental payment is not a cost of construction.

ARE next argues that *Supporters of Center, Inc. v. Moore*, 119 Wn. App. 352, 80 P.3d 618 (2003), conflicts with the Court of Appeals' construction of RCW 28B.10.350. Not so. In *Supporters*, the court examined whether an arts center was constructed "at the cost" of a public entity to determine if it was

subject to the prevailing wage statute. The court concluded that it was constructed at the cost of the public entity because the majority of the construction funding came from a combination of (1) direct state funding and (2) so-called "advance rent" payments by the city that were intended to support construction. *Id.* at 356. Those "advance rent" payments were only agreed to and provided by the city during construction after the entity constructing the building "determined it could not complete the project without additional funds." *Id.* at 355 n.3. Together, the state funding and "advance rent" were approximately 52% of the "direct building cost." *Id.* at 360.

Supporters does not conflict with the decision below because "*Supporters* does not have application here." Op. at 16. As the Court of Appeals reasoned, "[t]he circumstances are not similar; UW is not making any *advanced* rent payments to actually fund the building's demolition or construction. The developer for site W27 will pay the demolition and construction costs in their entirety." *Id.*

ARE next points to statutory provisions that the Court of Appeals correctly determined were inapplicable. Petition at 14-

15 (citing RCW 28B.10.300(5)). According to ARE, this statute "refer[s] to 'rental' as a type of 'cost' of 'construction.'" *Id.* at 14. First, this type of claimed error does not fall within the scope of RAP 13.4. Second, ARE misleadingly declines to quote anything more than piecemeal words from the statute. Looking at the entire relevant portion, the statute authorizes the boards of regents of state universities to:

> Contract to pay as rental or otherwise the cost of the acquisition of such lands and of the construction and installation of such buildings and facilities on the amortization plan[.]

RCW 28B.10.300(5). As the Court of Appeals noted in rejecting ARE's argument, "[t]his provision narrowly pertains to the acquisition of buildings and facilities *on an amortization plan*." Op. at 16 (emphasis in original). Here, as below, "ARE fails to explain how this apparent application can be broadly construed to equate lease payments to cost of construction in the general sense—especially when the statute does not have any relation to competitive bidding laws." *Id.* at 16.

ARE also references RCW 28B.10.320, which it did not cite below. Nonetheless, that statute also fails to support ARE's

argument. It states that the grant of authority in RCW 28B.10.300-330 shall be construed liberally, "and shall include authority to pledge for the amortization plan the net income from any and all existing and future lands, buildings and facilities of the nature described in RCW 28B.10.300 . . . ." Like RCW 28B.10.300(5), this statute discusses a grant of authority to take on debt and enter into amortization plans to finance transactions. It does not bear on the meaning of "cost" in the public works statute, let alone mandate that lease payments be viewed as a cost of construction under that separate statute.

Finally ARE claims conflict with an opinion issued by the Attorney General's Office in 1988. Petition at 16 (citing 1988 Op. Att'y Gen. No. 17). Setting aside that conflict with an AGO opinion is not a basis for this Court's review, no conflict exists. Once again, ARE's source deals not with public bidding requirements but with the applicability of a prevailing wage law. The AGO concluded that a hospital district could not evade a prevailing wage law by outsourcing the construction of a public project to a private developer then immediately leasing back the entire premises. 1988 Op. Att'y Gen. No. 17. But the AGO

noted that the analysis was circular, because the question assumed the lease arrangement was for a public project—meaning that the prevailing wage law had to apply. *Id.* The AGO also explained the limits of its opinion: "In the case of long-term leases where the useful life of the improvements will be substantially expended before they revert to the lessor, it seems unlikely that the construction of the improvements could be deemed a 'public work.'" *Id.* at 2. That caveat applies precisely to the Site W27 building, which reverts to UW at the end of the 80-year ground-lease long after the expiration of the useful life of the building. Finally, the opinion says nothing about the relevant question: whether post-construction rental payments can be viewed as costs of construction. It does not discuss rental payments at all. *See id.*

In 2008, the AGO offered a more salient opinion, weighing in on whether rental payments were construction costs. The Attorney General evaluated this question in connection with a project strikingly similar to the Site W27 lease/lease-back arrangement. *See* 2008 Op. Att'y Gen. No. 10. In examining whether that project was a public work, the Attorney General

concluded that lease payments did not constitute costs of construction. *Id.* The 2008 opinion also rejected the exact argument made by ARE based on the previous 1988 opinion, pointing to the caveat for "long-term leases where the useful life of the improvements will be substantially expended before they revert to the lessor." *Id.* at 17-18. It noted that the project was exactly such a situation. Accordingly, it was inappropriate to consider rental payments a "cost" of construction. *Id.*

Finally, public entities like UW routinely enter into lease rental agreements for their facilities. Such leases have never been subject to competitive bid requirements and routinely involve excess of $90,000 in rent over the term of the lease. The lease here, like others, does not start until completion of construction. And the rent owed does not change based on the actual costs of construction, including cost overruns. ARE's arguments, unsupported by any Washington case law or the text of the competitive bid statute, would create an unwarranted and harmful sea change in how public entities lease space.

ARE fails to identify any basis under RAP 13.4 why this Court should review the ruling below that UW's actions did not implicate the competitive bidding statute.

C. The Court of Appeals' Correct Determination that UW has Statutory Authority to Enter into a Leases/Lease-back Agreement Does Not Conflict with Precedent

In entering the Leases, UW properly exercised its statutory authority over its property. "[C]hapter 28B.20 RCW applies exclusively to UW and grants the UW Board of Regents expansive powers under statute." Op. at 10; RCW 28B.20.130(1) (granting UW Regents "full control of the university and its property of various kinds, except as otherwise provided by law."). ARE argues that this decision conflicts with this Court's decision *University of Washington v. City of Seattle*, 188 Wn.2d 823, 399 P.3d 519 (2017). But the Court of Appeals analyzed that decision and correctly held that unlike the statute at issue in *City of Seattle*, there is no limiting statutory provision here that restricts UW's authority under RCW 28B.20.130(1). The Court of Appeals' decision is consistent with case law and will not wreak the havoc ARE concocts.

The Court of Appeals correctly rejected ARE's argument that RCW 28B.10.300-305, a statute that provides an *additional* general grant of authority to all state and regional universities, somehow limits the *specific* grant of authority to UW in RCW 28B.20.130. RCW 28B.10.300-305 is a broad grant to all public universities and colleges in the state to take on debt and finance projects related to buildings used for certain purposes. Nothing in the statute purports to mandate certain actions or limit any existing authority granted to any university or college.

1. ARE Misreads This Court's Prior Decision in a Vain Attempt to Create a Conflict

As below, ARE argues that *City of Seattle*, 188 Wn.2d 823, supports its position. The Court of Appeals correctly determined the argument is fundamentally flawed. *See* Op. at 10-12.

In *City of Seattle*, this Court interpreted the "except as otherwise provided by law" provision of RCW 28B.20.130(1) in light of the requirements of the Growth Management Act ("GMA"). The GMA mandates that state agencies "comply with the local comprehensive plans and development regulations" adopted pursuant to state law. *City of Seattle*, 188 Wn.2d at 829

(citing RCW 36.70A.103). This Court held the GMA's mandate was a limitation on all state agencies and thus a limitation on UW's control over its property. *Id.* at 832.

Here, there are no claimed applicable statutes that, like the GMA, limit the grant of authority to UW in RCW 28B.20.130. Rather, ARE argues that RCW 28B.10.300-305, statutory provisions that grant *additional* authority to all state and regional universities, should be interpreted to act like the GMA to limit UW's authority.

RCW 28B.10.300-305 is a broad grant of authority to all public universities and colleges in the state for "[a]cquisition, construction, equipping and betterment of lands, buildings and facilities" including among other things, authority to enter into contracts and leases, and to borrow money and issue revenue bonds to support buildings that are primarily used for certain purposes. RCW 28B.10.300-305. This grant of authority is to be "liberally construed." RCW 28B.10.320. And nothing in RCW 28B.10.300-305 purports to limit any other existing authority that has been granted to any of the universities or colleges through other statutes including the broad authority

granted specifically to UW of "full control" of its property in RCW 28B.20.130.

The Court of Appeals evaluated these statutes and the holding in *City of Seattle* and concluded both statutes grant UW authority:

> Without some language in RCW 28B.10.300 more overtly enacting a limitation on the authority of the universities, rather than merely acting as a grant of authority, the statute cannot be reasonably seen as functioning as an "except as otherwise provided by law" limitation of the broad authority given to UW from RCW 28B.20.130.

Op. at 12 (citing *Hood Canal Sand & Gravel, LLC v. Goldmark*, 195 Wn. App. 284, 300, 381 P.3d 95 (2016)). There is no conflict with *City of Seattle*.

To concoct a conflict, ARE proposes an illogical misreading of one phrase in this Court's opinion: "the Regents' control over UW property may be limited, at least, by other applicable state statutes." Petition at 18. ARE reads this to mean that any law that may be applicable is a limitation. *Id*. But the far more reasonable interpretation is that, if a law is applicable it *may* limit the Regent's control over UW's property. Whether it

actually *does* limit that control requires reading the law and seeing if it imposes a limitation. A law like the GMA, which compels agencies to comply with certain standards, contains a limitation. A law like RCW 28B.10.300, which is general grant of power to all state universities, does not contain a limitation.

2. ARE's Other Statutory Arguments Do Not Meet the Standard for Review under RAP 13.4 and Fail Nonetheless

ARE's other complaints about the Court of Appeals' statutory interpretation do not present a conflict between court decisions. Regardless, ARE's argument that the decision below makes RCW 28B.10.300-305 superfluous falls apart as soon as one reads the portions of the statute that ARE has not cherry-picked. Reading RCW 28B.10.300 and its related statutes in their entirety, it becomes clear they are primarily a grant of authority to take on debt, issue bonds, and enter in amortization plans for the projects discussed. *See* RCW 28B.10.300(4)-(6) (granting authority to take on debt, issue bonds, and pay the costs of amortization plans); RCW 28B.10.310-315 (discussing issuance of bonds for facilities discussed in RCW 28B.10.300); RCW 28B.10.325 (discussing interest rates "on the principal of

any obligation made or incurred under authority granted in RCW 28B.10.300"). Accordingly, RCW 28B.10.300 remains a robust grant of authority, regardless how one interprets UW's authority granted in RCW 28B.20.130.

Perhaps recognizing that no statutes have been passed that limit UW from participating in the Site W27 process, ARE also argues that a rejected house bill from 2018 constrains UW's authority. Petition at 23. A rejected legislative bill provides no basis for this Court's review. *See* RAP 13.4; *Lowe's Home Centers, LLC v. Dep't of Revenue*, 195 Wn.2d 27, 41 n.5, 455 P.3d 659 (2020) ("[L]egislation that has not been enacted (let alone passed out of legislative committee) reveals little about the intent of the legislature and should not generally be relied on."). Moreover, the proposed bill recognized that existing law allowed for leases to improve or operate public property. CP 413 ("This chapter . . . does not limit a public body's ability to procure, execute, or administer any lease or other form of contract to improve public property or operate a public facility under existing law.").

3. The Petition Fails to Identify Any "Far Reaching Effects" of the Decision Meriting Review

ARE's warnings of far-reaching and dire consequences stemming from the Court of Appeals' decision collapse under the slightest scrutiny.

First, ARE attempts to raise the specter of "confusion" by pointing to examples of other statutory schemes that use the phrase "except as otherwise provided by law." Petition at 26-27. According to ARE, there are at least sixty instances of the phrase used in Washington statutes. *Id.* at 27. The holding in *City of Seattle* clearly provides that interpretation of that phrase depends on whether it "is subject to limitation by *applicable* state statutes." 188 Wn.2d at 833 (emphasis added). Thus, any claim about "otherwise prohibited by law" will always depend on a case-by-case analysis of whether the other state statute is "applicable" and whether it imposes a "limitation." The holding here is specific to the grant to UW and the claimed other state statute at issue. The Court of Appeals simply held the other claimed statute was neither applicable nor a limitation.

Indeed, ARE's chosen examples are quite different from RCW 28B.20.130. For instance, RCW 70.345.030 is a

limitation, not a grant of authority: "[n]o person may engage in or conduct business as a retailer, distributor or delivery seller [of vapor products] in this state without a valid license issued under this chapter, except as otherwise provided by law." And RCW 29A.56.090(2) is a mandate: "[e]xcept as otherwise provided by law of this state . . . each elector shall present both completed ballots to the secretary of state . . . ." Tellingly, ARE does not provide a single example of an actual problem or instance of confusion that would result from applying the Court of Appeals' interpretation to another statute.

ARE next points to the alleged harm to taxpayers.[3] In doing so, ARE repeats the wholly unsupported allegation that this development is a $3 billion project.[4] This case is about one building in which UW will be leasing space. Moreover, it is Alexandria's attempts to stop the contract process and delay the

[3] Here, ARE benefits from its decision not to appeal the Third Claim. At the conclusion of the trial on that claim, the judge concluded that Alexandria had failed to demonstrate any harm to taxpayers as a result of UW's actions and that it was Alexandria's attempts to stop the contract process that would lead to harm to taxpayers. CP at 1440, 1444.

[4] Even ARE refers to it as a "$150 million arrangement" elsewhere in its Petition. Petition at 2.

development of Site W27 that harm the taxpayers, as the trial court found. CP 1440, 1444.

V. CONCLUSION

The Court of Appeals correctly affirmed the dismissal of ARE's claims. ARE cannot identify a real conflict with any decision of this Court or any Court of Appeals that merits review under RAP 13.4. Many of the arguments in its Petition do not even fall within the limited scope of review under RAP 13.4. ARE's Petition takes snippets of the record, statutes, and case law out of context in an attempt to create conflicts and issues where none exist. But when looked at in context and in their entirety, the record and authorities make clear that (1) UW's future rental payments are not costs of construction that implicate competitive bidding requirements and (2) UW's broad grant of authority to manage its property is not limited by a separate grant of authority to all state universities. The Petition should be denied.

Respectfully submitted this 9th day of February, 2024.

I certify that this memorandum contains 4,996 words, in compliance with RAP 18.17.

PACIFICA LAW GROUP

By: */s/ Paul Lawrence*

Paul Lawrence, WSBA #13557
Zachary Tomlinson, WSBA #35940
W. Scott Ferron, WSBA # 61154
1191 Second Avenue, Suite 2000
Seattle, WA 98101
(206) 245-1700
paul.lawrence@pacificalawgroup.com
zak.tomlinson@pacificalawgroup.com
scott.ferron@pacificalawgroup.com

Attorneys for Defendant University of Washington

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this date, I caused to be served a true copy of the foregoing document via email as follows:

Adam K. Lasky
alasky@seyfarth.com
Andrew R. Escobar
aescobar@seyfarth.com
Seyfarth Shaw LLP
999 Third Avenue, Suite 4700
Seattle, Washington 98104

Philip A. Talmadge
phil@tal-fitzlaw.com
Aaron Orheim
aaron@tal-fitzlaw.com
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126

Dated this 9th day of February, 2024, at Seattle, Washington.

Cathy Hendrickson, Legal Assistant

PACIFICA LAW GROUP

February 09, 2024 - 3:35 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,713-3
Appellate Court Case Title:	Alexandria Real Equities Inc. John J. Cox, Dean A. Takko v. University of WA
Superior Court Case Number:	21-2-01005-2

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Address:
1191 Second Avenue, Suite 2000
Seattle, WA, 98101
Phone: (206) 245-1700

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