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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 BRIEFS

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I. INTRODUCTION.

The Court of Appeals correctly ruled that King County has collected property taxes above the levy limit imposed by RCW 84.55.010, and it is uncontested that King County continues to collect those taxes even since the Court of Appeals' decision. In other words, the Court of Appeals ruled that King County's ongoing level of taxation under King County Prop. 1 (2012) is illegal. This Court should affirm that ruling.

Two amici briefs have been submitted by organizations in which the County is a primary supporting member.¹ They primarily argue that the Court should allow the County to continue collecting the challenged taxes because nobody challenged the ballot title for Prop. 1 in 2012. The Court of Appeals correctly rejected this argument.

This case seeks to enforce the tax code and the constitutional prohibition on illegal taxes and to obtain relief that never could be achieved through a pre-election ballot title challenge, which is a limited

¹ Amici are the Washington State Association of Counties, the Washington State Association of Municipal Attorneys, and the Washington Association of Prosecuting Attorneys. The Court should take notice of the fact that all three 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. 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 Page 262. The Washington Association of Municipal Attorneys represents only counsel for local governments, including members of the County prosecutor's office. <http://www.wsama.org/members/membership.aspx>

statutory procedure that is decided in a week without opportunity for appeal, and which provides the singular remedy of amending the ballot title to conform to election laws. A judge hearing a pre-election ballot title appeal would never have been able to provide relief based upon the allegation that the County might, years later, illegally collect taxes in excess of the RCW 84.55.010 limit factor.

Nor could any citizen have predicted in 2012 that the County intended to use the amount of the 2013 levy increase to calculate levies in later years. The County's only statement on that subject appeared to deny that very intention. As the Court of Appeals held, chapter 84.55 RCW prohibits use of that tax-ballooning methodology without an express ballot title disclosure and voter approval. When the County pointedly amended the Prop. 1 ballot title to remove that express ballot title disclosure, the clear implication was that the County *chose not to* use that methodology. No judge could have added that disclosure back into the title based upon speculation that the County might someday change its decision.

Amici's ballot title appeal argument ignores that Article VII, Section 5 of the Washington Constitution and chapter 84.55 RCW are designed to protect *taxpayers*, whereas the ballot title appeal process is a forum for resolving disputes between election *campaigns*. Without any public notice of ballot title issuance, only campaigns know when a ballot

title is issued and can file an appeal within the 10-day appeal window.

Nothing that a campaign did or did not do in 2012 (nor, as in this case, the lack of an organized opposition campaign) can deprive future taxpayers of their right to be free from illegal taxation. Indeed, because Article VII, Sec. 5 prohibits collection of illegal taxes, no statutory process could deprive the Court of jurisdiction over a challenge to ongoing tax collections. Our appellate courts routinely rule on the legality of taxes and require refunds of illegal taxes, just as the Court of Appeals did here.

It is beyond dispute that King County *continues* to collect the taxes in question and plans to do so for several more years, despite taxpayer objections, so appellate courts inevitably needed to resolve this dispute. Indeed, Judge Ronald Leighton of the Western District of Washington has stayed a taxpayer refund action so that this Court can rule on whether the County's taxes comply with RCW 84.55.010.² *Appendix A*. Amici cannot reasonably claim that a failure to engage a 2012 election procedure allows King County to continue to collect and retain taxes in excess of the RCW 84.55.010 limit factor.

Amici make no arguments on the merits that justify reversal of the Court of Appeals. This Court should affirm.

A. The Court of Appeals correctly ruled that this is a case about

² *Pam Johnson v. King County*, West. Dist. Wa. Case No. 3:17-cv-05862-RBL.

the County's collection of property taxes in excess of the levy limits of RCW 84.55.010, which could not have been resolved through a pre-election ballot title appeal.

The Court of Appeals recognized that this case challenges the County's over-taxation in violation of the RCW Chapter 84.55, and in particular in excess of the RCW 84.55.010 limit factor. The Complaint alleged that "[a]fter 2013, King County was required to revert to the pre-election rate and could only increase property taxes pursuant to the statutory 'limit factor' of RCW 84.55. King County failed to reduce the rate as required and continues to impose the higher rate on King County property owners illegally." Complaint, at 3. Plaintiff asked the Court to declare the excess taxes illegal, enjoin the collection of the illegal taxes, provide an accounting, and require tax refunds to all taxpayers. Complaint, p. 3, 16. Similarly, the Motion for Summary Judgment that was ultimately granted by the Court of Appeals clearly sought to enforce the tax code not retroactively amend the ballot title. *Appendix B*.

As discussed in EPIC's Supplemental Brief, the Court of Appeals' ruling 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. *See* EPIC Supplemental Brief at 19. A pre-election ballot title appeal is a statutory *election procedure* for improving the ballot title; it is not a lawsuit and certainly no mechanism

for enforcing substantive laws. There is no filing fee; the entire case must be resolved in one week and without any evidentiary hearing; and the procedure's singular remedy is amending the ballot title to comply with the *election* code. RCW 29A.36.090. Equally important, the superior court issues a final decision, without the opportunity for appeal. *Id.*

Kreidler v. Eikenberry, 111 Wn.2d 828, 766 P.2d 438 (1989), does not support Amici's argument that a ballot title appeal could provide greater relief than amending the title to conform to election laws. That case predated RCW 29A.36.090, which explicitly restricts the authority of the superior court judge to the singular remedy of amending the title to conform to "this [election law] chapter." The statute necessarily limits the scope of relief to that ephemeral election law issue because of the lack of appeal. Critical and substantive tax questions simply cannot be resolved on a week schedule without opportunity for appeal. *Kreidler* confirms that a pre-election ballot title appeal is a limited statutory procedure which is beyond the review of the appellate courts.

Amici's ballot title appeal argument ignores that Article VII, Section 5 of the Washington Constitution and chapter 84.55 RCW are designed to protect *taxpayers*, whereas the ballot title appeal process is a forum for the *election campaigns*.

“In 1997, the voters approved Referendum 47, amending chapter 84.55 RCW. ... [T]he referendum imposed a “limit factor” on property tax increases. ... RCW 84.55.050’s voter approval mechanism could be used to increase property taxes above the limit factor” *Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142 *, 171 P.3d 486 (2007). The limit factor was tightened by subsequent citizen initiatives. These laws are designed to benefit all taxpayers.

In contrast, the pre-election ballot title appeal process is designed to create a fair campaign. *Ballot Title for Initiative 333 v. Gorton*, 88 Wn.2d 192, 558 P.2d 248 (1977). Indeed, the original statute, RCW 29.79.060, allowed only the “proposers” to bring a statutory ballot title appeal. *Id.* at 194. This Court determined that this restriction violated equal protection and ruled that the procedure must also be available for “opponents” of the ballot measure. *Id.* at 196.

The court in that case also recognized that ballot measure proponents are “a more identifiable group than are opponents,” *Id.*, which also explains why many times there will not be a group that learns of the ballot title issuance within the 10-day appeal window. Notably, the County was not required to notify anyone but itself (the proponent) when the ballot title was issued, setting off the appeal window. RCW 29A.36.080 (“auditor shall provide notice of the exact language of the

ballot title to the persons proposing the measure, the county or municipality, and to any other person requesting a copy...”)

Without any public notice of ballot title issuance, only campaigns know when a ballot title is issued and can file an appeal within the 10-day appeal window. In 2012, there was no active opposition campaign to Prop. 1 so it is unlikely that anybody except the County had notice of the ballot title in the 10 day window. Even if somebody noticed, there was no way to discern that the County intended to years later impose taxes in excess of the limit factor.³

The fact that there was no well funded 2012 campaign against Prop. 1, and therefore was no ballot title challenge, cannot deprive taxpayers of their constitutional and statutory right to be free from illegal taxation. *See* Wa. Const. Art. VII, § 5; RCW 84.55.010. Nor could a statute deprive today’s taxpayers (including EPIC’s members) of their *constitutional right* to be free from illegal taxes.

As this Court is well aware, Washington appellate courts regularly review the legality of taxes and order refunds where appropriate. *E.g.*,

³ Amici apparently argue that EPIC should have been able to foresee the possibility that the County would in the future employ the impermissible methodology and should have brought a ballot title appeal to conform the ballot title and this hypothetical future. Even if EPIC existed in 2012 (which it did not), there way no way to foresee or prove the County’s intent to ignore the statutory limit factor in the future. The Ordinance’s only reference to the County’s proposed methodology was a sentence in the proposed ballot title, but the County’s lawyers deleted this sentence from the final ballot title. The clear implication was that the County was not planning to use the methodology in question.

Estate of Hemphill v. Revenue, 153 Wn.2d 544 (2005); *Hillis Homes v. Snohomish County*, 97 Wn.2d 804 (1982); *Hogue v. Port of Seattle*, 54 Wn.2d 799 (1959); *In re Estate of Bracken*, 175 Wn.2d 549 (2012); *Lane v. City of Seattle*, 164 Wn.2d 875 (2008); *Harbour Village Apts. v. City of Mukilteo*, 139 Wn.2d 604 (1999); *King County v. Algona*, 101 Wn.2d 789 (1984); *Power, Inc. v. Huntley*, 39 Wn.2d 191 (1951); *Okeson v. City of Seattle*, 150 Wn.2d 540 (2003); *Prisk v. City of Poulsbo*, 46 Wn. App. 793, 732 P.2d 1013 (1987).

The Court of Appeals’ correctly rejected the argument that a County can illegally levy taxes for years, simply because nobody chose to challenge the Prop. 1 ballot title.

B. Under chapter 84.55 RCW, the ballot title governs the extent of the voters’ approval for taxation above the limit factor.

Amici acknowledge that their ballot title appeal argument would be inapplicable, and a post-election legal contest would be available, if the measure “continues in force after the election.” WAPA Brief, at 8. But this is precisely the situation under chapter 84.55, which allows the limit factor to be exceeded only with certain express ballot title disclosures and voter approval. The presence or absence of the express disclosure and voter approval govern how much taxes can be collected and therefore certainly “continues in force after the election.” Indeed, the County

continues to collect taxes under the measure to this day.

C. A statute of limitations defense could not prevent the Court of Appeals from ruling on a challenge to an illegal tax that is ongoing and will continue for years.

King County never raised any statute of limitations defense and it is not an issue in this appeal. *See* Petition for Review. In any event, a statute of limitations cannot completely deprive the court of jurisdiction to consider the legality of an *ongoing* practice of taxation.

The Court of Appeals' Opinion's failure to address such limitations does not mean that there is a need for Supreme Court guidance. The Washington State 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.⁴ For example, RCW 84.52.085 *requires* tax refunds when "an error has occurred in the levy of property taxes that has caused all taxpayers within a taxing district, other than the state, to pay an incorrect amount of property tax," but limits such refunds to three years preceding the year in which the error was discovered. At some point in the future, when this dispute reaches a remedy stage, such issues will be

⁴ *See e.g.*, WAC chapter 458-18; 1984 AGO No. 21.

litigated.

The critical point here is that the County is using an illegal methodology to calculate the Proposition 1 levy *every year* (until 2022).

No statute of limitations can therefore prevent review.

D. The Legislature chose to require express disclosures in the ballot title as a prerequisite for raising taxes above the statutory limit factor.

Amici argue that the Court of Appeals erred by giving weight to the ballot title and failing to address what Amici says are discrepancies between the ballot title and the Ordinance. However, it was the Legislature, not the Court of Appeals, which required an express ballot title disclosure and voter approval before using the otherwise prohibited methodology to use a “one year levy lid lift” to increase taxes for multiple years.

The Legislature had this authority. “Washington's property tax system is regulated under constitutional and statutory provisions.” *City of Spokane v. Horton*, 189 Wn.2d 696, 700, 406 P.3d 638 (2017). “[A] local jurisdiction's taxing authority is derived from legislative grant specified by the Washington Constitution.” *Id.* at 702. “One restriction is the ability to increase regular levies from year to year. RCW 84.55.010.” *Id.* While the Legislature could have outlawed the tax-ballooning methodology altogether, it instead struck a balance by allowing its use only with express

ballot title disclosure and voter approval.

EPIC's previous briefing has shown that the express disclosure requirement applies to ballot titles placed before voters, not to an ordinance or other document that most voters will never see. *See* Supplemental Brief at 8 *et seq.* As described in that briefing, the language and history of the statute leaves no question that the required disclosures must be placed in the ballot title.

This is especially clear because the disclosure requirement applies to all of the critical levy details, including the proposed rate, purpose, and duration of the levy increase. RCW 84.55.050(1) ("ballot of the proposition shall state the dollar rate proposed and shall clearly state the conditions, if any, which are applicable under subsection (4) of this section."). If the Court were to hold that this provision does not require a ballot title disclosure, then the voters would have no right to any critical information on the ballot. Voters would not even have the right to learn the proposed rate increase. This would make a mockery of the obvious legislative purpose of requiring *informed* voter approval before exceeding the statutory limit factor.

Amici rely upon *Sane Transit v. Sound Transit*, 151 Wn.2d 60, 85 P.3d 346 (2004) to argue that the express disclosure can be made in the ordinance, not in the ballot title. However *Sane Transit* was about the

expenditure of taxes, not their collection and therefore provides no support to the County's argument.

First, the Legislature adopted the limit factors of chapter 84.55 RCW, requiring express ballot title disclosures and voter approval to exceed those limits. In contrast, *judges* adopted the test under Article VII, Section 5, which requires that "every law imposing a tax shall state distinctly the object of the same to which only it shall be applied." Const. Art. VII, § 5. The constitution requires that the "object" of the tax be determined from the "law imposing a tax," which is the ordinance. *Sane Transit*, 151 at 72-73.

Second, because this case involves the collection of taxes, any ambiguity in RCW 84.55.010 and .050 "must be construed most strongly against the taxing power and in favor of the taxpayer." *Ski Acres v. Kittitas Cnty.*, 118 Wn.2d 852, 857, 827 P.2d 1000 (1992). However, that rule does not apply in cases like *Sane Transit* which only involve challenges to "expenditure of taxes that already have been collected." *Ley v. Clark County Pub. Transp. Benefit Area*, 197 Wn. App. 17, 25, 386 P.3d 1128 (2016).

Only the first clause of Article VII, Section 5 is at issue in this case: "No tax shall be levied except in pursuance of law." Const. Art. VII, § 5. For that analysis, the court starts with the statute authorizing the tax,

which in this case is chapter 84.55 RCW. The Constitution does not allow the court to ignore the Legislature's conditions for imposing a tax, which must be construed in favor of taxpayers and against King County.

1. Even the ordinance lacked a clear and express disclosure.

RCW 84.55.050 required a "clear" and "express" disclosure in the ballot title, so the improper taxes could not be authorized by a vague statement in the ordinance. But even the ordinance lacked the "clear" and "express" disclosure required by RCW 84.55.050.

First, Amici argues that express disclosure requirement could be satisfied by the *suggested ballot title* contained in the Ordinance. However, even Amici acknowledge that the County Council had no authority to write a ballot title. *See* WAPA Brief, at 2 *et seq.* The *suggested* ballot title, like other fluff, was not part of the ordinance. "A law is a rule of action.... [A] preface or preamble stating the motives and inducement to the making of [the law] . . . is without force in a legislative sense It is no part of the law." *Pierce County v. State*, 150 Wn.2d 422, 435, 78 P.3d 640 (2003). Moreover, nobody could reasonably rely upon that one sentence after it was pointedly deleted by the Prosecuting Attorney, the person who was actually authorized to draft the title.

The prosecutor's edits to the ballot title deleted the one sentence

that Amici point to as evidence of the Ordinance’s intent to use the otherwise prohibited methodology. The deleted sentence read: “The 2013 levy amount would become the base upon which levy increases would be computed in each of the eight succeeding years...” In light of the express disclosure requirements of RCW 84.55.050, the prosecutor’s deletion of this express disclosure evidenced the County’s intent to *not* use that levy calculation method.

Nor do vague references of a nine-year levy constitute “clear” and “express” disclosure that the County intended to use the dollar amount of the 2013 levy to compute levy limits in 2014 and later years. The Ordinance made indecipherably vague and inconsistent statements about how the levy would be calculated. At one place, the ordinance even suggested that the project would be funded by a “nine-year \$0.07 property tax levy,” WSAC Brief, at 9, which is inconsistent with the suggested ballot title and not how the County has implemented the levy.⁵

What voters thought about the vague nine-year reference is unclear (and legally irrelevant). Some voters likely believed they were earmarking nine years of levy increases to the project, while still not

⁵ Had the County chosen to simply increase the rate each year by the same \$0.07 amount, and disclosed this in the title, then it would not have triggered the need for the express disclosure at issue in this case. That would be like the example shown in the Department of Revenue’s first sample ballot title, which did not require the express disclosure. *See Appendix C.*

authorizing the otherwise prohibited methodology. Regardless of which methodology was used, levies in the nine-year period would increase as compared with the 2012 levy in effect at the time of the election. For that reason, vague references to a nine-year levy do not “clearly” and “expressly” disclose the methodology to be used to calculate levy limits.

E. Local governments cannot collect illegal taxes simply because they need the money.

Amici are concerned about the limited resources available to their local government members and that King County is relying upon the taxes it collected. However, it is worth remembering that this tax challenge was brought before King County began spending the challenged taxes and before it broke ground on its project.⁶ EPIC sought an injunction but the Court of Appeals denied that motion after the County argued that if it lost the case it could backfill the revenue from other sources. Given this history, the County and Amici cannot claim undue hardship from the Court of Appeals’ decision to enforce the tax laws.

A local government loses revenue every time the appellate courts invalidate local taxes, but this is not a factor in the Court’s decision. The Legislature has set stringent limits on the collection of local property taxes, but it has struck a balance by allowing additional tax collections

⁶ King County had spent 2013 tax revenues on project planning, but those revenues are not being challenged. The County had not begun construction on the project.

with express ballot title disclosure and voter approval. Having not met such conditions, the County cannot continue to collect and retain property taxes exceeding the RCW 84.55.010 limit factor.

F. Amici misrepresent the record in alleging the County’s reliance on the Department of Revenue.

Amici spend four pages alleging the County relied on the Department of Revenue (“DOR”) in drafting its ballot title.⁷ In fact, the record shows only that DOR issued a document that contained several sample ballot titles. *See* County Petition for Review, p. 14, attached as *Appendix C*. The County did not and could not rely upon those titles.

First, DOR explicitly tells jurisdictions that such “material is intended for general information purposes and does not alter or supersede the Washington State Constitution, the Revised Code of Washington, or any administrative regulations or rulings issued by the Department of Revenue.”⁸ The record shows no reasonable reliance on DOR and reliance would be legally irrelevant in any event.

Second, neither of the DOR’s sample ballot titles are directly on point,⁹ but on balance they definitely support the Court of Appeals’

⁷ Amici cites to page 14 of the County’s Petition as evidence of reliance on DOR. That document only alleges that other jurisdictions rely on DOR written guidance.

⁸ <https://dor.wa.gov/get-form-or-publication/ballot-measure-requirements>

⁹ The first sample involved a proposal to raise property taxes rates by the same amount every year for a set period. Because it does not use the dollar amount of the lifted levy to set future levy limits, no express ballot title disclosure is required. The second sample

position. DOR’s sample titles show that when the jurisdiction proposes to use the otherwise prohibited methodology, the “express” disclosure must be made *in the ballot title*. DOR suggests stating the rate for the single lid lift year and then disclose that “[t]hereafter, such levy amount would be used to compute limitations for subsequent years as allowed by chapter 84.55 RCW.” *Id.*

The fact that the sample title involved a permanent levy increase is not relevant. Using the revenue from the lid lift to compute subsequent years’ levy limits always would permanently increase the limit factor, unless the local government also chooses to add a limited duration under RCW 84.55.050(4)(b). In recent years, King County’s ballot titles have done just that: providing the express disclosure in question and also limited the duration of the tax increase. For example, the ballot title for King County’s lid lift in August, 2018, stated that the County proposed a rate increase of “\$0.035 (3.5 cents) per \$1,000 of assessed valuation for collection in 2019” and that “*The 2019 levy amount would be the base for computing limitations under Chapter 84.55 RCW for collections in year 2020 through 2024.*” *Appendix D* (emphasis added).

This is consistent with the chart that the Municipal Research

does use that methodology, so triggers the express disclosure requirement, but because it does not include a time limit it permanently increases the levy limit.

Services Corporation (“MRSC”) refers local governments to when setting levies after the conclusion of a single-year lid lift:

AFTER EXPIRATION OF ONE YEAR, amount of increased levy pursuant to the lid lift proposition is used as “base” to calculate levy lid going forward ONLY IF stated in ballot proposition.

- If stated in ballot title, use new “base” multiplied by statutory “Limit Factor” to calculate maximum legal levy (MLL) going forward after one-year period.
- If not stated in ballot title, MLL calculated as if no levy lid lift was approved. (Reverts to prior levy levels.)

Optional: May restrict length of time or purpose for which the lid lift will be carried forward after the one-year period.

Appendix E. See Order on Motions for Judicial Notice, July 31, 2018.

MRSC’s cited authority, of which this Court has agreed to take judicial notice, could not be clearer. Unless the express disclosure was made “in ballot title,” the County needed to calculate the maximum levy amount in 2014 “as if no levy lid lift was approved.” If the express ballot title disclosure had been made, the County could have calculated the limit factor based upon the 2013 revenue, and the County would have had the option of limiting the number of years of tax increases.

The DOR sample ballots, the County’s recent levy proposals, and the MRSC authority all undermine Amici’s arguments.

G. It is Amici and the County’s argument that would create absurd results.

Amici argue that it would create “absurd results” to interpret RCW 84.55.050 to require all of the disclosures in the ballot title. However, because the statute is clear, there is no room for judicial construction of RCW 84.55.050. *State v. Armendariz*, 160 Wn.2d 106, 110 (2007) (“If the plain language of the statute is unambiguous, then this court’s inquiry is at an end”). If there were an ambiguity, the statutes “must be construed most strongly against the taxing power and in favor of the taxpayer.” *Ski Acres*, 118 Wn.2d at 857. It is not absurd to enforce the protections and disclosures that the Legislature afforded to voters. And because the statute mandates the specific disclosure, the County could exceed the general 75-word ballot title limit. RCW 29A.36.071. In fact, the Prop. 1 ballot title placed before voters exceeded 75 words.

The Legislature’s decision also 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. 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. The Legislature 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).

Amici argue it is absurd to require all of the information in the ballot title, but RCW 84.55.010(1) applies to each of the disclosure requirements. Thus, Amici and the County's interpretation would guarantee voters *none* of this critical information. That certainly is not construing the statute "most strongly against the taxpayer and in favor of the taxpayer." *Ski Acres*, 118 Wn.2d at 857.

II. CONCLUSION.

The Opinion follows well-established precedent, enforces plain statutory language, and should be affirmed.

DATED this 2nd day of October, 2018.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PAM JOHNSON,)	
)	Case No. 3:17-cv-05862-RBL
Plaintiff,)	
v.)	STIPULATED MOTION FOR STAY OF
)	PROCEEDINGS AND ORDER
KING COUNTY.,)	
)	
Defendant.)	
_____)	

I. RELIEF REQUESTED

Plaintiff Pam Johnson and defendant King County jointly move the Court for an order staying all proceedings pending the Washington State Supreme Court’s decision in the related matter of *End Prison Industrial Complex v. King County*, 200 Wn.App. 616, 402 P.3d 918 (2017) (“EPIC”).

II. INTRODUCTION AND STATEMENT OF FACTS

Pam Johnson filed this class action on behalf of herself and all King County taxpayers who paid additional property taxes pursuant to King County Ordinance 17304, which was

1 adopted by voters in Proposition 1. The EPIC opinion raises substantial doubt about the amount
2 of property taxes that the County may collect pursuant to Proposition 1. After this case was filed,
3 King County petitioned the Washington State Supreme Court to review the Court of Appeals'
4 decision in *EPIC*.

5 6 **III. STATEMENT IN SUPPORT**

7 The Court has the power to stay proceedings to control its docket, to conserve judicial
8 resources, and to ensure “economy of time and effort for itself, for counsel, and for litigants.”
9 *Landis v. North Amer. Co.*, 299 U.S. 248, 254 (1936). In deciding whether to grant a stay, courts
10 consider whether damage may result from a stay, the hardship or inequity a party may suffer
11 without a stay, and whether a stay would simplify or complicate the legal or factual issues
12 presented in the case. *Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059,
13 1066 (9th Cir. 2007). *See also Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005).

14
15 Plaintiffs' claims in this case rely upon the Court of Appeals' decision in *EPIC*. *See*
16 Complaint at ¶¶ 16, 54 (DE 1-1). On December 13, 2017, King County petitioned the
17 Washington State Supreme Court to review that decision. The decision of the Supreme Court on
18 whether to accept review and, if so, whether to affirm or reverse, will be central to litigation of
19 this matter.
20

21
22 In light of this uncertainty, the parties agree that a stay of all proceedings in this case
23 pending a decision of the State Supreme Court will best serve the interests of judicial economy,
24 reduce the risk of conflicting decisions, and avoid hardships on both parties. Without a stay, the
25 Court and the parties would be forced litigate a matter that could be rendered irrelevant by the
26 outcome of King County's pending petition for review. Accordingly, the requested stay will
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28 JOINT MOTION FOR STAY
29 AND ORDER
Case No. 3:17-cv-05862-RBL

1 conserve judicial resources and ensure “economy of time and effort for itself, for counsel, and
2 for litigants.” *Landis* , 299 U.S. at 254.

3 **IV. CONCLUSION**

4 In light of the foregoing, the parties jointly request that the Court stay all proceedings in
5 this case pending the Washington State Supreme Court’s decision in the related matter of *EPIC v.*
6 *King County, Washington Supreme Court Cause No. 95307-4*. It would be appropriate for this
7 matter to proceed either (1) after the Washington State Supreme Court denies review, or (2) if
8 review is accepted, after the court issues a decision on the merits. In either event, the
9 Washington State Supreme Court will issue a mandate indicating its disposition of the matter and
10 the parties will promptly inform the court that the stay should be lifted.
11
12

13
14 RESPECTFULLY SUBMITTED, this 12th day of January, 2018.

15
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17 /s/ Claire E. Tonry
18 Knoll Lowney, WSBA 23457
19 Claire E. Tonry, WSBA No. 44497
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26 *Attorneys for Pam Johnson*
27

28 JOINT MOTION FOR STAY
29 AND ORDER
Case No. 3:17-cv-05862-RBL

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7 Fax: (206) 296-8819
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9 *Attorneys for Defendant King County*

10
11 ORDER

12 The Court GRANTS the parties' stipulated motion. This matter is STAYED pending the
13 issuance of a decision by the Washington State Supreme Court in *EPIC v. King County*. The
14 parties shall immediately inform the court and the stay shall be lifted once the Washington State
15 Supreme Court issues its mandate from this case. Should one or both parties seek to lift the stay
16 at an earlier time, they may file a motion with this Court.
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19 Dated this 17th day of January, 2018.

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22 Ronald B. Leighton
23 United States District Judge
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28 JOINT MOTION FOR STAY
29 AND ORDER
Case No. 3:17-cv-05862-RBL

July 29 2016 3:06 PM

KEVIN STOCK
COUNTY CLERK
NO: 16-2-07355-2

Appendix B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

END PRISON INDUSTRIAL COMPLEX,)	
)	No. 16-2-07355-2
Plaintiff,)	
v.)	
)	
KING COUNTY,)	PLAINTIFF'S MOTION FOR PARTIAL
)	SUMMARY JUDGMENT
Defendant.)	
_____)	

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I. RELIEF REQUESTED

Plaintiff, End Prison Industrial Complex (“EPIC” or “Plaintiff”), by and through its attorneys, hereby moves this court pursuant to Civil Rule 56 for partial summary judgment. Specifically, EPIC asks the Court to declare that the defendant, King County, has collected and is continuing to collect property taxes in excess of the amount authorized by voters in a 2012 levy lid lift vote.

II. INTRODUCTION AND SUMMARY

This case will address several issues relating to King County’s proposal to build a new youth jail, courthouse, and parking garage in Seattle, including the sufficiency of the 2012 “levy-lid-lift” election that King County is using to fund the project. Most of those issues will turn on disputed issues of fact making them inappropriate for summary judgment.

This motion addresses the one issue in the case that can be determined as a matter of law: Whether the ballot title presented to voters on King County Proposition One (“Prop. 1”) in 2012 “expressly state[d]” that the 2013 levy amount would be used to compute the limitation for subsequent levies, as required by RCW 84.55.050(3) and (4). Decl. of Claire Tonry (“Tonry Decl.”), Ex. 1 (RCW 84.55.050).

This is a simple issue that must be resolved in EPIC’s favor as a matter of law. The State Legislature has provided two methods of a “lid lift” to raise additional property taxes: a single year lid lift under RCW 84.55.050(1) and a multi-year lid lift (up to six years) under RCW 84.55.050(2). In 2012, King County asked the voters to approve a single year levy lid lift, to “authorize King County to levy an additional regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013.” Tonry Decl., Ex. 2 (August 7, 2012 King County Ballot Measure Proposition 1 (“Prop. 1”)).

1 King County has interpreted the election as authorizing it to collect that increased amount
2 for *nine years*, and has been unlawfully collecting these excess taxes since 2014. The County
3 could have sought such a tax increase from voters – and it knew how to do so – but it did not.
4 RCW 84.55.050 *repeatedly and explicitly prohibits* a levy lid lift from carrying forward into
5 future years except where the ballot title “expressly states” that it will.
6

7 It is beyond dispute that the 2012 ballot title provided no such express statement. Few if
8 any voters would interpret the 2012 ballot as authorizing the 2013 levy lid lift amount to carry
9 forward to future years. King County may argue that the ballot title was ambiguous and some
10 voters may have shared its strained interpretation, but ambiguity does not meet the statutory
11 requirement of an “express statement.” RCW 84.55.050.
12

13 There is no factual dispute to prevent summary judgment from being issued to EPIC.
14 The Court should declare that Prop. 1 did not expressly state that the 2013 levy would be used to
15 calculate subsequent levies and, therefore, King County has collected and is continuing to collect
16 property taxes in excess of the amount authorized by voters under Prop. 1.
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18 III. STATEMENT OF FACTS

19 King County Council Ordinance No. 17304, enacted on April 16, 2012, placed Prop. 1
20 before the voters. *See* Tonry Decl. Ex. 3. Section 3 of that Ordinance stated that “the county
21 council shall submit to the qualified electors of the county a proposition authorizing a regular
22 property tax levy in excess of the levy limitation contained in chapter 84.55 RCW for nine
23 consecutive years, commencing in 2012, with collections beginning in 2013, at a rate in the first
24 year not to [exceed] \$0.07 per one thousand [dollars] of assessed value.” *Id.* at § 3.¹
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28 ¹ The title of Ordinance 17304 called for an election on “a proposition authorizing a property tax
29 levy in excess of the levy limitation contained in chapter 84.55 RCW for a consecutive nine year
period at first year rate of not more than \$0.07 per one thousand dollars of assessed valuation”.

1 Ordinance 17304 proposed a ballot title which, consistent with RCW 84.55.050, would
2 have “expressly stated” that the 2013 levy amount would be used to calculate future levies –
3 effectively extending the one year increase to last nine years. The ordinance proposed a title that
4 would have read, in pertinent part, “This proposition ... would authorize King County to levy an
5 additional regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013.
6 *The 2013 levy amount would become the base upon which levy increases would be computed*
7 *for each of the eight succeeding years.” Id. at § 7 (emphasis added).*

8
9 By the time the ballot title was presented to the voters, it had been altered from that
10 proposed in Ordinance 17304. The title presented to voters stated:

11
12 **Children and Family Services Center Capital Levy**

13 The King County council passed Ordinance No. 17304 concerning a
14 replacement facility for juvenile justice and family law services. This
15 proposition would authorize King County to levy an additional property tax
16 for nine years to fund capital costs to replace the Children and Family
17 Justice Center, which serves the justice needs of children and families. **It**
18 **would authorize King County to levy an additional regular property**
19 **tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013.**
20 **Increases in the following eight years would be subject to the**
21 **limitations in chapter 84.55 RCW, all as provided in Ordinance No.**
22 **17304, Should this proposition be:**

- 23 ○ Approved
- 24 ○ Rejected.

25 Tony Decl. Ex. 2 (emphasis added).

26 The ballot title proposed in Ordinance 17304 describes a fundamentally different
27 property tax levy than that which was ultimately placed before voters. The Ordinance’s
28 proposed title, by using the mandatory express statement, would have legally extended the \$0.07
29 rate for nine years. In contrast, and as described below, the ballot title placed before the voters

1 authorized the \$0.07 rate for only the year 2013, after which the rate was automatically reduced
2 to the 2012 levy amount adjusted by the 1% limit factor.

3 Prop. 1 was placed on the August 2012 primary election ballot. Less than 39% of voters
4 participated.² Prop. 1 won in a close race, with the support of only 20% of registered voters.³

5 It is undisputed that King County has implemented the Prop. 1 levy as if it authorized the
6 \$0.07 rate for the entire nine year period. *See, e.g.*, Decl. of Hazel Gantz in Support of Def.’s
7 Mot. For Summ. J., ¶¶ 8, 12-13. For example, King County’s 2014 Comprehensive Annual
8 Financial Report, dated June 22, 2015 (“2014 CAFR”), acknowledged that King County had
9 implemented the levy as if it allowed the \$0.07 rate for the entire nine years. It stated “The
10 Children and Family Justice Center is a nine-year temporary levy lid lift approved by the voters
11 on August 7, 2012. In the first year, 2013, the levy rate was \$0.07000 per thousand. The rate for
12 2014 is \$0.06597 per thousand assessed value.” Tonry Decl. Ex. 4; Compl., ¶ 18; Answer, ¶ 18.

13 **IV. ISSUE PRESENTED**

14 1. Did the ballot title for Prop. 1 “expressly state” that the dollar amount of the 2013
15 levy would be used to compute subsequent levy amounts, as required under RCW 84.55.050?

16 2. If the ballot title for Prop. 1 did not contain this required express statement, has
17 King County unlawfully collected excess property taxes?

18 **V. EVIDENCE RELIED UPON**

19 This motion is based upon the Complaint, the pleadings and papers filed by King County,
20 the declaration of Claire Tonry, and the documents on file in this case.
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28 ² <http://your.kingcounty.gov/elections/2012aug-primary/results-all.aspx>

29 ³ *Id.*

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VI. LEGAL STANDARDS AND AUTHORITY

A. Summary Judgment.

Summary judgment is appropriate if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. C.R. 56; *Magula v. Benton Franklin Title Co., Inc.*, 131 Wn.2d 171, 182 (1997). Courts grant such a motion “if reasonable persons could reach but one conclusion.” *Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550, 558 (2001).

B. The Property Tax Limit Factor of RCW Chapter 84.55.

This case involves a “levy lid lift,” which is a procedure used to raise property taxes above the “limit factor” established by Chapter 84.55 RCW. This “limit factor” has been repeatedly tightened by the voters and the legislature, thereby restricting the property taxes of local government. Prior to 1997, “generally, the statute limited property tax increases to a levy of six percent above the total amount levied in the highest of the three previous years.” *Wash. Citizens Action v. State.*, 162 Wn.2d 142, 146 (2007). In 1997, voters approved Referendum 47, amending chapter 84.55 RCW. “Referendum 47 limited the levy for a taxing district” by pegging the limit factor to the lesser of 106% or inflation for most districts. *Id.* at 146-147.

In 2000, voters adopted Initiative 722 which further reduced the limit factor to the lesser of 101% or inflation for most districts. *Id.* at 147-148. The Supreme Court invalidated Initiative 722 in *Washington Citizens Action*, causing then-Governor Gregoire to call a special session at which the State Legislature reenacted the invalidated amendments to the limit factor. 2007 Wash. Sess. Laws 1 (Special Sess.) (Tonry Decl., Ex. 5).

1 The “limit factor” applicable to most taxing districts, including King County, generally
2 limits property tax levies to 101% of the district’s previous levy, allowing the levy to increase by
3 1% annually.⁴

4 **C. Levy Lid Lift Options.**

5 Legislation tightening the “limit factor” has typically been advanced as a means to give
6 voters more control over property taxes, since voters can authorize a property tax levy in excess
7 of the limit factor through a “levy lid lift.” *See* RCW 84.55.050. *See Wash. Citizens Action*, 162
8 Wn.2d at 147 (noting that “Referendum 47 ... emphasized that [RCW] 84.55.050’s voter
9 approval mechanism could be used to increase property taxes above the limit factor.”) “The
10 levy limit may be exceeded when authorized by a majority of voters voting on a proposition to
11 ‘lift the lid’ of the levy limit in accordance with RCW 84.55.050 The requirements for the
12 text of a ballot title and measure differ depending on whether the levy limit will be exceeded for
13 a single year or multiple years, up to six consecutive years” WAC 458-19-045.

14 RCW 84.55.050 provides two lid lift mechanisms:

15 (1) King County admits that Prop. 1 proceeded under the “single year lid lift” option
16 under RCW 84.55.050(1). Def.’s Answer at 9, ¶ 22. An election on a single year lid lift “shall
17 be held not more than twelve months prior to the date on which the proposed levy is to be made.”
18 RCW 84.55.050(1).

19 (2) The second lid lift option is a “multiple year lid lift” under RCW 84.55.050(2), which
20 can last up to six years. The complexities of that option are immaterial to this case. King
21 County admits in its Answer that because Prop. 1 is a “nine-year temporary levy lid lift,” it
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27 ⁴ The intricacies of how the “limit factor” applies is not material to this lawsuit. For simplicity,
28 this motion treats the limit factor as generally limiting levy increases to one percent.

1 cannot be authorized under RCW 84.55.050(2), which only allows a revenue increase for up to
2 six years. Def.'s Answer at 9, ¶ 22.

3 **D. Lid Lift Duration and Ballot Title Requirements.**

4 As the Legislature has tightened the limit factor, it also adopted stricter requirements for
5 overcoming the limit factor through a vote, and in particular has limited the ability to leverage a
6 voter-approved, short term levy lid lift (one to six years) to increase levy amounts in the longer
7 term.
8

9 In the original 1971 levy lid lift statute, there was only the “single year” lid lift, but its
10 effect was to permanently increase the lid. *See* 1971 Wash. Sess. Laws 1535 (Tonry Decl., Ex.
11 6); RCW 84.55.050 (1971) (“After a levy authorized pursuant to this section is made, the dollar
12 amount of such levy shall be used for the purpose of computing the limitations for subsequent
13 levies provided for under this chapter.”)
14

15 In 1986, the Legislature reversed course, and provided that after the increased levy was
16 over, “subsequent levies shall be computed as if (a) The limited proposition under subsection (3)
17 of this section had not been approved; and (b) The taxing district had made levies at the
18 maximum rates which would otherwise have been allowed under this chapter during the years
19 levies were made under the limited proposition.” 1986 Wash. Sess. Laws 553-54 (Tonry Decl.,
20 Ex. 7); RCW 84.55.050 (1986).
21

22 In 1989, the Legislature first recognized the importance of ensuring that voters are
23 provided with accurate information in the ballot title. It was amended to require that the ballot
24 “shall clearly state any conditions which are applicable” to the levy. 1989 Wash. Sess. Laws
25 1436 (Tonry Decl., Ex. 8); RCW 84.55.050 (1).
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1 In 2003, the Legislature amended RCW 84.55.050 to provide more flexibility for local
2 governments. For the first time it authorized multiple-year lid lifts of up to six years. Also for
3 the first time, it allowed the increased levy amount “to be used to compute the limitations
4 provided for in this chapter” for subsequent levies. 2003 Wash. Sess. Laws 2406 (Tonry Decl.,
5 Ex. 9); RCW 84.55.050(3)(e) (2003). The statute mandated that subsequent levies still needed to
6 be calculated as if the levy lid lift never occurred, “[e]xcept as otherwise provided in an
7 approved ballot measure under this section.” *Id.*

9 The legislative struggle over property taxes continued in 2007, when the Legislature
10 completely repealed the authority of governments to use the levy lid lift amount to calculate
11 subsequent levies. Engrossed Senate Bill 5498 § 2, 60th Legislature (2007) (Tonry Decl., Ex.
12 10) (repealing RCW 84.55.050(3)(e)).

14 In 2007 the Legislature strengthened the right of voters to obtain clear information about
15 proposed levies. RCW 84.55.050 already required that the ballot “clearly state” levy conditions,
16 but this apparently was insufficient. The statute was amended to its present form which requires
17 that any conditions on the levy lid lift be “expressly stated” in the proposition placed before the
18 voters. 2007 Wash. Sess. Laws 1760 (Tonry Decl., Ex. 11); RCW 84.55.050 (4) (2007).

20 The most important legislation for the purposes of this motion was enacted in 2008. At
21 that time, the statute had prohibited the use of a levy lid lift to compute future levy amounts. The
22 2008 legislation reaffirmed this prohibition with even stronger language. Again balancing the
23 interests of voters, taxpayers, and government, the Legislature authorized a levy lid lift to be
24 used to calculate future levies only if the voters were expressly informed that the levy would be
25 used for that purpose. As amended, the statute provided that:
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1 (3) After a levy authorized pursuant to this section is made, the dollar amount of
2 such levy may not be used for the purposes of computing the limitations for
3 subsequent levies provide for in this chapter, unless the ballot proposition expressly
4 states that the levy made under this section will be used for this purpose.

5 (4) If expressly stated, a proposition placed before the voters under subsection (1)
6 or (2) of this section may:
7

8 (a) Use the dollar amount of a levy under subsection (1) of this section, or the
9 dollar amount of the final levy under subsection (2) of this section, for the
10 purpose of computing the limitations for subsequent levies provided for
11 under this chapter;
12

13 . . .

14 (5) Except as otherwise expressly stated in an approved ballot measure under this
15 section, subsequent levies shall be computed if
16

17 (a) The proposition under this section had not been approved; and

18 (b) The taxing district had made levies at the maximum rate which would
19 otherwise have been allowed under this chapter during the years levies were made
20 under the proposition.
21

22 2008 Wash. Sess. Laws 1668 (emphasis added) (Tonry Decl., Ex. 12).

23 Thus, with this 2008 enactment, RCW 84.55.040 *twice* states the general prohibition on
24 using a levy increased by a lid lift to compute subsequent levies. A local government can ask
25 voters to allow such a use of the levy increase, but RCW 84.55.050 *three times* states that this is
26 only allowed when the ballot title “expressly states” that the approved levy lid lift will be used
27 for that purpose.
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VII. ARGUMENT

A. Prop. 1 Did Not Allow King County to Use the 2013 Levy Amount for Calculating Subsequent Levies.

The Court should hold as a matter of law that Prop. 1 did not “expressly state” that the dollar amount of the 2013 levy would be used to compute subsequent levy amounts, as required under RCW 84.55.050.

The ballot title proposed in Ordinance 17304 contained such an express statement. It would have read, in pertinent part, “This proposition . . . 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 2013 levy amount would become the base upon which levy increases would be computed for each of the eight succeeding years.” *Id.* at § 7 (emphasis added).

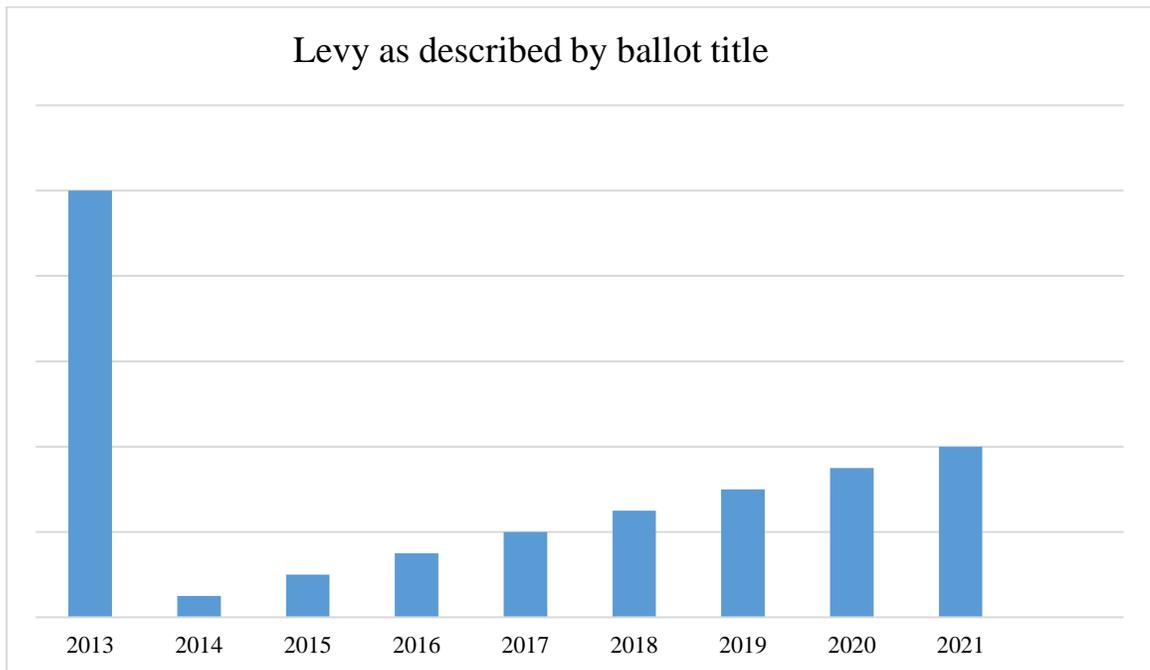
However, the title presented to voters contained no such express statement. Rather, it indicated that the \$0.07 per \$1,000 tax increase applied only in 2013. The ballot title said the proposition “**would authorize King County to levy an additional regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013. Increases in the following eight years would be subject to the limitations in chapter 84.55 RCW.**” Prop. 1 ballot title (emphasis added).

In other words, King County knew how to present voters with the express statement mandated by RCW 84.55.050, but it inexplicably chose not to do so. Instead, it provided voters with a ballot title which was at best ambiguous.

Here, most voters presumably read the ballot title at face value and thought that the \$0.07 tax increase would be put in effect in 2013 only, with future annual increase based upon the 2012 levy amount, just as RCW 84.55.050 requires. The ballot title thus describes a single-year levy lid lift followed by eight years of levy increases based on the limit factor as applied to the 2012

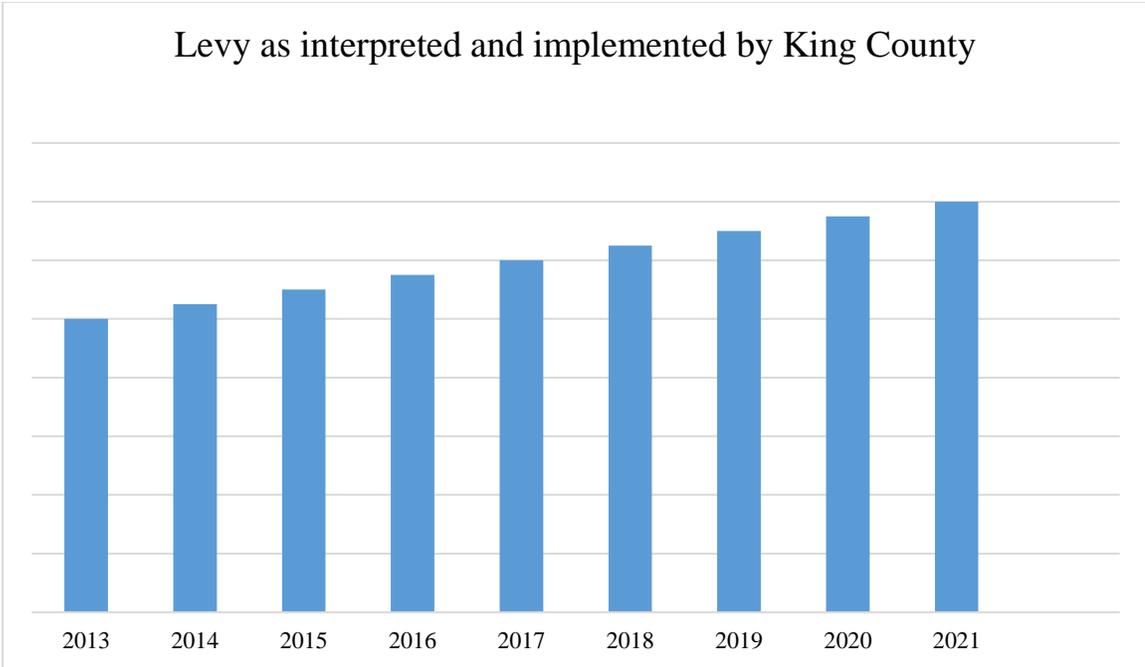
1 levy amount. That is entirely permissible under RCW 84.55.050(1). However, King County has
2 interpreted Prop. 1 as authorizing a much larger levy that carries the lid lift into future years.

3 The simplified charts below illustrate the levy that was described by the ballot title as
4 compared with the levy as interpreted and implemented by King County. The ballot title did not
5 expressly inform the voters that the 2013 levy would be used to compute subsequent levies and
6 therefore subsequent years' levies must be calculated as if the 2013 levy had never passed.
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20 In contrast, King County interprets the levy as allowing it to carry forward the 2013 rate
21 into subsequent levy years, and to allow further increases in subsequent years' levies by the 1%
22 limit factor.

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The fundamental goal of the 2009 legislation is to ensure that after the year of the “single year lid lift,” subsequent levies must be calculated as if the levy never occurred. The only exception is where the ballot title “expressly states that the levy made under this section will be used” to calculate the limitations for subsequent levies. RCW 84.55.050(3), (4)(a), (5).

The fundamental limitation of RCW 84.55.050 is that after the one-year increased levy is over, the tax rate drops back down and then can be increased annually by one percent. That is precisely what the Prop. 1 ballot title means when it states that levies after 2013 “would be subject to the limitations in chapter 84.55 RCW.” The ballot title thus authorized a significant 2013 levy, with only a smaller assessment in the subsequent eight years.

The ballot title of Prop. 1 does not “expressly” state that the dollar amount of the single year lid lift for 2013 could be used to calculate subsequent levies. In fact, the ballot title states the opposite: that subsequent years’ levies would be limited pursuant to RCW 84.55, which

1 requires subsequent levies to be calculated as if the 2013 levy increase never occurred. RCW
2 84.55.050(5).

3 Where the Legislature has *three times* mandated express ballot title language, and passed
4 legislation for the sole purpose of adding this requirement, it cannot be blithely ignored as King
5 County requests. Given this legislative history, there is no doubt that this requirement is
6 mandatory and must be strictly complied with. *Niichel v. Lancaster*, 97 Wn.2d 620, 625-26
7 (1982) (look to legislative history to determine whether requirement is mandatory or directory).

8 By using the term “expressly,” not just once but three times, the Legislature prohibited the use of
9 an ambiguous title to stretch a single year tax increase into subsequent years. The plain meaning
10 of “expressly” means “in an express manner: explicitly.” *Expressly*, Merriam-Webster
11 Collegiate Dictionary (10th ed. 2002). *See also Expressly*, Black’s Law Dictionary (6th ed. 1994)
12 (“Expressly” means “In an express manner; in direct and unmistakable terms; explicitly;
13 definitely; directly.”); *Richardson v. United States*, 190 F. Supp. 369, 375 (D. Wyo. 1961)
14 (“Presumably Congress used the word ‘express’ with the intention that it carry its ordinarily
15 accepted meaning.”)

16 Because the Prop. 1 ballot title contained no such express statement, the 2013 levy “may
17 not be used for the purpose of computing the limitations for subsequent levies.” RCW
18 84.55.050(3), (4)(a). Instead, “subsequent levies shall be computed as if . . . the proposition
19 under this section had not been approved.” RCW 84.55.050(5). Therefore, King County had no
20 authority to carry the 2013 tax rate (\$0.07 per \$1,000) into subsequent years.

21 King County had only two options to impose the additional \$0.07 levy rate over a multi-
22 year period. It could have proposed a multiple-year lid lift under RCW 84.55.050(2), but that
23 would have been limited to six years. King County’s answer admits that it didn’t follow this
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1 path. The only other option was to raise the levy in a single year under RCW 84.55.050(1) using
2 a ballot title that expressly stated that the single year increase would be used to calculate the levy
3 in the subsequent eight years. King County did not comply with that requirement.

4 The Court should conclude as a matter of law that the ballot title of Prop. 1 did not
5 expressly state that the 2013 levy would be used to calculate future levy amounts.

7 **B. King County Has Collected Unauthorized Property Taxes.**

8 Because Prop. 1 did not permit King County to use the 2013 levy to calculate future
9 years' levies, the Court should hold that King County has unlawfully collected excess property
10 taxes under Prop. 1.

11 It is uncontested that King County has implemented Prop. 1 as if it authorized the 2013
12 levy to be used for calculating future levies. Decl. of Hazel Gantz in Support of Def.'s Mot. For
13 Summ. J., ¶¶ 8, 12-13. King County admits it has acted as if the voters had approved the 2013
14 levy rate to remain in effect for nine years. *See id.* King County's 2014 CAFR similarly admits
15 as much by stating that in 2013, the levy rate was \$0.07000 per thousand, and in 2014, the levy
16 rate was \$0.06597 per thousand assessed value. Tonry Decl. Ex. 4; Compl., ¶ 18; Answer, ¶ 18.

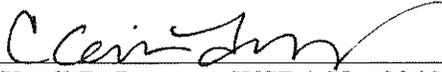
17 Given these assertions and admissions by King County, this Court can determine that as a
18 matter of law that King County has been improperly collecting taxes under Prop. 1 at a rate
19 higher than that authorized by RCW 84.55.

22 **VIII. CONCLUSION**

23 For the foregoing reasons, this Court should grant EPIC's motion for partial summary
24 judgment as requested herein.
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1 RESPECTFULLY SUBMITTED this 29th day of July, 2016.

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Sample ballot measures - single year lid lift

(SAMPLE) County Hospital District No. (##)

Proposition No. (#)

Single Year Temporary Levy Lid Lift (with specific time period)

The Commissioners of (SAMPLE) Hospital District adopted Resolution No (#) concerning a proposition to increase its regular property tax levy. If approved, this proposition would authorize the District to set its 2010 regular property tax levy rate at (\$.##) per \$1,000 assessed value to fund health services. The newly established dollar limitation would remain in effect for a period of 10 years. Should this proposition be:

Approved / Rejected

(SAMPLE) County Rural Library District

Proposition No. (#)

Single Year Levy Lid Lift - Permanent

Library Operations & Maintenance

The (SAMPLE) county Rural Library District Board of Trustees adopted Resolution No. (#####) concerning property taxes for community libraries. This proposition would enable the District to generate and maintain its community libraries and library services by increasing the property tax levy rate from the current rate of (\$.##) per \$1,000 of assessed valuation to (\$.##) per \$1,000 of assessed valuation for collection in 2011, as allowed by Chapter 84.55 RCW. Thereafter, such levy amount would be used to compute limitations for subsequent years as allowed by chapter 84.55 RCW. Should this proposition be approved?

Yes / No

- ^ [Contents \(/get-form-or-publication/ballot-measure-requirements/part-1-voted-regular-levies-levy-limit-levy-lid-lifts-and-general-obligation-bonds-port-districts/provisions-single-year-levy-lid-lifts-and-content-ballot-titles\)](#)
- < [Provisions for single year levy lid lifts and content for ballot titles \(/get-form-or-publication/ballot-measure-requirements/part-1-voted-regular-levies-levy-limit-levy-lid-lifts-and-general-obligation-bonds-port-districts/provisions-single-year-levy-lid-lifts-and-content-ballot-titles\)](#)
- > [Provisions for multiple year levy lid lifts and content for ballot titles](#)

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vote!

 Your ballot will arrive by July 23

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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

The complete text of this measure is available beginning on page 88.

Statement in favor

Renew AFIS, An Essential Crime-Fighting Tool

Submitted by: Mitzi Johanknecht,
Claudia Balducci, Andy Hwang
YesForAFIS@gmail.com

For over 30 years the voter-approved Automated Fingerprint Identification System (AFIS) has been the preeminent crime-fighting tool for police in King County's 39 cities and unincorporated area. Using state of the art technology and highly trained, nationally accredited staff, the AFIS Program ensures all King County law enforcement officers can use fingerprints and palm prints to identify suspects and solve crimes.

Real Efficiency, Lower Cost

This levy renewal proposal is fiscally responsible. In preparing to ask voters to renew the levy, the AFIS Program reviewed its operations and found ways to eliminate 11 full time positions while still providing the same high-quality, professional service to King County law enforcement agencies. The new AFIS levy will collect *\$1.5 million less* in 2019 than it did in 2018. The owner of a \$600,000 home will pay only \$21 in 2019 for this fundamental public safety tool.

Your yes vote will maintain, replace, or restore existing technology and operations for the next six years. AFIS is an essential crime fighting tool and the AFIS Program has a proven track record of managing the public's money well. We ask you to vote yes on Proposition 1.

Explanatory statement

This proposition would authorize King County to levy an additional regular property tax to support the continued operation and enhancement of the automated fingerprint identification system (AFIS) program, and would replace the current voter-approved levy that will expire on December 31, 2018. The AFIS program is designed to improve the ability of law enforcement agencies within King County to identify and convict criminal offenders. Among other activities, the AFIS program matches crime scene fingerprints and palmprints to potential criminal suspects. If this proposition is approved, levy funds may also be used to research and pilot other types of biometrics and technology to help investigators solve crimes more efficiently and accurately.

The proposed levy would be authorized for a six-year period with collection beginning in 2019. During the first year, the tax would be levied at a rate of 3.5 cents (\$0.035) or less per one thousand dollars (\$1,000) of assessed valuation on all taxable property within King County. Annual increases in each of the succeeding five years would be limited to the statutory rate set forth in chapter 84.55 RCW.

For questions about this measure, contact:

Carol Gillespie
Regional AFIS Manager
206-263-2721
Carol.gillespie@kingcounty.gov

Statement in opposition

No statement submitted.

Statements in favor of and in opposition to a ballot measure are submitted by committees appointed by the jurisdiction. No persons came forward to serve on the committee and to write a statement in opposition. If you would like to be involved with a committee in the future please contact the jurisdiction.

Comparison of Levy Lid Lift Mechanisms:

Appendix E

EXHIBIT

D

	“Basic” Option – ONE YEAR, plus carry-forward (RCW 84.55.050(1))	“Multi-year” Option – up to SIX YEARS, plus carry-forward (RCW 84.55.050(2))
SUMMARY	The “Basic” option is voter authorization to increase levy amount by more than the permitted 1% (or IPD) for ONE YEAR. May use higher levy to “re-set” base for levy limit calculation in future years. This is referred to as “carry-forward,” below.	The “Multi-Year” option is voter authorization to increase levy amount by more than the permitted 1% (or IPD) in each year for up to SIX YEARS, for a specified purpose. May use higher levy to “re-set” base for levy limit calculation in future years. This is referred to as “carry-forward,” below.
Election Information	Any taxing district. Any election date. Election must be held not more than 12 months before levy is made (e.g., if vote in 2016, increase effective for 2017 levy).	Any taxing district. <u>Primary</u> or <u>general</u> election date only. Election must be held not more than 12 months before first levy is made (e.g., if vote in 2016, first year of increase effective for 2017 levy).
Purpose Limitation	Optional. <u>May</u> be (but is not required to be) limited to purposes in ballot proposition. See also “Debt Financing” below.	<u>Must</u> be restricted to specific purpose for the initial period of up to six years. For jurisdictions in King County, see note (1). See also “Debt Financing” below.
Expiration?	Authority to exceed statutory limit factor expires after <u>one year</u> . See also “Carry Forward” provisions, below.	Authority to exceed statutory limit factor expires after <u>6 years</u> (or less, as stated in ballot title). See also “Carry Forward” provisions, below.
Levy Year 1	Levy not more than total levy <u>rate</u> stated in ballot measure.	Levy not more than total levy <u>rate</u> stated in ballot measure.
Levy Years 2-6	Not Applicable. See “Carry Forward” provisions, below.	Use <u>limit factor specified in ballot proposition</u> to calculate maximum legal levy (MLL), using highest prior MLL as base, in each year for up to 6 years. <i>Limit Factor may be any fixed increment or variable index, as described in ballot title.</i>
Carry-Forward Provisions	AFTER EXPIRATION OF <u>ONE YEAR</u> , amount of increased levy pursuant to the lid lift proposition is used as “base” to calculate levy lid going forward <u>ONLY IF</u> stated in ballot proposition. <ul style="list-style-type: none"> • If stated in ballot title, use new “base” multiplied by statutory “Limit Factor” to calculate maximum legal levy (MLL) going forward after one-year period. • If not stated in ballot title, MLL calculated as if no levy lid lift was approved. (Reverts to prior levy levels.) <u>Optional:</u> May restrict length of time or purpose for which the lid lift will be carried forward after the one-year period.	AFTER EXPIRATION OF <u>SIXTH YEAR</u> , highest amount of increased levy pursuant to the lid lift proposition is used as “base” to calculate levy lid going forward <u>ONLY IF</u> stated in ballot proposition. <ul style="list-style-type: none"> • If stated in ballot title, use new “base” multiplied by statutory “Limit Factor” to calculate maximum legal levy (MLL) going forward after expiration of 6-year period. • If not stated in ballot title, MLL calculated as if no levy lid lift was approved. (Reverts to prior levy levels.) <u>Optional:</u> May restrict length of time or purpose for which the lid lift will be carried forward after the six-year period.
Debt Financing	If limited purpose includes paying debt service on bonds, increased levy expires after 9 years.	If limited purpose includes paying debt service on bonds, increased levy expires after 9 years.

¹ For levies approved in King County, additional funds may not supplant “existing funds” used for the specified purpose. Laws of 2009, ch. 551, §3. “Existing funds” means operating expenditures for the calendar year in which the ballot measure is approved, excluding lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

SMITH & LOWNEY

October 02, 2018 - 4:23 PM

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Appellate Court Case Title: End Prison Industrial Complex v. King County
Superior Court Case Number: 16-2-07355-2

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