70633-1

SUPREME COURT
OF THE STATE OF WASHINGTON

PUBLIC HOSPITAL DISTRICT NO. 1 OF KING COUNTY,

Appellant,

vs.

UNIVERSITY OF WASHINGTON AND UW MEDICINE,

Respondents.

ANSWER OF RESPONDENTS UNIVERSITY OF WASHINGTON AND UW MEDICINE TO *AMICI CURIAE*

HILLIS CLARK MARTIN & PETERSON P.S.
LOUIS D. PETERSON, WSBA #5776
MARY CREGO PETERSON, WSBA #31593
JAKE EWART, WSBA #38655
1221 SECOND AVENUE, SUITE 500
SEATTLE, WASHINGTON 98101-2925
TELEPHONE: (206) 623-1745

Special Assistant Attorney General
Attorneys for Respondents

The amicus brief does not change the contours of this case. It is still a basic contract dispute where one party, two years into the deal, is trying to break its word.

DISCUSSION

The amicus brief ignores two well-settled legal principles. First, all parties, including municipal corporations exercising their statutory authority, are held to the contracts they sign. *State ex rel. Schlarb v. Smith*, 19 Wn.2d 109, 111-13, 141 P.2d 651 (1943) (holding King County to a 25-year contract it signed requiring it to exercise its taxing power); Br. of Resp. at 17-20. Even when voters themselves change their minds, which has not happened here, municipal corporations are still held to the terms of their contracts. *Pierce County v. State*, 159 Wn.2d 16, 43-44, 51-52, 148 P.3d 1002 (2006) (upholding appointed board and striking down ballot initiative that would have interfered with contractual promise made by Sound Transit, a municipal corporation).

Many of the cases cited in the amicus brief also support holding government entities to the contracts they enter. *E.g.*, *Municipality of Metro. Seattle v. Div. 587, Amalgamated Transit Union*, 118 Wn.2d 639, 826 P.2d 167 (1992) (upholding arbitration provision in union contract despite municipal entity's argument that it lacked authority to bind future

elected boards to arbitration); *Gruen v. Tax Commission*, 35 Wn.2d 1, 54, 211 P.2d 651 (1949) ("That contracts, when entered into by a state, cannot be changed by legislative enactment is fundamental....If the people's representatives deem it in the public interest they may adopt a policy of contracting in respect to public business for a term longer than the life of the current session of the Legislature."), overruled in part by *State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 663, 384 P.2d 833 (1963).

Here, the District approached the University, another public entity, about entering a contract, conducted a thorough public process that showed overwhelming public support, and decided to exercise its power by entering a 15-year contract. Br. of Resp. at 6-9. The District was thoroughly advised of the legal ramifications of doing so, and the contract was drafted to ensure the District was not exceeding its statutory authority. Br. of Resp. at 7-9. In fact, the contract has a lengthy table carefully dividing up responsibility to ensure the District did not exceed its statutory authority. Br. of Resp. at 12; CP 98-104.

This brings us to the second well-established legal principle the amicus brief ignores: a municipal corporation's ability to exercise powers is determined by the legislature. The amicus brief admits that municipal corporations "derive their powers and authority from the

legislature." Amicus Br. at 2. However, the amicus brief then glosses over the express statutory authority at issue here. As described in detail in the University's Response Brief, this contract was authorized by two different statutes, both of which are designed to allow government entities to cooperate to provide services in the most efficient and effective way. RCW 70.44; RCW 39.34; Br. of Resp. at 22-27.

The very same statute that grants hospital districts their powers also authorizes them to enter contracts with other *public* entities "for carrying out *any* of the powers authorized by this chapter." RCW 70.44.060(7) (emphasis added). The Interlocal Cooperation Act, which is not even mentioned in the amicus brief, similarly allows public entities to jointly exercise "[a]ny power or powers, privileges or authority exercised or capable of being exercised by a public agency of this state." RCW 39.34.030(1). The alliance between the University and the District falls within this statutory authority, and is an example of the cooperation the statutes intend to foster. This is government at its best, two public entities working cooperatively to provide better health care and more efficient service.

Instead of focusing on the touchstone of any inquiry into a municipal corporation's authority to act—the authority provided to it by the legislature—the amicus brief instead cites cases that do not relate to

this situation at all. *Nollette v. Christianson*, 115 Wn.2d 594, 800 P.2d 359 (1990) (whether district judge could also serve as municipal judge without appointment by mayor); *Town of Othello v. Harder*, 46 Wn.2d 747, 284 P.2d 1099 (1955) (whether mayor had authority to speak for town absent statutory authorization); *City of Raymond v. Runyon*, 93 Wn. App. 127, 967 P.2d 19 (1998) (whether public works commissioner violated conflict of interest law by selling rock to city contractors).

The amicus brief also cites cases dealing with legislative powers. *E.g.*, *Wash. State Farm Bur. Fed. v. Gregoire*, 162 Wn.2d 284, 174 P.3d 1142 (2007) (allowing state legislature to retroactively increase state expenditure limit). The case before the Court now does not deal with the legislature, or a county, or a city, or any other legislative body with plenary powers. The hospital district is a special purpose municipal entity created for the limited purpose of running a hospital. Its enabling legislation allows it to run the hospital, and allows it to join with another public entity to do so. RCW 70.44.060.

There are no claims of unconstitutional conduct here, and no one is arguing the statutes are invalid. Br. of Resp. at 33-34. The statutes specifically authorize this type of contract. None of the cases cited in the

amicus brief invalidates a contract that is based on specific legislative authority.

The amicus brief claims the District abdicated its core responsibility by entering an alliance with the University. But this was not an abdication, it was the exercise of authority. The District has acted in conformance with its statutory authority, and thoughtfully balanced its responsibilities to its constituents in a time of significant change and uncertainty in the delivery of health care. The District still owns its assets, and retains important authority, including the exclusive authority to levy taxes and annex territory. Br. of Resp. at 9, 11-12; CP 63-66 (Agreement § 5.1-5.2), CP 72-74 (Agreement § 7.1), CP 77-78 (Agreement § 9.1).

The tasks that have been delegated by the District in the Alliance Agreement—essentially the administrative operations of the hospital and related facilities—are overseen by a new board created as provided by the relevant statutes. RCW 39.34.030; RCW 70.44.240. The board has seats for all five commissioners, as well as five other community members, and three seats for the District's public partner, the University. Br. of Resp. at 9-10; CP 46-47 (Agreement § 3.2). This is not an entity that has been removed from public control, but rather the public has been

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given even more opportunity to be part of the administration of the District.

CONCLUSION

The power of municipal corporations to contract with others has been recognized from the inception of these entities. Here, the University, and the residents of the District, are entitled to the benefits of an alliance made under the auspices of the Hospital District statute and the Interlocal Cooperation Act. The legislature granted that authority for good reason—to provide hospital districts with the necessary flexibility to provide the best health care for their communities in a cost-efficient way. The wisdom of this legislative framework is apparent in this alliance, which was forged with the overwhelming support of the community and its elected leaders.

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The trial court concluded on summary judgment that the relevant statutes unambiguously allowed this contract. This routine contract dispute does not rise to the level of requiring this Court's attention, and should be directed to the Court of Appeals.

RESPECTFULLY SUBMITTED this 3rd day of July, 2013.

HILLIS CLARK MARTIN & PETERSON P.S.

By _____
Louis D. Peterson, WSBA #5776
Mary Crego Peterson, WSBA #31593
Jake Ewart, WSBA #38655
Special Assistant Attorney General
Attorneys for Respondents

CERTIFICATE OF SERVICE

On the date indicated below, I hereby certify that I caused to be served upon all counsel of record, via email and U.S. Mail, a true and correct copy of the foregoing document.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 3rd day of July, 2013, at Seattle, Washington.

_____
Suzanne Powers

ND: 12662.053 4842-6979-6116v3

OFFICE RECEPTIONIST, CLERK

To: Lou Peterson
Cc: bruce@kenyondisend.com; phil@tal-fitzlaw.com; paula@tal-fitzlaw.com; miller@carneylaw.com; anderson@carneylaw.com; king@carneylaw.com; Mary Crego Peterson; Jake Ewart; Brenda Partridge
Subject: RE: Supreme Court No. 88308-4 - Public Hospital District No. 1 of King County v. University of Washington, et al. - Answer to Amici Curiae

Rec'd 7-3-13

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From: Suzanne Powers [mailto:smp@hcmp.com] **On Behalf Of** Lou Peterson
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To: OFFICE RECEPTIONIST, CLERK
Cc: bruce@kenyondisend.com; phil@tal-fitzlaw.com; paula@tal-fitzlaw.com; miller@carneylaw.com; anderson@carneylaw.com; king@carneylaw.com; Mary Crego Peterson; Jake Ewart; Brenda Partridge
Subject: Supreme Court No. 88308-4 - Public Hospital District No. 1 of King County v. University of Washington, et al. - Answer to Amici Curiae

Re: Supreme Court No. 88308-4
Public Hospital District No. 1 of King County v. University of Washington, et al.

Attached is a copy of the Answer of Respondents University of Washington and UW Medicine to *Amici Curiae*, with Certificate of Service.

The person submitting this motion is Louis D. Peterson, Telephone: (206) 623-1745, WSBA No. 5776, e-mail address: ldp@hcmp.com.

This brief is being served on all counsel of record by email and U.S. mail.

Suzanne for
Louis D. Peterson
Suzanne Powers - Legal Assistant
Hillis Clark Martin & Peterson P.S.
1221 Second Avenue | Suite 500 | Seattle, WA 98101
d: **206.470.7686** | 206.623.1745 | f: 206.623.7789
smp@hcmp.com | www.hcmp.com