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SUPREME COURT  
OF THE STATE OF WASHINGTON

In re:

BOND ISSUANCE OF GREATER WENATCHEE  
REGIONAL EVENTS CENTER PUBLIC FACILITIES DISTRICT

GREATER WENATCHEE REGIONAL EVENTS CENTER  
PUBLIC FACILITIES DISTRICT,

Appellant,

v.

CITY OF WENATCHEE, WASHINGTON,

Respondent.

BY RONALD R. CARPENTER  
CLERK

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FILED  
SUPREME COURT  
STATE OF WASHINGTON

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BRIEF OF AMICUS CURIAE WASHINGTON STATE TREASURER  
IN SUPPORT OF DIRECT REVIEW

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## **I. INTRODUCTION**

The Washington State Treasurer's Office ("State Treasurer") supports the requests of the Greater Wenatchee Regional Events Center Public Facilities District's ("the District") seeking direct and expedited review of the Superior Court decision in this case. The Superior Court's Decision ("Decision") raises fundamental constitutional questions concerning the meaning of "debt" under Article VIII of the Washington State Constitution. Without prompt and ultimate resolution of the issues raised in the District's appeal, cities, counties and special purpose districts across the State could face serious harm through financial uncertainty, increased borrowing costs, loss of market access and potential multi-million dollar defaults. As such, direct review and accelerated review is appropriate pursuant to RAP 4.2(a)(4).

Should the Court accept direct review, for purposes of the broader State interests potentially impacted by the decision below, the State Treasurer would propose a merits briefing schedule as follows: Appellants' Brief due 30 days after the Court's ruling on the pending motions, Respondents' brief due 30 days after service of the Appellant's brief, and any reply brief due 15 days after service of the Respondents'

brief. This proposed schedule would allow argument in the Court's Winter Term.

## **II. IDENTITY AND INTEREST OF AMICUS**

The State Treasurer is a constitutional executive officer of the State charged with various duties relating to the fiscal health of the State including matters concerning state debt. Currently, hundreds of millions of dollars of municipal debt is secured by contingent loan agreements throughout the state. If contingent loan agreements, generally, or specifically under the facts of this case, are deemed to be municipal debt for purposes of calculating county and city debt capacity, the security underlying all of this debt could be called into question.

The State Treasurer routinely issues debt on behalf of the state, its agencies, and local governments. Through this practice, the State Treasurer has become increasingly aware of the critical need for market access for state and local debt during this difficult economy. A challenge to this widely used enhancement for municipal debt is likely to have far-reaching and unintended consequences to all of the State's municipal debt issuers.

If upheld, the Superior Court's Decision will have a serious impact on the State and its municipalities. Further, because of the prevalence of the use of contingent loan agreements in municipal

financings, the result of such a decision will likely lead to further challenge and uncertainty for many other municipal debt issuers. For this reason, it is in the interest of the State Treasurer to insure that state and local government debt remains stable and predictable. In light of the fundamental and urgent public issues at stake, direct and accelerated review of the District's appeal is appropriate.

### **III. ISSUES TO BE ADDRESSED BY AMICUS**

This amicus brief addresses only the reasons why direct and accelerated review is appropriate in this case. Should the Court accept direct review, amicus will seek to file a brief on the merits at the appropriate time.

### **IV. STATEMENT OF THE CASE**

The Greater Wenatchee Regional Events Center Public Facilities District is a public facilities district and municipal corporation organized under RCW 35.57. The District was formed in 2006 for the purpose of the financing, construction and operation of the Greater Wenatchee Regional Events Center (the "Regional Center"). A 2006 Interlocal Agreement between the District and the City of Wenatchee ("the City") provides that the City will enter into Contingent Loan Agreements with the District under which the City will loan funds to the District to meet the District's debt service obligations. Pursuant to the 2006 Agreement, in 2008, the

District issued approximately \$41.8 million of short-term bond anticipation notes to finance purchase of the Regional Center.<sup>1</sup> The notes mature on December 1, 2011. The District and the City intended that long-term bonds would be issued by December 1, 2011 to refinance the maturing short-term notes.

To facilitate the issuance of the long-term bonds, in June of this year, the District presented to the City the 2011 Contingent Loan Agreement (“2011 Agreement”).<sup>2</sup> Under the 2011 Agreement, the City would agree to loan the District sufficient funds to cover the difference between the District’s immediately available funds and the amount of its next semi-annual debt service payment. The 2011 Agreement provides that the District will repay all such loans, with interest, from the District tax and facility revenues, that all debts of the District are the District’s alone, and that holders of the District’s bonds will have no recourse against the City, its assets or its tax revenues. Finally, under the 2011 Agreement, the City has no obligation to either impose new taxes or enter into its own debt obligations to fund loans to the District.

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<sup>1</sup> The Official Statement provided to investors in conjunction with the issuance of the bonds disclosed the material terms of the contingent loan agreement including the City’s obligation to guarantee refunding bonds for the short-term notes.

<sup>2</sup> The proposed 2011 Contingent Loan Agreement is attached as Exhibit A to the District’s Statement of Grounds in support of direct review.

The City conditionally approved the 2011 Agreement, subject to a determination from the Chelan County Superior Court pursuant to the bond issue declaratory judgment statute, RCW 7.25. The City sought a declaration determining whether the proposed 2011 Agreement with the District is a valid exercise of the City's authority.

The Superior Court ruled that the agreement was *ultra vires* because the City's obligation to make loans to the District constitutes "debt" subject to the limitations of Article VIII of the Washington Constitution and RCW 39.36, and that the total amount of the obligations the City could potentially take on exceeds its remaining non-voted debt capacity.<sup>3</sup> Moreover, the Court ruled that in calculating the City's "debt," the City's contingent loan obligation to make loans to the District equaled the entire amount of the debt to be issued by the *District*, including both the principal and interest components of the contemplated long-term bonds. Without the 2011 Agreement to support the issuance of new long-term bonds, the District now faces the likelihood of a multi-million dollar default on the maturing short-term notes.

The District appealed on September 27, 2011 and sought direct review on October 11, 2011. The City also supports direct review.

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<sup>3</sup> The Court's September 8, 2011 Order is attached to the District's Statement of Grounds as Appendix B. The verbatim report of proceedings which sets forth the Superior Court's findings is attached to the District's Statement of Grounds as Appendix C.



## V. ARGUMENT

Direct review is appropriate where a case involves “a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.” RAP 4.2(a)(4). The Superior Court’s Decision certainly meets this standard, as it raises fundamental questions concerning the definition and calculation of constitutional and statutory debt limitations under Article VIII of the Washington State Constitution and RCW 39.36. Moreover, the impacts of the Court’s Decision extend far beyond the situation in Wenatchee. The Decision calls into question the use of contingent loan agreements - a common form of security or enhancement employed by cities, counties and special purpose districts throughout the State for decades. Given the fundamental constitutional questions at stake and the statewide impacts of the Decision, direct and expedited review is critical to head off a statewide financial crisis.

### **A. The Public Importance of the Legal Questions At Stake Requires Direct Review**

The Superior Court’s Decision raises fundamental constitutional questions regarding the legal definition and calculation of “debt” as it applies to municipal corporations. These questions merit direct review.

The Superior Court’s Decision determined that contingent loan obligations constitute “debt” for purposes of the *lending* entity’s

constitutional and statutory debt limitations. Though a contingent loan agreement establishes an inherently *contingent* obligation to potentially loan funds (at an unknown point in the future and in unknown future amounts, if any), the Superior Court's Decision removes the contingency, and treats a municipality's *potential* obligations as absolute. As further explained in Part B, *infra*, this conclusion has dramatic and far-reaching implications for the financial health of the State as a whole.

In addition to the definition of debt, the Superior Court's method of calculation of a municipal corporation's "debt" threatens to expand significantly the role of the constitutional and statutory debt limits. The Superior Court ruled that the "debt" incurred by the City under the 2011 Agreement is equal to "the total anticipated amount to be loaned under the lifetime of the Bonds," including interest and principal. Order at 2. However, the City is obligated under the 2011 Agreement only to make up the difference between what the District is able to pay and its semi-annual debt service obligations. As such, the actual amount and frequency of any loans that will be made by the City are presently unknown (and unknowable with certainty). Accordingly, calculating the "debt" to include principal and interest of the *District's* entire outstanding bond obligations for 20 years arguably significantly overstates the City's actual loan obligations. Employing the Superior Court's debt calculation

methodology to outstanding contingent loan agreements across the State could result in a statewide wave of potential defaults through the invalidation of numerous contingent loan agreements.

Where such urgent and fundamental legal issues are at stake, direct review is essential to provide prompt determination and restore certainty to the State's public finance jurisprudence. This Court has often accepted direct review of cases involving issues of similarly public importance and should do so here.<sup>4</sup>

#### **B. The Statewide Nature of the Issues Warrants Direct Review**

The significant statewide impacts of the Superior Court's Decision also necessitate direct and accelerated review. The Decision casts a serious financial cloud over local governments in Washington with implications for the entire State, at a time of national and state recession. The uncertainty created by the Decision may lead to higher borrowing costs in an already weak economy and may have negative impacts on the State's credit markets.

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<sup>4</sup> See, e.g., *Wash. Public Ports Assoc. v. State*, 148 Wn.2d 637, 62 P.3d 462 (2003) (direct review of trial court decision upholding validity of WAC leasehold excise tax provisions and denying refund of assessed tax); *Wash. Mfged. Housing Assoc. v. PUD No. 3 of Mason County*, 124 Wn.2d 381, 878 P.2d 1213 (1994) (granting direct review of utility district's resolution establishing \$2,000 new facilities charge for utility hookup); *City of Spokane v. Taxpayers*, 111 Wn.2d 91, 92, 758 P.2d 480 (1988) (direct review to determine if bonds to be repaid from revenues generated by waste to energy plant are "debt").

The proposed 2011 Contingent Loan Agreement between the City and the District is one of approximately 20 similarly structured arrangements in the State involving public facilities districts. At present, bonds in the principal amount of approximately \$271 million are outstanding which have been issued by public facilities districts and are secured through a form of contingent loan agreement obligating a local government to loan to the district amounts necessary to cover shortfalls in principal and interest due and payable. This amount does not include debt issued by other types of municipal corporations, such as housing authorities, which have also issued debt secured by such contingent loan agreements. If contingent obligations such as these are deemed to be debt subject to municipal debt limits and can no longer be used as enhancement for debt of municipal borrowers, statewide financial and infrastructure planning will be severely compromised.

The unprecedented breadth of the Court's Decision calls into question numerous inter-governmental loan agreements, both as they pertain to outstanding indebtedness and future municipal borrowing by cities, counties and special purpose districts throughout the State. As to current indebtedness, the Decision creates a significant risk of lawsuits by bondholders who may believe they were misled. Moreover, if existing contingent loan agreements were invalidated, it would have an immediate

rating impact on issuers that relied on such security which could trigger other financial costs for the issuer.

With regard to future borrowing, if lending municipalities are no longer able to engage in inter-governmental lending without incurring constitutional and statutory “debt”, issuers providing enhancement through contingent obligations could be impacted if there is uncertainty as to their future ability to issue debt. In plain terms, municipal corporations may lose a decades-old tool for funding critical infrastructure projects such as roads, bridges, and utilities. For example, if under the Superior Court’s Decision, a city’s existing contingent obligations are debt such that the city is pushed outside the legal debt limit, then that city may no longer have the ability to issue new debt and in many cases will not be able to finish ongoing projects. Because many projects funded by outstanding bonds are revenue generating projects with user fees, the inability to issue new debt will impact the health of the project, the associated obligation and the surrounding economy.

The results of this uncertainty will be felt throughout the entire State. Borrowing costs will increase for existing issuers who provide enhancement through such obligations. Bond issuers who rely on such obligations for bondholder security will likewise be impacted. Similarly, market access for issuers that utilize such instruments would effectively be

eliminated or the cost of issuing such debt will increase substantially. As such, bond issuers will either have to postpone infrastructure development or issue bonds at a much higher cost, with alternative enhancement or a lower credit rating.

As illustrated above, the impacts of the Superior Court's Decision will extend to every jurisdiction in the State. The statewide impact of the Superior Court's Decision demonstrates the presence of "fundamental and urgent issue[s] of broad public import which requires prompt and ultimate determination." RAP 4.2(a)(4). The Court should accept direct review.

## **VI. CONCLUSION**

The Superior Court's Decision defining and calculating the City's "debt" as all potential payments made under a contingent loan agreement has consequences far beyond the scope of the events in Wenatchee. Municipal corporations throughout the State have issued millions of dollars in local bonds secured by contingent loan agreements that have now been called into question. Prompt and ultimate resolution of these issues is of critical public importance. Pursuant to RAP 4.2(a)(4), the Court should accept direct review and establish a briefing schedule for the merits of this appeal as proposed above.

DATED this 25th day of October, 2011.

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