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No. 95307-4

SUPREME COURT OF THE STATE OF WASHINGTON

END PRISON INDUSTRIAL COMPLEX,

Respondent,

v.

KING COUNTY,

Petitioner.

ANSWER TO AMICUS BRIEF

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I. INTRODUCTION.

While EPIC did not object to the submission of the Amici Curiae Memorandum (“Memorandum”), the Court should take notice of the fact that Washington State Association of Counties and the Washington State Association of Municipal Attorneys (collectively “Amici”) are agents for the County and represent the County’s interests. For example, King County paid \$461,440 to the Washington State Association of Counties in its 2017-2018 biennial budget.¹ The Washington Association of Municipal Attorneys represents only counsel for local governments, including members of the County prosecutor’s office.² Thus, Amici’s advocacy for the County’s interest does not objectively establish that the Court of Appeals’ Published Opinion (“Opinion”) is a matter of broad public importance. Indeed, the Amici was unable to identify a single other jurisdiction that has improperly implemented a levy like the County or that would be impacted by the Opinion.

The two arguments made by Amici provide no basis for this Court to accept review.

First, Amici argues that this Court should accept review to provide

¹ https://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/budget/2017-2018/17-18BudgetBook/Print_Shop_Version_2017-2018_Budget_Book.ashx?la=en

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² <http://www.wsama.org/members/membership.aspx>

guidance as to the applicable statute of limitations for seeking a tax refund where a jurisdiction has overcharged its taxpayers. However, accepting the petition would not provide a vehicle for providing such guidance. There are numerous statutes and regulations addressing such issues, but because the Opinion was issued on appeal of a motion for summary judgment it does not address remedies or the timeliness of refund requests.

Amici's second argument is that the Court should grant review because "[t]he Court of Appeals' decision to move *all* statutory requirements to the title of the ballot measure, instead of other places like the ballot proposition, creates absurd results." Memorandum at 6-7. However, it was the Legislature that required that the critical information be presented to voters in the ballot title. The statutory mandate is clear. Moreover, where the Legislature has dictated the contents of the ballot title, the general 75-word ballot title limit does not apply. RCW 29A.36.071. That is why the Prop. 1 ballot title presented to voters *exceeded 75 words*.

A. Amici have not shown that the Opinion will impact other jurisdictions.

While Amici notes that its members have passed hundreds of levy lid lifts, conspicuously absent is any assertion that other jurisdictions will be impacted by the Opinion. Amici are in a position to know which

jurisdictions may be impacted, but they have not identified a single one of their members that will be impacted by the Opinion. *See* Memorandum.

Instead, Amici argues that further review would provide “additional guidance” and “clarity” about when a claim of over-taxation is timely and what must be stated in the ballot title. Memorandum at 4, 7.

However, this Court’s review will not provide such “additional guidance.”

B. A pre-election ballot title appeal does not provide a mechanism for enforcing substantive rights and the petition is not the vehicle for providing guidance on statutes of limitations.

Amici support the County’s petition for review because the Court of Appeals rejected the County’s “ballot title appeal” argument “without directing the parties or other taxing entitled to the applicable time limitations.” Memorandum at 3. This is not a basis for accepting review because (1) the Court of Appeals was correct in its narrow decision about pre-election ballot title appeals; and (2) the petition is not a vehicle for providing further guidance on statutes of limitations for tax refund cases.

1. A pre-election ballot title appeal is not a mechanism for enforcing substantive rights.

EPIC’s Answer to Petition for Review discusses some of the reasons why a pre-election ballot title appeal was not required in this case. That expedited pre-election procedure, which doesn’t even allow a right to appeal, is not a mechanism for enforcing substantive laws. Indeed, that

pre-election procedure provides only the single remedy of amending the ballot title to comply with the *election* code. *See Answer*, at 18-20. Here, EPIC’s claim did not even ripen until the County began to collect taxes in violation of chapter 84.55 RCW, years after the election. The Opinion’s narrow decision that a pre-election ballot title appeal was not a prerequisite to challenging the County’s over-taxation was in line with numerous cases of this Court and the Court of Appeals. *Id.*

2. Further review will not provide the guidance that Amici seek, since the Opinion and Petition for Review do not address remedies and this Court will not provide an advisory opinion.

While the Court of Appeals rightly rejected the County’s ballot title appeal argument, neither the parties’ briefing nor the Opinion addressed the statute of limitations issues upon which Amici seek “additional guidance.” The Opinion did not calculate the amount of overcharges or address remedies or timelines for seeking a tax refund. Instead, the Opinion reversed the trial court’s dismissal of the case and remanded for additional proceedings. While remedies issues may become relevant in a later phase of the case, they are not presently before the Court and were not even addressed by the County’s Petition for Review.

Amici’s request for “additional guidance as to the applicable time limits” is based upon a mischaracterization of the case. They argue that

EPIC brought the case after “more than three year delay” and “long after taxes have been collected.” Amici brief at 1, 3.

What Amici fail to acknowledge is that this lawsuit challenges an *ongoing* illegal practice. The County acknowledges that it began using the prohibited methodology to calculate Prop. 1 levies in 2014 – well after the election – and that it will continue to use that practice until 2022. *End Prison Indus. Complex v. King County*, 200 Wn. App. 616, 623-24 (2017). (citing CP 280-281).

Given that the challenged practice is ongoing, a statute of limitations defense cannot be dispositive, even if it arguably could limit a taxpayer’s ability to obtain a tax refund for the oldest tax payments. That, plus the early stage of this case, is why there was no briefing, argument, or ruling on statutes of limitations for tax refunds.

The Opinion’s failure to address such limitations does not mean that there is a need for Supreme Court guidance. The Legislature has passed entire chapters of the RCW addressing tax refunds, including procedures and statutes of limitations. *See* chapter 84.69 RCW (property tax refunds). There are regulations, attorney general opinion, and department of revenue guidance documents addressing the subject.³

³ *See e.g.*, WAC chapter 458-18; 1984 AGO No. 21.

Indeed, Amici note in a footnote that “Conceivably, RCW 84.52.085 creates a three-year limitation.” Review of the Opinion will not provide additional guidance on those statutes and it is unclear that any is needed.

The critical point here is that the County is using an illegal methodology to calculate the Proposition 1 levy *every year* (until 2022). The County did not change its practices even after the Court of Appeals issued a published opinion declaring its present taxation illegal. Granting review will merely give the County an excuse to continue its unlawful tax collections, increasing harm to taxpayers.

C. The Legislature, not the Court of Appeals, decided to require certain disclosures in the ballot title.

Amici argue that “the Court of Appeals’ decision to move *all* statutory requirements to the title of a ballot measure, instead of other places like the ballot proposition, creates an absurd result.” Memorandum at 6-7. Like the County, they argue that there is no room for all of this information in a 75-word title. This argument is wrong.

First, it was the Legislature, not the Court of Appeals, which mandated the ballot title disclosures. The sentence requiring certain disclosures in the “ballot of the proposition” is in the original 1971 act that first enacted the limit factor. (CP 334) (Laws of 1971, 1st Ex. Sess., ch. 288, § 24). Later the Legislature amended the statute to require the ballot

title to clearly disclose all “subsection (4) conditions.” In 2008, the Legislature again amended the statute to prohibit the methodology that the County is currently using, and to allow it only as a subsection 4 condition – thereby requiring the disclosure in the ballot title. As discussed in EPIC’s Answer, the 2008 amendment repeatedly required the disclosure of this methodology in the ballot title. *See Answer at 9 et seq.*

The Legislature’s decision was not absurd. Rather, it would be absurd to ask voters for consent for a property tax increase without giving them the basic information about the proposed levy. Voters certainly should have had the right to understand that the County was using the methodology at issue. As discussed in EPIC’s Answer, that methodology results in converting a one year levy into a permanent levy, unless the government limits the duration under RCW 84.55.050(4)(b). The Legislature logically believed that the voters had a right to know both the proposed rate and whether a methodology is used which has the capacity to make the tax increase permanent. It was well aware that the only way to get this information to the voters is to require it in the ballot title. *See Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 217, 11 P.3d 762 (2001) (critical information must be in the ballot title because many voters read only the ballot title).

D. Because the Legislature specified the ballot title content, the

general 75-word ballot title limit does not apply.

While all of the required disclosures can easily fit in a 75-word limit, RCW 29A.36.071 makes it clear that the 75-word limit “does not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition.”

Because the County fully understands this, its ballot titles for levy lid lift measures sometimes exceed 75-words. The County and Amici spend a lot of time arguing that the Prop. 1 ballot title could not include the mandatory disclosures because of the 75-word limit. In fact, the Prop. 1 ballot title presented to voters exceeded that limit – it was 79 words long. Arguments about the 75-word limit are thus disingenuous, at best.

RCW 84.55.050 and RCW 29A.36.071 allowed the County to take the space it needed to provide the mandatory disclosures to voters. But, as the ballot title examples provided by the County show, the disclosures can be stated succinctly in fewer than 75-words.

Amici wants “clarity” about what information must be put in the ballot title. The Opinion provides that clarity. The County and presumably other jurisdictions are complying with the Opinion and providing voters with the disclosure that the Legislature mandated. Further review will merely undermine that clarity.

CONCLUSION.

The Opinion follows well-established precedent, enforces plain statutory language, and does not warrant Supreme Court review.

DATED this 14th day of March, 2018.

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