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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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END PRISON INDUSTRIAL COMPLEX,

Respondent,

v.

KING COUNTY,

Petitioner.

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**SUPPLEMENTAL BRIEF OF KING COUNTY**

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## I. INTRODUCTION

The statute of limitations for ballot title challenges is short by design: timely challenges permit prompt correction of errors, prevent useless elections and second-guessing of voters' intent, and save governments from significant financial risks. More than three and a half years after King County voters approved a nine-year, \$200 million property tax levy to build a new Children and Family Justice Center ("CFJC"), Respondent End the Prison Industrial Complex ("EPIC") filed this action challenging that vote. EPIC's claim was that the ballot title did not conform to statutory requirements. The Court of Appeals erroneously held EPIC's case was not a ballot title challenge and was timely, despite the lengthy passage of time and expenditure of millions of public dollars.

Moreover, the Court of Appeals misconstrued the text of the ballot title and RCW 84.55.050, the levy lid lift statute. As a result, the Court of Appeals effectively rewrote the measure, even though it satisfied all applicable statutory requirements. The decision transformed a nine-year additional property tax levy into a one-year tax levy, thereby thwarting the will of the voters and leaving King County in financial jeopardy.

This Court should reverse because EPIC's lawsuit is an untimely ballot title challenge. Moreover, reversal is appropriate because the voters had before them all information required to cast an informed vote under

RCW 84.55.050 to pass a nine-year \$200 million property tax levy to fund fully the CFJC.

## **II. STATEMENT OF ISSUES**

A. EPIC failed to bring a ballot title challenge within the ten-day statutory period allowed by RCW 29A.36.090, but instead waited over three-and-a-half years after the levy passed and King County had already spent tens of millions of dollars implementing the CFJC project. Did the Court of Appeals err by holding that EPIC's suit is timely?

B. The ballot title correctly stated the initial amount of the CFJC levy, the nine year term of the levy, and the method of calculating the amount of the levy throughout its term. Moreover, the ballot title incorporated the underlying proposition, which was reproduced fully in the voters' pamphlet. Did the Court of Appeals err by: (1) failing to recognize that the ballot title provided voters with all necessary information to adopt a levy lid lift pursuant to RCW 84.55.050?; (2) focusing exclusively on the 75-word ballot title, when RCW 84.55.050(1) directs voters to consider both the title and the proposition; and (3) imposing requirements for permanent levy lid lifts to the temporary levy lid lift at issue?

## **III. STATEMENT OF THE CASE**

### **A. Proposition 1 Authorized a Temporary Nine-Year Levy.**

Under RCW 13.16.030, Washington counties are required to

operate detention facilities for youthful offenders. By 2005, King County's facility was determined to be "in severe disrepair." CP 98.

In 2012, the King County Council passed Ordinance 17304 (the "Ordinance"), which submitted a nine-year additional tax levy proposition to voters "concerning funding for a replacement facility" for the CFJC. CP 85. The Ordinance, which was placed on the ballot as Proposition 1, expressly authorized "a property tax levy in excess of the levy limitation contained in chapter 84.55 RCW for a consecutive nine-year period." CP 80. Pursuant to RCW 29A.36.071(1), the Proposition 1 ballot title read:

The King County council passed Ordinance No. 17304 concerning a replacement facility for juvenile justice and family law services. This proposition would authorize King County to levy an additional property tax for nine years to fund capital costs to replace the Children and Family Justice Center, which serves the justice needs of children and families. It 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, all as provided in Ordinance No. 17304.

CP 367. RCW 29A.36.071(1) limits the ballot title to 75 words.<sup>1</sup>

The ballot title for Proposition 1 informed voters that they were considering "an **additional** property tax for **nine** years" at a first year rate

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

of “\$0.07 per \$1,000 of assessed valuation” with “[i]ncreases in the following eight years . . . subject to the limitations in chapter 84.55 RCW.” CP 367 (emphasis added). The ballot title further informed voters that the details of the levy lid lift were “all as provided in Ordinance No. 17304.” CP 367. Ordinance 17304 was printed in full in the voters’ pamphlet. CP 283. Together, the ballot title for Proposition 1 and Ordinance 17304 constituted the “ballot of the proposition” placed before the voters. *See* RCW 84.55.050(1) (requiring certain levy lid lift information to be placed in the “ballot of the proposition”).

In August 2012, over 55% of King County voters approved Proposition 1, which implemented Ordinance 17304. CP 270, 367. Based on voter approval, in February 2015, the County entered into a \$150 million design-build contract to construct the CFJC and subsequently obtained project permits.<sup>2</sup> Construction is well underway with all of the structural elements and utilities for the main building in place and installation of ductwork, plumbing, electrical conduit, fire sprinklers, and exterior walls all in progress. To date, King County has expended, and contracted to expend, over a hundred million dollars on the CFJC project.

Property taxes for the years 2013, 2014, and 2015 were calculated and paid based on the additional property tax being in place for nine years.

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<sup>2</sup> Decl. of Jim Burt in Supp. of Resp’t’s Resp. in Opp’n to Mot. for Injunctive Relief Pending Appeal at ¶¶ 4, 6-8. (Apr. 5, 2017). Pet. for Review, Appendix C.

CP 279-81. No protests were filed. Additional property taxes under the CFJC levy continue to be collected pending a final judgment in this action.

**B. EPIC Challenges the Vote on Proposition 1 More Than Three and a Half Years After the Election.**

EPIC opposes construction of the new CFJC. In April 2016, more than three and a half years after voters approved Proposition 1, EPIC brought this action claiming that the ballot title did not comply with RCW 84.55.050's requirements. CP 7-11. EPIC made no claims that the text of Proposition 1 itself, i.e., the Ordinance, failed (1) to comply with RCW 84.55.050, (2) accurately to inform voters of the intended duration of the levy, nor (3) to comply with any constitutional requirements. CP 1-16. On summary judgment, the superior court rejected EPIC's claims, ruling that EPIC's ballot title challenge was untimely and that the ballot title met the statutory requirements of RCW 84.55.050. CP 477-78.

The Court of Appeals largely reversed. First, the Court of Appeals concluded that EPIC was not challenging the ballot title and thus not subject to the ten-day limitations period in RCW 29A.36.090. *End Prison Indus. Complex v. King Cnty.* (“EPIC”), 200 Wn. App. 616, 627, 402 P.3d 918 (2017). Second, the Court of Appeals held that the Proposition 1 ballot title failed to comply with RCW 84.55.050 because the ballot title did not “expressly state” that the increased base tax amount in the first

year of the CFJC levy (2013) would be used to calculate future years' increases (2014-2021), even though (1) the ballot title expressly stated this was an additional property tax for nine years, and (2) the language EPIC argues was missing from the ballot title was contained in the text of Proposition 1 (which was included in the voters' pamphlet) and was incorporated in the ballot title. *Id.* at 633-34. The Court of Appeals ultimately held that the ballot title authorized additional levy collections only for one year, thereby converting a \$200 million voter-approved nine-year additional property tax levy into a one-year \$20 million additional property tax levy and leaving the CFJC well-short of its funding requirements. King County sought review, which this Court granted.

#### **IV. ARGUMENT**

##### **A. Basic Principles Underlying Levy Lid Lifts.**

The amount of a regular property tax levy may increase by only 1% per year.<sup>3</sup> RCW 84.55.005(2)(c); CP 280. This limit, referred to as the "limit factor," sets a "lid" on annual tax increases. When the need arises, a local government may ask voters to pass a "levy lid lift," which allows it to collect additional property taxes beyond the 1% levy lid.

RCW 84.55.050 establishes two distinct levy lid lift mechanisms. First, a local government may seek a so-called "single-year levy lid lift"

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<sup>3</sup> Plus an additional amount for new construction. *See* RCW 84.55.010.

under RCW 84.55.050(1). Contrary to its name, a single-year levy lid lift allows for collection of additional property taxes for more than one year. *See* RCW 84.55.050(4)(b) (ii); WAC 458-19-045(3)(b)(i) (district can set number of years increased levy can be made). The single-year levy lid lift thus allows a local government: “to increase the maximum levy by more than one percent for **one year only**” which “amount is then used as a base to calculate all subsequent 1% levy limitations for the duration of the levy.” *Levy Lid Lifts*, MUN. RESEARCH SERVS. CTR. (Apr. 18, 2018) (emphasis in original).<sup>4</sup>

Second, RCW 84.55.050(2) permits a “multi-year levy lid lift” to “bump up or exceed the 1% limitation **each year** for up to six consecutive years.” *Levy Lid Lifts, supra* (emphasis in original); *see also* RCW 84.55.050(2); WAC 458-19-045(4). This mechanism allows a new levy lid lift for each year over the duration of the levy. As such, the terms “single” and “multi” do not refer to the length of the levy, but to the number of years during the levy that the 1% limit factor may be exceeded.<sup>5</sup> It is undisputed that Proposition 1 is a single-year levy lid lift

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<sup>4</sup> <http://mrsc.org/getdoc/2d6184c5-e55f-48e6-b7a6-d6262f342394/Levy-Lid-Lift.aspx>; *see also* RCW 84.55.050 (1).

<sup>5</sup> For example, a vote on a six-year “single-year lid lift” can authorize a levy of \$1 million in additional property taxes in year one that could then be increased annually by 1% in years two through six. By contrast, a vote on a six-year “multi-year lid lift” might authorize a levy of \$1 million in additional property taxes in year one, which could then be increased annually by more than 1% in each subsequent year of the levy.

under RCW 84.55.050(1) and intended to last nine years. CP 9, 41.

When either a single-year or multi-year levy lid lift expires, “the levy lid reverts to what it **would have been**” if the lid lift never occurred and the local government had instead increased its normal levy by the 1% limit factor each year. *Levy Lid Lifts, supra* (emphasis in original); *see also* RCW 84.55.050(5). These are “temporary” levy lid lifts. *See* App. A. The local government has the option, however, to seek voter approval for a “permanent” levy lid lift, where the “levy lid never reverts.” *Levy Lid Lifts, supra*. There, the amount from the final year of the (voter-approved) levy is used as a base for calculating subsequent (post-voter approved) levies. *See* RCW 84.55.050(3), (4)(a), (5); App. B. All parties agree that this case involves a temporary levy lid lift. CP 9, 47.

**B. EPIC’s Ballot Title Challenge Is Untimely.**

Though EPIC’s case was premised solely on whether the ballot title for Proposition 1 met the requirements of RCW 84.55.050, the Court of Appeals characterized EPIC’s claim as an effort to “enforce the terms of the ballot title as written” and therefore outside the ten-day statute of limitations in RCW 29A.36.090. *EPIC*, 200 Wn. App. at 628. But, this semantic turn of phrase cannot hide the true nature of EPIC’s challenge: that voters did not enact Proposition 1’s \$200 million excess property tax levy solely because the proposition’s ballot title was insufficient. Where a

party is challenging the sufficiency of a ballot title, but not the legality of the underlying Ordinance, such a challenge falls squarely within the ten-day limitations period of RCW 29A.36.090. Challenges to alleged deficiencies in a ballot title that could have been easily corrected prior to the vote must be brought pre-election. Moreover, EPIC's three-and-a-half-year delay was unreasonable. Permitting ballot title challenges years after the vote and after the expenditure of millions of public dollars is inconsistent with this Court's precedent and defies common sense.

**1. EPIC's Challenge Is Untimely Under RCW 29A.36.090.**

When a taxing district proposes a levy lid lift, the ballot title for the underlying proposition must be formulated in accordance with RCW 29A.36.071, which provides general ballot title requirements, and RCW 84.55.050, which provides specific requirements for levy lid lifts. Once drafted, RCW 29A.36.090 requires that any person "dissatisfied" with the ballot title sue in superior court within ten days. This expedited process promotes the "speedy determination of election disputes" and "strong interest in the finality of ballot title decisions." *Kreidler v. Eikenberry*, 111 Wn.2d 828, 833-34, 766 P.2d 438 (1989).

Here, any challenge alleging the failure of the ballot title to meet RCW 84.55.050—or any other statutory requirement—had to be brought within the timeframe under RCW 29A.36.090. *See, e.g., Wash. Fed'n of*

*State Emps. v. State*, 127 Wn.2d 544, 560, 901 P.2d 1028 (1995). EPIC’s sole argument on appeal is that the ballot title is deficient because it did not expressly tell voters that the increase in year one of the levy would continue in years two through nine. *See, e.g.*, CP 7 (“The ballot title of Prop. 1 did not authorize King County’s tax collections”); *EPIC*, 200 Wn. App. at 627-28 (“the ballot title language approved by voters was insufficient under RCW 84.55.050”). EPIC alleges no deficiency in the Ordinance and no constitutional challenges to the ballot title or Ordinance. This is a ballot title challenge plain and simple.

EPIC argues, and the Court of Appeals agreed, that its lawsuit is not a ballot title challenge, “but an attempt to enforce the ballot title as written and passed by voters.” *EPIC*, 200 Wn. App. at 627; CP 374. But what the voters passed is the Ordinance itself, not the ballot title. *See, e.g.*, *Wash. Ass’n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 640, 278 P.3d 632 (2012) (“*WASAVP*”) (“A ballot title consists of . . . the question of whether or not the **measure** should be enacted into law.” (emphasis added)). Because EPIC has not challenged the Ordinance, but only the statutory sufficiency of the ballot title, its challenge is subject to the ten-day limitation applicable to ballot title challenges. *Cf. id.* at 661 (subject-in-title challenge not required pre-

election because such challenges “do not challenge the result of the ballot title determination, but rather the constitutionality of the law itself”).

In short, EPIC was required to bring its ballot title challenge within the ten-day statutory period and failed to do so. The Court of Appeals thus erred by hearing EPIC’s untimely lawsuit.<sup>6</sup>

## **2. EPIC’s Delay Was Unreasonable.**

Even if this Court does not apply the ten-day statutory period, EPIC’s challenge is untimely under *Lopp v. Peninsula School District No. 401*, 90 Wn.2d 754, 585 P.2d 801 (1978). In *Lopp*, this Court rejected as untimely a post-election challenge to a school district’s sale of bonds based on alleged irregularities in a pre-election board meeting approving the ballot title for the measure. The measure passed and the plaintiff brought suit one month after the bond election. This Court held the one-month delay was “unreasonable” and that the delay in bringing suit prejudiced the school district because “changed conditions” caused increased construction costs and delay. *Id.* at 761.

Here, EPIC’s three-and-a-half-year delay was significantly longer and more prejudicial than that in *Lopp*. As in *Lopp*, EPIC failed to

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<sup>6</sup> This Court strictly adheres to expedited processes in other contexts that similarly require “timely judicial review.” See *Habitat Watch v. Skagit Cnty.*, 155 Wn.2d 397, 406-07, 120 P.3d 56 (2005) (explaining that “even illegal [land use] decisions” become “unreviewable by the courts if not appealed within” the Land Use Petition Act’s “uniform 21-day deadline”).

provide notice of the alleged statutory violation before the election when it could have been addressed. And there have been even more significant “changes in conditions” between the 2012 election and the filing of EPIC’s lawsuit in 2016. Indeed, King County executed a \$150 million design-build contract and expended tens of millions of dollars on construction prior to EPIC’s lawsuit, all premised on the revenue to be raised by the levy lid lift. King County taxpayers would face millions of dollars in costs if forced to suspend or terminate the design-build contract.

Because EPIC did not timely raise any objection to the ballot title and waited years such that a decision in its favor would cause significant damage to King County and its taxpayers, EPIC’s suit is not timely.

**C. The Court of Appeals Erred in Holding that the Proposition 1 Ballot Title Did Not Satisfy RCW 84.55.050.**

The Court of Appeals held that the Proposition 1 ballot title was insufficient because it did not “expressly state that the levies following 2013 would be calculated based upon 2013’s increased levy amount.” *EPIC*, 200 Wn. App. at 633. In so concluding, the court misread both the ballot title and the statutory requirements. Rather, the ballot title’s express language and incorporation of the Ordinance fully informed the voters of the details of the nine-year additional property tax levy. Moreover, the court erred by confining its inquiry solely to the Proposition 1 ballot title,

where RCW 84.55.050(1) requires levy information to be placed in the “ballot of the proposition,” which refers to the proposition before the voters as well as the ballot title. Finally, the Court of Appeals was wrong to require an “express statement” about the calculation of “subsequent levies,” where Proposition 1 is a temporary, not permanent levy.

**1. The Ballot Title Fully Informed the Voters.**

Ballot materials “should be construed as the average informed voter” would read them. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 219, 11 P.3d 762 (2000); *see also Watson v. City of Seattle*, 189 Wn.2d 149, 167, 401 P.3d 1 (2017) (liberally construing tax statute under “home rule” principle). Courts must “not void a law duly enacted by voters based upon the technical significance of a word, where it can hardly be contended that anyone was likely to be deceived.” *WASAVP*, 174 Wn.2d at 664 (internal quotations omitted). Rather than interpret the ballot title in accord with its language, as the average voter would, the Court of Appeals interpreted the ballot title to authorize only a one-year levy, defying the will of the voters and creating the absurd result in which only 10% of the voter-approved facility is funded. *See Strand v. State Dep’t of Motor Vehicles*, 8 Wn. App. 877, 880, 509 P.2d 999 (1973) (“Unlikely, strained, absurd consequences are to be avoided”).

RCW 84.55.050(1) and the accompanying WAC 458-19-045 require that voters be informed of the dollar rate, the duration, and the purpose of additional property tax levies. While neither the statute nor the WAC requires all this information to fit in the 75-word ballot title, the Proposition 1 ballot title did in fact contain all of this information. The ballot title plainly disclosed that the “proposition would authorize King County to levy an additional property tax for nine years” at a first year rate of “\$0.07 per \$1,000 of assessed valuation” with “[i]ncreases in the following eight years” subject to the 1% limitation in RCW 84.55, all “as provided in Ordinance No. 17304.” CP 367. This language is more than sufficient to inform voters that they are voting on a nine-year levy with increases subject to the 1% limit in years two through nine.

Moreover, the ballot title expressly incorporated the Ordinance, which contained the precise information EPIC contends is missing.<sup>7</sup> See CP 367 (noting that more details were “provided in Ordinance No. 17304”). In *Sane Transit v. Sound Transit*, 151 Wn.2d 60, 71-72, 85 P.3d 346 (2004), this Court held “where the ballot title would lead to an inquiry into the body of the act, proper notice . . . has been given to the voter about what he or she is deciding.” There, reference to a resolution in the ballot title was sufficient where the resolution contained the necessary

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<sup>7</sup> Though not required for a temporary levy lid lift, Proposition 1 expressly provided the method by which increases in years two through nine of the levy are calculated. CP 85.

details and was “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 incorporation of the Ordinance is even more compelling because, unlike the resolution in *Sane Transit*, the actual text of the Ordinance was included in the voters’ pamphlet. CP 283.

**2. RCW 84.55.050(1) Provides that the Ballot Title and Proposition Together Provide All Necessary Details.**

Though the ballot title alone complied with RCW 84.55.050(1), the Court of Appeals was wrong to confine its inquiry solely to the 75-word ballot title to the exclusion of the proposition itself. The levy lid lift statute employs several distinct terms to indicate where information should reside in materials considered by the voters. Notably, RCW 84.55.050(2), which applies only to multi-year lid lifts and is not applicable in this case, is the only section in the statute where the Legislature requires special information to be included specifically in the “ballot title.” In contrast, RCW 84.55.050(1), which does apply here, requires that “[t]he **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” (emphasis added).

Because the Legislature used different terms within each subsection of the statute, the Court of Appeals was required to “presume the [L]egislature intend[ed] the terms to have different meanings.” *Densley v. Dep’t of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885 (2007).

Under this rule of statutory construction, the use of “ballot of the proposition” in RCW 84.55.050(1) means something different than “ballot title” in RCW 84.55.050(2). Consistent with the statute’s fundamental purpose to inform voters, the term “ballot of the proposition” under RCW 84.55.050(1) means the issues to be voted upon, which includes both the ballot title and the proposition. RCW 84.55.050(4) and the Department of Revenue’s interpretation of the statute in the WAC support this reading. *See* RCW 84.08.080; *Harley H. Hoppe & Assocs., Inc. v. King Cnty.*, 162 Wn. App. 40, 54, 255 P.3d 819 (2011) (courts give “considerable deference” to the “interpretation made by the agency”).

Specifically, RCW 84.55.050(4) provides: “if expressly stated, a **proposition** placed before the voters” (emphasis added) under RCW 84.55.050(1) or RCW 84.55.050(2) may:

- (a) Use the dollar amount of a levy under subsection (1) of this section ... for the purpose of computing the limitations for subsequent levies provided for in this chapter;
- (b) Limit the period for which the increased levy is to be made ...
- (c) Limit the purpose for which the increased levy is to be made ...

- (d) Set the levy or levies at a rate less than the maximum rate allowed for the district; or
- (e) Include any combination of the conditions in this subsection.

Similarly, WAC 458-19-045 provides that such information be contained in the “text of a ballot title and measure for a single year lid lift”.

In sum, neither the statute nor the WAC requires all voter information to fit in the 75-word ballot title alone. Rather RCW 84.55.050(1) places this information in the “ballot of the proposition” which the WAC correctly interprets to mean the “ballot title and the measure.”<sup>8</sup> There is no dispute that Proposition 1 contained detailed calculation information about future tax increases.

EPIC argues that crediting the Legislature’s chosen language would “judicially repeal the statute’s **only** requirement that the voters be told **anything** on the ballot.” Answer at 10-11. This red herring argument has no basis. First, as described above, the ballot title here told the voters what they were voting on. Second, as EPIC recognizes, RCW 29A.36.071(1) mandates that every ballot title must include a concise description of the measure within the applicable word limit. The court was wrong to consider only the ballot title and not the proposition.

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<sup>8</sup> See also RCW 84.55.050(3) (if a levy lid lift is permanent, voters must be so told in the “**ballot proposition**” (emphasis added)); .050(4) (if “expressly stated, a **proposition** placed before the voters” (emphasis added)); .050(5) (subsequent levies are computed based on what is “expressly stated in an **approved ballot measure** under this section” (emphasis added)).

### **3. The Statute Contains No Express Statement Requirements for A Temporary Levy Lid Lift.**

Even if King County is incorrect on its preceding arguments, it still should prevail because the Court of Appeals erred in its holding that the Proposition 1 ballot title needed to provide an “express” statement about the calculation of “subsequent levies.” *EPIC*, 200 Wn. App. at 632. Relying on RCW 84.55.050(3), (4)(a), and (5), the court held that the ballot title was required to state that the 2013 levy amount would be used as a base to compute levy amounts for years two through nine of the measure. *EPIC*, 200 Wn. App. at 632. But years two through nine of Proposition 1 are not “subsequent levies” under the statute.

As explained previously, one issue that arises for levy lid lifts is whether the base tax amount that applies to levies **after** expiration of a voted levy is reset to the pre-levy amount. Subsections (3), (4), & (5) of RCW 84.55.050 address this problem by directing the amount be reset unless the intention to establish a new base rate for “subsequent levies” is “expressly stated” in the original voter-approved levy. Thus, the “express statement” requirement only applies when a government seeks to permanently use the higher tax amount as the base for subsequent levies after the end of the voted levy.

Here, a “subsequent levy” is the levy that will be imposed in 2022, when Proposition 1 expires. *See* WAC 458-19-045(3)(b)(iii), (4)(a)(iii)(C) (equating “computing the limitations for subsequent levies” with “**permanently** increase[ing] the taxing district’s levy base” (emphasis added)); WAC 458-19-045(5) (permanent lid lift occurs when ballot title and measure expressly state levy will be used for calculating subsequent levies); 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” (emphasis added)). There is no basis to interpret the “express statement” requirement of RCW 84.55.050 to apply to each consecutive year within the same levy, when it is limited to “subsequent levies.” And, there is no basis to apply these sections here because Proposition 1 is a temporary levy.

EPIC relies heavily on the legislative history of RCW 84.55.050 to shore up the Court of Appeals’ interpretation that “subsequent levies” means every year subsequent to the first year of a single voter-approved levy. Answer at 5-6. First, it is improper to resort to legislative history when the meaning of “subsequent levy” is plain. Second, while EPIC is correct that RCW 84.55.050 was amended in 2008, its spin on those amendments is wrong. As EPIC notes, prior to the amendment, the default rule was that a “single-year” levy lid lift authorized a permanent

increase to the levy limit. *Id.* at 5. The amendment reversed the default rule so that single- and multi-year lid lifts were now presumed temporary, unless “expressly” made permanent. *See* AGO 2008 No. 3.

The Final Bill Report summarizes the amendment as follows:

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). Accordingly, the “express” statement requirements imposed by the amendment are merely intended to alert voters to a permanent increase applicable to “subsequent levies”, not to explain the methodology for calculations made throughout the duration of the proposition being voted on. The court was wrong to require King County to detail its calculation method for each year of the nine-year temporary levy.

## V. CONCLUSION

The voters were fully informed when they approved the levy and their decision should be respected. Moreover, EPIC’s challenge here is untimely. This Court should reverse the Court of Appeals.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of May, 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 25<sup>th</sup> day of May, 2018, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the Supplement Brief of King County upon the parties listed below:

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DATED this 25<sup>th</sup> day of May, 2018.



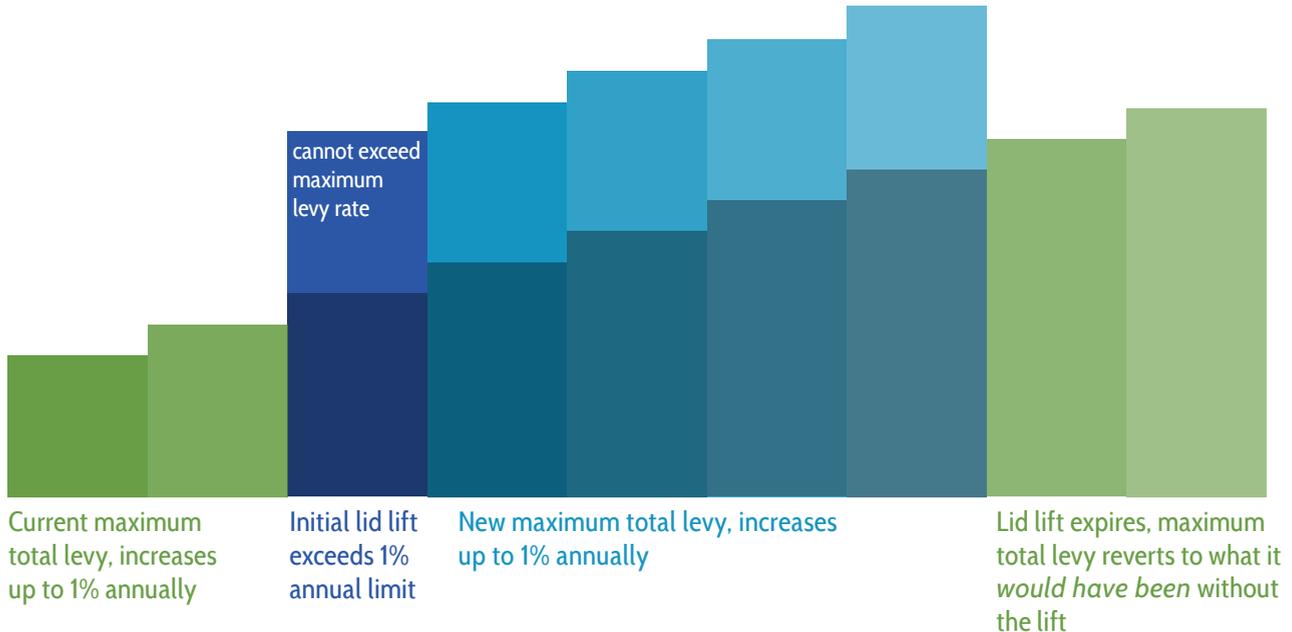
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Sydney Henderson

# **APPENDIX A**

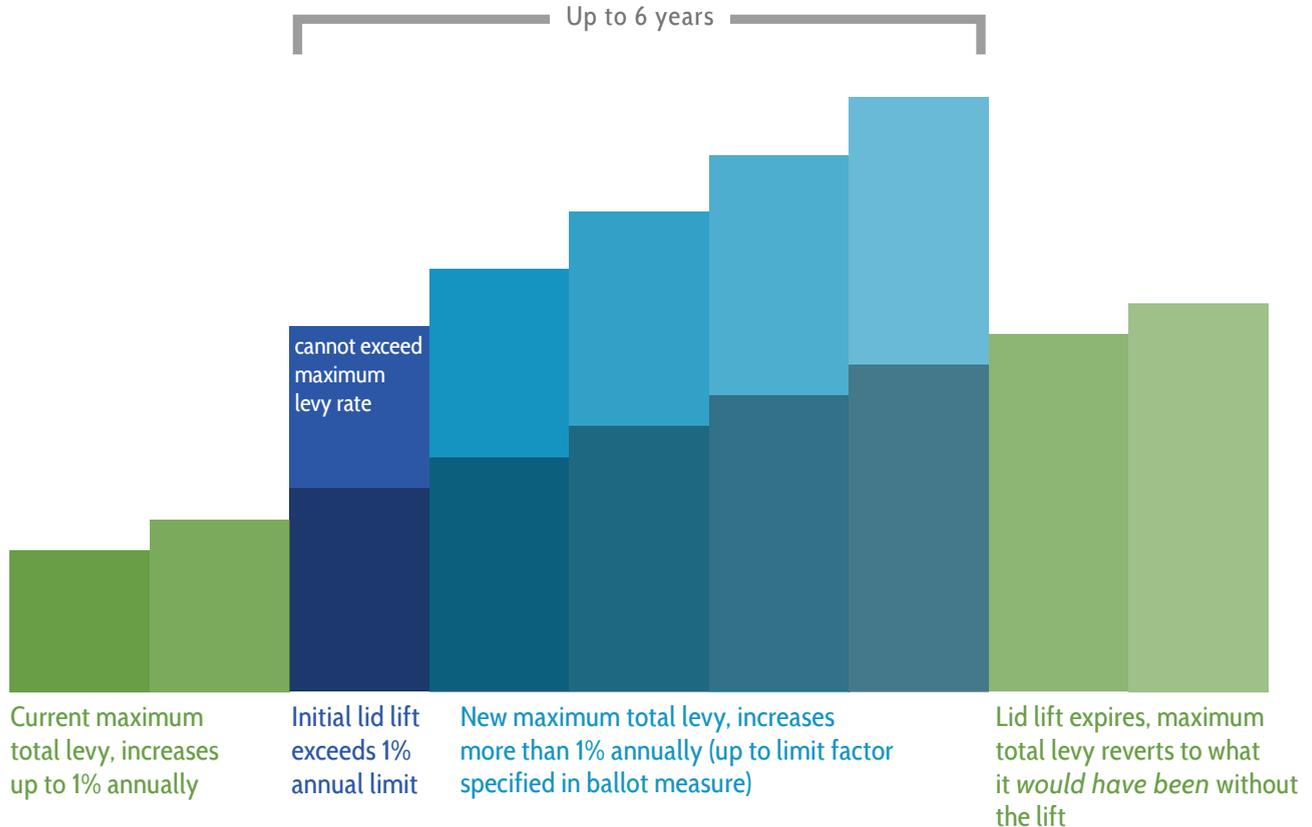
## Single Year (One-Bump) Levy Lid Lift – Temporary RCW 84.55.050(1)

Any number of years  
Cannot exceed 9 years for debt service\*



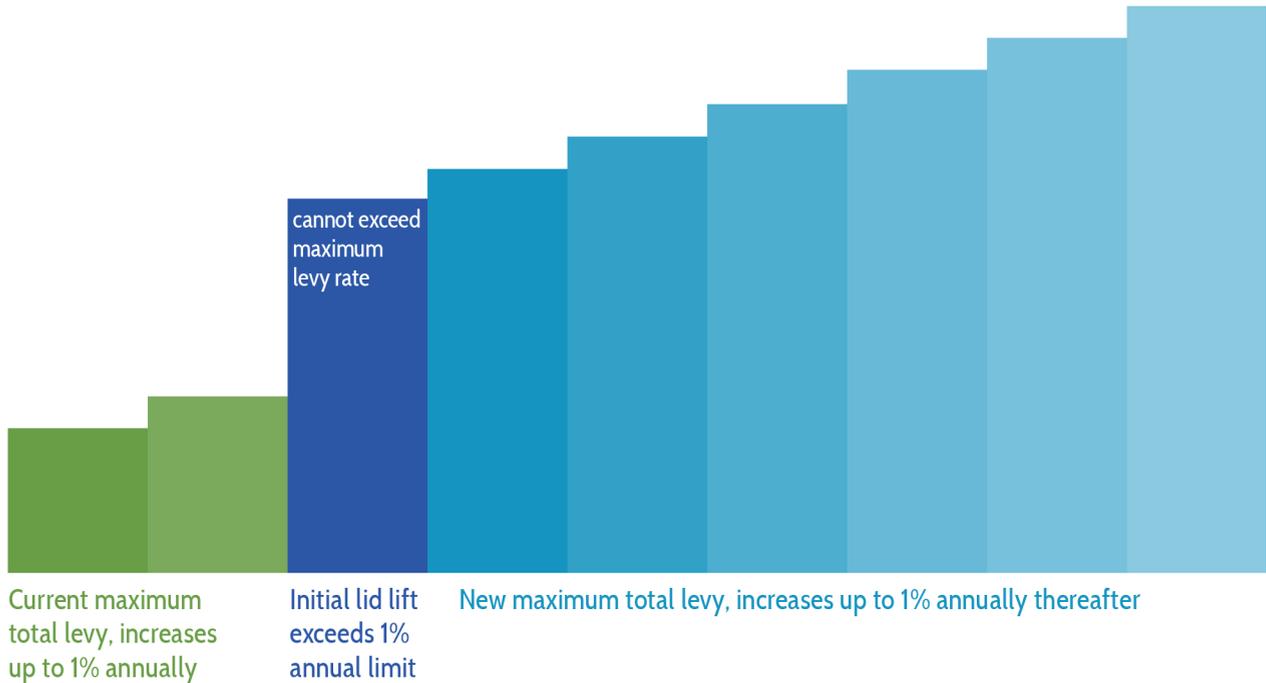
\*Except Thurston County

## Multi-Year Levy Lid Lift – Temporary RCW 84.55.050(2)

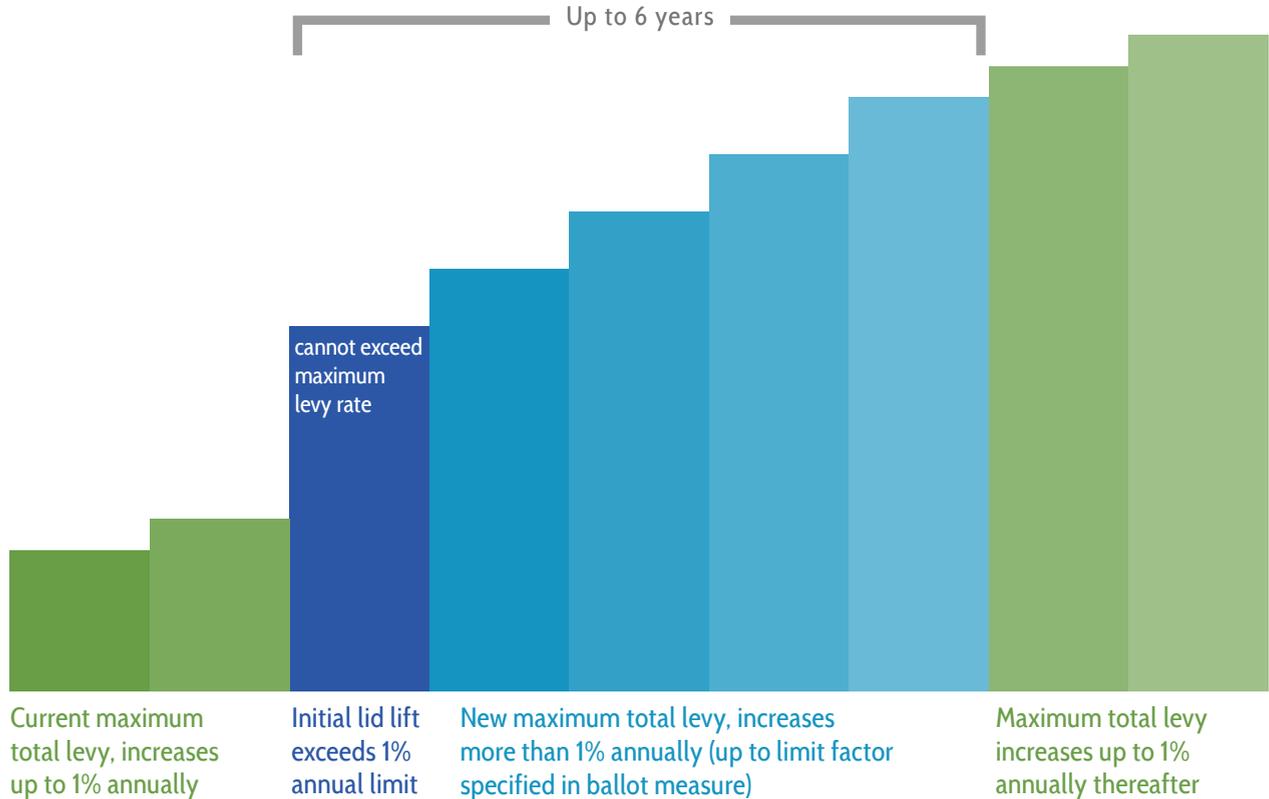


# **APPENDIX B**

## Single Year (One-Bump) Levy Lid Lift – Permanent RCW 84.55.050(1)



## Multi-Year Levy Lid Lift – Permanent RCW 84.55.050(2)



# PACIFICA LAW GROUP

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