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NO. 953074

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

(Court of Appeals Division II – No. 49453-1-II)

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END PRISON INDUSTRIAL COMPLEX,

Respondent,

vs.

KING COUNTY,

Petitioner.

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BRIEF OF *AMICI CURIAE*  
WASHINGTON STATE ASSOCIATION OF COUNTIES AND  
WASHINGTON STATE ASSOCIATION OF MUNICIPAL  
ATTORNEYS IN SUPPORT OF PETITIONER

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Daniel B. Heid, WSBA No. 8217  
Reynolds Burton (of counsel)  
1219 Cole Street  
Enumclaw, WA 98022  
(360) 802-3888  
dbh@reynoldsburton.com

Erik J. Lamb, WSBA No. 40557  
Deputy City Attorney  
City of Spokane Valley  
10210 E. Sprague Ave.  
Spokane Valley, WA 99206-3682  
(509) 720-5030  
elamb@spokanevalley.org

*Attorneys for Washington State Association of Municipal Attorneys*

Alan L. Miles, WSBA No. 26961  
Senior Deputy Prosecuting Attorney  
Kitsap County Prosecuting Attorney's Office  
614 Division Street, MS-35A  
Port Orchard, WA 98366-4681  
(360) 337-7223  
AMiles@co.kitsap.wa.us

*Attorney for Washington State Association of Counties*

*Counsel for Amici Curiae*

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**I. IDENTITY AND INTEREST OF *AMICI CURIAE***

The Washington State Association of Counties (“WSAC”) is a voluntary, non-profit association serving all of Washington's 39 counties. WSAC members include elected county commissioners, council members and executives from all of Washington's 39 counties. WSAC provides a variety of services to its member counties including advocacy, training and workshops, and a forum to network and share best practices.

The Washington State Association of Municipal Attorneys (“WSAMA”) is a nonprofit Washington corporation whose membership is comprised of the attorneys who represent the 281 cities and towns in this state, and that provides education and training in the areas of municipal law to its members.

This case is vitally important to the members of WSAC and WSAMA (collectively *Amici*). They, their 39 counties, and 281 cities and towns, must be able to utilize the procedures of RCW 84.55.050 to increase regular property taxes via voter-approved ballot measures, and be able to depend upon those procedures, particularly after contractual commitments have been made, moneys have been obligated, taxes have been collected, costs have been incurred and expenses paid. Additionally, if excess property tax levies can be challenged years after the fact, long after taxes have been collected, indebtedness incurred and expenditures made, then the entire framework of municipal tax financing could be placed in significant

jeopardy. *Amici* respectfully request that this Court correct the error of the decision of the Court of Appeals and uphold, in full, King County's Proposition 1, per King County Ordinance No. 17304 (the "Ordinance").

## **II. STATEMENT OF THE CASE**

*Amici* adopt the Statement of Facts provided and described by Petitioner, King County.

## **III. ARGUMENT**

King County has capably presented its arguments to this Court in connection with this case and the issues before this Court. It is not necessary for *Amici* to reiterate those arguments. Instead, the purpose of this brief of *Amici Curiae* is to indicate to this Court that *Amici* support King County's arguments, to inform this Court of the state-wide detrimental impact of the decision of the Court of Appeals on local government taxing authorities, and to request that this Court grant the relief requested by King County, including reversing the decision of the Court of Appeals and clarifying the law governing tax levy ballot measures and challenges to such measures. Here, the Court of Appeals performed an incomplete analysis on a matter of first impression, leaving significant legal questions unresolved and jeopardizing the substantial public interest in providing certainty for tax levies passed throughout the state.

The Court of Appeals' decision involves three issues of substantial

public concern: (1) the difference between a ballot title challenge and a so-called challenge to the implementation of a ballot title, (2) when a challenge to a ballot title, or alternatively the implementation of a ballot title, for a tax levy is timely, and (3) the specific language necessary to determine how a levy limit is calculated. All of these matters are vital to the legitimacy and stability of the tax levy collection and expenditure process that affects every Washington county, city, town, other taxing entity and citizen. The Court of Appeals addressed each of these aspects in a manner inconsistent with relevant statutes and without thorough attention to the practical application of the Court's ruling. The Supreme Court should reverse the decision of the Court of Appeals and provide the public and public agencies with proper guidance on the law governing tax levy ballot measures.

**1. The Court of Appeals erred in not applying RCW 29A.36.090 because the action by the Respondent was, in fact, a ballot title challenge.**

The Court of Appeals incorrectly ruled that Respondent's challenge was not a challenge to a ballot title, but rather a challenge to the implementation of a ballot title.<sup>1</sup> Based on such determination, the Court of

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<sup>1</sup> *Amici* are unaware of any other case where a Washington state appellate court has allowed such a challenge to the "implementation" of a ballot title. *Amici* are concerned that the decision of the Court of Appeals inappropriately, if inadvertently, creates an incentive for persons who oppose a proposition to intentionally forego challenging the ballot title directly as provided in RCW 29A.36.090 and, instead, wait months or even years after voters have approved the proposition to indirectly or collaterally attack the election outcome, claiming that the challenge is merely to the "implementation" of the ballot title. Permitting such indirect attacks would allow persons disgruntled with an election outcome

Appeals refused to apply RCW 29A.36.090, which applies to challenges of ballot titles. The Court of Appeals specifically disregarded all of the evidence, including Respondent’s own claims in its Complaint, that Respondent’s challenge was in fact a challenge to a ballot title. Furthermore, the Court of Appeals misconstrued approval of Proposition 1 as approval of the ballot title, when in fact voters only approve a proposition and not a ballot title. By conflating the two, the Court of Appeals incorrectly focused on the implementation of the ballot title, rather than the discrepancy between the one-year levy lift it found in the ballot title and the nine-year levy lift in the approved proposition.

The Court of Appeals’ decision circumvents the realistic applicability of RCW 29A.36.090 because the statutory time-limitation now may be avoided by claiming any ballot title challenge as a challenge to the implementation or application of the ballot title.

- a. The Court of Appeals erred in not applying RCW 29A.36.090 because the action by the Respondent was, as demonstrated throughout their Complaint, a ballot title challenge.**

The Court of Appeals “agree[d] with EPIC that its claim was not a

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to attempt to thwart the will of the people and to disrupt active and ongoing large public projects. By contrast, requiring a timely direct challenge under RCW 29A.36.090 is consistent with the Legislature’s intent that any alleged deficiency in a ballot title be addressed *before* the ballot title is placed on the election ballot. *See also* chapter 29A.68 RCW (reflecting Legislature’s intent that alleged election irregularities be heard and resolved by the courts prior to the election when possible and, when not possible, to be heard and resolved by the courts promptly after election certification).

ballot title challenge....” *End Prison Industrial Complex v. King County*, 200 Wn. App. 616, 627, 402 P.3d 918 (2017), and FN 5. Yet, Respondent’s challenge can hardly be anything but a ballot title challenge subject to RCW 29A.36.090. In the Respondent’s Complaint, Respondent points out that the King County Prosecutor *drafted the ballot title.*<sup>2</sup> CP 5-6. Moreover, the Complaint contains more than 25 references to specific issues related to the “ballot title.” *See* Appendix A.

It is hard to understand, in light of the many references to “ballot title” repeatedly made in the Respondent’s Complaint, how the Court of Appeals could have concluded that Respondent’s action was not a ballot title challenge subject to the 10-day limitation under RCW 29A.36.090. In fact, the Court of Appeals specifically analyzed whether the ballot title met the requirements of RCW 84.55.050.

The Court of Appeals incorrectly concluded that the ballot title of Proposition 1 did not “clearly” and “expressly” state that the 2013 levy would be used to calculate levy amounts in the following eight years. *End Prison Industrial Complex*, 200 Wn. App. at 619. Because of this finding, the Court of Appeals improperly concluded King County was limited to a single-year levy lid lift. This ignores the ballot title language expressly stating that the proposition authorized King County to levy an additional property tax for a total of nine years, with increases in the following eight years, following the additional property tax levy for 2013 subject to the

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<sup>2</sup> The King County Prosecutor, in accord with statute, drafted the ballot title for Prop. 1.

limitations in chapter 84.55 RCW, all as provided in the Ordinance. For EPIC to argue, and for the Court of Appeals to find, that the title only provides a one-year lift is to argue that the title fails to align with the described proposition. *See* CP 83-84.

RCW 29A.36.090 identifies not only a time frame within which a challenge to the ballot title must be filed, but also the process for adjudicating the challenge. The decision of the Court of Appeals essentially abolishes this statute. The 10-day window within which a ballot title must be challenged means nothing if someone can wait more than three years to file a complaint about the ballot title and call it a challenge to the implementation or effectiveness of the very ballot title that is the subject of the challenge. This dilemma of uncertainty would now potentially affect each of the over 1,800 county, city, and town and special purpose districts with taxing authority<sup>3</sup> in the state intending to bring a levy lid lift or other voter-approved tax levy to their voters. The Court of Appeals should have dismissed EPIC's challenge to the ballot title as untimely because RCW 29A.36.090 applies to EPIC's challenge and the challenge was not brought during the 10-day requirement.

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<sup>3</sup> As of March 1, 2016, for taxes due in 2017. *See*, Wash. Dep't of Rev., *Property Tax Statistics 2017 –Additional Information – Number of Taxing Districts by Type*, <https://dor.wa.gov/about/statistics-reports/property-tax-statistics/property-tax-statistics-2017> (2016).

**b. The Court of Appeals erred by construing approval of proposition as approval of the ballot title and failing to address the discrepancy between the alleged one-year levy lift in the ballot title and nine-year levy lift in the proposition as provided in the Ordinance.**

The Court of Appeals misconstrued the proposition approved by voters as being one in the same with the ballot title. *End Prison Industrial Complex*, 200 Wn. App. at 628 (“Because EPIC seeks to enforce the terms of the ballot title as written and approved by voters...”) (emphasis added). By doing so, the Court of Appeals creates an inconsistency between what it found as a one-year levy lift in the ballot title and the nine-year levy lift that was undisputedly expressed and approved as part of Proposition 1 as set forth in the Ordinance. The Court of Appeals never addressed the inconsistency it created, precisely because to do so would require it to address EPIC’s challenge as a challenge to the ballot title.

The Court of Appeals’ decision ignores a basic principle set forth in chapter 84.55 RCW. Specifically, voters do not “approve” a ballot title. Voters approve a proposition. RCW 84.55.050(1) (“...regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district...”) (emphasis added); WAC 458-19-045(1) (“The levy limit may be exceeded when authorized by a majority of the voters voting on a proposition to ‘lift the lid’ of the levy limit in accordance with RCW 84.55.050.”) (emphasis

added). In this case, voters approved Proposition 1, as proscribed and authorized by the Ordinance. The ballot title merely describes the measure for voters, but it is not to be confused with the measure itself. *See, e.g.*, RCW 29A.04.008(1)(a) (defining “ballot” “as the issues and offices to be voted upon in a jurisdiction or a portion of a jurisdiction at a particular primary, general election, or special election...”); RCW 29A.04.091 (defining “measure” as “any proposition or question submitted to the voters”). In fact, statutory procedures require the ballot title to include “a concise description of the measure” in addition to certain other statutory requirements, and limit the “concise description” of a measure to 75 words. RCW 29A.36.071; WAC 458-19-045(2). Thus, by statute the ballot title cannot be *the* measure approved by voters.

This Court has distinguished between the proposition as set forth in enabling documents, such as the Ordinance, and the concise description of the measure set forth in the ballot title. *See, e.g., Sane Transit v. Sound Transit*, 151 Wn.2d 60, 72-73, 85 P.3d 346 (2004). In *Sane Transit*, the Supreme Court found that the resolution authorizing the proposition was the enabling legislation and thus, as incorporated into the ballot title, was part of the legislation “and it was the measure approved by the voters.” *Id.* at 69. Accordingly, Sound Transit could rely on provisions within the enabling resolution that authorized certain modifications to the original project approved by voters. *Id.* Similarly, King County’s ballot title informed voters the nine-year levy lift was to be enacted based on the limitations of “in chapter 84.55 RCW, all as provided in Ordinance No.

17304.” CP 241. The Ordinance, incorporated by reference within the title, thus is the enacted proposition. Provisions within the Ordinance articulate that the levy lid lift was for a nine-year period. *See* CP 84 (“The county council further finds that it is appropriate to ask voters to fund the replacement of this essential criminal justice facility through a nine-year \$0.07 property tax levy.”); CP 83 (“...a proposition authorizing a regular property tax levy in excess of the levy limitation contained in chapter 84.55 RCW for nine consecutive years...”). Further, in its Supplemental Brief filed herein, King County highlighted the point that the Ordinance also specifically included a suggested ballot title with language which stated (in part) it would authorize King County to levy an additional property tax in \$0.07 per \$1000 of assessed valuation for collection in 2013.<sup>4</sup> The 2013 levy amount would become the base upon which levy increases would be computed for each of the eight succeeding years, all as provided in the Ordinance. *See* Appendix A, page 6 to King County’s Brief of Respondent filed in the Court of Appeals.

Neither EPIC nor the Court of Appeals properly addressed how to

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<sup>4</sup>See footnote 1 of Supplemental Brief of King County, which states:

[1] The Ordinance contained a suggested ballot title, but the prosecutor, rather than the municipality proposing the measure, has the statutory duty to draft a neutral ballot title. Although the suggested title in the Ordinance reflected the Council’s intent and further informed voters’ of the Ordinance’s purpose, the prosecutor redrafted the official ballot title to better reflect the Department of Revenue’s guidance for sufficient ballot titles, and importantly, to stay within the 75-word limit. CP 85; *see* WAC 458-19-045(2) (75-word limit in RCW 29A.36.071 applies to ballot titles for levy lid lifts).

reconcile the very clearly articulated nine-year levy lift proposition set forth in the Ordinance with the supposed one-year levy lift claimed to be set forth in the ballot title. *See End Prison Industrial Complex*, 200 Wn. App. at 633 (Court of Appeals stated there is an “implication that the 2013 levy amount would be used to compute the subsequent levies” in the ballot title, but fails to discuss any of the specific levy lift calculation terms as provided in the Ordinance). To do so would require acknowledgment that EPIC is in fact challenging that the ballot title does not align with the measure authorized by the Ordinance. In incorrectly concluding that the levy-lift was a one-year lift, the Court of Appeals ignored the ballot title language expressly stating that the proposition authorized King County to levy an additional property tax for a total of nine years, with increases in the following eight years, following the additional property tax levy for 2013 subject to the limitations in chapter 84.55 RCW, all as provided in the Ordinance. And the Ordinance further expressly described that the levy was for nine years and how the levy was to be implemented. Allowing EPIC’s collateral attack well beyond the statutory limits produces absurd results and effectively invalidates RCW 29A.36.090.

**2. Alternatively, even if the Court of Appeals did not err in its ruling that this was not a ballot title challenge, the Court of Appeals failed to provide another mechanism to identify when a claim is timely, or to put limits on such claims.**

The Court of Appeals rejected the County’s argument that RCW 29A.36.090 applied, but further failed to analyze whether other time limitations apply on challenges such as those by EPIC. If the Supreme Court

determines to not apply the time limits of RCW 29A.36.090, the Court should correct this omission and ensure that taxing entities throughout the state are able to competently collect and expend tax revenues with a known understanding of when such collections may be subject to challenge.

The Court of Appeals held that the 10-day limitation in RCW 29A.36.090 did not preclude EPIC's claim as untimely because it erroneously accepted EPIC's characterization of its own claim as an enforcement of the ballot title, not a challenge thereto. *End Prison Industrial Complex*, 200 Wn. App. at 627. Other limitations, however, should apply. Here, the ballot measure for Proposition 1 was voted upon at the primary and special election on August 7, 2012. CP 270. But EPIC's lawsuit was not filed until April 27, 2016, more than three and one half years later.

One of EPIC's claims is that the County incorrectly used the 2013 levy amount to calculate the levy amount for 2014, 2015, and 2016. *Brief of Appellants*, p. 14; *see also* CP 280-81 ¶¶ 12-13. EPIC claims that it "discovered the County's over-collection of property taxes in 2016." *Id.*, p. 16. But notice of the levy amount in 2014 was, by law, required to be available to all King County taxpayers well before then. A claim brought years after it reasonably should have been brought, as in this case, has to be seen as stale. EPIC's claim that it "diligently brought his matter to the Court" is without merit. EPIC certainly should have known the tax levels long before it says it knew.

Counties must hold a public hearing on the preliminary budget, which inherently includes the proposed amount of levies collected, on the

first Monday in October or December.<sup>5</sup> RCW 36.40.070, 36.40.071. Upon conclusion of the budget hearing the County adopts the budget, based on the amount of tax levied. RCW 36.40.080. Because of these statutory requirements, the amount of 2014 tax collected under the disputed levy was discoverable by EPIC in December of 2013.<sup>6</sup> EPIC provides absolutely no explanation as to why it waited until April 2016 to file a claim for an alleged over-calculation made public knowledge in December of 2013.

Comparatively, the time limitation for an over-calculation on the assessed value of property, which determines the amount of property tax owed, is 60 days. WAC 458-14-056. Levies for tax refunds are limited to 12 months. Neither EPIC nor the Court of Appeals cite to any authority for the premise that a claim of over-calculation made three years after the fact is timely. Further, chapter 29A.68 RCW has similarly short time limits for challenging certain election errors. *See, e.g.*, RCW 29A.68.011 (three-day period to file affidavit in challenge to error in printing or placement of name of candidate on ballots); RCW 29A.68.013 (ten-day period to file affidavit in challenge for wrongful acts or neglect by election officers or error or omission in the official certification of any primary or election).

Cities, counties and local taxing districts throughout the state rely

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<sup>5</sup> Local taxing districts must certify their budget requests, and therefore their levy amounts, to the County by November 30<sup>th</sup> of the year preceding the year in which the levy is collected. RCW 84.52.020; Wash. State Dep't of Rev., *Property Tax Levy Manual*, [https://dor.wa.gov/sites/default/files/legacy/Docs/Pubs/Prop\\_Tax/LevyManual.doc](https://dor.wa.gov/sites/default/files/legacy/Docs/Pubs/Prop_Tax/LevyManual.doc) (2017).

<sup>6</sup> In fact, as public records under Washington's Public Records Act, the amount of tax collected under Proposition 1 was discoverable not just by EPIC, but by *anyone* in December of 2013.

on tax levy ballot measures to provide critical services including: public facilities such as city halls, parks, and libraries; water, sewer, and solid waste facilities and services; electrical and other utility facilities and services; public transit; road maintenance; firefighting; police and public safety; teachers' salaries and building schools; combating homelessness; and protecting the environment. The funding of these services affects every Washington resident and visitor. But the Court of Appeals' lack of guidance as to when a claim is timely destabilizes the provision of these critical services. In the last five years, there were at least 709 ballot measures that were submitted to voters in Washington from taxing districts statewide, with 648 of those for tax or bond levies.<sup>7</sup> Further, in the last two years, there were 44 successful levy lid lifts and in the last five years there were 127 successful levy lid lifts by counties, cities, towns, and special purpose taxing districts. *Id.*

Without guidance from this Court, local taxing entities face significant risk of challenges long after tax levies are approved, taxes are collected, and even after projects are well under construction. Waiting over three and one half years after the election and over two years after the assessment at issue

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<sup>7</sup> Municipal Research Service Center, *Local Ballot Measure Database*, <http://mrsc.org/elections.aspx#results> (last visited July 6, 2018). Further, while this database includes counties, cities, and a number of other special purpose taxing districts, it does not include any school district tax or bond levy.

is established and budgeted is simply too long given the impacts. *Amici* ask this Court to reverse the decision of the Court of Appeals and to provide clarity for all local taxing entities as to when levy challenges based on wording in the ballot title must be brought.

**3. The Court of Appeals' conflation of the requirements of RCW 84.55.050 produces an absurd result and precludes taxing entities from determining how a levy limit can be calculated and spent.**

In this case, King County sought guidance from the Washington State Department of Revenue to draft the language of its ballot proposition. King County's Petition for Review, p.14. That practice is common among practically all local governments in this state. The reason for this practice is patently simple: Title 84 RCW creates a byzantine network of requirements for certain pieces of information in certain places while simultaneously limiting length, format, and form. Relying on State guidance is a prudent thing to do. Rather than follow the state guidance relied upon by many jurisdictions that recognizes that the fulsome requirements of Title 84 RCW are best met through both the ballot title and the proposition being voted upon, the Court of Appeals' decision creates an absurd result by moving all statutory requirements to the title of a ballot measure.

Ironically, the suggested ballot title language included in the Ordinance would have addressed the focus of the court's ruling – that the eight subsequent years were based upon the 2013 levy amount. However, because of King County's effort to ensure the title sufficiently and

satisfactorily addressed the limitations in RCW 84.55, while meeting required word limitations and following guidance from the Washington State Department of Revenue, the King County prosecutor sacrificed some words from the suggested text in the Ordinance to make sure that the limitation language of RCW 84.55 was included. Moreover, this was language that could have been challenged within the 10-day rule of RCW 29A.36.090, but it was not.

King County should not be punished because it took efforts, for clarity and based upon the guidance of the Washington State Department of Revenue, to add language in the ballot title addressing the limitations of RCW 84.55, particularly where it is subject to the ballot title word limitations of RCW 29A.36.071 and must condense the eight-page Ordinance into a concise description of 75 words. *See* WAC 458-19-045.<sup>8</sup>

Even though the King County prosecutor changed the ballot title language from what was suggested in the Ordinance, the ballot title crafted by the King County prosecutor and the title suggested in the Ordinance both reference the Ordinance. In that regard, the ballot title clearly and expressly stated that the levy lid lift was to be as provided in the Ordinance, and the Ordinance clearly and expressly stated that the 2013 levy amount is the base upon which levy increases would be computed for each of the eight

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<sup>8</sup> It should also be noted that RCW 84.55 contains a number of limitations that could apply to a ballot proposition such as the one before this Court. For instance, the limitations that could be triggered in a levy lid lift ballot measure include RCW 84.55.010, 84.55.0101, 84.55.040, 84.55.050, and 84.55.100.

succeeding years. CP 83-84 (“...the county council shall submit to the qualified electors of the county a proposition authorizing a regular property tax levy in excess of the levy limitation contained in chapter 84.55 RCW for nine consecutive years, commencing in 2012, with collection beginning in 2013, at a rate in the first year not to [sic] \$0.07 per one thousand dollars of assessed value.”) (emphasis added). The Court of Appeals erred in ignoring the reference to the Ordinance and the language clearly identifying the nine-year period of the levy lid lift in the ballot title. It is concerning that the guidance King County received from the Department of Revenue, in terms of the language needed to ensure the ballot title met statutory requirements, including the 75-word limit, was ruled insufficient by the Court of Appeals.

Identifying the purpose, length, initial amount, total amount, and method of calculation, among other information, creates simply too many substantive requirements to fit into the 75-word limit required by RCW 29A.36.071(1). It is for this very reason that the plain language of the statute references other components, like the “ballot of the proposition” and “ballot measure.” RCW 84.55.050(1), 84.55.050(5). The Court of Appeals conflated the requirements of RCW 84.55.050 despite a prescription against “interpret[ing] a statute in a manner that leads to an absurd result.” *Hangartner v. City of Seattle*, 151 Wn. 2d 439, 448, 90 P.3d 26 (2004)

(overruled in part by statute on other grounds, as recognized by *Doe ex rel. Roe v. Washington State Patrol*, 185 Wn. 2d 363, 374 P.3d 63 (2016)).

If the advice and guidance of the Department of Revenue as to what meets the requirements of RCW 84.55.050 is deficient, and all taxing entities must instead cram all requirements into the ballot title as the Court of Appeals has required, then ballot propositions and ballot measures will become superfluous. Furthermore, the ballot measures of all taxing entities will be vulnerable to challenge and taxing entities will not have clarity as to how a levy amount is calculated and expended. *Amici* request this Court to reverse the decision of the Court of Appeals, to provide clarity for all local taxing entities over when and what information must be contained in a ballot title, when and what information must be contained in a ballot proposition, and when and what information must be contained in a ballot measure.

#### IV. CONCLUSION

For the reasons set forth above, *Amici* respectfully request that this Court reverse the decision of the Court of Appeals in this matter and restore RCW 29A.36.090's 10-day rule for challenging ballot titles.

Respectfully submitted this 30th day of August, 2018.

/s/ Daniel B. Heid

Daniel B. Heid, WSBA No. 8217  
Reynolds Burton (of counsel)  
1219 Cole Street  
Enumclaw, WA 98022  
(360) 802-3888  
[dbh@reynoldsburton.com](mailto:dbh@reynoldsburton.com)

/s/ Erik J. Lamb

Erik J. Lamb, WSBA No. 40557  
Deputy City Attorney  
City of Spokane Valley  
10210 E. Sprague Ave.  
Spokane Valley, WA 99206-3682  
(509) 720-5030  
[elamb@spokanevalley.org](mailto:elamb@spokanevalley.org)

/s/ Alan L. Miles

Alan L. Miles, WSBA No. 26961  
Senior Deputy Prosecuting Attorney  
Kitsap County Prosecuting Attorney's Office  
614 Division Street, MS-35A  
Port Orchard, WA 98366-4681  
(360) 337-7223  
[AMiles@co.kitsap.wa.us](mailto:AMiles@co.kitsap.wa.us)

Counsel for *Amici Curiae*

## CERTIFICATE OF SERVICE

I certify that on the date referenced below, pursuant to agreement of the parties and amici curiae, I served a copy of the foregoing document and the Motion for Leave to file Brief of Amici to each and every attorney of record herein, as identified below, by e-mail:

Thomas Kuffel  
Janine Joly  
David J. Hackett  
King County Prosecutor's Office 500  
Fourth Avenue,  
9th Floor  
Seattle, WA 98104-2316  
[Thomas.Kuffel@kingcounty.gov](mailto:Thomas.Kuffel@kingcounty.gov)  
[Janine.Joly@kingcounty.gov](mailto:Janine.Joly@kingcounty.gov)  
[Heidi.Lau@kingcounty.gov](mailto:Heidi.Lau@kingcounty.gov)

Knoll D. Lowney  
Alyssa L. Englebrecht  
Claire E. Tonry  
Katherine Brennan  
Smith & Lowney, PLLC  
2317 East John St.  
Seattle, WA 98112-5412  
[knoll@ige.org](mailto:knoll@ige.org)  
[alyssae@igc.org](mailto:alyssae@igc.org)  
[clairet@igc.org](mailto:clairet@igc.org)  
[katherineb@igc.org](mailto:katherineb@igc.org)

Paul J. Lawrence  
Kymberly K. Evanson  
Shae Blood  
Pacifica Law Group LLP  
1191 Second Avenue, Suite 2000  
Seattle, WA 98101-3404  
[paul.lawrence@pacificallawgroup.com](mailto:paul.lawrence@pacificallawgroup.com)  
[kymberly.evanson@pacificallawgroup.com](mailto:kymberly.evanson@pacificallawgroup.com)  
[shae.blood@pacificallawgroup.com](mailto:shae.blood@pacificallawgroup.com)

Reid W. Hay  
Deputy Prosecuting Attorney  
Benton County Prosecuting  
Attorney's Office  
7122 West Okanogan Place, Bldg. A  
Kennewick, WA 99336  
[Reid.Hay@co.benton.wa.us](mailto:Reid.Hay@co.benton.wa.us)

DATED this 30th day of August, 2018, at Spokane Valley, Washington.

/s/ Erik J. Lamb  
Erik J. Lamb, WSBA No. 40557  
Deputy City Attorney  
City of Spokane Valley  
10210 E. Sprague Ave.  
Spokane Valley, WA 99206-3682  
(509) 720-5030  
[elamb@spokanevalley.org](mailto:elamb@spokanevalley.org)

## APPENDIX A

The Court should enjoin King County from spending any levy funds on the construction of a new youth jail. The ballot title never informed voters that the levy would fund a facility to lock up children, which overwhelming research has shown to be ineffective and harmful to children and their families. Prop. 1 never would have passed if King County had provided honest and accurate information to voters. (CP 3, emphasis added.)

9. The Prop. 1 ballot title placed before voters limited the use of levy funds to "capital costs to replace the Children and Family Justice Center, which serves the justice needs of children and families." The ballot title, which is the only description of Prop. 1 that many voters ever saw, does not encompass spending on a new youth jail. No reasonable voter interprets a center that "services the justice needs of children and families" to mean a jail. The ballot title was purposefully crafted to conceal the unpopular jail project from voters. (CP 6, emphasis added.)

10. The Prop. 1 ballot title was especially misleading because King County had used a similar description for its 2010 project which would have replaced only the courthouse and parking lot, but would not have built a new jail. In its 2010 resolution, the County described its courthouse replacement project as a capital project to replace "facilities for juvenile justice and family law services," and specifically one that "services the justice needs of King County juveniles and families."<sup>1</sup> This is almost identical language used in the Prop. 1 ballot title. (CP 6, emphasis added.)

11. State law does not permit such deception in a levy lid lift ballot title, nor does it permit bait-and-switch tactics with levy spending. See RCW 84.55.050(4)(c) ("If expressly stated, a proposition placed before the voters under subsection (1) or (2) of this section may ... limit the purpose for which the increased levy is to be made ... "). This requirement is even stricter than the "subject in title" requirement of Art. II, Sec. 19 of the Washington State Constitution, since it requires an express statement of how the funds will be used. See also RCW 84.55.050(2) ("The title of each ballot measure must state the limited purpose for which the proposed annual increase during the specified period ...."). (CP 6-7, emphasis added.)

12. King County should be prohibited from spending levy proceeds on the jail. Alternatively, because the title does not "expressly state" that the funds were to be used for the jail, King County is not bound to spend any levy funds on that project. Such a restriction arises only when the specific limited purpose is "expressly stated." RCW 84.55.050(4)(c). (CP 7, emphasis added.)

13. Had the ballot title been written to encompass spending on a new youth jail, it is unlikely to have passed. (CP 7, emphasis added.)

B. The ballot title of Prop. 1 did not authorize King County's tax collections. (CP 7, emphasis added.)

16. The Prop. 1 ballot title did not authorize the amount of taxes that the County has collected under it. (CP 7, emphasis added.)

17. The Prop. 1 ballot title described a nine year levy with a significant additional tax collection in 2013 and smaller tax collections in subsequent years. According to the ballot title, Prop. 1 authorized significant increased tax collection only in 2013. The title stated that the measure "would authorize King County to levy an additional regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013." The ballot title allowed only a smaller assessment in the subsequent eight years of the levy: "Increases in the following eight years would be subject to the limitations in chapter 84.55 RCW . . .," which generally allows property tax levies to increase by about 1% plus inflation. (CP 7-8, emphasis added.)

24. Prop. 1 portrays itself as only a "single year lid lift." The ballot title stated that the measure "would authorize King County to levy an additional regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013." (CP 9, emphasis added.)

26. If King County wished to use the 2013 levy as a base for calculating subsequent levies, the ballot title needed to expressly state that. RCW 84.55.050(4) provides that "If expressly stated, a proposition placed before voters under subsection (1) or (2) of this section may . . . use the dollar amount of a levy under subsection (1) of this section [single year levy lid lift], or the dollar amount of the final levy under subsection (2) of this section [multiple year levy lid lift], for the purpose of computing the limitations for subsequent levies provided for in this chapter." RCW 84.55.050(4) (emphasis added). The Prop. 1. ballot title said nothing of that sort. (CP 10, emphasis added.)

27. King County understands the ballot title required by RCW 80.58.050 [*sic*]\*, but chose not to use it on the ballot. King County Council Ordinance No. 17304, which placed Prop. 1 on the ballot, proposed a ballot title informing voters that "[t]he 2013 levy amount would be the base upon which levy increases would be computed for each of the eight succeeding years." (emphasis added). By "expressly stat[ing]" that the increased levy amount will be used as a base for future years, that title would have complied with RCW 80.58.050(4)(a) [*sic*]. (CP 10, emphasis added.)

[\*Note: The reference to RCW 80.58.050 appears to be an erroneous statutory reference. Chapter 80.58 RCW relates to Nonpolluting Power Generation Exemption.]

28. In contrast, the Prop. 1 ballot title authorized the additional \$0.07 per \$1,000 rate only for the 2013 tax year, and authorized only a modest levy in successive years. The Supreme Court has recognized that many voters will make their mind up based only upon the ballot title, and this is especially important when the voters are being asked to authorize a tax levy. (CP 10, emphasis added.)

29. The Legislature twice mandated that voters be given adequate information in a levy lid lift ballot title. RCW 84.55.050(1) says that "the ballot of the proposition shall state the dollar rate proposed and shall clearly state the conditions, if any, which are applicable under subsection (4)". (emphasis added). Then, subsection 4 requires the conditions be "expressly stated." RCW 84.55.050(4). These mandates cannot be ignored. (CP 10, emphasis added.)

47. There is a ripe justiciable controversy over (1) whether the ballot title was deceptive in failing to state that the levy would fund a new youth jail; and (2) whether the County is illegally spending levy proceeds on the youth jail. (CP 14, emphasis added.)

55. Even in the Ordinance placing Prop. 1 on the ballot, there are two inconsistent descriptions of the tax to be collected. The ballot title provides a third inconsistent description of the tax that will be collected. (CP 15, emphasis added.)

56. Equity demands that King County provide an accounting of its tax collections under Prop. 1 to provide transparency and to determine whether its practices conformed to the ballot title and State Law. (CP 15, emphasis added.)

[Request for Relief] A. Declare that the Prop. 1 ballot title contained a limited purpose and does not permit King County to spend levy proceeds on a new youth jail. (CP 16, emphasis added.)

# CITY OF SPOKANE VALLEY

August 30, 2018 - 4:17 PM

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**Appellate Court Case Title:** End Prison Industrial Complex v. King County  
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- david.hackett@kingcounty.gov
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- katherineb@igc.org
- knoll@smithandlowney.com
- kymberly.evanson@pacificallawgroup.com
- paoappellateunitmail@kingcounty.gov
- paul.lawrence@pacificallawgroup.com
- prosecuting@co.benton.wa.us
- reid.hay@co.benton.wa.us
- shae.blood@pacificallawgroup.com
- sydney.henderson@pacificallawgroup.com
- thomas.kuffel@kingcounty.gov

### Comments:

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Sender Name: Erik Lamb - Email: elamb@spokanevalley.org  
Address:  
10210 E SPRAGUE AVE  
SPOKANE VALLEY, WA, 99206-3682  
Phone: 509-720-5030

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