FILED
SUPREME COURT
STATE OF WASHINGTON
10/2/2018 4:46 PM
BY SUSAN L. CARLSON
CLERK

No. 95307-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

END PRISON INDUSTRIAL COMPLEX,

Respondent,

v.

KING COUNTY,

Petitioner.

KING COUNTY'S RESPONSE TO MEMORANDUM OF *AMICI CURIAE* KING COUNTY PROPERTY TAXPAYERS

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I. INTRODUCTION

A group calling themselves "King County Property Taxpayers" ("KCPT") simultaneously argues that the "will of the people must be protected," while seeking to invalidate the votes of 55% of King County voters who supported Proposition 1. Mem. of *Amici Curiae* KCPT ("Am. Br.") at 4. They claim that voters were "deceived" by the ballot title to Proposition 1, but the ballot title, actual proposition language, and voters' guide materials each fully informed voters that they were enacting a nine-year excess property tax levy in full compliance with RCW 84.55.050. KCPT's claims of insufficiencies and "deception" in the ballot title are puzzling because KCPT (like End the Prison Industrial Complex ("EPIC")) had the ability to challenge the ballot title within the ten-day statutory period allowed by RCW 29A.36.090. Had they followed the proper statutory process, all of their claims could have been resolved pre-election, rather than endangering a major public works project years after a clear majority of King County's voters decided to both fund and build a crucial public facility.

Even more puzzling is that neither KCPT, nor EPIC, propose any alternative statute of limitations for the type of challenge they wage. Absent the ten-day limitations period imposed by the Legislature, major public projects are left open to belated, politically-motivated attacks for

years on end by groups that lost at the ballot box. Here, KCPT's Wild West approach allows an attack against a tax funding proposition well after substantial taxes have been collected, all proceeds have been contractually obligated to a project, and the building has been substantially constructed. The uncertainty caused by effectively eliminating any statute of limitations jeopardizes voter-funded public infrastructure projects and the provision of critical services throughout this state.

In sum, none of KCPT's arguments have merit. Accordingly, this Court should reverse because EPIC's lawsuit is an untimely ballot title challenge and the voters had before them all information required to cast an informed vote under RCW 84.55.050.

II. ARGUMENT

A. KCPT Ignore the Extensive Materials Before the Voters When They Approved Proposition 1.

The gist of KCPT's brief is that voters were "deceived" by the ballot title and thus inadvertently approved Proposition 1 without full information as to its scope and duration. Am. Br. at 10. Any claim of voter confusion, however, depends upon an implausible reading of the ballot title and willful ignorance of the Proposition and supporting materials provided to the voters. Contrary to KCPT's characterization, voters had ample required information when they approved Proposition 1.

The voters' decision to fund the Children and Family Justice Center ("CFJC") should be respected.

KCPT's claim that the voters did not know they were passing a nine-year property tax increase is belied by the plain text of the ballot title. The second sentence of the ballot title states: "This proposition would authorize King County to levy **an additional property tax for nine years**." CP 367 (emphasis added). The ballot title then explains that the levy consists of an "additional regular property tax of $0.07 per $1,000 of assessed valuation for collection in 2013" and that "[**i]ncreases in the following eight year**s would be subject to the limitations in chapter 84.55 RCW, all as provided in Ordinance No. 17304." CP 367 (emphasis added). No reasonable voter would conclude from reading this ballot title that they were voting on a one-year property tax increase.

KCPT further ignore that the ballot title expressly referenced Ordinance 17304, the full text of which was provided to the voters and which provided even more detail about the mechanics of the levy. The Ordinance authorized "a regular property tax levy **in excess of the levy limitation contained in chapter 84.55 RCW for nine consecutive years**, commencing in 2012, with collection beginning in 2013 . . . ." CP 310 (emphasis added). Moreover, consistent with the usual practice in calculating the amount of single-year levy lid lifts, the Ordinance

explained that the "2013 levy amount would become the base upon which levy increases would be computed for each of the eight succeeding years." CP 311; *see also Levy Lid Lifts*, MUN. RESEARCH SERVS. CTR. (Sept. 27, 2018) (after "maximum levy" is "increase[d] . . . by more than one percent . . . [t]hat amount is then used as a base to calculate all subsequent 1% levy limitations **for the duration of the levy**" (emphasis added)).[1]

Finally, KCPT disregard the explanatory statement, mailed to all voters in the voters' guide that provided more information still:

> The levy would be authorized for a nine-year period with collection beginning in 2013. In the first year, the levy rate would be equal to or less than seven cents ($0.07) per one thousand dollars ($1,000) of assessed valuation on all taxable property within King County. Annual increases for collection years 2014 through 2021 would be governed by chapter 84.55 RCW, which limits the growth of the levy amount to 1 % per year.

CP 251. The voters' pamphlet also included statements in favor of and in opposition to the Proposition. Notably, the statement in opposition objected to Proposition 1 on the grounds that it put an unwarranted tax burden on homeowners, as KCPT claim here. CP 251; Am. Br. at 3-4. Any suggestion that voters were deceived is meritless.

Recognizing that voters were provided with ample information about Proposition 1, KCPT argue that voters were unlikely to read the

[1] *Available at* http://mrsc.org/getdoc/2d6184c5-e55f-48e6-b7a6-d6262f342394/Levy-Lid-Lift.aspx

extensive materials mailed with their ballots, including the Ordinance, the explanatory statement, and the statements for and against the Proposition. Am. Br. at 11. But this Court has repeatedly held that it may look to the voters' pamphlet statements as evidence of voters' intent. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205-06, 11 P.3d 762 (2000), *as amended* (Nov. 27, 2000), *opinion corrected*, 27 P.3d 608 (Wash. 2001) (citing *State v. Thorne*, 129 Wn.2d 736, 763, 921 P.2d 514 (1996)). In addition to being contrary to this Court's decisions, KCPT's position conflicts with EPIC's (incorrect) argument that voters must be presumed to read only the ballot title and nothing else. CP 376. Finally, KCPT's argument is internally inconsistent as KCPT claim that voters would have relied upon the ballot title's reference to the "limitations in RCW 84.55," suggesting that the same voters who allegedly would not read explanatory materials would likely look up a statute, ascertain the applicable terms, and rely on an (incorrect) interpretation of them. Am. Br. at 7.[2] Here, the ballot title was sufficient standing alone, and the Ordinance and explanatory materials further clarified the scope, duration, and mechanics of the levy.

[2] KCPT argue that the "limitations in RCW 84.55" refers to the "express" statement requirements in RCW 84.55.050(3) and (4)(a), but as discussed below those subsections do not apply here. Am. Br. at 7-10. Rather, the "limitations in RCW 84.55" means that the 1% limit factor would be exceeded only in the first year of the levy. CP 280.

Furthermore, KCPT's claim that King County is "effectively convert[ing] a one year levy lid lift into a multi-year property tax increase" flies in the face of the facts. *Id.* at 11. There was significant public interest and debate taking place in 2012 around whether and how to replace the CFJC. Numerous media outlets ran opinion pieces supporting or opposing the measure. In each, Proposition 1 is plainly described as a "nine-year" property tax increase. *See* CP 252-68. In short, Proposition 1 has always had a nine-year duration and voters knew it.

Despite this wealth of information, KCPT claim that under King County's interpretation of RCW 84.55.050, voters would "not be entitled to any information on the ballot." Am. Br. at 12. This argument misconstrues the County's position, disregards the actual information in the ballot title, and ignores that ballot titles for all County measures are subject to the requirements in RCW 29A.36.071 and to pre-election challenge under RCW 29A.36.090. As ably detailed in the brief filed by amicus Washington Association of Prosecuting Attorneys ("WAPA"), county prosecutors drafting ballot titles for local measures do so in an independent and neutral role, separate from the legislative body that enacted the ordinance and sponsored the measure. WAPA Br. at 3-5. Rather than accept a ballot title drafted solely by promoters of the measure, state law requires the county prosecutor to craft a "concise

description of the measure" limited to seventy-five words. RCW 29A.36.071. RCW 84.55.050 and WAC 458-19-045 provide additional requirements for levy lid lift ballot titles and propositions, but neither removes the general obligations on prosecutors in RCW 29A.36.071. While KCPT hypothesize that voters would not "even . . . be told the proposed rate increase," Am. Br. at 12, this ignores that the plain terms of WAC 458-19-045 dictate that the "text of a ballot title and measure for a single year lid lift must contain . . . [t]he dollar rate of the proposed levy." WAC 458-19-045(3)(a). Accordingly, KCPT's hyperbolic prediction of levies passed without voters' "informed consent" is unfounded. Am. Br. at 11.

In short, the voters (including amicus KCPT) had all required information before them at the time of the vote, and their decision to approve Proposition 1 should not be subject to challenge now.

B. KCPT Misinterpret RCW 84.55.050 and its Legislative History, Both of Which Demonstrate That the Ballot Title Accurately Disclosed the Contents of Proposition 1.

KCPT's argument that the "ballot title did not expressly authorize [King County's] methodology," resulting in an "illegal" multi-year levy lid lift, fails for three separate reasons. Am. Br. at 6, 12 n.8, 13-14. First, Proposition 1 is a single-year levy lid lift, not a multi-year levy lid lift, because the 1% limit factor is lifted for one year only. *See* WAC 458-19-

045(3); RCW 84.55.050(1) (authorizing increase in "levy"); King Cnty.'s Suppl. Br., App. A.[3] Both EPIC and the County agree Proposition 1 is a single-year levy lid lift. CP 9, 41. Indeed, KCPT's argument that Proposition 1 is a multi-year levy lid lift attacks the substantive validity of Proposition 1, an argument that, in addition to being wrong on the merits, was not made by EPIC and is not before this Court.

Second, under the plain terms of RCW 84.55.050, a local government may collect additional property taxes for any number of years—here nine—under the single-year levy lid lift mechanism; only multi-year levy lid lifts are limited to six years. *See* RCW 84.55.050(5)(b) (noting that levy may last "years . . . under the proposition"); *see also* RCW 84.55.050(4)(b); WAC 458-19-045(3)(b)(i); King Cnty.'s Suppl. Br., App. A; CP 80. As such, there is nothing "illegal" about the duration of Proposition 1. Moreover, this argument, in addition to being wrong, was also not made by EPIC and is not before the Court. *See* CP 9 (EPIC noting there would be a dispute whether Proposition 1 "was illegal" only if King County claimed it was a multi-year levy lid lift).

Third, KCPT are wrong that the methodology for Proposition 1 must be "expressly authorized" by its ballot title. Specifically, KCPT

[3] In contrast, a multi-year levy lid lift allows a local government to "increase its levy by more than one percent [i.e., exceed the limit factor] . . . for up to six consecutive years." WAC 458-19-045(4); *see also* RCW 84.55.050(2)(a) (authorizing "increases in levies"); King Cnty.'s Suppl. Br., App. A.

argue that even if Proposition 1 is a single-year levy lid lift, the ballot title needed to contain the "express" statements referenced in RCW 84.55.050(3) and 4(a). Am. Br. at 9, 12, 16-18. This is incorrect because the plain language of RCW 84.55.050 provides that subsections 3 and 4(a) apply in limited circumstances not present here. *See* RCW 84.55.050(1) (making no reference to subsection 3 and stating that the "ballot of the proposition" need only state the "applicable . . . subsection (4)" conditions, "if any"); *see also* WAC 458-19-045(3)(b) (ballot title and measure must contain "[a]ny of the following limitations that are applicable"). Specifically, subsections 3 and 4(a) apply only when the dollar amount of the increased levy will be used to compute the limitations for "subsequent levies," i.e., when a local government proposes a permanent, as opposed to a temporary, levy lid lift. *See* WAC 458-19-045(5) ("A permanent lid lift occurs when the ballot title and ballot measure expressly state that the levy will be used for the purpose of computing the limitations for subsequent levies . . . ."), (6) ("If the ballot title and ballot measure do not expressly indicate that the final levy will be used for the purpose of computing subsequent levies, the levy increase is presumed temporary."); *see also* King Cnty.'s Suppl. Br., Apps. A & B. It is undisputed that Proposition 1 only adopted a temporary, not a

permanent, levy lid lift. CP 8-9, 47. In other words, the levy will revert to the pre-Proposition 1 base in 2022, when Proposition 1 expires.

KCPT argue that a "subsequent levy" here means the amounts collected in 2014 and any year thereafter during Proposition 1's nine-year term, not the amounts collected in 2022, when Proposition 1 expires. Am. Br. at 9, 17. RCW 84.55.050(5)(a) explains, however, that "subsequent levies" are those computed after "[t]he proposition" expires. *See also* WAC 458-19-045(3)(b)(iii), (4)(a)(iii)(C) (equating "computing the limitations for subsequent levies" with "permanently increas[ing] the taxing district's levy base"); AGO 2008 No. 3 (the calculation of "subsequent levies" under RCW 84.55.050(4)(a) refers to the calculation of "future (post-proposition) levies").

Accordingly, to the extent subsection RCW 84.55.050(4)(a) "distinguishes" between single- and multi-year levy lid lifts as KCPT claim, Am. Br. at 17, it is only to indicate which amount of a multi-year levy lid lift applies for purposes of computing post-proposition levies. *Compare* RCW 84.55.050(1) (limit factor may be exceeded only in first year) *with* RCW 84.55.050(2)(a) (limit factor may be exceeded up to "six consecutive years" and "need not be the same for all years"). Moreover, subsection 4(b) is irrelevant here. Am. Br. at 18. It does not reference

"subsequent levies" and is simply one of the "conditions" under subsection 1 that may or may not apply.

KCPT's "express authorization" in the ballot title argument further fails because the only reference to ballot "title" in RCW 84.55.050 is in subsection 2, which applies only to a multi-year levy lid lift. *See* RCW 84.55.050(2)(a) (requiring that information for multi-year levy lid lift be placed in the "title").[4] By contrast, RCW 84.55.050(1), which applies here, requires that information for a single-year levy lid lift be placed in the "ballot of the proposition." Implicitly recognizing this, KCPT argue that the "ballot of the proposition" means both the ballot title **and** the measure considered independently, Am. Br. at 12, but such an interpretation is contrary to common sense and practice. *See* King Cnty.'s Pet. for Review, App. D (copies of 19 ballot titles, including a sample from the Department of Revenue, stating only the first year tax rate and the number of years of the levy and thus excluding the "express" statement requirements of subsections 3 and 4(a)); WAC 458-19-045(3), (4)(a) (interpreting "ballot of the proposition" to mean the "ballot title and measure" but providing no indication of treating them separately). "When the legislature uses two different terms in the same statute, courts presume

[4] King County acknowledges the plain language of RCW 84.55.050(2) and thus does not argue that "nothing in RCW 84.55.050 imposes any requirements on the ballot title." Am. Br. at 11.

the legislature intends the terms to have different meanings." *Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885 (2007). KCPT are simply misreading the statute as it applies to a single-year levy lid lift. In any event, even if "ballot of the proposition" means the ballot title and measure considered independently, which it does not, the ballot title here provided all information required in RCW 84.55.050(1) as explained above.

Finally, in addition to misreading RCW 84.55.050, KCPT mischaracterize its legislative history, claiming that the purpose of the "express" statement requirements in subsections 3 and 4(a) is to "limit the delegated authority" of taxing districts, Am. Br. at 8, and to "convert[] a one year levy lid lift into a multi-year" levy lid lift, *id.* at 11. The Final Bill Report for the legislation adding those subsections states nothing of the sort. Rather, it confirms that the "express" statement requirements of subsections 3 and 4(a) are merely intended to alert voters to a permanent increase applicable to "subsequent levies":

> Taxing districts are required to explicitly indicate in a ballot proposition for **both multiyear and single year lid lifts** that the district's levy base will be permanently increased. **If the ballot proposition does not expressly indicate that the final levy will be used for the purpose of computing subsequent levies, the levy increase is presumed temporary.**

FINAL B. REP. ON E.S.B. 6641, 60th Leg., Reg. Sess. (Wash. 2008) (emphasis added).

In sum, the Proposition 1 ballot title complied with RCW 84.55.050. KCPT's arguments to the contrary are the result of their misunderstanding of the statute and the mechanics of levy lid lifts.[5]

C. Voters Enacted Ordinance 17304, Not its Ballot Title.

Despite implicitly acknowledging that EPIC's only challenge is to the ballot title, KCPT argue that RCW 84.55.050 "unequivocally prohibits the County's methodology for calculating levies because the ballot title did not expressly authorize that methodology." Am. Br. at 6. But KCPT overlook the fact that the purpose of the vote on Proposition 1 was to enact Ordinance 17304, not its ballot title. The Ordinance authorizes the levy lid lift, not the ballot title.

The language requirements of RCW 84.55.050(3) and (4)(a) (although not applicable here as explained above) by their terms do not apply to "ballot titles." Rather, the specified language belongs in the "ballot proposition" or the "proposition placed before the voters." RCW 29A.04.091 equates "proposition" with "[m]easure." This makes sense, as

[5] King County's 2018 ballot title concerning an additional property tax to fund the regional Automated Fingerprint Identification System ("AFIS") has no bearing on the statutory sufficiency of the Proposition 1 ballot title. Am. Br. at 15-16. The King County prosecutor drafted the AFIS ballot title after the Court of Appeals issued its decision in this case, which is the current state of the law pending resolution on appeal.

a vote does not enact the ballot title as law. The ballot title, in other words, does not authorize a levy methodology, only the proposition (or measure) does. *See, e.g.*, *Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 655, 278 P.3d 632 (2012) ("A ballot title consists of . . . the question of whether or not the **measure** should be enacted into law." (emphasis added)).

In *Sane Transit v. Sound Transit*, 151 Wn.2d 60, 71-72, 85 P.3d 346 (2004), this Court held that the purpose of the ballot title is to "lead to an inquiry into the body of the act," but that the accompanying ordinance is the "legislation adopted by the voters." *Id.* at 73; *see also Amalgamated Transit*, 142 Wn.2d at 217 (a ballot title "need not be an index to the contents, nor must it provide details of the measure," rather it need only give "notice which would lead to an inquiry into the body of the act or indicate[] the scope and purpose of the law to an inquiring mind"). Here, the ballot title served its statutory purpose by adequately informing voters of the contents of the Proposition at the time of the vote. The relevance of the ballot title ends there.

In sum, KCPT's position that an alleged statutory defect in the ballot title raised years after a vote should invalidate a duly passed ordinance approved by the voters is unprecedented, and contrary to law.

D. KCPT's Approach Would Permit Endless Challenges to Publicly Funded Projects.

1. KCPT's Proposed Challenge to the "Implementation of the Ballot Title" Is Unworkable and Illegal.

In rejecting the ten-day statute of limitations for ballot title challenges, KCPT ask the Court to recognize a claim that would permit citizens to challenge approved public measures in perpetuity, by alleging that a municipality has failed to "implement a ballot title" as written. Am. Br. at 10. There is no support for this novel legal theory, which would upend publicly funded projects and cause substantial uncertainty in the delivery of public services.

Moreover, as WAPA correctly notes, neither the Court of Appeals nor EPIC nor KCPT have proposed an alternative to RCW 29A.36.090's ten-day limitations period. WAPA Br. at 10. As the Washington State Association of Municipal Attorneys ("WSAMA") and Washington State Association of Counties ("WSAC") detail in their brief, permitting challenges like EPIC's to go on years after the vote, absent any statute of limitations, would put the funding of critical services at risk, including water, sewer, and solid waste facilities, public transit, and police and public safety. WSAMA & WSAC Br. at 12-13.

Finally, permitting a party to challenge the "implementation" of a ballot title years after the election would vastly change the role of the

county prosecutor. As WAPA explains, the county prosecutor drafts the ballot titles for local measures. WAPA Br. at 2-3. Meanwhile, it is the county council that drafts and passes ordinances. Permitting a belated challenge to the "implementation" of a ballot title would effectively change the ballot title into the governing law and place more power in to the county prosecutor's hands than that possessed by the legislative body passing the operative ordinance in the first place. Subordinating the council's lawmaking power to the administrative functions of the county prosecutor in this manner is likely unconstitutional. *See* WASH. CONST. art. XI, § 4 ("All the powers, authority and duties granted to and imposed on county officers by general law, except the prosecuting attorney . . . shall be vested in the legislative authority of the county . . . ."); RCW 36.32.120(4) ("The legislative authorities of the several counties shall . . . [f]ix the amount of county taxes to be assessed according to the provisions of law, and cause the same to be collected as prescribed by law . . . .").

2. KCPT's Political Opposition to a Public Project Does Not Warrant Extending the Strict Ten-Day Period for Ballot Title Challenges.

KCPT disavow that they are motivated by opposition to the CFJC project, claiming instead that the "taxpayers are the real parties in interest" and that EPIC's belated ballot title challenge is the only method to protect

taxpayers and voters opposed to a measure. Am. Br. at 11. This argument fails on both the facts and the law. Like EPIC, individuals now identifying as KCPT have been involved in political opposition to the CFJC for years. While they are entitled to oppose the project, the mechanism to do so is not through a ballot title challenge three and half years after the vote. Rather, any citizen opposed to the project could have (and some individuals comprising KCPT did) voiced opposition to the King County Council as the measure was debated, brought a timely and genuine ballot title challenge if appropriate, and/or engaged in opposition campaigns in advance of the election. What they cannot do now is attempt to undo a multi-million dollar nearly completed public works project years after the public approved it.

As noted above, Proposition 1 was repeatedly featured in the media in the run up to the election. One opposition piece in The Seattle Globalist accurately described the Proposition as creating a "nine-year, $210 million tax levy for a new [CFJC]" and urged a no vote, not because of the tax burden or structure of the levy, but because it was opposed to the construction of a facility that included youth detention services. CP 257-61. At least one of the individuals forming KCPT is featured in this 2012 article explaining his organizing efforts against the CFJC, while others have been involved in prior publicity and legal efforts to stop the

project.[6] The overlap between individuals opposing the construction of the CFJC for ideological reasons and amicus KCPT undercuts any claim that KCPT were surprised or misled about the duration, structure, or cost of the levy, but rather confirms that they oppose the project on philosophical grounds.

Equally spurious is KCPT's suggestion that permitting untimely ballot title challenges is the only way by which KCPT can challenge a local government "exceeding [its] delegated tax authority." Am. Br. at 5. As a threshold matter, no party to this appeal has challenged the constitutionality of Ordinance 17304 or King County's taxing authority. Instead, the only claim EPIC asserts is the propriety of the ballot title. Such challenges are subject to RCW 29A.36.090, which expressly empowers "any person[] . . . dissatisfied" with the ballot title an expedited mechanism to challenge the title in superior court before it goes to the voters. This Court has upheld the ten-day statute of limitations for such actions based on the Legislature's express direction that such disputes be resolved promptly and to promote the "strong interest in the finality of

[6] The article describes the efforts of individuals and organizations opposing the project on these grounds, including Professor Dean Spade, who is one of the named taxpayers appearing as amicus. CP 258-59. Amicus taxpayer Professor Angelica Chazaro has also publically opposed the project on similar grounds. Amicus taxpayer Rev. Richard Derksen was a party to EPIC's unsuccessful land use challenge to the CFJC Permits. *See End the Prison Indus. Complex ("EPIC") v. King Cnty.*, 3 Wn. App. 2d 1064 (2018).

ballot title decisions." *Kreidler v. Eikenberry*, 111 Wn.2d 828, 833-34, 766 P.2d 438 (1989). KCPT offer no basis to depart from this authority.

Like all voters, individuals comprising KCPT had multiple opportunities to voice their opposition to Proposition 1, and they availed themselves of many. Their failure to timely bring a ballot title challenge, however, does not warrant bringing a belated political challenge to the project now.

III. CONCLUSION

At its core, this case presents a simple question: Was the voter-approved additional property tax levy proposed to fund the construction of the CJFC a nine-year levy, raising over $200 million to fully fund its construction, or was it a one-year levy, raising only one-ninth of the amount needed to fund construction of the facility? All available evidence, including the ballot title, the Proposition itself, the voters' pamphlet, and the substantial debate at the time of the vote demonstrates this was a nine-year additional property tax levy. There is no support whatsoever for KCPT's argument that 55% of the voters were deceived when they passed Proposition 1. This Court should thus reverse the Court of Appeals.

RESPECTFULLY SUBMITTED this 2nd day of October, 2018.

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PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, and not a party to this action. On the 2nd day of October, 2018, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the foregoing document upon the parties listed below:

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DATED this 2nd day of October, 2018.

Sydney Henderson

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October 02, 2018 - 4:46 PM

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