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No. 95307-4

SUPREME COURT OF THE STATE OF WASHINGTON

No. 49453-1-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

END PRISON INDUSTRIAL COMPLEX,

Respondent,

v.

KING COUNTY,

Petitioner.

**MEMORANDUM OF *AMICI CURIAE* KING COUNTY
PROPERTY TAXPAYERS**

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici are King County property owners and taxpayers.¹ As such, *Amici* are among those who will be left most vulnerable if the Court follows King County's invitation to eviscerate the limitations of the levy lid lift statute, chapter 84.55 RCW. Indeed, this appeal is critically important to *Amici* and other taxpayers because they all rely on the few enacted legal protections that prevent excessive levies, such as chapter 84.55 RCW, and trust those protections will be followed and enforced. *Amici* have a keen interest in ensuring that RCW 84.55.050 is given meaning and that the Court will fulfill its function as a check on local governments' exceeding their delegated taxing authority.

II. STATEMENT OF THE CASE

Amici adopt the Statement of the Case provided by Appellee End Prison Industrial Complex (EPIC) in its Supplemental Brief.

¹ *Amici* are: Megan Ybarra, Marisa Ordonia, Tamar Zere, Brenda Anibarro, Kristy Copeland, Arjun Kakkar, Katrina Spade, Rania Spade, Syllas Wright, Katrine Behrend, Francis L. Cahill, Virginia Magboo, Soya Jung, Stefanie Fox, Sarah Nason, Sara Knowles, Logan Cox, Dean Spade, Devon de Leña, Lucianne Hackbert, Gillian Harkins, Kathy Ackerman Erie Jones, Elizabeth Leonard, Daniel Berger, Dana Barnett, Judy de Leña, Sara Ainsworth, Matthew Shoudy, Joanna Schuman, Ricky Hougland, Abraham Flaxman, Jessi Berkelhammer, Christian Anderson, Ryan Honnen, Isyss Honnen, Kate Benward, Mathew Burke, Amy Kratz, Marilyn C. Derksen, Richard J. Derksen, Sarah A. Brown, Giulia Pasciuto, Dylan McCalmont, Precious, Douglas Arney, Chris Black, Chandan Reddy, Laura Barboza, Devon Knowles, and Angelica Chazaro. Some of the *Amici* are married, where ownership of their home is via community property.

III. ARGUMENT

A. The Court must protect taxpayers from unlawful tax increases.

King County's unlawful tax collections come at an ominous time for property owners. Spiraling property-tax burdens are placing long-time King County home owners in a precarious state. With the County's regressive taxes already going through the roof, the Court should prevent the County from with unconsented and illegal levies.

Statutory limits on a local government's delegated levy-power represent a careful balance between the interests of taxpayers and government and must be respected. For this reason, it is well established in Washington State that "[i]n case of doubt, taxing statutes are construed most strongly against the government and in favor of the taxpayer." *Wash. State Dep't of Revenue v. Hoppe*, 82 Wn.2d 549, 552 (1973); accord *Ski Acres v. Kittitas County*, 118 Wn.2d 852, 857 (1992); *Qwest Corp. v. City of Bellevue*, 161 Wn.2d 353, 364 (2007); *Estate of Hemphill v. Revenue*, 153 Wn.2d 544, 552 (2005). The well-worn principle in favor of fair and transparent taxation informs the Court's support of taxpayers and the Court's crucial role to keep the government accountable on tax matters. See e.g. *Granite Falls Library Capital Facility Area v. Taxpayers*, 134 Wn.2d 825, 848, n. 47 (1998). Whether acting through its representatives in the legislature, or acting as "quasi-legislators" in a direct

vote such as for Proposition 1 (Prop. 1) (Aug. 7, 2012), the will of the people must be protected.

As it stands, Washington State has the most regressive tax structure in the nation, placing a greater burden on the bottom 20% of income earners than any other state.² Indeed, our poorest 20%, excluding elderly residents, are taxed at rates nearly seven times higher than the wealthiest 1%.³ Washington does not offer age-neutral tax credits when property tax bills exceed a certain percentage of a person's income, something available in other states.⁴ In sum, Washington State "is the highest-tax state in the country for poor people."⁵

The regressive tax structure in Washington is compounded by the soaring property values in King County. Consequently, the property tax burden in the County is simply pricing people out of their homes.⁶ Each additional property tax levy contributes to this crisis for property owners

² See Institute on Taxation and Economic Policy, *Who Pays?: A Distributional Analysis of the Tax Systems in All 50 States*, 5th Ed. (January 2015), at 15, available at <https://itep.org/wp-content/uploads/whopaysreport.pdf>.

³ *Id.* at 4.

⁴ *Id.* at 14.

⁵ *Id.* at 15.

⁶ Jessica Lee, 'Enough is enough': Some Seattle-area homeowners say latest property-tax hikes will force them to move, THE SEATTLE TIMES, April 2, 2018, available at <https://www.seattletimes.com/seattle-news/enough-is-enough-some-local-homeowners-say-this-years-property-tax-increase-will-force-them-to-move/> ("As the effect of the higher rates spread statewide, some homeowners are calling the tax increase a tipping point in a period of financial stress that's forcing too-soon goodbyes to longtime homes.").

on a limited income. It is critical that the Court protect these vulnerable residents by ensuring that the few property tax limitations on the books are enforced and given effect.

This Court has regularly met this responsibility when faced with local governments exceeding their delegated tax authority. *See, e.g., Hoppe*, 82 Wn.2d at 561 (“[We] do not agree with the second proposition of the state that [the complexity and difficulty of the issues] requires this court to indulge in every presumption to uphold the levies at the higher level. To do so would thwart the expressed intent of the voters to limit property taxes...”)⁷; *City of Spokane v. Horton*, 189 Wn.2d 696 (2017) (holding municipal tax exemption unconstitutional because it exceeded the delegation of tax authority); *Cnty. Telecable of Seattle, Inc. v. City of Seattle, Dep’t of Executive Admin.*, 164 Wn.2d 35 (2008) (striking down municipal tax because it exceeded limited authority delegated by state legislature.); *Covell v. Seattle*, 127 Wn.2d 874, 891 (1995) (invalidating a

⁷ In *Hoppe*, the Court considered whether a cap on property tax levies approved by voters in November 1972 limited the taxes due and collectible in 1973. 82 Wn.2d 549. The State argued that, due to a technical interpretation of the word “levies,” the limit should not apply until 1974 because the corresponding levy was not complete by a December deadline. *Id.* at 554. The Court rejected this argument, finding “no mention...of the idea that no tax relief would be granted until 1974. There is not the slightest hint that a technical interpretation of the word levies would stand in the way of reduced taxes in 1973.” *Id.* at 555. Thus, despite governments relying on the expected higher tax revenues in 1973 for budgeting purposes, the Court held that the limits applied in 1973. *Id.*

“street utility fee,” finding that the “fee” was in fact “a property tax, and thus must be imposed in accordance with the requirements of law.”); *Love v. King County*, 181 Wash. 462 (1935) (holding that the county had no power to levy taxes beyond the limits prescribed by initiative); *Great N. R. Co. v. Stevens Co.*, 108 Wash. 238, 241 (1919) (striking down excessive tax by County in excess of their legislative grant of power, noting that “no decision has come to our notice which holds that an express statutory limitation upon the taxing power of such governing boards may under any circumstances be exceeded.”); *Great N. Ry. Co. v. Glover*, 194 Wash. 146, 158 (1938) (striking down tax, holding “the legislative branch has the power to determine the amount or the rate of a tax, and also the power to limit the amount or rate of taxation by a county, town, municipality or other local subdivision.”).

The Court should similarly affirm the Court of Appeals in this case, and protect taxpayers from unconsented and illegal tax increases premised on the County’s faulty reading of Prop 1. RCW 84.55.050 unequivocally prohibits the County’s methodology for calculating levies because the ballot title did not expressly authorize that methodology. The County would have the Court ignore the requirement that the ballot title “clearly” and “expressly” authorize the methodology, a requirement which is a strong protection for voters and taxpayers. The County instead argues

that the limitations of RCW 84.55.010 can be circumvented as long as some voters studied materials and may have understood the County's intent. The Court must reject this argument to water-down the Legislature's protection for taxpayers and voters.

B. The ballot title does not support the County's argument.

In 2013, voters narrowly approved the limited Prop. 1 levy, relying on assurances in the ballot title that all statutory limitations on lifting levy-lids would remain in force and protect them from subsequent tax increases. The last descriptive sentence of the Prop. 1 ballot title plainly reads: "Increases in the following eight years would be *subject to the limitations in chapter 84.55 RCW*, all as provided in Ordinance No. 17304." (emphasis added). Voters opened their ballots, read this description, and saw a clear restriction on King County's ability to increase the levy beyond the limitations of 84.55 RCW. *See Hoppe*, 82 Wn.2d at 553 ("words, unless otherwise defined, must be given their usual or ordinary meaning..."); *Black's Law Dictionary* 926 6th ed. 1990, defining "limitation" as "Restriction"; *Merriam Webster's Collegiate Dictionary* 674 10th ed. 2002, defining "limitation" as "1: an act or instance of limiting 2: The quality or state of being limited 3: something that limits: restraint ...". Indeed, nothing in the ballot title suggests — or

even hints — that the measure being voted upon contained any exceptions chapter 84.55 RCW.

The entire purpose of 84.55 RCW, as amended in 2008, was to provide protections to taxpayers and limit the delegated authority that tax districts, such as King County, retain. This is well documented in the legislative history of the statute and in the plain amendments expressing this purpose. *See* EPIC Supplemental Brief at 4-6. Following the amendment in 2008, property tax increases are subject to its strict restrictions. *See Horton*, 189 Wn.2d 696 at 700 (“While a levy lid lift allows the taxing district to increase its levy amount, it does not relieve the taxing district from any of the other statutory or constitutional limitations imposed on regular levies. RCW 84.55.050)). In this case, the Prop. 1 ballot title explicitly confirms this restriction in providing that increases would be “subject to [those] limitations.” *EPIC v. King County*, 200 Wn. App. 616, 623 (2017). “If that was intended by the drafters of the measure, it would have been simple to say so.” *Hoppe*, 82 Wn.2d at 555. The Court of Appeals got it right and should be affirmed.

The text of the statute makes it even clearer:

RCW 84.55.010 (1): Except as provided in this chapter, the levy for a taxing district *in any year* must be set so that the regular property taxes payable in the following year *do not exceed* the limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most

recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year by the increase in assessed value in that district resulting from [specified reasons for value increases].

...

RCW 84.55.050 (4): *If expressly stated*, a proposition placed before the voters [may]... (a) Use the dollar amount of a levy under subsection (1) of this section, or the dollar amount of the final levy under subsection (2) of this section, for the purpose of computing the limitations for subsequent levies provided for in this chapter...

(emphasis added). Subsection (4) confirms that, under normal circumstances, the amount of levied property taxes in a year where the levy lid was lifted cannot be used as one of the three years for the calculation described at subsection (1). Indeed, unless an exception is approved, the temporarily-inflated tax year (in this case 2013) cannot be used as a basis for calculating the levy lid in subsequent years. *Id.* And an exception can only be approved if it is “expressly stated” to the voters on their ballots. As the Court of Appeals correctly held, no such exception was “expressly stated” for Prop. 1. *EPIC*, 200 Wn. App. at 619.

The County cannot argue in good faith that the ballot title communicated to voters would lift the very limitations in chapter 84.55 RCW that the title itself assured would be followed. The County’s incongruous reading of the ballot title, if accepted by the Court, would

validate a classic “bait and switch,” contrary to public policy and contrary to an inherent sense of justice among those deceived by the promise that the levy “limitations” would control in subsequent years. When reasonable voters read their ballots, they understood that any subsequent increases would be capped by statutory limitations. Yet despite what the ballot actually said, once the title attracted a slim majority in the election, in year two (2014), the County abandoned its promise to property owners with a tax collection that exceeded the lid limitations. *See EPIC*, 200 Wn. App. at 631 (describing how the County collected taxes beginning in 2014).

The Court should stand up for voters and ensure we can trust our ballots. Allowing the County to get away with describing a proposition one way, and then implementing it another way, would offend voters’ sense of fairness. Such an outcome would likely leave voters jaded and less likely to vote for needed levies in the future — an outcome in no one’s interest. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“Confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy.”). The Court should affirm the Appellate Court, uphold the common-sense reading of the ballot title approved, and maintain voter trust in the initiative process.

C. The County’s attempt to re-write RCW 84.55.050 would harm taxpayers and voters and is refuted by WAC 458-19-045.

The County goes to great lengths to argue that nothing in RCW 84.55.050 imposes any requirements on the ballot title (the only language most voters will ever see). *See* King County Supplemental Brief at 12-18. In so doing, the County completely disregards the clear statutory purpose of the requirement – to ensure that voters give informed consent before a local government effectively converts a one year levy lid lift into a multi-year property tax increase. *See* EPIC Brief at 4-6 (explaining statutory history).

The County seems to think that this is just a controversy between itself and EPIC about a jail, while ignoring that voters and taxpayers are the real parties in interest. Taking this critical information out of the ballot title would completely eviscerate the statutory protections for voters and taxpayers, leaving only the opposing *campaigns* with sufficient information on the levy proposition. Virtually nobody except those involved in the campaigns read all of the background information and minutia about a levy ballot measure. *See Fed’n of Employees v. State*, 127 Wn. 2d 544, 554 (1995) (“We can safely assume that not all voters will read the text of the initiative or the explanatory statement. Some voters may cast their votes based on the ballot title as it appears on their

ballots.”) (cited with approval in *Wash. Citizens Action of Wash. v. State*, 162 Wn. 2d 142, 155 (2007)).

If the Court were to accept the County’s reading, then voters would not just be deprived of the information about the methodology in question. Rather, the voters would not be entitled to any information on the ballot. They wouldn’t even have a right to be told the proposed rate increase, since that too is required to be stated in the “ballot of the proposition.” RCW 84.55.050(1).

In addition, the Washington Administrative Code (WAC) likewise requires an express statement in the ballot title itself. WAC 458-19-045(1) (“explain[ing] the procedures for implementing a lid lift ballot measure”):

The text of a ballot title and measure for a single year lid lift must contain the following:...(b)(iii) Whether the dollar amount of the increases levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district’s levy base.

WAC 458-19-045(3) (emphasis added);⁸ *see also* WAC 458-19-045(4) (providing similar requirements for “a multiple year lid lift”). Under Washington’s rules of construction, use of the conjunctive word “and” clearly requires that both the ballot title *and* the measure itself must

⁸ The County asserts that “it is undisputed that Proposition 1 is a single-year levy lid lift under RCW 84.55.050(1) and intended to last nine years,” County Supplemental Brief, pp. 7-8, but as explained below, it appears to be a multiple-year levy lift.

contain the prescribed descriptions to lawfully lift the levy lid. *See State v. Bolar*, 129 Wn.2d 361, 366 (1996).

The County misconstrues the WAC's language as merely interpreting the unambiguous phrase "ballot of the proposition" from RCW 84.55.050(1), in an attempt to support its misguided interpretation of the statute. *See* County Supplemental Brief at 17 (claiming "neither the statute nor the WAC requires all voter information [in the ballot title]"). The County's strained reading cannot be squared with either the plain meaning of "ballot of the proposition,"⁹ its purpose and history, or the language of the administrative code.

D. A nine-year lid lift under RCW 84.55.050(2) is illegal.

On its face, Prop. 1, and particularly the County's interpretation thereof, is more like a multiple year lid lift under RCW 84.55.050(2), as opposed to a single lift under section (1). Because the nine-year duration of Prop. 1 exceeds the "six consecutive years" authorized by the statute, Prop. 1 is an illegal multi-year levy lid lift that should be invalidated.

RCW 84.55.050(2) states:

⁹ *Amici* agree with EPIC's explanation of the phrase "ballot of the proposition," which means the ballot applicable to the proposed measure. *See* EPIC Supplemental Brief at 9-13. And even if the meaning of these provisions was not so clear, any ambiguities "must be construed most strongly against the taxing power and in favor of the taxpayer." *Ski Acres v. Kittitas County*, 118 Wn. 2d 852, 857 (1992) (citing *Puyallup v. Pacific Northwest Bell Tel. Co.*, 98 Wn. 2d 443, 448 (1982)).

...a proposition placed before the voters under [section (2)] may authorize annual increases in levies for multiple consecutive years, up to six consecutive years, during which period each year's authorized maximum legal levy shall be used as the base upon which an increased levy limit for the succeeding year is computed, but the ballot proposition must state the dollar rate proposed only for the first year of the consecutive years...

RCW 84.55.050(2). This provision describes Prop. 1 precisely. Prop. 1 provides annual increases in levies for multiple consecutive years. *EPIC*, 200 Wn. App. at 623 (“...for nine years...”). Since the enactment of Prop. 1 in 2013, King County has used each year's maximum levy as the base upon which an increased levy limit for the succeeding year was computed. *Id* at 631 (“In 2013, the County applied the first year levy rate of \$0.07 per \$1,000 of assessed valuation to arrive at the highest lawful levy amount for 2013 under Prop. 1. Beginning in 2014, the County collected property taxes by applying the limit factor...to 2013's highest lawful levy amount...The levy under Prop. 1 has been and will continue to be similarly calculated until 2022...”). Yet, the ballot proposition stated the dollar rate proposed only for the first year of the nine consecutive years. *See EPIC*, 200 Wn. App. at 622 (“an additional regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013.”). As calculated, this is clearly a multi-year levy lid lift, subject to section (2).

Despite the six-year restriction at RCW 84.55.050(2), Prop. 1 unlawfully provided for nine consecutive years. *Id.* at 623. It is thus illegal on these grounds as well.

E. King County knows how to comply with the law.

King County's actions are particularly egregious because the County initially drafted a legally-compliant ballot title but then chose not to put it before the voters – possibly because it didn't poll well enough to secure a majority vote.

Yet, now that the Court of Appeals has held that chapter 84.55 means what it says, the County seems to have no trouble writing a proper ballot title. This Court can take notice that in the 2018 primary election, King County placed a levy lid lift measure before the voters. The ballot title for King County Proposition 1 stated:

King County

**Proposition No. 1
Regular Property Tax Levy Automated Fingerprint
Identification System Services**

The King County council has passed Ordinance 18674 concerning this proposition for the automated fingerprint identification system (AFIS) levy. This proposition would replace an expiring levy and fund continued operation of the regional AFIS Program to provide enhanced and accessible forensic fingerprint, palmprint and other technology and services to identify criminals and aid in the administration of justice. It would authorize an additional property tax for six years beginning with a 2018 rate of \$0.035 (3.5 cents) per \$1,000 of assessed valuation for collection in 2019. *The 2019*

levy amount would be the base for computing limitations under Chapter 84.55 RCW for collection in years 2020 through 2024. Should this proposition be:

Approved ____

Rejected ____ (emphasis added).¹⁰

If the Court authorizes local governments to ignore the requirements or chapter 84.55 RCW, it will send ballot titles on a “race to the bottom,” resulting in less certainty for voters, taxpayers and local governments, and presumably significantly more post-election litigation. If the statutory term “expressly” is given no meaning, then parties can argue endlessly about what level of disclosure is enough.

F. The County’s argument about “subsequent levies” would harm taxpayers.

The County’s argument also undermines the interest of taxpayers by arguing that the express-statement requirement of RCW 84.55.050(3) and (4)(a) only applies for permanent levies. Such an anti-taxpayer interpretation should be rejected because it undermines taxpayer protections and because it is grossly inconsistent with RCW 84.55.050.

The statute says:

(3) After a levy authorized pursuant to this section is made, the dollar amount of such levy may not be used for the purpose of

¹⁰ King County, Ballot Measures, August 7 2018 Primary and Special Election, King County Proposition No. 1 (Aug. 7, 2018), *available at* <https://info.kingcounty.gov/kcelections/Vote/contests/ballotmeasures.aspx?lang=en-US&cid=90120&groupname=County>.

computing the limitations for subsequent levies provided for in this chapter, unless the ballot proposition expressly states that the levy made under this section will be used for this purpose.

(4) If expressly stated, a proposition placed before the voters under subsection (1) or (2) of this section may:

(a) Use the dollar amount of a levy under subsection (1) of this section, or the dollar amount of the final levy under subsection (2) of this section, for the purpose of computing the limitations for subsequent levies provided for in this chapter;

(b) Limit the period for which the increased levy is to be made under (a) of this subsection;

RCW 84.55.050.

The Court must reject the County's argument that "subsequent levies" means only levies after 2022. This ignores the plain language of the statute in three ways.

First, subsection (3) prohibits using the "dollar amount of such levy" "for the "purpose of computing the limitation for subsequent levies provided under this chapter." This governs how a local government performs the calculation under RCW 84.55.010, which looks at the last three annual levies. It cannot be interpreted to refer to a nine year levy period and still have any meaning.

Second, subsection (4)(a) distinguishes between a one year levy and a multi-year levy and thus makes clear that for a single year levy, the subsequent levy is any levy after the first year. *See* RCW 84.55.050(4)(a) ("... use the dollar amount of a levy under subsection (1) of this section, or

the dollar amount of a final levy under subsection (2) of this section.”). Under the County’s argument, there would be no reason to distinguish between these two types of levies.

Finally, subsection (4)(b) states that, once you get express authority to use a lifted levy for computing subsequent levies, the government can add a time limit. Thus, it’s clear that subsections (3) and (4)(a) do not just apply to permanent levies. Rather, using that methodology (with voter permission) creates a permanent levy unless there is also a time limit added — like the nine year limit in Prop. 1.

G. The County’s argument that this is a ballot title appeal harms taxpayers and renders tax limitations unenforceable.

The County continues to push its misguided argument that this is actually a ballot title appeal, subject to the 10-day deadline in RCW 29A.36.090. *See* King County Supplemental Brief at 8-12. The County intentionally misses the point of EPIC’s suit. This is not a case where Appellees are “dissatisfied” with the ballot title; rather, the ballot title reflects the extent of the voters’ approval for increased taxation and must be enforced. *EPIC*, 200 Wn. App. at 627.

The absurdity of the County’s proposition is laid bare by the consequences of their faulty analysis. *See Hangartner v. City of Seattle*, 151 Wn.2d 439, 448 (2004) (“We will not interpret a statute in a manner

that leads to an absurd result”). If the Court accepts that this is a ballot title appeal, cognizable only if a suit is filed within ten days of drafting the title, there would be no opportunity for taxpayers to defend themselves from unlawful tax collections. Statutory tax limitations would be unenforceable.

This is not a remote hypothetical. Here, taxpayers had no objections to the Prop. 1 ballot title. It met the statutory requirements for a levy limited by chapter 84.55 RCW, and passed by a narrow margin. It was only after the County began levying taxes exceeding the voters’ approval that they had cause to sue. The County’s argument would deny justice to taxpayers being duped and lead to impunity when local governments exceed the levy authority granted to it by popular vote. To avoid this absurd result, the Court of Appeals correctly held that Appellees did not bring a ballot title appeal. “EPIC claims that the ballot title language approved by voters was insufficient under RCW 84.55.050 to allow the County to use the Prop. 1 levy authorized for the first year as a base to compute the amount of levies for subsequent years...” *EPIC*, 200 Wn. App. at 627. The Court should affirm.

IV. CONCLUSION

For the foregoing reasons *Amici* respectfully request the Court to affirm the Court of Appeals and protect taxpayers from unconsented and illegal tax burdens.

DATED this 31st day of August, 2018.

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Comments:

Attached please find the Motion for Leave and Memorandum of Amicus Curiae King County Taxpayers. The documents have been amended to include the correct cover page.

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