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No. _____

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 49453-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

END PRISON INDUSTRIAL COMPLEX,

Respondent,

v.

KING COUNTY,

Petitioner.

KING COUNTY'S PETITION FOR REVIEW
(State of Washington Court of Appeals Division II No. 49453-1-II)

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I. INTRODUCTION & IDENTITY OF PETITIONER

More than three and a half years after King County voters approved a nine-year excess property tax levy to replace the county's ailing juvenile justice court and detention facilities with a new Children and Family Justice Center ("CFJC"), Respondent End the Prison Industrial Complex ("EPIC") filed this action challenging that vote by claiming deficiencies in the ballot title. Despite the significant passage of time and expenditure of millions of dollars by King County to implement the voter-approved CFJC project, the Court of Appeals found EPIC's ballot title challenge timely. That was error. Further, the Court of Appeals misconstrued RCW 84.55.050, the levy lid lift statute, to require the 75-word ballot title, rather than the broader "ballot of the proposition," to include specified highly detailed information. By limiting excess property tax collections necessary to fund the CFJC project, the Court of Appeals has left King County with a multi-million dollar hole in the ground and an uncertain path to completion of this essential public facility. *End Prison Indus. Complex v. King Cty.*, 200 Wn. App. 616, 402 P.3d 918 (2017) ("EPIC Opinion").

The EPIC Opinion—by liberally allowing funding challenges based on alleged ballot title deficiencies to proceed years after an election—not only endangers completion of the CFJC, but creates a high risk environment for other major public works projects around our state.

Moreover, the Court of Appeals' erroneous interpretation of RCW 84.55.050 impacts not only King County's excess levy proposition but many other similar propositions throughout the state. As a result, other voter-approved levies are now also potentially subject to late-filed attacks, creating significant uncertainty for numerous public entities engaged in multi-million dollar infrastructure projects. This appeal thus presents issues "of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4).

Indeed, this Court has often reviewed challenges addressing funding of large, public works projects because of the substantial public interest involved. *See, e.g., Chem. Bank v. Wash. Pub. Power Supply Sys.*, 99 Wn.2d 772, 780-82, 666 P.2d 329 (1983) (direct review addressing funding of nuclear plants); *CLEAN v. State*, 130 Wn.2d 782, 790-92, 928 P.2d 1054 (1996) (direct review of statute funding baseball stadium).¹

Moreover, review is appropriate under RAP 13.4(b)(1) because the Court of Appeals' decision to allow an untimely ballot title challenge on non-constitutional grounds conflicts with this Court's decision in *Lopp v. Peninsula School District No. 401*, 90 Wn.2d 754, 585 P.2d 801 (1978). Similarly, the Court of Appeals' interpretation of the levy lid lift statute, which holds that different statutory terms somehow mean the same thing, conflicts with this Court's precedent and implicates separation of powers

¹ The reasons that support direct review by this Court under RAP 4.2 are similar to those that support a grant of discretionary review under RAP 13.4.

concerns. *See, e.g., Five Corners Family Farmers v. State*, 173 Wn.2d 296, 311, 268 P.3d 892 (2011) (“disregarding an otherwise plain meaning and inserting or removing statutory language . . . raises separation of powers concerns”).

Because the *EPIC* Opinion satisfies the standards of RAP 13.4(b)(1) and (4), this Court should grant King County’s Petition for Review and ultimately reverse the published *EPIC* Opinion.

II. COURT OF APPEALS DECISION

The published *EPIC* Opinion is attached as Appendix A. The Court of Appeals’ order denying King County’s timely motion for reconsideration is attached as Appendix B.

III. ISSUES PRESENTED FOR REVIEW

A. EPIC failed to bring a ballot title challenge within the ten-day statutory period allowed by RCW 29A.36.090, instead waiting over three and a half years until after the levy passed and after King County had 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 at issue stated the initial amount of the excess levy, that increases would be calculated pursuant to statute, and the nine-year length of the levy. It specifically referenced the proposition to be voted upon, which was fully reproduced in the voters’ pamphlet. (1) Did the Court of Appeals err by holding that RCW 84.55.050 requires that a 75-

word ballot title contain detailed levy lid lift information when the applicable statutory language refers to other materials that were before the voters, including the text of Proposition 1? (2) Did the Court of Appeals err by ignoring the ballot title language stating that the proposition would authorize “an additional regular property tax for nine years” at a rate “of \$.07 per \$1,000 of assessed valuation for collection in 2013” with “[i]ncreases in the following eight years . . . subject to the limitations in chapter 84.55 RCW” and referencing the terms of Ordinance 17304?

IV. STATEMENT OF THE CASE

A. Basic Principles Underlying Excess Property Tax Levies.

The annual limit for rate increases in regular property tax levies is 1%. RCW 84.55.005(2)(c); CP 280. This limit is referred to as the levy lid. When the need arises, a local government may ask voters to pass a “levy lid lift,” which allows it to collect additional or excess property taxes beyond the 1% levy lid.

Although the nomenclature is confusing, 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” under RCW 84.55.050(1). Contrary to its name, a single-year levy lid lift allows for collection of excess property taxes for more than one year. The single-year levy lid lift allows a local government “to increase the maximum levy by more than one percent for *one year only*. That 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. (Nov. 28, 2017).² For example, a vote on a nine-year “single-year lid lift” can authorize a levy of \$1 million in excess property taxes in year one that could then be increased annually by 1% in years two through nine. All parties agree that this case presents a single-year levy lid lift under RCW 84.55.050(1).

In contrast, RCW 84.55.050(2) allows for a “multi-year levy lid lift” where the base rate is lifted beyond the 1% limit in the first year, **and** additional lifts beyond the 1% limit occur in each subsequent year. For example, a vote on a nine-year “multi-year lid lift” might authorize a levy of \$1 million in excess property taxes in year one, which could then be increased annually by **more than** 1% in years two through nine.

B. Proposition 1 Authorized a Nine-Year Levy Based On A Single-Year Levy Lid Lift.

In 2012, the King County Council passed Ordinance 17304, which submitted a single-year levy lid lift proposition to voters “concerning funding for a replacement facility for the Children and Family Justice Center.” 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 King County

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

Prosecuting Attorney drafted a ballot title for Proposition 1:

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.³

The ballot title for Proposition 1 informed voters that they were considering “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 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, as required by RCW 84.55.050(1).

In August 2012, King County voters approved Proposition 1, which implemented Ordinance 17304 and authorized a nine-year excess levy to build the new CFJC. CP 270. Based on voter approval, in

³ Ordinance 17304 contained a suggested ballot title, but that title exceeded the word limit. CP 85.

February 2015, the County entered into a \$150 million design-build contract to construct the CFJC and subsequently obtained project permits. Decl. of Jim Burt in Supp. of Resp't's Resp. in Opp'n to Mot. for Injunctive Relief Pending Appeal ("Burt Decl.") at ¶¶ 4, 6-8. (Apr. 5, 2017).⁴ Construction is well underway with footings, foundations, and a large construction crane occupying a substantial excavation. To date, King County has expended tens of millions of 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. CP 279-81. No protests were filed. Excess property taxes continue to be collected pending a final judgment in this action.

C. EPIC Challenged the Vote on Proposition 1 More Than Three and a Half Years After the Election.

In April 2016, more than three and a half years after voters approved Proposition 1, EPIC brought this action claiming deficiencies in the Proposition 1 ballot title. CP 1-16. EPIC claimed that the ballot title did not comply with RCW 84.55.050's requirements.⁵ CP 7-9. EPIC made no claims that the text of Proposition 1 itself, i.e., the Ordinance, failed to comply with RCW 84.55.050, nor did it claim any constitutional deficiencies. CP 1-16. On summary judgment, the superior court rejected

⁴ This declaration is part of the Court of Appeals record, but King County has attached it as Appendix C to this Petition for convenience of the Court.

⁵ EPIC also alleged that the ballot title failed to adequately set forth the purpose of the excess levy, a claim the Court of Appeals correctly rejected and on which King County does not seek review. CP 6-7; *EPIC*, 200 Wn. App. at 628.

EPIC's claims, ruling that EPIC's challenge to the sufficiency of the ballot title was untimely and that the ballot title otherwise 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. *EPIC*, 200 Wn. App. at 627. 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" King County's methodology for calculating taxes over the course of the nine-year levy duration, even though the required language was contained in the text of Proposition 1 and was referenced in the ballot title. *Id.* at 633-34. The Court of Appeals ultimately held that the ballot title authorized excess levy collections only for one year, thereby converting a \$200 million voter-approved nine-year excess property tax levy into a one-year \$20 million levy.

King County filed a timely motion for reconsideration, which the Court of Appeals denied. It now petitions this Court for review.

V. ARGUMENT

A. **Permitting EPIC's Untimely Ballot Title Challenge Raises Issues of Substantial Public Interest and Conflicts With This Court's Precedent.**

The Court of Appeals permitted EPIC's challenge to the statutory sufficiency of the ballot title to proceed some three and a half years after

certification of the final election results. Such an approach effectively allows invalidation of all or part of an election years after a vote, leaving the will of the voters thwarted by an easily correctable, alleged statutory deficiency in the ballot title. For a municipality, this leaves years of tax collection, planning, and construction of public works projects subject to upset for years after a vote, despite the expenditure of millions of dollars towards completion of a project. The risk continues even after a project is complete and otherwise paid for by the challenged levy.⁶ Whether a challenge to the statutory sufficiency of a ballot title must be brought within the ten-day statutory period permitted under RCW 29A.36.090 or promptly after an election—before millions of dollars are spent on a voter approved project—is an issue of substantial public interest meriting review under RAP 13.4(b)(4).⁷

RCW 29A.36.071 sets forth the requirements for formulation of ballot titles. Here, the county prosecuting attorney has responsibility for drafting a 75-word ballot title. RCW 29A.36.071(1). Within this word limit, any ballot title must conform to the requirements of relevant statutes, which in this case is RCW 84.55.050(1). RCW 29A.36.071(3).

Once the ballot title is drafted, RCW 29A.36.090 sets forth the

⁶ Presumably the only limitation would be the three-year statutory period for seeking a tax refund. *See* RCW 84.69.030.

⁷ King County recognizes that constitutional claims regarding ballot titles are appropriately brought after the election. But no constitutional claims are at issue here. Regardless, even with constitutional challenges, this Court has not sanctioned a three and a half year delay in bringing such challenges.

mandatory process for appealing the sufficiency of that title:

If any persons are dissatisfied with the ballot title for a local ballot measure that was formulated by the . . . prosecuting attorney preparing the same, they may **at any time within ten days from the time of the filing of the ballot title** . . . appeal to the superior court of the county where the question is to appear on the ballot, by petition **setting forth the measure, the ballot title objected to, their objections to it, and praying for amendment of it.**

(Emphasis added). A short limitations period for ballot title disputes promotes the “speedy determination of election disputes” and “finality.”

Kreidler v. Eikenberry, 111 Wn.2d 828, 834, 766 P.2d 438 (1989). It prevents a useless vote on a statutorily infirm ballot title.

Here, the King County Prosecuting Attorney exercised his duty to draft a ballot title of no more than 75 words that would meet the requirements of RCW 84.55.050(1) for a single-year levy lid lift proposition. Thus, any challenge alleging the failure of the ballot title to meet those statutory requirements had to be brought within the ten-day statutory period. *See, e.g., Wash. Fed’n of State Emps. v. State*, 127 Wn.2d 544, 560, 901 P.2d 1028 (1995) (upholding trial court determination that challenge to statutory sufficiency of ballot title must be brought within the statutory limitations period).

The Court of Appeals’ opinion judicially creates a loophole to the statutory process set forth in RCW 29A.36.071 - .090. In avoiding the ten-day limitations period, the court used reasoning that turns the levy approval process on its head. There was no dispute that the text of “Prop.

1 authorized ‘an additional property tax for nine years to fund capital costs to replace the Children and Family Justice Center.’” *EPIC*, 200 Wn. App. at 621. The Court of Appeals correctly summarized EPIC’s core contention that “the ballot title language approved by voters was **insufficient** under RCW 84.55.050 to allow the County to use the Prop. 1 levy authorized for the first year as a base to compute the amount of levies for subsequent years.” *Id.* at 627-28 (emphasis added). At this point, the Court of Appeals should have applied the ten-day limitations period and ended its opinion affirmed. A challenge to the sufficiency of a ballot title used to pass an otherwise constitutional ordinance is a “ballot title challenge” under any reasonable interpretation of RCW 29A.36.090.

But the Court of Appeals missed this holding and proceeded one step further to effectively re-write the Ordinance to conform with the allegedly insufficient ballot title. The Opinion turns the Ordinance’s nine-year excess levy into a one-year levy based on the court’s misreading of the ballot title. Reforming an ordinance to reflect a ballot title exceeds any recognized judicial authority, especially three and a half years after the vote. The lower appellate court shook the tail to wag the dog.

Enforcement of the ten-day limitations period for ballot titles serves a crucial function for elections. RCW 29A.36.090 imposes an affirmative obligation on any person who is dissatisfied with a ballot title—including EPIC—to come forward immediately. It is a “speak now

or forever hold your peace” statute. Allowing parties to avoid the ten-day limit to challenge and rewrite a proposition years after adoption by the voters raises serious and substantial questions of public interest that merit this Court’s review.

Review is also merited under RAP 13.4(b)(1) because the *EPIC* Opinion conflicts with this Court’s precedent. Most notably, in *Lopp*, 90 Wn.2d at 755-57, this Court rejected as untimely a post-election challenge to a school district’s sale of general obligation bonds based on an alleged violation of the Open Public Meetings Act in a pre-election board meeting that approved the ballot title for the bond measure. The measure passed and the plaintiff brought suit **one month** after the bond election. *Id.* at 759. This Court deemed the one month delay “unreasonable.” *Id.* at 761.

Here, EPIC’s challenge was more than three and a half years after the election. Like the challenger in *Lopp*, EPIC failed to provide notice of the alleged statutory violation before the election when any problem with the ballot title could have been fixed and a useless election avoided.

Similarly, the *Lopp* Court noted that increased construction costs and construction delay, as well as difficulties in the bond market, would result from plaintiff’s untimely challenge. *Id.* at 756-57, 761. Here, there have been even more significant “changes in conditions” between the 2012 election and the filing of the EPIC lawsuit in 2016, including King County’s execution of a \$150 million design-build contract and substantial

expenditures on construction. The possible elimination of \$180 million worth of voter-approved excess levy funds has a substantial impact on the King County purse. To build the CFJC, King County may have to look to its general fund, which supports many other important programs, or face millions of dollars in costs if forced to suspend or terminate the design-build contract.

In sum, this Court should grant review to determine whether non-constitutional challenges to the ballot title of voter-approved property tax levy propositions can be made more than three and a half years after the election. Levy propositions past and present will be impacted by resolution of this important question.

B. The Court of Appeals' Incorrect Interpretation of RCW 84.55.050 Raises Issues of Substantial Public Interest and Conflicts with This Court's Precedent.

1. The Court of Appeals Misinterpreted RCW 84.55.050 By Examining Only the Ballot Title for Levy Lid Lift Details.

Depending on the type of levy lid lift requested, RCW 84.55.050 requires that voters be provided with relevant information about the levy lid lift and specifies where that information must appear in the voters' materials, including possible placement in the "proposition," the ballot "title," and/or the "ballot of the proposition" (both the proposition and the ballot title). Despite specific statutory language, the *EPIC* Opinion holds that RCW 84.55.050 mandates all the required information to be included

in the 75-word **ballot title**. This was error, and the resulting substantial impacts on King County and its voters (invalidating a public vote) are sufficient to warrant this Court's review.

Moreover, review is warranted because the consequences of the *EPIC* Opinion extend far beyond the CFJC levy. Many other jurisdictions, relying on Washington Department of Revenue ("DOR") guidance, have passed excess levies using similar language.⁸ Those levies are now potentially subject to challenge, thereby jeopardizing hundreds of millions of dollars in ongoing public projects and effectively invalidating the voters' will to enact excess property taxes. The proper interpretation of RCW 84.55.050 is a matter of substantial public interest as many Washington jurisdictions have and will place levy lid lift propositions on the ballot and need guidance from this Court as to the proper method of doing so.

King County's levy lid lift request was brought under the "single-year" levy lid lift provision of RCW 84.55.050(1), which requires that "[t]he **ballot of the proposition** shall state the dollar rate proposed and

⁸ Copies of 19 ballot titles with similar language are attached as Appendix D to this Petition. Two of these ballot titles are already in the record. CP 467, 472. Concurrent with this filing, King County has moved for judicial notice and in the alternative to expand the appellate record to include the 17 other ballot titles under RAP 9.11. Each ballot title states only the first year tax rate and the number of years of the levy, which is all that has been traditionally required. *See Levy Lid Lifts, supra*, <http://mrsc.org/getdoc/2d6184c5-e55f-48e6-b7a6-d6262f342394/Levy-Lid-Lift.aspx> (temporary single-year lid lift ballot measure requirements include only "the maximum tax rate to be imposed in the first year," "the total duration of the levy (number of years)," and a maximum of "75 words" (emphasis omitted)).

shall clearly state the conditions, if any, which are applicable under subsection (4) of this section.” (Emphasis added). Under RCW 84.55.050(3), if a levy lid increase is to be used as a permanent base for future levies, such information must be included in the “**ballot proposition.**” (Emphasis added). RCW 84.55.050(4) provides, “[i]f expressly stated, a **proposition** placed before the voters” may use the dollar amount of the increased levy to compute statutory limitations going forward, limit the period of the increased levy, and limit the use of the levy (Emphasis added). Finally, in RCW 84.55.050(5), subsequent levies are computed based on what is “expressly stated in an **approved ballot measure** under this section.” (Emphasis added).

The statute thus employs several distinct terms to indicate where differing pieces of information must reside in the materials considered by a voter. Of great importance to this appeal, RCW 84.55.050(2)—which applies solely to “multi-year levy lid lifts”—is the only place in the statute where the Legislature requires special voter information to be included in a ballot title. This section, which does not apply to Proposition 1, mandates that the “**title** of each ballot measure must state the limited purposes” of the levy, while allowing other information to be included in the broader “ballot proposition.” RCW 84.55.050(2)(a) (emphasis added).

Inexplicably, the *EPIC* Opinion overlooks the Legislature’s use of distinct statutory terms and holds that “RCW 84.55.050(3), (4)(a), and (5)

require that in order to compute limitations for ‘subsequent levies’ using the dollar amount of a levy authorized by a proposition, the proposition’s **ballot title** must have ‘expressly state[d]’ so.” *EPIC*, 200 Wn. App. at 632 (emphasis added). The Court of Appeals simply misreads the statute. None of the subsections cited by the court, including the RCW 84.55.050(1) mechanism utilized by Proposition 1, contain the term “ballot title,” let alone any requirement to place special information in the “ballot title.”

The Court of Appeals’ holding thus violates straightforward canons of statutory construction. Because the Legislature used different terms within each subsection of RCW 84.55.050, the Legislature necessarily intended these terms to have different meanings. *Densley v. Dep’t of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885 (2007) (“When the legislature uses two different terms in the same statute, courts presume the legislature intends the terms to have different meanings.”). The Court of Appeals was ““required to assume the Legislature meant exactly what it said and apply the statute as written.”” *In re Custody of Smith*, 137 Wn.2d 1, 8, 969 P.2d 21 (1998), *aff’d sub nom. Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) (quoting *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997)). The failure of the Court of Appeals to give meaning to the Legislature’s specific language “effectively ‘rewrit[es]’” the statute, *Applied Indus. Materials Corp. v. Melton*, 74 Wn.

App. 73, 78, 872 P.2d 87 (1994), and intrudes on the legislative function. See *Lummi Indian Nation v. State*, 170 Wn.2d 247, 262, 241 P.3d 1220 (2010).

Nor does it make sense to interpret the term “ballot of the proposition” to mean only “ballot title.” See *Sane Transit v. Sound Transit*, 151 Wn.2d 60, 71, 85 P.3d 346 (2004) (noting that Sound Transit’s Resolution 75 was “the proposition to be voted on”); *Ley v. Clark Cty. Pub. Transp. Benefit Area*, 197 Wn. App. 17, 26, 386 P.3d 1128 (2016) (the relevant law is the resolution enabling the ballot measure); RCW 42.17A.005(4) (“‘Ballot proposition’ means any ‘measure’ as defined by RCW 29A.04.091”); RCW 29A.04.091 (“‘Measure’ includes any proposition or question submitted to the voters.”). Rather than just the ballot title or the ballot proposition, the term “ballot of the proposition” in RCW 84.55.050(1) means the issues to be voted upon, which includes **both** the ballot title and the proposition. Consistent with RCW 84.55.050(1), the “ballot of the proposition”—here, the ballot title and Proposition 1 taken together—clearly disclose the amount of the excess nine-year levy and how each year’s levy amount is to be collected.

Because the Court of Appeals collapses RCW 84.55.050 into a statute requiring the inclusion of all levy lid lift information into a 75-word “ballot title,” even though the Legislature specifically identifies

additional repositories for voter information like the “proposition” and the “ballot of the proposition,” it erred. Review of this published opinion is necessary to correct an issue of substantial public interest and reinstate the statute as drafted by the Legislature.

2. The Court of Appeals Ignored Express Language in the Proposition 1 Ballot Title.

Although RCW 84.55.050(1) imposes no special requirements for single-year levy lid lift ballot titles, the Proposition 1 ballot title nonetheless included the information deemed necessary by the Court of Appeals. The Court of Appeals failed in its obligation to reject “ballot title challenges based on nuances between terms.” *Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 664, 278 P.3d 632 (2012). As with an initiative, a voter proposition “should be construed as the average informed voter voting on the initiative would read it.” *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 219, 11 P.3d 762 (2000).

Here, the ballot title disclosed that the “proposition would authorize King County to **levy an additional property tax for nine years.**” CP 367 (emphasis added). The levy “would authorize King County to levy **an additional** regular property tax of \$0.07 per \$1,000 of assessed valuation for collection in 2013” with “[i]**ncreases in the following eight years . . .** subject to the limitations in chapter 84.55

RCW.” CP 367 (emphasis added). Finally, the ballot title specifies excess levy funds would be collected “as provided in Ordinance No. 17304.” CP 367. This language is more than sufficient to inform “the average informed voter” that they are voting on a nine-year levy.

Rather than interpreting the ballot title in accord with its language, the *EPIC* Opinion posits an interpretation that turns a nine-year levy into a one-year levy. Rendering large portions of the ballot title inoperative, the Court of Appeals does not allow an “additional property tax for nine years.” Instead, the additional property tax is limited to one year, 2013. Contrary to the ballot title, the Court of Appeals permits no “[i]ncreases in the following eight years,” and instead, allows zero dollars of CFJC levy collections over that time period. Such an interpretation of the ballot title was error. *See Strand v. State Dep't of Motor Vehicles*, 8 Wn. App. 877, 880, 509 P.2d 999 (1973) (“Unlikely, strained, or absurd consequences are to be avoided, and the initiative should be given a reading which makes it purposeful and effective.”). Review should be granted under RAP 13.4(b)(4) because the public has a substantial interest in ensuring that measures approved by the voters are interpreted in a manner consistent with the voters’ intent.

Review is also warranted under RAP 13.4(b)(1) because this Court has held that voters and courts should consider the measures referenced in the text of a ballot title. *Sane Transit*, 151 Wn.2d at 63. In *Sane Transit*,

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.” *Id.* at 71-72. There, reference to a resolution in the ballot title was sufficient where the resolution contained the necessary 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,” but merely sufficient to “lead to an inquiry into the body of the act or [to] indicate[] the scope and purpose of the law to an inquiring mind”).

The *EPIC* Opinion conflicts with *Sane Transit* because the Court of Appeals ignored the ballot title’s express reference to Ordinance 17304. Indeed, the reference here is even more compelling because, unlike the resolution in *Sane Transit*, the full text of Ordinance 17304 was included in the voters’ pamphlet. CP 283. This conflict further supports review.

VI. CONCLUSION

For the foregoing reasons, this Court should grant King County’s Petition for Review and reverse the Court of Appeals.

///

RESPECTFULLY SUBMITTED this 13th day of December,
2017.

DANIEL T. SATTERBERG
KING COUNTY PROSECUTING ATTORNEY

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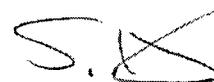
CERTIFICATE OF SERVICE

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 13TH day of December, 2017, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the foregoing document and Appendix A-D upon the parties listed below:

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DATED this 13th day of December, 2017.



Sydney Henderson

APPENDIX A

200 Wash.App. 616
Court of Appeals of Washington,
Division 2.

END PRISON INDUSTRIAL COMPLEX, Appellant,
v.
KING COUNTY, Respondent.

No. 49453-1-II

September 26, 2017

Synopsis

Background: Nonprofit corporation sued county seeking declaratory and injunctive relief regarding county's calculation of property tax increases under local ballot measure that authorized property tax levy at a rate above established statutory limit and asserting that measure's language did not expressly state that increased base tax amount in the first year could be used to calculate future years' increases and that the measure did not expressly state that tax proceeds could be used to construct a juvenile detention facility, as were required by statute. The Superior Court, Pierce County, No. 16-2-07355-2, Frank E. Cuthbertson, J., granted county's motion for summary judgment, denied nonprofit's motion for partial summary judgment, and dismissed nonprofit's claims with prejudice. Nonprofit appealed.

Holdings: The Court of Appeals, Johanson, J., held that:

[1] nonprofit was not required to bring its claim regarding measure before measure was put to election;

[2] language in measure did not satisfy statutory requirement for an express statement of how subsequent years' levies would be calculated, and thus county improperly implemented measure; but

[3] first sentence of measure was a clear and express statement of the limited purpose of the funds created by the levy.

Affirmed in part, reversed in part, and remanded.

West Headnotes (10)

[1] Appeal and Error

↔ Cases Triable in Appellate Court

Court of Appeals reviews de novo the superior court's grant of summary judgment; in doing so, the Court performs the same inquiry as the superior court, and it affirms where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Cases that cite this headnote

[2] Appeal and Error

↔ Judgment

On appeal of trial court's grant of summary judgment, the Court of Appeals must review the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in the nonmoving party's favor.

Cases that cite this headnote

[3] Appeal and Error

↔ Cases Triable in Appellate Court

Court of Appeals reviews de novo questions of statutory interpretation, with the goal of effectuating the legislature's intent.

Cases that cite this headnote

[4] Statutes

↔ Plain Language; Plain, Ordinary, or Common Meaning

Where a statute's meaning is plain, the Court of Appeals gives effect to that plain meaning in interpreting the statute.

Cases that cite this headnote

[5] Statutes

↔ Context

Statutes

↔ Related provisions

Statutes

↔ Statutory scheme in general

To discern plain meaning when interpreting a statute, the Court of Appeals looks to the words of a particular provision in the context of the statute in which they are found, together with related statutory provisions, and the statutory scheme as a whole.

Cases that cite this headnote

[6] Statutes

↔ Plain language; plain, ordinary, common, or literal meaning

Court of Appeals' inquiry interpreting a statute ends if the statute's plain meaning is unambiguous.

Cases that cite this headnote

[7] Counties

↔ Ordinances and by-laws

Nonprofit corporation was not required to bring its claim challenging county's calculation of property tax increases under local ballot measure that authorized property tax levy at a rate above established statutory limit before measure was put to election, under statute providing a preliminary procedure by which dissatisfied persons could object to a ballot title and seek its amendment; nonprofit sought to enforce terms of ballot title as written and approved by voters, rather than claiming that ballot title was infirm under statute, and did not object to language of ballot title. Wash. Rev. Code Ann. §§ 29A.36.090, 84.55.050.

Cases that cite this headnote

[8] Counties

↔ Ordinances and by-laws

Language in local ballot measure, which authorized property tax levy at a rate above established statutory limit, that implied that levy amount during first year would be used to compute the amount of levies in subsequent years was insufficient to satisfy

requirement for an express statement of how subsequent years' levies would be calculated under statute governing elections to increase property taxes, and thus county improperly implemented measure in calculating property tax increases under measure for subsequent years, where measure's statement concerning subsequent levies only stated that subsequent levies would be subject to limitations of statutory chapter governing limitations on property taxes. Wash. Rev. Code Ann. §§ 84.55.005(2), 84.55.010, 84.55.050(3), 84.55.050(4)(a), 84.55.050(5).

Cases that cite this headnote

[9] Municipal Corporations

↔ Referendum procedure

A ballot title must expressly convey that an increased levy lid lift amount will be used to calculate later years' levy amounts. Wash. Rev. Code Ann. § 84.55.050(3), 84.55.050(4)(a), 84.55.050(5).

Cases that cite this headnote

[10] Counties

↔ Ordinances and by-laws

First sentence of local ballot measure, which authorized property tax levy at a rate above established statutory limit for a replacement facility for juvenile justice and family law services, was a clear and express statement of the limited purpose of the funds created by the levy, as was required by statute governing elections to increase property taxes; measure's use of word "replace" rather than "construct" did not make measure's limited purpose unclear, no voter was likely to have been deceived or misled when county inaccurately named the existing facility in measure, and measure was neither vague nor obscure and its limited purpose was clear. Wash. Rev. Code Ann. § 84.55.050(1), 84.55.050(4)(c).

Cases that cite this headnote

****919** Appeal from Pierce County Superior Court, No. 16-2-07355-2, Honorable Frank E. Cuthbertson.

Attorneys and Law Firms

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PUBLISHED OPINION

Johanson, J.

***618** ¶1 End Prison Industrial Complex (EPIC) sued King County to challenge the County's calculation of property tax increases under Proposition 1 (Prop. 1), a local ballot measure that authorized a property tax levy at a rate above the limit established in ch. ***619** 84.55 RCW. EPIC claimed that although the language of the Prop. 1 ballot title authorized an increased tax rate in the first year of the levy, the ballot title's language did not expressly state, as required in RCW 84.55.050,¹ that the increased base tax amount in the first year could be used to calculate future years' increases. In addition, EPIC claimed that the ballot title did not expressly and clearly state, as required in RCW 84.55.050, that the tax proceeds could be used to construct a juvenile detention facility.

¶2 The superior court granted the County's summary judgment motion and dismissed EPIC's claims, ruling that (1) EPIC's claims were untimely, (2) the ballot title language was sufficient under RCW 84.55.050 to authorize the County to levy property taxes in future years based on the increased base tax amount in the first year, and (3) the ballot title language was sufficient to limit the use of the tax proceeds to purposes including the construction of a juvenile detention facility. EPIC appeals all three rulings.

¶3 We hold that EPIC's challenge to the County's calculation of subsequent levy amounts was timely. We also hold that Prop. 1's ballot title did not expressly authorize the County to levy property taxes based on the

increased base tax amount in the first year of the levy. Thus, we reverse the order granting summary judgment on this point. However, we further hold that the ballot title authorized use of those funds for a limited purpose that included the construction of a juvenile detention facility. Thus, we affirm the superior court on this point. Accordingly, we reverse in part and affirm in part the superior court's order granting the County's summary judgment motion. We remand for further proceedings.

*620 FACTS

I. REAL PROPERTY TAX LEVIES

¶4 Central to this case is the system by which taxing districts calculate and impose real property taxes under ch. 84.55 RCW, which limits the rate at which a taxing district may increase the regular property tax levy amount. *See Wash. Citizens Action of Wash. v. State*, 162 Wash.2d 142, 145, 171 P.3d 486 (2007). RCW 84.55.010; the “levy lid” statute, imposes an amount that each year's regular property taxes may not exceed, calculated using the following formula:

[T]he limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year by the increase in assessed value in that district.

The limit factor, which is defined by RCW 84.55.005(2), is 101 percent.²

¶5 RCW 84.55.050 allows a taxing district to exceed the levy lid under certain circumstances. This “levy lid lift” statute authorizes a taxing district to submit to voters a proposition that will lift the levy lid. RCW 84.55.050(1). The dollar amount of such a levy ****921** lid lift may not be used as the base amount for computing “subsequent levies” unless the proposition “expressly” states that the levy will be used for this purpose. RCW 84.55.050(3); *see also* RCW 84.55.050(4)(a). “Except as otherwise expressly

stated in an approved ballot measure,” subsequent levies are calculated as if the levy lid lift proposition “had not been approved.” RCW 84.55.050(5)(a).

*621 ¶6 Under RCW 84.55.050(4)(c), the purpose for which levy lid lift funds are used also may be limited. But the proposition must “clearly” and “expressly” state that this condition will apply. RCW 84.55.050(1), (4)(c).

II. BACKGROUND

¶7 In 2012, voters approved Prop. 1. Prop. 1 implemented Ordinance 17304 and had the stated purpose of “concerning a replacement facility for juvenile justice and family law services.” Clerk’s Papers (CP) at 367. Prop. 1 authorized “an additional property tax for nine years to fund capital costs to replace the Children and Family Justice Center.” CP at 367.

¶8 In April 2016, EPIC, a nonprofit corporation, sued the County and alleged that the County had over-collected property taxes under Prop. 1 beginning in 2014 and that Prop. 1’s ballot title concealed from voters that Prop. 1 would be used to fund a “new youth jail.” CP at 3. EPIC sought declaratory and injunctive relief to bar the County from levying additional excessive property taxes and spending Prop. 1 funds on a “new youth jail” and to force the County to refund excessive property taxes that had already been collected. CP at 16.

III. SUMMARY JUDGMENT MOTIONS

A. COUNTY’S REQUEST FOR SUMMARY JUDGMENT

1. COUNTY’S SUMMARY JUDGMENT MOTION

¶9 In July 2016, the County moved for summary judgment. The County argued that EPIC’s lawsuit was untimely because EPIC had not brought a preelection ballot title challenge under RCW 29A.36.090. The County alternatively argued that summary judgment was appropriate because the ballot title adequately informed voters of the method by which property taxes would be calculated and the purpose for the taxes.

*622 a. PREELECTION EVIDENCE

¶10 In support of its motion, the County submitted materials including the full text of Ordinance 17304 and related reports given to the county council. A 2012 county council committee report addressed a proposed ballot measure authorizing a property tax levy to replace the existing “Youth Services Center” in Seattle with a “new Children and Family Justice Center.” CP at 97. The existing structure consisted of three conjoined buildings that housed courtrooms, administrative offices, a youth detention facility, and on-site parking. The report proposed constructing a new courthouse, a new detention center, and additional parking.

¶11 Ordinance 17304, adopted in 2012, provided for a proposition to be passed

concerning funding for a replacement facility for the Children and Family Justice Center. This proposition would authorize King County to levy an additional property tax to provide funding for 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. *The 2013 levy amount would become the base upon which levy increases would be computed for each of the eight succeeding years.*

CP at 85 (emphasis added). Ordinance 17304 defined the “[c]hildren and family justice center replacement project” to include replacement of the “detention facilities” at the “children and family justice center.” CP at 83.

b. ELECTION EVIDENCE

¶12 The County also submitted the ballot title and explanatory statement written by the prosecuting attorney, the voter’s pamphlet page discussing Prop. 1, and the election results. As presented to voters, the ballot title of Prop. 1 stated,

****922 *623 Proposition No. 1**

Children and Family Services Center Capital Levy

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.* Should this proposition be:

() Approved

() Rejected

CP at 367 (emphasis added).

¶13 Before the election, county voters had also received the ballot title, an explanatory statement, and the entire text of Ordinance 17304 in their voters' pamphlets. The explanatory statement told voters that Prop. 1 would authorize “an additional regular property tax” to replace and expand the Children and Family Justice Center, including “replacement of the ... detention facilities.” CP at 251.

¶14 A majority of voters approved Prop. 1.

c. IMPLEMENTATION EVIDENCE.

¶15 Related to the implementation of Prop. 1, the County submitted the declaration of Hazel Gantz, who calculated county property taxes including Prop. 1's levy. Gantz explained that Prop. 1's levy proceeds were kept in a separate fund from other levy proceeds because of Prop. 1's limited purpose.

¶16 Gantz described how she calculated the levy under Prop. 1. For 2013, the first year, Gantz relied upon the ballot *624 title and applied the first year levy rate³ to the total taxable value in the County to arrive at the highest lawful Prop. 1 levy amount for 2013.

¶17 For 2014, Gantz referred to the “ballot title, explanatory statement, and the ordinance” to determine the allowable increase in the levy amount. CP at 279. Gantz explained that for Prop. 1,

[t]he ballot title states that after the first year of the levy, “[i]ncreases in the following eight years would be subject to the limitations in chapter 84.55 RCW[.] ...”

This language indicates that increases in each year of the levy after the first year would be subject to the statutory limit factor of 101%.

CP at 280 (some alterations in original). Thus, Gantz multiplied the limit factor of 101 percent by the amount lawfully levied in the highest of the three most recent years, which was the 2013 levy amount, and added the additional dollar amount.

¶18 For the remaining years, 2015 to 2021, Gantz explained that, again, the 101 percent limit factor was or would be applied to the preceding year's highest lawful levy amount. In 2022, the 101 percent limit factor would be applied to “what would have been the County's highest lawful levy amount in 2021” had the Prop. 1 levy “never occurred.” CP at 281.

2. EPIC'S RESPONSE

¶19 In response to the County's summary judgment motion, EPIC argued that as a matter of law, its claim was not untimely. Further, EPIC relied upon Gantz's declaration to argue that the County's method for collecting taxes levied under Prop. 1 beginning in 2014 was prohibited by RCW 84.55.050 unless expressly stated in the ballot title.⁴

*625 ¶20 Regarding the sufficiency of the ballot title's disclosure of the limited use for Prop. 1 funds, EPIC argued that the County failed to expressly state that the funds would be used for a “youth jail.” CP at 388. EPIC sought to **923 have summary judgment on this issue denied so that EPIC could produce additional evidence; alternatively, EPIC requested that the superior court grant summary judgment in EPIC's favor on the issue as a matter of law.

¶21 In support of its opposition, EPIC relied upon descriptions of other “Family” or “Children's” justice centers and reports related to the “Children and Family Justice Center” replacement project.

B. EPIC'S MOTION FOR PARTIAL SUMMARY JUDGMENT

¶22 A day after the County moved for summary judgment, EPIC moved for partial summary judgment on whether Prop. 1's ballot title had expressly stated that the 2013 levy amount would be used to compute subsequent levies' limitations, as EPIC claimed that RCW 84.55.050 required. EPIC's motion stated that this issue was the only issue that was appropriate for summary judgment. In support of its motion, EPIC relied upon the ballot measure for Prop. 1, the full text of Ordinance 17304, and other materials, including the legislative history for RCW 84.55.050.

IV. SUMMARY JUDGMENT RULING

¶23 In August, the superior court granted the County's summary judgment motion, denied EPIC's partial summary judgment motion, and dismissed the case with prejudice. The superior court determined that there were no genuine issues of material fact and that as a matter of law, EPIC's challenge was untimely under RCW 29A.36.090 and, alternatively, that Prop. 1's ballot title met the statutory requirements of RCW 84.55.050.

*626 ¶24 EPIC appeals the superior court's summary judgment order.

ANALYSIS

I. PRINCIPLES OF LAW: SUMMARY JUDGMENT AND STATUTORY INTERPRETATION

[1] [2] ¶25 We review de novo the superior court's grant of summary judgment. *Lakey v. Puget Sound Energy, Inc.*, 176 Wash.2d 909, 922, 296 P.3d 860 (2013). In doing so, we perform the same inquiry as the superior court, and we affirm where “ ‘there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.’ ” *Lakey*, 176 Wash.2d at 922, 296 P.3d 860 (quoting *Qwest Corp. v. City of Bellevue*, 161 Wash.2d 353, 358, 166 P.3d 667 (2007)). We must review the evidence in the light most favorable to the nonmoving party and draw

all reasonable inferences in the nonmoving party's favor. *Lakey*, 176 Wash.2d at 922, 296 P.3d 860.

[3] [4] [5] [6] ¶26 We also review de novo questions of statutory interpretation, with the goal of effectuating the legislature's intent. *Burns v. City of Seattle*, 161 Wash.2d 129, 140, 164 P.3d 475 (2007). Where a statute's meaning is plain, we give effect to that plain meaning. *Burns*, 161 Wash.2d at 140, 164 P.3d 475. To discern plain meaning, we look to the “words of a particular provision in the context of the statute in which they are found, together with related statutory provisions, and the statutory scheme as a whole.” *Burns*, 161 Wash.2d at 140, 164 P.3d 475. Our inquiry ends if the statute's plain meaning is unambiguous. *State v. Armendariz*, 160 Wash.2d 106, 110, 156 P.3d 201 (2007). Our courts have relied on the “ordinary, dictionary meaning” of a word to determine its plain meaning. *Burns*, 161 Wash.2d at 141, 164 P.3d 475.

II. PROCEDURAL BAR

[7] ¶27 EPIC argues that the superior court erred when it ruled that EPIC's failure to bring a preelection ballot title *627 challenge barred EPIC's postelection request for declaratory and injunctive relief under RCW 29A.36.090. EPIC argues that its lawsuit was not a ballot title challenge but an attempt to enforce the ballot title as written and passed by voters. The County responds that the superior court properly granted summary judgment because EPIC's claims were untimely under RCW 29A.36.090. The County characterizes EPIC's claims as challenges “to the ballot title[,] not to the underlying legislation.” Br. of Resp't at 18. We agree with EPIC that its claim was not a ballot title **924 challenge.⁵

¶28 RCW 29A.36.090 provides a preliminary procedure by which “dissatisfied” persons may object to a ballot title and seek its amendment to conform with the requirements of ch. 29A.36 RCW. That statute requires a challenge to a ballot title to be filed within 10 days of when the ballot title is filed with the county auditor. RCW 29A.36.090.

¶29 The provisions of another statute in ch. 29A.36 RCW require ballot titles to identify the enacting legislative body, state the subject matter, concisely describe the proposition, and contain a question. RCW 29A.36.071(1)(a)-(c). Also, RCW 29A.72.050(1) requires

that the statement of the proposition's subject must be "sufficiently broad to reflect" the proposition's subject and "sufficiently precise to give notice" of the proposition's subject matter and that the description of the proposition be true and impartial and clearly identify the proposition.

¶30 But EPIC's claims are not that the ballot title was infirm under RCW 29A.36.090, RCW 29A.36.071(1)(a)-(c), or RCW 29A.72.050(1). EPIC does not object to the language of the ballot title. Rather, EPIC claims that the ballot title language approved by voters was insufficient under *628 RCW 84.55.050 to allow the County to use the Prop. 1 levy authorized for the first year as a base to compute the amount of levies for subsequent years or to limit the purpose of Prop. 1 funds.

¶31 Because EPIC seeks to enforce the terms of the ballot title as written and approved by voters, claiming the ballot title's language was insufficiently "express" to authorize the County's method for calculating tax levies beginning in 2014 and insufficiently "express" and "clear" to limit the purpose for which the proceeds were used, EPIC's claim is not a challenge to the ballot's title that must be brought preelection. See RCW 84.55.050(1), (4). We accordingly hold that the superior court erred when it ruled that EPIC's challenge to the calculation of subsequent levy amounts was untimely and granted the County's summary judgment motion.⁶

III. EPIC'S CLAIMS UNDER RCW 84.55.050

[8] ¶32 EPIC next argues that the ballot title did not expressly authorize the method by which the County has calculated tax levies under Prop. 1 beginning in 2014 or expressly limit the purpose for the County's use of Prop. 1 funds.⁷ We agree with the first argument but disagree with the second argument.

A. RCW 84.55.010: THE "LEVY LID" STATUTE

¶33 RCW 84.55.010 prescribes the levy lid and sets limitations on regular property taxes as follows:

*629 Except as provided in this chapter, the levy for a taxing district in any year must be set so that the regular property taxes payable in the following year ... [do]

not exceed the limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year by the increase in assessed value in that district resulting from:

- (1) New construction;
 - (2) Increases in assessed value due to construction of wind turbine, solar, biomass, and geothermal facilities ...;
 - (3) Improvements to property; and
- **925 (4) Any increase in the assessed value of state-assessed property.

(Second alteration in original.)

B. RCW 84.55.050: THE "LEVY LID LIFT" STATUTE

¶34 RCW 84.55.050 governs elections to authorize increases in regular property tax levies and lift the levy lid created by RCW 84.55.010. As relevant here, RCW 84.55.050 provided,

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied ... in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition. ... Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the proposed levy is to be made, except as provided in subsection (2) of this section. *The ballot of the proposition shall state the dollar rate proposed and shall clearly state the conditions, if any, which are applicable under subsection (4) of this section.*

(2)(a) Subject to statutory dollar limitations, a proposition placed before the voters under this section may authorize annual increases in levies for multiple consecutive years, up to six consecutive years, during which period each year's authorized maximum legal levy shall be used as the base upon which *630 an increased levy limit for the succeeding year is computed, but the ballot proposition must state the dollar rate

proposed only for the first year of the consecutive years and must state the limit factor, ... by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. ... The title of each ballot measure must state the limited purposes for which the proposed annual increases during the specified period of up to six consecutive years shall be used.

....

(3) After a levy authorized pursuant to this section is made, *the dollar amount of such levy may not be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, unless the ballot proposition expressly states that the levy made under this section will be used for this purpose.*

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

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

....

(c) *Limit the purpose for which the increased levy is to be made under (a) of this subsection*, but if the limited purpose includes making redemption payments on bonds, the period for which the increased levies are made shall not exceed nine years;

....

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

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

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

(Emphasis added.)

***631 C. NO EXPRESS STATEMENT THE PROP. 1 LEVY LIFT AMOUNT WOULD BE USED TO CALCULATE FUTURE LEVIES**

¶35 EPIC argues that the County has improperly implemented Prop. 1 since 2014 because voters did not expressly authorize the County to use the 2013 levy amount to calculate the base amount for levies beginning in 2014. The County responds that the ballot title authorized the County's method of calculating property taxes since 2014.⁸ We agree with EPIC.

****926** ¶36 Here, voters passed Prop. 1, the ballot title for which stated, as relevant,

This proposition would authorize King County to levy an additional property tax for nine years. ... 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 at 367.

¶37 In 2013, the County applied the first year levy rate of \$0.07 per \$1,000 of assessed valuation to arrive at the highest lawful levy amount for 2013 under Prop. 1. Beginning in 2014, the County collected property taxes by applying the limit factor from RCW 84.55.005(2) (101 percent) to 2013's highest lawful levy amount, as the highest amount in the previous three years, and adding a sum related to new construction. The levy under Prop. 1 has been and will continue to be similarly calculated until 2022, when the Prop. 1 levy will expire, and the limit factor (101 percent) will be applied to "what would have been the County's ***632** highest lawful levy amount in 2021 had the [Prop. 1] Levy never occurred." CP at 281.

¶38 We agree with EPIC that the County's methodology for calculating taxes beginning in 2014 involved the use of the 2013 levy to "comput[e] the limitations for subsequent levies" under RCW 84.55.050(3), (4)(a).

¶39 Next, we determine what language the ballot title had to include in order for the County to use the increased 2013 levy amount authorized by Prop. 1 as the base amount to calculate the 2014 levy. RCW 84.55.050(3), (4) (a), and (5) require that in order to compute limitations for “subsequent levies” using the dollar amount of a levy authorized by a proposition, the proposition’s ballot title must have “expressly state[d]” so. We look to the plain meaning of RCW 84.55.050(3), (4)(a), and (5). *See Burns*, 161 Wash.2d at 140, 164 P.3d 475. In doing so, we may rely upon the ordinary, dictionary meaning of “expressly.” *See Burns*, 161 Wash.2d at 141, 164 P.3d 475.

¶40 “[E]xpressly” means “in direct or unmistakable terms” and “explicitly.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 803 (2002). To state a matter “explicitly” is, in turn, to state it in a manner that is “characterized by full clear expression,” “without vagueness or ambiguity,” and “unequivocal.” WEBSTER’S 801. Thus, RCW 84.55.050 (3), (4)(a), and (5) require a ballot title to state “in direct and unmistakable terms” and in a manner that is “characterized by full clear expression” and is not vague, ambiguous, or equivocal that a specific levy amount will be used to compute the limitations for subsequent levies. WEBSTER’S 801.

¶41 Here, the ballot title provided no such express statement. Rather than providing an unmistakable, explicit statement that the County would use the 2013 levy lift amount to compute subsequent levies, the County included a vague statement that “[i]ncreases in the following eight years would be subject to the limitations in ch. 84.55 RCW, all as provided in Ordinance No. 17304.” CP at 367.

[9] *633 ¶42 The County argues that the only reasonable reading of the ballot title is that the levy lid lift amount would be used to calculate later years’ levy amounts. But the test is not merely what a reasonable reading of the ballot title might be. The statute requires that the ballot title *expressly* state that the 2013 increased levy lift amount would be used to compute subsequent levy amounts. We do not hold that the ballot title must incant certain “magic language” to satisfy the statute. Rather, we hold that RCW 84.55.050(3), (4)(a), and (5) dictate that a ballot title must expressly convey that an increased levy lid lift amount will be used to calculate later

years’ levy amounts. The Prop. 1 ballot title failed to do this.

¶43 The County also argues that we must interpret the ballot title to authorize the 2013 levy to be used to compute subsequent levies because otherwise, there would be no “[i]ncreases in the following eight years.” CP at **927 367. We disagree: the vague statement that there would be “[i]ncreases” in years two through nine expressly conveyed no more than that property taxes would be greater in those years than before the levy’s implementation. CP at 367. An *implication* that the 2013 levy amount would be used to compute the amount of subsequent levies is insufficient to satisfy RCW 84.55.050’s requirement of an express statement.⁹

¶44 We hold that RCW 84.55.050’s plain meaning requires that Prop. 1’s ballot title expressly state that the levies following 2013 would be calculated based upon 2013’s increased levy amount. We further hold that Prop. 1’s ballot title did not expressly state that the subsequent levies would be calculated based upon 2013’s increased levy amount. Accordingly, we reverse the superior court’s ruling that the *634 ballot title met RCW 84.55.050’s requirements in this respect.

D. LIMITED PURPOSE OF PROP. 1 FUNDS

[10] ¶45 EPIC argues that because Prop. 1’s ballot title did not clearly and expressly state its limited purpose and was ambiguous and misleading to voters, the County cannot use the funds collected under Prop. 1 “to build a new ... youth jail” under RCW 84.55.050(4)(c). Br. of Appellant at 31. We disagree.¹⁰

¶46 RCW 84.55.050(4) provides that “[i]f expressly stated, a proposition placed before the voters under subsection (1) or (2) of this section may ... (c) [l]imit the purpose for which the increased levy is to be made under (a) of this subsection.” RCW 84.55.050(1) incorporates .050(4) (c) by reference and states that “[t]he ballot of the proposition ... shall clearly state the conditions, if any, which are applicable under subsection (4) of this section.”

¶47 The ballot title for Prop. 1, as relevant here, stated that

[t]he 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.

CP at 367 (emphasis added). Notably, however, 2012 county reports discussing the project and submitted in support of the County's summary judgment motion show that the existing facility was named the "Youth Services Center." CP at 97.

*635 ¶48 No case has interpreted RCW 84.55.050's limited purpose provision. However, we rely upon the ordinary, dictionary meaning of "clearly" and "expressly" to discern the statute's plain meaning. *See Burns*, 161 Wash.2d at 141, 164 P.3d 475.

¶49 Webster's Dictionary defines "[c]learly" as meaning "in a clear manner" and "clear" as "easily understood" and "without obscurity or ambiguity." WEBSTER'S 419-20. Again, "[e]xpressly" means "in direct or unmistakable terms" and "explicitly." WEBSTER'S 803. Thus, the plain language of RCW 84.55.050 requires that the limited purpose for the increased levy be stated in an "easily understood" manner, "without obscurity or ambiguity," "in direct or unmistakable terms," and "explicitly." WEBSTER'S 419-20, 803.

¶50 Here, the first sentence of the ballot title informed voters that the measure "concern[ed] a replacement facility for juvenile justice and family law services." CP at 367. The explanation that the measure concerned a replacement facility for juvenile justice and family law services met the statutory requirements of being stated in an "easily understood" manner, "without obscurity or ambiguity," "in direct or unmistakable terms," **928 and "explicitly." WEBSTER'S 419-20, 803. Thus, the first sentence of the ballot title satisfied RCW 84.55.050's requirement that the limited purpose be "clearly" and "expressly" stated. *See* RCW 84.55.050(1), (4)(c).

¶51 EPIC argues that the ballot title was insufficiently specific because it did not inform voters that the project would replace the existing youth detention center, courthouse, administrative offices, and on-site

parking. We disagree: requirements of being "clearly" and "expressly stated" are not requirements of *specificity* but requirements of *clarity*.

¶52 EPIC also argues that the ballot title was misleading because the statement that levy funds would be used "to 'replace the Children and Family Justice Center'" inaccurately implied that there was an existing Children and *636 Family Justice Center. Br. of Appellant at 29-30. But this argument overlooks the first sentence of the ballot title, which explained that the ballot proposition concerned "a replacement facility for juvenile justice and family law services." CP at 367. As discussed, we hold that this first sentence was a clear and express statement of the limited purpose.

¶53 Although there is no authority interpreting RCW 84.55.050(4)(c), in other contexts involving ballot titles, our Supreme Court has repeatedly held that arguably misleading nuances in ballot titles do not invalidate a law duly enacted by voters where no voter was likely to be deceived. *Wash. Ass'n for Substance Abuse & Violence Prevention (WASAVP) v. State*, 174 Wash.2d 642, 664, 278 P.3d 632 (2012). In *WASAVP*, the court held that the use of "'license fees based on sales'" in a ballot title to mean "taxes" was not "palpably misleading or false" and accurately "express[ed] the underlying subject contained in the body of the initiative." 174 Wash.2d at 661, 664-65, 278 P.3d 632 (addressing an article II, section 19 subject-in-title challenge to an initiative's ballot title). The court noted "numerous occasions" in which it had "rejected ballot title challenges based on nuances between terms." *WASAVP*, 174 Wash.2d at 664, 278 P.3d 632.

¶54 Guided by the principles expressed in *WASAVP*, we reject EPIC's argument that the use of the word "replace" rather than "construct" in Prop. 1's ballot title made Prop. 1's limited purpose unclear. As in *WASAVP*, no voter was likely to have been deceived or misled when the County inaccurately named the existing facility, particularly where the first sentence of the ballot title expressed an accurate, limited purpose for Prop. 1's funds. Prop. 1 was neither vague nor obscure and its limited purpose was clear: a replacement facility for juvenile justice and family law services.¹¹

*637 ¶55 We hold that the ballot title "clearly" and "expressly" stated the limited purpose for Prop. 1 funds, as required by RCW 84.55.050's plain language. For this

reason, we hold that the superior court properly granted the County's summary judgment motion in this regard.

MAXA, A.C.J.

LEE, J.

¶56 We reverse in part, affirm in part, and remand for further proceedings.

All Citations

200 Wash.App. 616, 402 P.3d 918

We concur:

Footnotes

- 1 The legislature amended RCW 84.55.050 in 2017. LAWS OF 2017, ch. 296, § 2. We cite to the version of the statute in effect when EPIC sued King County, former RCW 84.55.050 (2009), throughout this opinion.
- 2 RCW 84.55.005(2) sets the limit factor for most districts as either 101 percent, RCW 84.55.005(2)(a), or the lesser of 101 percent or 100 percent plus inflation, RCW 84.55.005(2)(c). For our purposes, it can be assumed that the limit factor is 101 percent.
- 3 "\$0.07 per \$1,000 of assessed valuation." CP at 278.
- 4 EPIC also requested that the County's summary judgment motion be denied on the basis that there were "factual issues" related to Prop. 1's limitation: specifically, the procedure by which the levy was calculated and the funds raised were tracked.
- 5 Because we agree with EPIC that its claim was not a ballot title challenge, we do not address EPIC's alternative arguments that failure to bring a preelection ballot title challenge does not bar a postelection challenge or that its claims were unripe before the election and thus could not have been brought under RCW 29A.36.090.
- 6 EPIC also challenged Prop. 1's use of the levy funds for the limited purpose of constructing a youth services center. Even if we assume, without deciding, that this challenge is not time-barred, this argument fails as discussed below.
- 7 At one point, EPIC claims that the superior court "did not resolve" the merits of EPIC's claims and only ruled that those claims were procedurally barred. Br. of Appellant at 3. To the contrary, the superior court determined that Prop. 1's ballot title met the requirements of RCW 84.55.050, as well as that EPIC's claims were untimely.
- 8 Notably, the parties agree that the County implemented Prop. 1 under RCW 84.55.050(1), not .050(2) and that the operative document for compliance with RCW 84.55.050 is Prop. 1's ballot title.
- 9 Indeed, the council apparently knew how to expressly state that the 2013 levy amount would be used to compute the amount of subsequent levies: the ballot title proposed by Ordinance 17304 included language that the "2013 levy amount would become the base upon which levy increases would be computed for each of the eight succeeding years." CP at 85.
- 10 The County argues that even if the ballot title were insufficient, we should hold that the explanatory statement and Ordinance 17304 provided the requisite statement of the limited purpose. Because we hold that the ballot title expressly authorized a limited purpose use, we need not reach this argument.
- 11 Indeed, EPIC appears to admit that the stated purpose was to " 'serve the justice needs of children and families.' " Reply Br. of Appellant at 20. EPIC asks that we hold that the ballot title allowed the County to use the funds to "serve the justice needs of children and families"—a purpose that would appear to include construction of a new Children and Family Justice Center. Reply Br. of Appellant at 20.

APPENDIX B

November 13, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

END PRISON INDUSTRIAL COMPLEX,

Appellant,

v.

KING COUNTY,

Respondent.

No. 49453-1-II

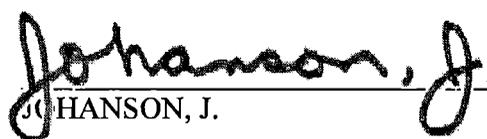
ORDER DENYING MOTION FOR
RECONSIDERATION

RESPONDENT moves for reconsideration of the Court's September 26, 2017 published opinion. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Johanson, Maxa, Lee

FOR THE COURT:



JOHANSON, J.

APPENDIX C

NO. 49453-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

END PRISON INDUSTRIAL COMPLEX,
Appellant/Plaintiff,

v.

KING COUNTY
Respondent/Defendant.

APPEAL FROM THE SUPERIOR COURT FOR PIERCE COUNTY
THE HONORABLE JUDGE FRANK E. CUTHBERTSON

**DECLARATION OF JIM BURT IN SUPPORT OF
RESPONDENT'S RESPONSE IN OPPOSITION TO MOTION FOR
INJUNCTIVE RELIEF PENDING APPEAL**

DANIEL T. SATTERBERG
King County Prosecuting Attorney

THOMAS W. KUFFEL, WSBA #20118
Senior Deputy Prosecuting Attorney
JANINE JOLY, WSBA #27314
Senior Deputy Prosecuting Attorney
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500 Fourth Avenue, Suite 900
Seattle, WA 98104
(206) 296-0430

I, Jim Burt, declare as follows:

1. I am over eighteen years old and am competent to testify. I have personal knowledge of the matters stated below.

2. I am employed by the Facilities Management Division, an agency within the King County Department of Executive Services. I have worked for the Division since February 1987. Currently, I am the manager of the Major Projects and Capital Planning Unit and supervise approximately 17 employees responsible for planning and delivering the Division's major capital projects. I have a master's degree in architecture from the University of Washington and have been a licensed architect in the state of Washington since 1992.

3. In addition to the above responsibilities, I am also the project manager of the King County Children and Family Justice Center (CFJC) project. The CFJC is a **two hundred ten million dollar (\$213 million)** capital project to replace existing juvenile justice facilities with a new courthouse, juvenile detention facility, Interagency Academy school for Seattle Public Schools, parking garage and youth program space. As project manager, I am responsible for overseeing implementation of this project for King County. In addition to construction this includes negotiating the original contract with the design-builder and any change

orders to the contract and monitoring and the project's scope, schedule and budget.

4. On or around February 20, 2015, the County contracted with Balbour Beatty Construction, LLC d/b/a Howard S. Wright (referred to hereafter as "HSW") to design and build the CFJC for the contract sum of **one hundred fifty four million dollars (\$154 million)** plus sales tax. As of March 31, 2017 the contract sum is now \$158,165,610 inclusive of all negotiated change orders as of this date.

5. As of February 2017, the County has spent \$31,077,345.22 on the project.

Master Use Permit

6. As the design-builder, one of HSW's responsibilities is to apply, on the County's behalf, for a Master Use Permit ("MUP") with the city of Seattle Department of Construction and Inspections ("DCI"). A MUP is a single land use permit and related application, review and regulatory approval processes associated with development proposal.

7. HSW submitted the MUP application for the CFJC on or around September 1, 2015. The review process performed by DCI was lengthy and thorough. Over the ensuing sixteen months DCI conducted a detailed design and environmental review for compliance with the

substantive requirements of the city code. HSW (with the assistance of County staff) participated in multiple meetings with DCI staff, responded to numerous requests for further information, and responded to requests for correction letters.

8. DCI issued the MUP on December 22, 2016, subject to complying with additional conditions imposed through DCI's exercise of substantive authority under the State Environmental Policy Act.

9. On January 4, 2017 EPIC appealed DCI's decision to the city of Seattle Hearing Examiner.

10. On March 1, 2017 the Hearing Examiner dismissed EPIC's appeal on jurisdictional grounds. *See* Declaration of Knoll Lowney (in support of motion for injunctive relief pending appeal), Exhibit 4.

11. EPIC's request for reconsideration was denied on March 28. Attached as Exhibit A to this declaration is a true and correct copy of the Hearing Examiner's Order on Appellant's Motion for Reconsideration.

12. On March 29, upon satisfaction of all remaining conditions imposed by DCI, the city issued the MUP for the project.

Construction

13. Having received the MUP, the County anticipates receiving demolition and grading permits from the city in April, and excavation,

shoring and building permits in June or July.

14. The County has already received a permit from the Puget Sound Clean Air Agency for abatement work in an unused portion of the detention facility built in the 1950s. No permit from the city is required for that work.

15. Based on securing the above permits, the activities described below are scheduled to occur through the end of 2017. The corresponding monthly and cumulative cash flow projections are identified in the right-hand columns. The total for 2017 is \$17,395,972.

Month	Activity	Cost/Mo	Cumulative cost
April 2017	Sewer Relocation & Abatement	1,096,053	1,096,053
May 2017	Abatement & Demolition	956,691	2,052,745
June 2017	Demolition	1,142,725	3,195,470
July 2017	Demolition	1,587,653	4,783,124
Aug 2017	Excavation & Shoring	2,376,268	7,159,393
Sept 2017	Excavation, Shoring, & Foundations	2,032,367	9,191,760
Oct 2017	Foundations and slab on grades	2,918,195	12,109,955
Nov 2017	Foundations and slab on grades	2,529,997	14,639,953
Dec 2017	Begin steel erection	2,756,019	17,395,972

Effect of injunction; costs associated with delay

16. If the Court enjoins the County from spending CFJC levy funds during the pendency of this appeal the entire project will be delayed. Because the County could not pay for construction without the use of the funds that were set up for that purpose, the effect of the Court's order would be to stop the project.

17. I have performed an analysis of the cost impacts due to such a delay through December 31, 2017, except where otherwise indicated in paragraph 20. I have assumed this time period because my understanding is that Appellant still needs to submit its reply brief in this appeal, oral argument before the appellate panel has yet to be scheduled, and there is no mandatory deadline by which the panel's decision must be issued.

18. If an injunction is issued and the project is delayed, HSW will almost certainly submit a demand to the County for additional time and compensation.

19. The total amount of compensation sought by HSW, and to which HSW would be entitled to receive, is difficult to assess at this time. However, likely cost categories that would need to be addressed include:
(a) price escalation—subcontractor bids are set to expire in April and

May. In the event of delay, they would likely have to be rebid and awarded at higher prices after the injunction was lifted. Moreover, a delay to the project will extend project completion and therefore expose the County to industry-wide labor rate increases to union contract that will go into effect in 2022; (b) **resequencing**--certain work activities, such as excavation and shoring, that are set to occur in August and September would be moved out to the fall and winter months where they are more costly to perform; and (c) **team continuity**—there would be a cost increase for keeping HSW’s now idle construction and design team on the project. In addition to categories (a) through (c), the County would incur its costs for paying its own staff and consultants during the period in which the project is enjoined. These categories and corresponding cost estimates are discussed further in the paragraphs below.

20. **Price escalation**. As indicated above and in the application for payment attached hereto as Exhibit B, the current contract value with HSW is \$158,165,610. King County has been invoiced \$17,051,419 as of March 31, 2017. This leaves a remaining contract balance of \$141,114,190. This amount will continue to escalate as subcontract bids expire in April and May. Rather than bind itself to awarding millions of dollars in subcontracts, HSW would likely let bids expire if the project is

stopped. As a result, these would have to be rebid once the injunction was lifted. If the appeal was not resolved until December 2017, renegotiation of the contract amount and subcontract bidding process would not likely be completed until three months later, in March of 2018,

21. Due to the active construction environment in Seattle, it is reasonable to assume prices received during the re-negotiation of the contract and rebid will be higher. I have used an escalation rate of 4.9%, based on the Turner Construction Cost Index, a widely used index, for construction pricing in the national market from 2015 to 2016. See, <http://www.turnerconstruction.com/cost-index>. Applying this rate to the current remaining amount on HSW's design build contract, the cost would increase by **\$6,914,595** if the project is delayed by one year (December 31, 2017 plus three months for rebidding).

22. I am concerned that this amount is too low for two reasons. First, it is very likely the Seattle market saw larger increases during this time period due to the high level of construction activity in the Seattle market. Subcontractors may increase their bids by more than the index rate because they believe they can in the current construction climate and still obtain work.

23. Second, subcontractor costs (and HSW's own costs for concrete work it is self-performing) will likely be higher because key early work activities like excavation and grading would be pushed into the 2017/2018 rainy season. For example, HSW is currently relocating a city of Seattle sewer line that bisects the CFJC parcel in the north and actually runs under several of its buildings before exiting the parcel's southeast corner. This is the "preconstruction work" referenced at page 9 of Appellant's motion and is performed under a separate permit from the MUP. Because of the length and intensity of the current rainy season, dewatering the ditch has been more complicated and expensive than anticipated. The cost of grading, excavation and dewatering the entire site – as opposed to a ditch – during the winter months is likely to be significantly more costly than in the summer and fall. HSW will certainly factor that into its change order discussions with the County.

24. **Retention of HSW's team.** If the project is delayed, HSW would seek additional compensation to maintain its project staff and design team. Absent such compensation HSW would likely deploy its staff to other projects. The County pays \$113,000 for these costs per month. Over nine months, this would equal **\$1,017,000.** Like price escalation, I also believe this amount may be too low because most of

HSW's work to date has been on the design, not the more expensive construction side of the project.

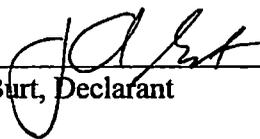
25. **Cost of county staff.** The County is paying a monthly cost of **\$267,000** to maintain its own project staff and other consultants and for non-construction related costs, such as printing and community outreach. This would equal **\$2,430,000** for a nine-month delay.

Total

26. In total, a nine-month delay in the CFJC project will likely result in a request from HSW of at least **\$7,931,595** (\$6,914,595+ \$1,017,000) in additional compensation. When the County's own additional costs are included, the total increases to **\$10,361,595** (\$7,931,595 + \$2,430,000). It is respectfully requested that Appellant be required to put up an injunction bond in this amount.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed in Seattle, Washington, this 5th day of April, 2017.



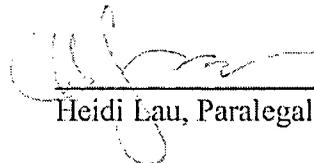
Jim Burt, Declarant

DECLARATION OF SERVICE

I, Heidi Lau, hereby declare under penalty of perjury under the laws of the State of Washington that on April 5, 2017, I caused the foregoing Declaration of Jim Burt in support of Respondent's Response in Opposition to Motion for Injunctive Relief Pending Appeal to be filed with the Court of Appeals, Division II and a true and correct copy of the same to be sent via email, per agreement of counsel, to the following:

Knoll D. Lowney
Claire Tonry
Alyssa L. Englebrecht
Katherine Brennan
Smith & Lowney, PLLC
2317 East John St.
Seattle, WA 98112-5412
Email: knoll@igc.org
clairet@igc.org
alyssae@igc.org
katherineb@igc.org
Jessie.c.sherwood@gmail.com

SIGNED THIS 5th day of April, 2017, at Seattle, Washington.



Heidi Lau, Paralegal

EXHIBIT A

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of
EPIC, ET AL.

from a decision by the Director,
Department of Construction and
Inspections

Hearing Examiner File:
**MUP-17-001
(W, MOD. STDS.)**

Department Reference:
3020845

**ORDER ON APPELLANTS'
MOTION FOR
RECONSIDERATION**

On March 1, 2017, the Hearing Examiner entered an order in this case dismissing EPIC's ("Appellants'") appeal for lack of jurisdiction. On March 3, 2017, the Appellants filed a motion for reconsideration of the order, and on March 14, 2017, filed their memorandum in support of the motion. The Applicant, Patrick Donnelly, and King County ("Respondents") responded to the motion on March 20, 2016, as did the Seattle Department of Construction and Inspections ("Department"). The Department had joined in the portion of the Respondents' motion to dismiss that was granted by the Examiner but now supports the Appellant's motion for reconsideration of the Examiner's order on that motion. This led the Respondents to file a reply to the Department's response to the motion for reconsideration. The Appellants then filed a reply in support of their motion for reconsideration on March 24, 2017.

Motions for reconsideration are governed by HER 3.20(a), which reads as follows:

3.20 RECONSIDERATION

(a) The Hearing Examiner may grant a party's motion for reconsideration of a Hearing Examiner decision if one or more of the following is shown:

- (1) Irregularity in the proceedings by which the moving party was prevented from having a fair hearing;
- (2) Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing;
- (3) Error in the computation of the amount of damages or other monetary element of the decision;
- (4) Clear mistake as to a material fact.

The Appellants did not address this rule in their motion and supporting memorandum, which were devoted entirely to an expanded response to the legal merits of the Respondents' motion to dismiss

and argument that the Examiner's order granting the motion was based on an error of law. In their reply memorandum, the Appellants continue to argue that the Examiner's decision resulted from an error of law, but that is not one of the bases for reconsideration under HER 3.20(a).

In their reply, the Appellants also assert that the order of dismissal "was erroneous and prevented a fair hearing" and therefore constitutes an "irregularity in the proceedings by which the moving party was prevented from having a fair hearing" under HER 3.20(a)(1). The Department also cites this ground for reconsideration in its response to the motion for reconsideration, arguing that it would be "unfair to ignore the more complete review of the relevant code provisions presented by Appellant [in briefing on the motion for reconsideration]." However, under Superior Court Civil Rule 59(a)(1), on which HER 3.20(a)(1) is loosely based,¹ irregularities in the proceedings that could warrant a new trial are generally actual irregularities "in the proceedings," such as instances of a trial court's lack of impartiality,² or juror misconduct.³ The HERs do not include a requirement for a hearing on a motion to dismiss, and such hearings are rare. The Appellants were given a full opportunity to respond to the motion to dismiss and did so. They did not request argument on the motion. An order granting a motion to dismiss an appeal eliminates the need for a hearing on the appeal. It does not constitute an "irregularity in the proceedings" that prevents a party from having a fair hearing. There is no evidence of irregularity in the proceedings in this case.

The Appellants also argue in reply that new evidence warrants granting the motion for reconsideration. They offer documents from City and King County records relating to the legislative history of code amendments addressing the King County Children and Family Justice Center project,⁴ as well as a declaration from one member of the City Council.⁵ Nonetheless, like CR 59(a)(4), the basis for reconsideration under HER 3.20(2) is "[n]ewly discovered evidence of a material nature *which could not, with reasonable diligence, have been produced at hearing.*"⁶ In this case, the inquiry is whether the evidence offered as new in the motion for reconsideration could, with reasonable diligence, have been produced in the Appellant's response to the motion to dismiss. As noted, the new evidence consists of documents readily available in the public record and a declaration from a city councilmember. As a general rule, a motion for a new trial, or in this case, a motion for reconsideration, will not be granted on the ground of newly discovered evidence where the moving party did not use due diligence to discover that evidence.⁷ Further, "[e]vidence which is a matter of public record is not a sufficient ground for the granting of a new trial."⁸ The Appellants made no showing of why the evidence they offer in their motion for reconsideration

¹ HER 1.03(c) provides that the Examiner may look to the Superior Court Civil Rules for guidance when questions of practice or procedure arise that are not addressed by the HERs.

² See *Edwards v. Le Duc*, 157 Wn. App. 455, 459–60, 238 P.3d 1187 (2010).

³ See *Marvik v. Winkelman*, 126 Wn. App. 655, 663–64, 109 P.3d 47 (2005).

⁴ See Declaration of Knoll Lowney In Support of Motion for Reconsideration.

⁵ See Declaration of Seattle City Councilmember Michael O'Brien in Support of Appellants' Motion for Reconsideration. This declaration was filed with the Appellants' memorandum in support of their motion for reconsideration. The Respondents have asked that the declaration be stricken as irrelevant and immaterial, but that is unnecessary in light of the basis for the Examiner's ruling on the motion for reconsideration.

⁶ Emphasis added.

⁷ See *Wick v. Irwin*, 66 Wn.2d 9, 12, 400 P.2d 786 (1965).

⁸ *Anderson v. Bauer*, 121 Wash. 112, 114, 208 P. 259, 260 (1922) (citation omitted).

could not, with reasonable diligence, have been produced with their response to the motion to dismiss. A realization that a response to a motion to dismiss may have been insufficient does not mean that information presented with a motion for consideration is newly discovered evidence.⁹

The motion for reconsideration does not meet any of the criteria for reconsideration in HER 3.20 and is therefore **DENIED**.

Entered this 28th day of March, 2017.


Sue A. Tanner, Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Phone: (206) 684-0521
FAX: (206) 684-0536

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing the record. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

⁹ Cf. *Adams v. Western Host, Inc.*, 55 Wn.App. 601, 608, 779 P.2d 281 (1989)(The realization that a first declaration was insufficient did not qualify the second declaration as newly discovered evidence.).

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached Order on Appellant's Motion for Reconsideration to each person listed below, or on the attached mailing list, in the matter of EPIC et al. Hearing Examiner File: MUP-17-001 (W) in the manner indicated.

Party	Method of Service
<p>Epic et al. c/o Knoll Lowney, Claire Tonry, Meredith Crafton, Katherine Brennan Smith & Lowney PLLC</p> <p>knoll@igc.org clairer@igc.org meredithc@igc.org katherineb@igc.org</p> <p>Nick Allen, Rhona Taylor, and Nick Straley Columbia Legal Services</p> <p>nick.allen@columbialegal.org rhona.taylor@columbialegal.org nick.straley@columbialegal.org</p> <p>Maureen Janega maureen.janega@columbialegal.org</p> <p>Odile Valenzuela odile.valenzuela@columbialega.org</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>
<p>Patrick Donnelly c/o Courtney Kaylor and Jack McCullough McCullough Hill Leary, P.S.</p> <p>courtney@mhseattle.com jack@mhseattle.com</p> <p>Laura Counley lcounley@mhseattle.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

SDCI c/o Liza Anderson Assistant City Attorney Liza.Anderson@seattle.gov Alicia Reise Alicia.Reise@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
King County c/o Cristy Craig King County Prosecutor Cristy.Craig@kingcounty.gov Monica Erickson Monica.Erickson@kingcounty.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: March 28, 2017

TK

Tiffany Ku
Legal Assistant

EXHIBIT B

APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER:
King County Facilities Management Division
500 4th Avenue, Suite 800
Seattle, WA 98104

PROJECT:
Children and Family Justice Center
1211 East Alder Street
Seattle, WA 98122

APPLICATION NO: 13853000-22
PERIOD TO: 3/31/2017
PROJECT NO: CPA # 5750153
CONTRACT NO: C00863C13
CONTRACT DATE: 2/20/2015

Distribution to:
X **OWNER**
ARCHITECT
CONTRACTOR

FROM CONTRACTOR:
Balfour Beatty Construction LLC dba Howard S. Wright
415 1st Avenue North, Suite #400
Seattle, WA 98109

VIA ARCHITECT:

CONTRACT FOR : KING COUNTY CHILDREN AND FAMILY JUSTICE CENTER

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payments shown herein is now due.

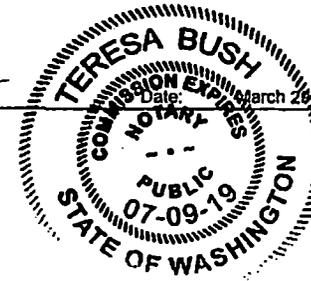
1. ORIGINAL CONTRACT SUM	\$154,000,000
2. Net change by Change Orders	\$4,165,610
3. CONTRACT SUM TO DATE (Line 1 +/- 2)	\$158,165,610
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$17,051,419.81
5. RETAINAGE:	
a. % of Completed Work	\$387,391.74
(Columns D + E on G703)	
b. % of Stored Material	\$0.00
(Column E on G703)	
Total Retainage (Line 5a + 5b or	
Total in column J of G703)	(\$367,391.74)
6. TOTAL EARNED LESS RETAINAGE	\$16,684,027.87
(Line 4 less Line 5 Total)	
Washington State Sales Tax @ 9.6%	\$1,636,836.28
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$17,314,663.74
8. PAYMENT DUE	\$1,006,300.42
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$141,114,191

New CO # issued 3/31 prior to cut-off

CONTRACTOR:
By: _____

State of: Washington
County of: King
Subscribed and sworn to before me this March 29, 2017

Notary Public: *Teresa Bush*
My Commission expires: 7/9/2019



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment for the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: _____ Date: _____
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved previously by Owner thru CO #14 :	\$4,165,610.39	\$0.00
Total approved this month:		
Owner CO #	\$0.00	\$0.00
	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order:	\$4,165,610.39	

Balfour Beatty Construction LLC dba Howard S. Wright

P. O. BOX 19380, SEATTLE, WA 98109
(206) 447-7654

INVOICE

King County Facilities Management Division
500 4th Avenue, Suite 800
Seattle, WA 98104

Date: 03/20/17
Invoice: 13853000-22
Contract Number: CPA # 5750153

King County Children and Family Justice Center Project
1211 East Alder Street, Seattle, WA 98122

To invoice you for work through March, 2017

Total Work Completed to Date		\$17,051,419.61
WSST @ 9.6%		\$1,636,936.28
Subtotal Directs Including WSST		\$18,688,355.89
Less Retention		\$367,391.74
Subtotal		\$18,320,964.16
Less Previously Billed		\$17,314,663.74
TOTAL AMOUNT DUE THIS INVOICE		\$1,006,300.42

Invoice Due Date: April 1, 2017

RECAP INVOICES TO DATE

DATE	INVOICE #	AMOUNT	DATE PAID
5/1/2015	13853000-01	\$4,305,983.19	6/26/2015
6/1/2015	13853000-02	\$602,797.08	8/25/2015
7/1/2015	13853000-03	\$1,129,963.83	10/5/2015
9/1/2015	13853000-04	\$1,553,820.37	11/10/2015
10/1/2015	13853000-05	\$714,957.66	11/24/2015
11/1/2015	13853000-06	\$750,118.82	1/27/2016
12/1/2015	13853000-07	\$699,579.65	2/24/2016
1/1/2016	13853000-08	\$775,004.84	3/24/2016
2/1/2016	13853000-09	\$669,208.54	5/4/2016
3/1/2016	13853000-10	\$863,549.75	5/17/2016
4/1/2016	13853000-11	\$426,862.02	6/2/2016
5/1/2016	13853000-12	\$369,572.40	7/6/2016
6/1/2016	13853000-13	\$400,318.26	8/12/2016
7/1/2016	13853000-14	\$306,439.47	9/20/2016
8/1/2016	13853000-15	\$284,323.54	10/13/2016
9/1/2016	13853000-16	\$313,617.12	11/23/2016
10/1/2016	13853000-17	\$430,976.25	12/20/2016
11/1/2016	13853000-18	\$353,560.08	12/28/2016
12/1/2016	13853000-19	\$384,568.47	2/8/2017
1/1/2017	13853000-20	\$823,599.41	3/1/2017
2/1/2017	13853000-21	\$1,155,842.99	
3/1/2017	13853000-22	\$1,006,300.42	
TOTAL TO DATE		\$18,320,964.16	

less unpaid = \$16,158,820.75

March 2017 Billing – Certification for Accuracy of the Request for Payment & Completion of Scheduling Requirements

Dated: 3/22/2017

Company

Name: Balfour Beatty Construction, LLC dba Howard S. Wright
Street Address: 415 1st Avenue North, Suite 400
City, State & Zip: Seattle, WA 98109
Division: Northwest

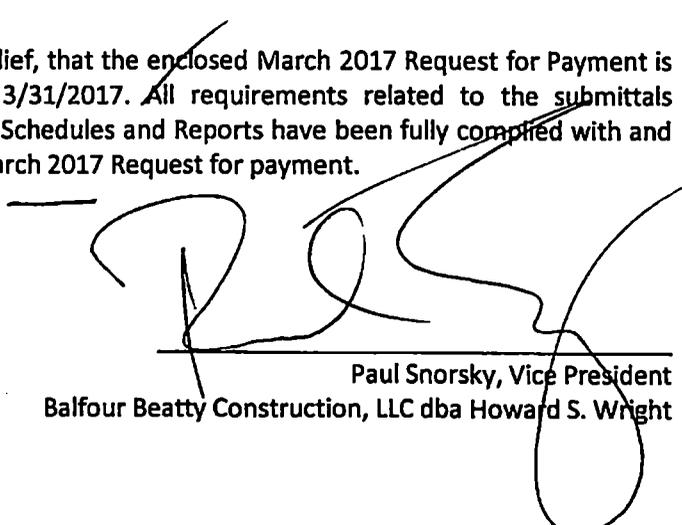
Company Officer to Contact Concerning this Statement:

Name & Title: Paul Snorsky, Vice President
Phone number: (206) 447 7614

Statement Submitted to:

Name: Jim Burt, Major Projects Unit Manager
Street Address: 500 4th Avenue, Suite 800
City, State & Zip: Seattle, WA 98104

I certify, to the best of my knowledge and belief, that the enclosed March 2017 Request for Payment is accurate based on accrued costs through 3/31/2017. All requirements related to the submittals mentioned in the Revised Section 01 32 26 – Schedules and Reports have been fully complied with and the required reports are enclosed with the March 2017 Request for payment.



Paul Snorsky, Vice President
Balfour Beatty Construction, LLC dba Howard S. Wright

APPENDIX D

Ballot Measure Details

Jurisdiction: Chelan County Fire Protection District No. 5 - Mason
County: Chelan

Subject: Fire, EMS

Ballot Measure Text: Proposition No. 1 Fire, Rescue and Emergency Medical 10-Year Maintenance and Operating Levy Lid-Lift. The Board of Fire Commissioners of Chelan County Fire Protection District No. 5 adopted Resolution No. 2013-06 concerning the tax levy for operations & maintenance. This proposition authorizes the District to levy regular property taxes in excess of the limitation imposed by RCW 84.55 at the rate of \$.89 per thousand of assessed value for a period of ten years, commencing in 2014 (2015 collection) as authorized by RCW 52.16.130 and .140, on all taxable property within the District, to be used for fire equipment, training and administering the Volunteer Fire Department, all as provided in Resolution No. 2013-06.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.89

Election Results

Pass / Fail: **Passed**

Yes: **53.32%**

No: **46.68%**

Election Date: **February 2014**

Ballot Measure Details

Jurisdiction: Cheney
County: Spokane

Subject: Criminal Justice, Fire, Parks and Recreation, Other

Ballot Measure Text: Public Safety and Capital Plan Levy. The Cheney City Council adopted Ordinance W-68 concerning a proposition to provide for continual public safety (police, fire), other governmental services and implement priority elements of the City's capital plan (swimming pool, technology, etc.). This proposition would increase the City's regular property tax rate by \$0.6962 to a total authorized rate of \$3.10 per \$1,000 of assessed value for collection in 2016 and annually thereafter. Should this proposition be approved?

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$3.10

Election Results

Pass / Fail: **Passed**

Yes: **59.32%**

No: **40.68%**

Election Date: **November 2015**

Ballot Measure Details

Jurisdiction: Bellevue
County: King

Subject: Fire

Ballot Measure Text: Proposition No. 1 Levy for Fire Facilities. The Bellevue City Council adopted Ordinance No. 6303 concerning a proposition to fund improvements to fire facilities. To seismically retrofit fire stations, build a new Downtown fire station, realign and upgrade existing fire facilities to better serve the community, and obtain logistics center warehouse space, this proposition would increase the City's regular property tax levy by \$0.125 to a total authorized rate of \$1.255 (if only this proposition passes) per \$1,000 of assessed value for collection in 2017 and for 19 years thereafter as allowed by chapter 84.55 RCW.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.125

Election Results

Pass / Fail: **Passed**

Yes: **56.98%**

No: **43.02%**

Election Date: **November
2016**

Ballot Measure Details

Jurisdiction: Bellevue
County: King

Subject: Transportation

Ballot Measure Text: Proposition No. 2 Levy for Neighborhood Safety, Connectivity, and Congestion. The Bellevue City Council adopted Ordinance No. 6304 concerning a proposition to fund transportation neighborhood safety, connectivity and congestion improvements. To improve neighborhood safety, reduce neighborhood congestion, install sidewalk, trail and bicycle facilities, provide safe routes to connect people to schools, parks, transit and other services, and enhance maintenance and technology, this proposition would increase the City's regular property tax levy by \$0.150 to a total authorized rate of \$1.280 (if only this proposition passes) per \$1,000 of assessed value for collection in 2017 and for 19 years thereafter as allowed by chapter 84.55 RCW.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.15

Election Results

Pass / Fail: Passed

Yes: 54.13%

No: 45.87%

Election Date: November
2016

Ballot Measure Details

Jurisdiction: Bellingham
County: Whatcom

Subject: Parks and Recreation

Ballot Measure Text: Proposition No. 2016-1 Greenways IV Levy. The City of Bellingham's Proposition No. 2016-1 concerns a Greenways Levy for greenways, open space, parks, park facilities, and trails.

For the purpose of funding development, acquisition, and maintenance of greenways, open space, parks, park facilities, and trails, this proposition would authorize the City to increase its regular property tax levy by up to \$0.50 per \$1,000 of assessed value to renew an expiring greenways levy, resulting in a total levy not to exceed \$2.40 per \$1,000 of assessed value, for 2017 collection, and to levy the additional amount for six succeeding years as allowed under RCW 84.55.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.50

Election Results

Pass / Fail: **Passed**

Yes: **69.73%**

No: **30.27%**

Election Date: **November
2016**

Ballot Measure Details

Jurisdiction: Seattle
County: King

Subject: Other

Ballot Measure Text: Initiative Measure No. 122. The City of Seattle Initiative Measure Number 122 concerns public participation in government, including publicly-financed election campaigns, and lobbying. If enacted, the measure would limit election campaign contributions from entities receiving City contracts totaling \$250,000 or more, or from persons spending \$5,000 or more for lobbying; require 24-hour reporting of electronic contributions; require paid signature gatherer identification; limit lobbying by former City officials; create a voluntary program for public campaign financing through \$100 vouchers issued to registered voters funded by ten years of additional property taxes, with \$3,000,000 (approximately \$0.0194/\$1000 assessed value) collected in 2016.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$.02

Election Results

Pass / Fail: Passed

Yes: 63.14%

No: 36.86%

Election Date: November 2015



Ballot Measure Details

Jurisdiction: Seattle
County: King

Subject: Affordable Housing

Ballot Measure Text: Property Tax Levy Renewal for Affordable Housing. The City of Seattle's Proposition 1 concerns replacing the Seattle Housing Levy. If approved, this proposition would replace an expiring levy to fund: housing for low-income seniors, workers, and households, and the disabled and mentally ill; and homelessness prevention and reduction programs, including emergency rental assistance for at-risk families.

It authorizes regular property taxes above RCW 84.55 limits, allowing \$290,000,000 in additional taxes over seven years beginning in 2017, limited to \$41,428,571/year. The 2017 regular tax rate would be limited to \$3.60/\$1,000 assessed value, including approximately \$0.25/\$1,000 assessed value in additional taxes.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.25

Election Results

Pass / Fail: **Passed**

Yes: **70.60%**

No: **29.40%**

Election Date: **August 2016**

Ballot Measure Details

Jurisdiction: Seattle
County: King

Subject: Library

Ballot Measure Text: Proposition No. 1 Regular Tax Levy Including Seattle Public Libraries. This proposition would increase library collections, support library hours and services, update technology and maintain library facilities, as provided in Ordinance No. 123851. It authorizes regular property taxes above RCW 84.55 limits, allowing additional 2013 collection of up to \$17,000,000 (approximately \$0.15/\$1,000 assessed value) and up to \$122,630,099 over seven years. In 2013, total City taxes collected would not exceed \$3.60 per \$1,000 of assessed value.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.15

Election Results

Pass / Fail: Passed

Yes: 67.17%

No: 35.83%

Election Date: August 2012

Ballot Measure Details

Jurisdiction: Seattle
County: King

Subject: Other

Ballot Measure Text: Proposition Numbers 1A and 1B.

Proposition 1A (submitted by Initiative Petition No. 107) and Proposition 1B (alternative proposed by the City Council and Mayor) concern early learning programs and providers of such services for children.

Proposition 1A (Initiative 107) would establish a \$15 minimum wage for childcare workers (phased in over three years for employers with under 250 employees); seek to reduce childcare costs to 10% or less of family income; prohibit violent felons from providing professional childcare; require enhanced training and certification through a training institute; create a workforce board and establish a fund to help providers meet standards; and hire an organization to facilitate communication between the City and childcare workers.

As an alternative, the Seattle City Council and Mayor have proposed Proposition 1B (Ordinance 124509), which would fund the four-year initial phase of a City early learning program with the goal of developing a widely-available, affordable, licensed, and voluntary preschool option. The Ordinance requires support, training and certification for teachers. The program uses research-based strategies, includes evaluation of results, and provides tuition support. This proposition authorizes regular property taxes above RCW 84.55 limits, allowing additional 2015 collection of up to \$14,566,630 (approximately 11¢ per \$1,000 assessed value), totaling \$58,266,518 over four years.

1. Should either of these measures be enacted into law? (*MRSC note: 68.20% said "yes."*)
2. Regardless of whether you voted yes or no above, if one of these measures is enacted, which one should it be? (*MRSC note: 69.01% favored Option 1B.*)

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.11

Election Results

Pass / Fail: **Passed**

Yes: **68.20%**

No: **31.80%**

Election Date: **November
2014**

Ballot Measure Details

Jurisdiction: Spokane
County: Spokane

Subject: Library

Ballot Measure Text: Library Operations Levy. The City of Spokane adopted Resolution No. 2016-0093 providing for an increase in the regular property tax levy in excess of state law beginning in 2018 in which the funding would be allocated one hundred percent for library operations. This measure authorizes an increase in the regular property tax levy for 2018 by \$0.07 per \$1,000 of assessed valuation for a levy rate not to exceed \$3.52. The increase in the property tax levy would remain in effect for a period of seven years.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.07

Election Results

Pass / Fail: **Passed**

Yes: **71.32%**

No: **28.68%**

Election Date: **April 2017**

Ballot Measure Details

Jurisdiction: Spokane
County: Spokane

Subject: Library

Ballot Measure Text: Proposition No. 3 - City of Spokane Library Operations Levy.
The City of Spokane adopted Resolution No. 2012-0106, providing for an increase in the regular property tax levy in excess of state law beginning in 2014 in which the funding would be allocated one hundred percent for library operations. This proposition authorizes an increase in the regular property tax levy for 2014 by \$0.07 per \$1,000 of assessed valuation for a levy rate not to exceed \$3.08. The increase in the property tax levy would remain in effect for a period of four years.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.07

Election Results

Pass / Fail: **Passed**

Yes: **66.17%**

No: **33.83%**

Election Date: **February 2013**



Ballot Measure Details

Jurisdiction: Tacoma
County: Pierce

Subject: Transportation

Ballot Measure Text: Proposition No. 3. The Tacoma City Council adopted Amended Resolution No. 39236 concerning levy rate and gross earnings tax increases for street improvements. If passed, Proposition No. 3 would authorize the City to increase the City's regular property tax levy by \$0.20 per \$1,000 of assessed value for collection for ten years beginning in 2016, and levy an additional 1.5% earnings tax on natural gas, electric, and phone companies for ten years, beginning 2016, to fund street repair, maintenance and safety improvements for residential streets, arterials, and freight access, including resurfacing, pothole repair, pedestrian safety improvements, school crossing beacons, and sidewalk improvements.

Funding Type/Statutory Authority: Utility Tax Increase (RCW 35.21.870), Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.20

Tax Amount: \$.015

Election Results

Pass / Fail: Passed

Yes: 50.03%

No: 49.97%

Election Date: November 2015

Ballot Measure Details

Jurisdiction: Washougal
County: Clark

Subject: Fire, EMS

Ballot Measure Text: Replacement Levy for Fire and Emergency Medical Services. The City Council of the City of Washougal adopted Resolution 1092 concerning renewing an increase in Washougal's regular property tax levy for fire and emergency medical services. To fund fire and emergency medical services, this proposition authorizes an increase in the City of Washougal's regular tax levy for collection in 2015 of ten cents (\$0.10) per \$1,000 of assessed valuation. If this proposition is approved the City's total 2015 regular levy rate will not exceed \$2.85 per \$1,000 of assessed valuation. Levy amounts in the five years following 2015 will be limited as provided under RCW chapter 84.55.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.10

Election Results

Pass / Fail: **Passed**

Yes: **58.59%**

No: **41.41%**

Election Date: **November
2014**



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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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 [Contact \(/contact-us\)](#) |
 [About \(/about\)](#)

"Working together to fund Washington's future"

Ballot Measure Details

Jurisdiction: DuPont
County: Pierce

Subject: EMS

Ballot Measure Text: Proposition No. 1 Six-Year Levy Lid Lift for Advanced Life Support Services. DuPont City Council adopted ordinance 17-1018 affecting the City's regular property tax rate. Proposition 1 would provide ALS services at no out of pocket cost to residents for necessary use and increase fire and EMS crew from three to five. Regular property tax levy would increase by \$1.52 per \$1,000 assessed value replacing the existing EMS levy of \$.50: a net increase of \$1.02 per \$1,000.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$1.52

Election Results

Pass / Fail: **Passed**

Yes: **58.11%**

No: **41.89%**

Election Date: **August 2017**

Ballot Measure Details

Jurisdiction: Duvall
County: King

Subject: Parks and Recreation, Other

Ballot Measure Text: Proposition No. 1 Nine Year Levy Lid Lift for Big Rock Ballfield Improvements, Employment of a Full-Time School Resource Officer, and IT System Improvements. The Duvall City Council passed Resolution No. 16-13 to place before the voters a proposition increasing the City's regular property tax levy by up to \$0.325/\$1,000 of assessed valuation to a total maximum rate of \$1.725/\$1,000 of assessed valuation in 2017, with increases to the levy as permitted in RCW 84.55 for eight years thereafter, to finance improvements to the Big Rock Ballfields, the employment of a full-time school resource officer, and IT system improvements.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.325

Election Results

Pass / Fail: Passed

Yes: 50.99%

No: 49.01%

Election Date: November
2016

Ballot Measure Details

Jurisdiction: San Juan County Fire Protection District No.2 - Orcas Island Fire and Rescue
County: San Juan

Subject: Fire

Ballot Measure Text: Proposition No. 1 -- Maintenance of Regular Property Tax Levy. The Board of Fire Commissioners of Fire Protection District No. 2, San Juan County, Washington, adopted Resolution No. 2014-1 re-authorizing a regular property tax levy. This proposition would authorize the District to maintain its regular property tax levy of \$1.05 per \$1,000 of assessed valuation for ten years commencing with taxes collected in 2015.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$1.05

Election Results

Pass / Fail: **Passed**

Yes: **62.22%**

No: **37.78%**

Election Date: **April 2014**

Ballot Measure Details

Jurisdiction: San Juan County
County: San Juan

Subject: Criminal Justice, Parks and Recreation, Other

Ballot Measure Text: Six-Year Levy Lid Lift. The San Juan County Council adopted Resolution No. 33-2014 concerning the replacement of the existing levy lid lift. This proposition will cancel an existing levy lid lift for the year 2015 and replace it in 2015 and for five consecutive years in the amount of 18 cents per \$1,000 assessed value, subject to the limit factors in RCW 84.55, for the purpose of funding senior services, fair, parks, extension programs, public health, victim services, corrections, and other items in the amounts set forth in the resolution.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.18

Election Results

Pass / Fail: **Passed**

Yes: **61.98%**

No: **38.02%**

Election Date: **November 2014**



Ballot Measure Details

Jurisdiction: San Juan Island Park and Recreation District
County: San Juan

Subject: Parks and Recreation

Ballot Measure Text: Proposition No. 1. The Board of Commissioners of the San Juan Island Park and Recreation District ("Island Rec") adopted Resolution No. 15-01 concerning the District's regular property tax levy. This proposition would authorize Island Rec to impose a property tax levy of 38.5 cents or less per \$1,000 of assessed valuation for each the tax years 2016 – 2021, subject to the limit factors in RCW 84.55, which monies (or proportionate amount) will be dedicated for the following purposes:

18.5 cents for funding Island Rec programs;
12.0 cents for sports programs with the School District; and
8.0 cents for operation and maintenance of Friday Harbor Fields.

Funding Type/Statutory Authority: Levy Lid Lift (RCW 84.55.050)

Levy (Per \$1000 A/V): \$0.385

Election Results

Pass / Fail: Passed

Yes: 69.32%

No: 30.68%

Election Date: April 2015

PACIFICA LAW GROUP

December 13, 2017 - 4:41 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49453-1
Appellate Court Case Title: End Prison Industrial Complex, Appellant v. King County, Respondent
Superior Court Case Number: 16-2-07355-2

The following documents have been uploaded:

- 494531_Motion_20171213161448D2375160_1998.pdf
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Motion 1 - Other
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- 494531_Petition_for_Review_20171213161448D2375160_2859.pdf
This File Contains:
Petition for Review
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