FILED
SUPREME COURT
STATE OF WASHINGTON
5/25/2018 2:51 PM
BY SUSAN L. CARLSON
CLERK

No. 95307-4

SUPREME COURT OF THE STATE OF WASHINGTON

END PRISON INDUSTRIAL COMPLEX,

Respondent,

v.

KING COUNTY,

Petitioner.

SUPPLEMENTAL BRIEF

Knoll Lowney, WSBA #23457
Claire Tonry, WSBA #44497
Smith & Lowney, PLLC
2317 E. John St.
Seattle, WA 98112
(206) 860-2883

Attorney for Respondent
EPIC

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

ISSUES PRESENTED FOR REVIEW 3

STATEMENT OF THE CASE 3

A. RCW 84.55.010 limits the amount of property tax levies, with particular rules for calculating limits after a "levy lid lift." 3

B. In 2008, the Legislature passed emergency legislation to prohibit using the dollar amount of the "lifted" levy as the base for setting future levy limits. 4

C. The County admits to using the prohibited methodology. 6

D. The County lacked legally required voter consent to use the prohibited methodology. 6

ARGUMENT 7

A. The Court of Appeals correctly interpreted RCW 84.55.050. 7

1. RCW 84.55.050 plainly requires that the mandatory disclosures be in the ballot title. 8

a. "Ballot of the proposition" means the ballot, not the voter's pamphlet. 9

b. "Ballot proposition" means ballot title. 11

c. "Proposition placed before voters" means ballot title. 12

2. The County's construction would leave the voters without entitlement to any ballot information, undermining clear legislative intent. 13

3. The Ordinance did not contain the "clear" and "express" disclosure. 14

4. The Prop. 1 ballot title did not contain the "clear" and "express" disclosure. 15

5. The County's arguments about ballot title word count are meritless. 17

B. The Opinion correctly found that this challenge to Prop 1's implementation is not a ballot title appeal. 18

CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Amalgamated Transit Union Local 587 v. State,
142 Wn.2d 183, 217, 11 P.3d 762 (2001)..... 13-14, 19

City of Burien v. Kiga,
144 Wn.2d 819, 823, 31 P.3d 659 (2001)..... 19

City of Sequim v. Malkasian,
157 Wn.2d 251, 253-54, 138 P.3d 943 (2006) 19-20

End Prison Indus. Complex v. King County,
200 Wn. App. 616, 632 (2017) 6, 15, 18-19

Leppaluoto v. Eggleston,
57 Wn.2d 393, 404, 357 P.2d 725 (1960)..... 9

Ski Acres v. Kittitas Cnty.,
118 Wn.2d 852, 857, 827 P.2d 1000 (1992)..... 8

Spokane v. Taxpayers of Spokane,
111 Wn.2d 91, 97, 758 P.2d 480 (1988)..... 12

State v. Armendariz,
160 Wn.2d 106, 110 (2007)..... 7, 10

Walker v. Munro,
124 Wn.2d 402, 414-15, 418, 879 P.2d 920 (1994) 19

Wash. Ass'n for Substance Abuse & Violence Prevention v. State,
174 Wn.2d 642, 661, 278 P.3d 632 (2012)..... 19-20

Washington State Statutes

RCW 17.28.090 12

RCW 27.12.370 12

RCW 29A.32.210 13

RCW 29A.36.071 17-18

RCW 29A.36.071(1) 15

RCW 29A.36.080 20

RCW 29A.36.090 20

RCW 29A.36.230 12

RCW 35.58.090 12

RCW 35.58.100 12

RCW 35.58.550 12

RCW 36.36.020 12

RCW 36.60.020 12

RCW 52.04.071 12

RCW 67.38.030 12

RCW 70.44.230 12

RCW 84.52.054 11

RCW 84.55 ..... 1, 3, 15-18

RCW 84.55.010 ..... 1, 3-4, 18-19

RCW 84.55.010(1) 11, 13

RCW 84.55.010(4) 11, 13

RCW 84.55.050 ..... 1, 3, 6-10, 13, 16, 18

RCW 84.55.050(1) 6, 8-9, 11

RCW 84.55.050(3) 4, 6, 12

RCW 84.55.050(4) 9, 12-13

RCW 84.55.050(4)(a) 4, 6

RCW 84.55.050(4)(b) 14

RCW 84.55.050(4)(c) 16

RCW 84.55.050(5) 4

RCW 84.55.050(5)(a) 7

RCW 84.55.050(5)(b) 7

Other

King County, Ballot measures - November 7 2017 General and Special Election,
https://info.kingcounty.gov/kcelections/Vote/contests/ballotmeasures.aspx?cid=90068&groupname=County 3

Appendices

A. RCW 84.55.010

B. RCW 84.55.050

C. Laws of 2008, ch. 319 (CP 362-364)

D. Laws of 1971, 1st Ex. Sess., ch. 288, § 24 (CP 319, 334)

E. Laws of 2007, ch. 380 (CP 358-61)

F. Sample edits to proposed ballot title in ordinance to meeting alleged 75-word limit.

G. Comparison of ballot titles submitted by County.

INTRODUCTION

Respondent EPIC asks the Court to affirm the Court of Appeals published opinion ("Opinion"), which properly interpreted the statutory mandates in chapter 84.55 RCW and confirmed that King County (the "County") is not above the law.

The Opinion merely confirms that RCW 84.55.010 and .050 mean what they say. In 2008, the Legislature adopted emergency legislation amending RCW 84.55.050 to outlaw the property tax levy methodology that the County is presently using to implement King County Proposition 1 ("Prop. 1"). Few statutes are so urgent in protecting taxpayers and voters. *Four times* RCW 84.55.050 requires the County to tell voters "clearly" and "expressly" that the methodology at issue would be used, or else it is prohibited.

The language of each of these passages is clear that the required disclosures must be in the ballot title. This disclosure requirement is stated emphatically because the methodology in question has a major impact on voters' pocketbooks. Using a "single-year" levy lid lift to calculate future levy limits has the effect of *permanently* increasing property tax levies, although governments may add a limited duration to that increase. The 2008 emergency legislation rightly determined that

voters have a right to learn in the ballot title both the proposed dollar rate of the increase and whether it would be used to inflate future levies.

The County previously acknowledged that these disclosures must be on the ballot, and it even prepared a proposed ballot title that would have permitted its current level of taxation. CP 93. But the County did not use that ballot title. Consequently, the voter-approved ballot – the one that matters – does not permit the County's current level of taxation.

The County's new fallback argument is that statutorily required disclosure can be buried in the text of the ordinance rather than appear on the ballot itself. That argument cannot be squared with the statute and would effectively repeal *all* of the ballot requirements, entitling voters to no information whatsoever on the ballot.

Finally, the Opinion follows well-established law in finding that a pre-election ballot title appeal is not a pre-requisite to a later action seeking to enforce tax laws, which is obviously correct given the limited scope and relief, and lack of appellate review, in a ballot title challenge.

In light of the Opinion, the County and other jurisdictions have drafted ballot titles more carefully to inform voters and obtain authority for desired tax increases. [1] The Opinion should be affirmed.

---

[1] The Court can take judicial notice of the fact that the County's recent levy lid lift for veterans, seniors, and vulnerable populations used a title that informed voters that "The first year levy amount would be the base for computing annual increases up to 3.5% for

ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly hold that the Prop. 1 ballot title failed to satisfy RCW 84.55.050's requirement that the ballot title "clearly" and "expressly state" that the 2013 levy amount would be used to compute subsequent levies, as a precondition to the County's admitted use of that methodology?

2. Did the Court of Appeals correctly hold that a taxpayer action to enforce the limitations of chapter 84.55 RCW is not a ballot title appeal, and a ballot title appeal is not a prerequisite to this lawsuit?

STATEMENT OF THE CASE

A. RCW 84.55.010 limits the amount of property tax levies, with particular rules for calculating limits after a "levy lid lift."

Under RCW 84.55.010, "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 statutory limitation set forth in that section. RCW 84.55.010 (emphasis added). Here, the County Council set the levy in 2014 and later years based upon an illegal methodology, causing the levy to exceed that permitted under RCW 84.55.010. CP 279-80.

RCW 84.55.010 creates a two-step methodology for calculating the

---

collection in 2019 through 2023." King County, Ballot measures — November 7 2017 General and Special Election, https://info.kingcounty.gov/kcelections/Vote/contests/ballotmeasures.aspx?cid=90068&groupname=County (last visited May 24, 2018).

maximum levy that a jurisdiction can impose in any given year: First, it identifies the "base levy amount," which is the "amount of regular property taxes lawfully levied for such district in the highest of the three most recent years." RCW 84.55.010. Second, it increases the base levy with various multipliers – generally 1% plus an allowance for new construction – to find the new levy limit (e.g., the maximum levy). *Id.* However, after a levy lid lift the base for later levy limits must be calculated pursuant to RCW 84.55.050(3), (4)(a), and (5).

B. In 2008, the Legislature passed emergency legislation to prohibit using the dollar amount of the "lifted" levy as the base for setting future levy limits.

From 1971 through 2008, after a "single-year" lid lift ended, the elevated collections during that year became the base for calculating later levies. CP 334 (Laws of 1971, 1st Ex. Sess., ch. 288, § 24); CP 361 (Laws of 2007, ch. 380 § 2) ("After a levy authorized pursuant to this section is made, the dollar amount of such levy *shall be used* for the purpose of computing the limitations for subsequent levies ..." (emphasis added)).

Through that default methodology, a "single-year" lid lift actually authorized a permanent increase to the levy limit. A government could limit the period in which the levy limit was increased (and still can), but "[o]therwise, either a single-year or multi-year levy lid lift … results in a 'permanently' adjusted levy lid." Op. Att'y Gen. No. 3 (2008).

In 2008, the Legislature passed an emergency act that completely changed the default rule for calculating levy limits after a lid lift by changing "shall" to "may not." The amendment could not have been clearer or more emphatic. The amendment read, in part, as follows:

> (3) After a levy authorized pursuant to this section is made, the dollar amount of such levy ((~~shall~~)) may not be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, ((~~except as provided in subsection (5) of this section~~)) 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 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;
>
> …
>
> (5) Except as otherwise ((~~provided~~)) expressly stated in an approved ballot measure under this section, ((~~after the expiration of a limited period under subsection (4)(a) of this section or the satisfaction of a limited purpose under subsection (4)(b) of this section, whichever comes first~~)) subsequent levies shall be computed as if:
>
> (a) The ((~~limited~~)) proposition under ((~~subsection (4) of~~)) this section had not been approved …

CP 362-64 (Laws of 2008, ch. 319) (revision marks in the original).

Because this methodology was made a "subsection (4) condition," it was subject to subsection (1), which provides:

> 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.

RCW 84.55.050(1) (emphasis added). Thus, the default rule specifically prohibits the County from using the *actual* 2013 levy amount to calculate the levy limit in 2014 and later, absent proper disclosure in a voter-approved ballot title.

C. The County admits to using the prohibited methodology.

Based upon undisputed facts, the Opinion found 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) and (4)(a)." *End Prison Indus. Complex v. King County* ("*EPIC*"), 200 Wn. App. 616, 632, 402 P.3d 918 (2017). The County does not dispute this. CP 46-47; 279-80.

D. The County lacked legally required voter consent to use the prohibited methodology.

The Opinion recognizes that under the "plain meaning" of RCW 84.55.050, the methodology used by the County was prohibited unless the approved ballot title "clearly" and "expressly" stated it would be used. Division II looked at the Prop. 1 ballot title and concluded that it did not contain the "clear" and "express" statement that the statute requires before the County can use the otherwise-prohibited methodology. *Id.* at 633.

If the County wanted to use the 2013 levy amount in calculating later years' levies, it knew how to draft an appropriate ballot title. Indeed,

its proposed title in Ordinance 17304 contained the needed disclosure. *Id.* at n.9 (citing CP 85), and it could have been easily edited to the proper length without losing substance. *See* App'x F. The County instead put a different ballot before voters, which omitted any reference to the use of the prohibited methodology. CP 249.

Division II's Opinion simply told the County that the law is clear and the County must follow it. The Opinion did not calculate the extent of illegal tax collections and instead remanded to the trial court.[2]

ARGUMENT

A. The Court of Appeals correctly interpreted RCW 84.55.050.

The Opinion used basic rules of statutory construction to confirm "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 on 2013's increased levy amount." *EPIC* at 633.

Courts may not judicially repeal unambiguous requirements. *State v. Armendariz*, 160 Wn.2d 106, 110 (2007) ("If the plain language of the statute is unambiguous, then this court's inquiry is at an end.") Even if there were an ambiguity, which there is not, it would *not* support the

[2] The Opinion does not nullify Prop.1, as the County argues. Prop. 1 properly authorized tax increases in 2013 and it can earmark additional tax increases for its project. But those increases must be calculated as set forth in RCW 84.55.050(5)(a) and (b), not using the prohibited methodology.

County's illegal taxation. Where there is any question about the meaning of a tax statute, "the statute must be construed most strongly against the taxing power and in favor of the taxpayer." *Ski Acres v. Kittitas Cnty.*, 118 Wn.2d 852, 857, 827 P.2d 1000 (1992).

1. RCW 84.55.050 plainly requires that the mandatory disclosures be in the ballot title.

The County's first argument is that the mandatory disclosure to voters does not need to be on the ballot, but instead can be provided in other places, such as in the Ordinance. County Pet. at 18. This is incorrect.

Previously, the County agreed that all of the disclosures must be in the ballot title. The County argued to Division II that "[t]he statute *does* require that the conditions applicable to the levy lid lift be expressly stated in the ballot title" and "[t]here is *no dispute* that the statutory requirement for a ballot title must be met by the ballot title itself." County Br. at 24, 30 (Mar. 17, 2017) (emphasis added). It argued that "[t]he ballot title either meets the requirements or it does not – that is a question for the court to decide as a matter of law." *Id.* at 27.

The County specifically acknowledged that RCW 84.55.050(1) required subsection (4) conditions to be disclosed in the ballot title:

> *RCW 84.55.050(1) requires the ballot title to state* the dollar rate proposed and to clearly state the condition, if any, which are

> applicable under RCW 84.55.050(4). The latter includes the period for which the increased levy is to be made and the levy's purpose.

CP 44 (emphasis added). *See also* CP 52 (conceding that disclosure is required in ballot title, but arguing that ballot title met standard).

The County cannot completely change its position and now argue the statute is ambiguous and requires judicial construction. *Leppaluoto v. Eggleston*, 57 Wn.2d 393, 404, 357 P.2d 725 (1960) ("Appellant cannot be permitted to take an inconsistent position on appeal.").

The weakness of the County's new position is shown by its earlier concessions. The statute four times requires "clear" and express" disclosure to voters, and each of these passages use language that requires that the disclosure be in the *ballot title,* not some other document that few voters will read. RCW 84.55.050. Statements in a related ordinance or voters' pamphlet are insufficient under RCW 84.55.050's plain language.

a. "Ballot of the proposition" means the ballot, not the voter's pamphlet.

First, subsection (1) requires the mandatory disclosure be in "the ballot of the proposition," which clearly means ballot title. RCW 84.55.050(1) ("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.") This passage governs

where voters must be provided with certain key information about the proposal, including the dollar rate and, if applicable, the "expressly stated" disclosure required under subsection 4(a).

The County now asks the Court to re-interpret the phrase "***ballot of*** the proposition" to mean "***both*** the ballot title ***and*** the proposition." County Pet. at 17. However, the word "of" is not ambiguous and is certainly not susceptible to being construed to mean "and"; the phrase is thus not subject to judicial construction. *Armendariz*, 160 Wn.2d at 110.

The County's newfound argument for judicial construction is that because RCW 84.55.050 uses both the terms "ballot of the proposition" and "ballot title," "the Legislature necessarily intended these terms to have different meanings." County Pet. at 16. But the County fails to acknowledge that the term "ballot title" was not added to the statute until 2009, almost *40 years after* the original statute was enacted requiring basic disclosure of the "millage rate proposed" in the "ballot of the proposition." Laws of 2009, ch. 551, § 3.[3] Thus, the different terms result from evolution of statutory language, not different legislative intent rendering the terms ambiguous.

[3] The sentence requiring certain disclosures in the "ballot of the proposition" is in the original 1971 act that first enacted the limit factor. (CP 334) (Laws of 1971, 1st Ex. Sess., ch. 288, § 24). Later this disclosure requirement was amended to also require disclosure of "subsection (4) conditions," including the methodology disclosure at issue in this case.

Importantly, accepting the County's new argument would judicially repeal the statute's *only* requirement that the voters be told *anything* on the ballot. The requirement to disclose certain information in the "ballot of the proposition" is the only passage in the statute requiring local governments to tell voters about the key details of the proposed levy lid lift, including the "dollar rate proposed" and applicable conditions. RCW 84.55.050(1). Thus, under the County's argument, even the levy's proposed dollar rate and duration could be hidden in the ordinance and never disclosed at the ballot. RCW 84.55.010(1), and (4).

The term "ballot of the proposition" is an older phrase, but it's still used today and *always* refers to the ballot title.[4] The Court cannot reinterpret an unambiguous phrase and judicially repeal all ballot requirements, leaving voters with no information about the proposed levy.

b. "Ballot proposition" means ballot title.

Subsection (3) explicitly prohibits the County from using the 2013 levy to calculate later levies because the "ballot proposition" did not expressly state that the 2013 levy would be used for that purpose:

> (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

[4] Other statutes continue to use this phrase to refer to the ballot title. *See* RCW 84.52.054 ("The additional tax provided … shall be set forth in terms of dollars on the ballot of the proposition submitted to the voters.")

made under this section will be used for this purpose. *Id.* RCW 84.55.050(3). This language requires disclosure on the ballot.

The Legislature routinely uses the term "ballot proposition" to mean the mandatory ballot title. For example, when a local government wants voters to approve the creation of an aquifer protection area:

> *The ballot proposition shall be in substantially the following form*:
>
> "Shall the … aquifer protection area be created and authorized to impose monthly fees …?
>
> Yes……
>
> No……"

RCW 36.36.020 (emphasis added). The Legislature has used "ballot proposition" to mean "ballot title" in almost a dozen similar statutes.[5] *Accord Spokane v. Taxpayers of Spokane*, 111 Wn.2d 91, 97, 758 P.2d 480 (1988) ("The ballot proposition summarized the initiative in this fashion: Shall the Charter of the City of Spokane be amended …?").

c. "Proposition placed before voters" means ballot title.

RCW 84.55.050(4) states that "*If expressly stated, a proposition placed before the voters* under subsection (1) or (2) of this section may:

---

[5] *See, e.g.*, RCW 29A.36.230 (creation of regional transportation area); RCW 35.58.090 (formation of metropolitan municipal corporation); RCW 17.28.090 (mosquito control district); RCW 27.12.370 (annexation); RCW 35.58.100 (grant of additional powers to metropolitan municipal corporation); RCW 35.58.550 (annexation); RCW 52.04.071 (annexation); RCW 70.44.230 (alternative method of annexation); RCW 36.60.020 (formation of county rail district); RCW 67.38.030 (formation of stadium district).

(a) Use the dollar amount of a levy under subsection (1) of this section … for the purpose of computing the limitations for subsequent levies provided for in this chapter." As discussed, a ballot "proposition" means the ballot title. Moreover, it is only the ballot title, not the ordinance, which is in fact "placed before the voters." RCW 84.55.050(4); *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 217, 11 P.3d 762 (2001).

2. The County's construction would leave the voters without entitlement to any ballot information, undermining clear legislative intent.

The County's argument, if accepted, would eviscerate the express statutory requirement for well-informed voter consent. Most voters would not receive any of the key information they need to understand the proposal, including the proposed dollar rate of the increase and whether the tax increase is permanent or temporary. RCW 84.55.050(1), (4).

Nor would voters be entitled to this basic information in the voters' pamphlet. RCW 84.55.050 does not require publication of the ordinance. Moreover, local governments are not even required to publish a voters' pamphlet for each election. RCW 29A.32.210 ("county … *may* adopt an ordinance authorizing the publication and distribution of a local voters' pamphlet) (emphasis added). Even where jurisdictions choose to publish a voters' pamphlet, this Court has recognized that few people read it.

Amalgamated Transit, 142 Wn.2d 183, 217 (critical information must be in the ballot title because many voters read only the ballot title, not the voters' pamphlet).

The Legislature's decision to require this critical information in the ballot title is protective of voters and taxpayers and must be respected. The Legislature logically believed that the voters had a right to know both the proposed rate and whether a methodology is used which has the capacity to make the tax increase permanent (which is the effect unless the government added a time limit under RCW 84.55.050(4)(b)). The Legislature is well aware that the only way to get this information to the voters is to require it in the ballot title. *See Amalgamated Transit*, 142 Wn.2d at 217.

3. The Ordinance did not contain "clear" and "express" disclosure.

While the County's argument would repeal critical protections for voters and taxpayers, it would not lead to a different result because the Ordinance, like the ballot title, did not "clearly" and "expressly state" that the 2013 levy would be used to calculate later levies. The only reference to this methodology was in the Ordinance's suggested ballot title, which the County rejected. CP 80-85. A voter cannot glean anything from an abandoned phrase in a proposed title, so it cannot constitute the "clear"

and "express" disclosure that the statute requires. Moreover, the suggested ballot title is *ultra vires* and not part of the law, since only the prosecuting attorney may draft the ballot title. RCW 29A.36.071(1).

4. The Prop. 1 ballot title did not contain the "clear" and "express" disclosure.

The County's second argument is that the Court should ignore the statutorily mandated ballot title requirement ("clearly" and "expressly stated") and instead apply the "average informed voter" standard that courts have adopted for Constitutional challenges under article II, section 19. County Pet. at 18. But the Court cannot ignore a statutory standard[6] and apply an inapplicable judge-made test. Using the statutory standard, Division II correctly found that "[r]ather 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 chapter 84.55 RCW, all as provided in Ordinance No. 17304.'" *EPIC*, 200 Wn. App. at 632 (citing CP at 367).

Indeed, the ballot for Prop. 1 said nothing about using the 2013

[6] While the statutory standard is exacting, it is more flexible than the alternative of prohibiting the controversial methodology altogether – which was within the Legislature's authority. The Legislature's 2008 amendment struck a rigorous but reasonable compromise.

collections to calculate future levies. The County's argument that "voters should have known" ignores the statutory standard and is simply untrue. No matter which methodology was used, increases over the "following eight years" would be subject to chapter 84.55 RCW limits. The ballot did not even say that there would be increases *each* year. Rather, voters are only told that the levy lid was lifted in 2013, future limits are governed by law, and all levy proceeds would be earmarked for the County's project under RCW 84.55.050(4)(c). It did not disclose the methodology at all.

Division II recognized that "[a]n 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." *EPIC* at 633. It relied upon the plain meaning of the words "clearly" and "expressly" to hold that judicial construction was unwarranted. *Id.* at 632. *Accord* Op. Att'y Gen. No. 3 (2008) ("Because the language of RCW 84.55.050 as amended by Laws of 2007, ch. 380 is plain and unambiguous, there is no need to consider extrinsic factors ...").

The County seeks to supplement the record with language from 19 other ballot titles, alleging that they used "similar language" to the Prop. 1 title. *See* County Pet. at 14 n.8. As EPIC has shown, there is no consistency among the various titles and none is identical to the Prop. 1

title. Answer to County Pet., App'x G.[7] Most of those levies were unlike Prop. 1 because they asked voters to approve a specific rate increase for a specific number of years[8] or asked voters to increase the levy to raise a specific amount of money.[9] Prop. 1 is the only measure before the Court and the County admits that it has implemented Prop. 1 using a methodology that is presumptively prohibited.[10]

5. The County's arguments about ballot title word count are meritless.

The County argues that the Court should not enforce the ballot disclosure requirements because it would be difficult to fit all of the mandatory information into a 75-word title allowed by RCW 29A.36.071. EPIC has demonstrated that this is factually wrong. Answer to Pet., App'x F. Moreover, RCW 29A.36.071 and its word limit do "not apply if another provision of law specifies the ballot title for a specific type of ballot question or proposition." RCW 29A.36.071.

---

[7] For example, some refer directly to RCW 84.55; some state how much money will be raised; some state the duration; etc.

[8] *See e.g.,* County Pet., Ex. D (Chelan County title) ("This proposition authorizes the district to levy regular property taxes … at a rate of $.89 per thousand of assessed value for a period of ten years…");

[9] *See e.g., Id.* (Seattle Proposition 1B title) ("This proposition authorizes regular property taxes above RCW 84.55 limits, allowing additional 2015 collection of up to $14,566,630 (approximately 11C per $1,000 assessed value), totaling $58,266,518 over four years.")

[10] Similarly, the County points to an unauthenticated screen shot of the Department of Revenue's draft titles which are not legally binding, and not before the Court. Even if these were relevant, they do not support the County. These titles are consistent with the statute and the Opinion, because they use the language "such levy amount would be used to compute the limitations for subsequent years as allowed under chapter 84.55 RCW."

Because the County fully understands this, its ballot titles for levy lid lift measures do not follow the ballot title structure of RCW 29A.36.071 and sometimes exceed 75 words. Indeed, the Prop. 1 ballot title presented to voters exceeded that limit – it was 79 words long. Arguments about the 75-word limit are thus disingenuous, at best.

RCW 84.55.050 and RCW 29A.36.071 allowed the County to take the space it needed to provide the mandatory disclosures to voters. But, as the ballot title examples provided by the County show, the disclosures can be stated succinctly in fewer than 75-words.

B. The Opinion correctly found that this challenge to Prop 1's implementation is not a ballot title appeal.

Division II rejected the County's argument that EPIC could not enforce chapter 84.55 RCW because it didn't bring a pre-election ballot title appeal. It correctly held that "EPIC's claim is not a challenge to the ballot's title that must be brought preelection." *EPIC*, 200 Wn. App. at 628. Rather, "EPIC seeks to enforce the terms of the ballot title as written and approved by voters." *Id.* Under RCW 84.55.010 and.050, the approved ballot title governed whether or not the County could use the prohibited methodology in calculating levies beginning 2014. Without the disclosure, later year's tax increases could be earmarked for the project, but could not be calculated using the prohibited methodology.

EPIC's claims only ripened years after the election when King County violated RCW 84.55.010 by setting the 2014 levy to collect more taxes than voters approved. *See Walker v. Munro*, 124 Wn.2d 402, 414-15, 418, 879 P.2d 920 (1994) (Tax challenge not ripe until the tax is implemented, in effect, and paid). The County admits that it set the 2014 levy by ordinance on February 4, 2014, using the 2013 collections as a base, and collected taxes based upon that levy amount. *EPIC*, 200 Wn. App. at 623-4 (citing CP 280-281).

The Opinion is consistent with precedent holding that a pre-election ballot title challenge is not required for or dispositive of a later claim. *Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 661, 278 P.3d 632 (2012) ("*WASAVP*") (unsuccessful ballot title challenge not preclusive, as plaintiff was not challenging "the result of the ballot title determination, but rather, the constitutionality of the law itself"); *City of Sequim v. Malkasian*, 157 Wn.2d 251, 253-54, 138 P.3d 943 (2006) (post-election challenge could proceed eight years after ballot title appeal because the Court could still invalidate the initiative.).[11]

These cases make sense because a pre-election ballot title appeal cannot enforce substantive rights; it can only modify the ballot title to

[11] Most post-election challenges are not preceded by a ballot title appeal. *See Amalgamated Transit*, 142 Wn.2d at 217; *City of Burien v. Kiga*, 144 Wn.2d 819, 823, 31 P.3d 659 (2001) ("first lawsuit" challenging constitutionality was post-election).

conform to election laws. RCW 29A.36.090. [12] Ballot title challenges are further limited in that governments do not give public notice when issuing a ballot title, but appeals must still be brought within ten days and must be decided "immediately," and the trial court's ruling is *not subject to appeal*. *Id.*; RCW 29A.36.080.

The County admits it plans to use the illegal methodology until 2022. CP 280-81. Under the County's absurd reasoning, as long as there was no successful pre-election ballot title appeal, the Courts would be helpless to provide relief from ongoing illegal taxation, eviscerating one of the most important taxpayer protection regimes in our State. As the Opinion correctly holds, that is not the law. *See City of Sequim, WASAVP*.

CONCLUSION

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

Respectfully submitted this 25th day of May, 2018.

SMITH & LOWNEY, PLLC

By: /s/ *Knoll Lowney*
Knoll Lowney, WSBA No. 23457
Claire Tonry, WSBA No. 44497
Attorneys for Plaintiffs

[12] RCW 29A.36.090 ("Upon the filing of the petition on appeal, the court shall immediately… examine the proposed measure, the ballot title filed, and the objections to it and may hear arguments on it, and shall as soon as possible render its decision and certify to and file with the county auditor a ballot title that it determines will meet the requirements of this chapter. The decision of the superior court is final …")

2317 E. John St., Seattle WA 98122
Tel: (206) 860-2883
Fax: (206) 860-4187
knoll@smithandlowney.com,
claire@smithandlowney.com

Appendix A

RCW 84.55.010

Limitations prescribed.

(1) Except as provided in this chapter, the levy for a taxing district in any year must be set so that the regular property taxes payable in the following year do not exceed the limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year by the increase in assessed value in that district resulting from:

(a) New construction;

(b) Increases in assessed value due to construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under this section for purposes of providing an additional dollar amount. The property may be classified as real or personal property;

(c) Improvements to property; and

(d) Any increase in the assessed value of state-assessed property.

(2) The requirements of this section do not apply to:

(a) State property taxes levied under RCW **84.52.065**(1) for collection in calendar years 2019 through 2021; and

(b) State property taxes levied under RCW **84.52.065**(2) for collection in calendar years 2018 through 2021.

[**2017 3rd sp.s. c 13 § 302; 2014 c 4 § 1; 2006 c 184 § 1;** 1997 c 3 § 202 (Referendum Bill No. 47, approved November 4, 1997); **1979 ex.s. c 218 § 2; 1973 1st ex.s. c 67 § 1; 1971 ex.s. c 288 § 20.**]

NOTES:

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW **84.52.065**.

Intent—2017 3rd sp.s. c 13: See note following RCW **28A.150.410**.

Application—2014 c 4: "This act applies to taxes levied for collection in 2015 and thereafter." [**2014 c 4 § 6.**]

Intent—1997 c 3 §§ 201-207: "It is the intent of sections 201 through 207 of this act to lower the one hundred six percent limit while still allowing taxing districts to raise revenues in excess of the limit if approved by a majority of the voters as provided in RCW **84.55.050**." [1997 c 3 § 208 (Referendum Bill No. 47, approved November 4, 1997).]

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW **84.40.030**.

Effective date—Applicability—1979 ex.s. c 218: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That the amendment to RCW **84.55.010** by section 2 of this act shall be effective for 1979 levies for taxes collected in 1980, and for subsequent years." [**1979 ex.s. c 218 § 8.**]

Appendix B

RCW 84.55.050

Election to authorize increase in regular property tax levy—Limited propositions—Procedure.

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. 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 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, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. Elections for this purpose must be held at a primary or general election. 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.

(b)(i) Except as otherwise provided in this subsection (2)(b), funds raised by a levy under this subsection may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(ii) The supplanting limitations in (b)(i) of this subsection do not apply to levies approved by the voters in calendar years 2009, 2010, and 2011, in any county with a population of one million five hundred thousand or more. This subsection (2)(b)(ii) only applies to levies approved by the voters after July 26, 2009.

(iii) The supplanting limitations in (b)(i) of this subsection do not apply to levies approved by the voters in calendar year 2009 and thereafter in any county with a population less than one million five hundred thousand. This subsection (2)(b)(iii) only applies to levies approved by the voters after July 26, 2009.

(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;

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

(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;

(i) For the county in which the state capitol is located, the period for which the increased levies are made may not exceed twenty-five years; and

(ii) For districts other than a district under (c)(i) of this subsection, the period for which the increased levies are made may not exceed nine years;

(d) Set the levy or levies at a rate less than the maximum rate allowed for the district; or

(e) Include any combination of the conditions in this subsection.

(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.

[**2017 c 296 § 2; 2009 c 551 § 3; 2008 c 319 § 1; 2007 c 380 § 2; 2003 1st sp.s. c 24 § 4; 1989 c 287 § 1; 1986 c 169 § 1; 1979 ex.s. c 218 § 3; 1973 1st ex.s. c 195 § 109; 1971 ex.s. c 288 § 24.**]

NOTES:

Findings—2017 c 296: "The legislature finds government owned property is exempt from both property taxes and leasehold excise tax. The legislature further finds property tax exemptions lower the taxable assessed value within a district. The legislature further finds most of the state-owned buildings in Washington, including the state capitol, are located in Thurston county. The legislature further finds this imposes a disproportional burden on taxpayers and Thurston county. It is the legislature's objective to mitigate this burden by providing Thurston county the ability to increase a bond levy for a longer period of time with a voter approved lid lift." [**2017 c 296 § 1.**]

Application—2017 c 296: "This act applies to taxes levied for collection in 2018 and thereafter." [**2017 c 296 § 3.**]

Application—2008 c 319: "This act applies prospectively only to levy lid lift ballot propositions under RCW **84.55.050** that receive voter approval on or after April 1, 2008." [**2008 c 319 § 2.**]

Effective date—2008 c 319: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [**2008 c 319 § 3.**]

Finding—Intent—Effective date—Severability—2003 1st sp.s. c 24: See notes following RCW **82.14.450**.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW **84.52.043**.

Savings—Severability—1971 ex.s. c 288: See notes following RCW **84.40.030**.

Appendix C

EXHIBIT
12

2008

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
SIXTIETH LEGISLATURE
Convened January 14, 2008. Adjourned March 13, 2008.

Published at Olympia by the Statute Law Committee under Chapter 44.20 RCW.

K. KYLE THIESSEN
Code Reviser

http://www1.leg.wa.gov/codereviser

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 11, 2008.
Passed by the House March 12, 2008.
Approved by the Governor April 1, 2008.
Filed in Office of Secretary of State April 2, 2008.

CHAPTER 319

[Engrossed Senate Bill 6641]

PROPERTY TAX INCREASES—BALLOT PROPOSITIONS

AN ACT Relating to providing that voter-approved property tax increases do not permanently increase a taxing district's levy base, unless expressly stated in the ballot proposition; amending RCW 84.55.050; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.55.050 and 2007 c 380 s 2 are each amended to read as follows:

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. 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) 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 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, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. Elections for this purpose must be held at a primary or general election. The title of each ballot measure must state the ((~~specific~~)) limited purposes for which the proposed annual increases during the specified period of up to six consecutive years shall be used, and funds raised under the levy shall not supplant existing funds used for these purposes. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur,

changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(3) After a levy authorized pursuant to this section is made, the dollar amount of such levy ((~~shall~~)) may not be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, ((~~except as provided in subsection (5) of this section~~)) unless the ballot proposition expressly states that the levy made under this section will be used for this purpose.

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

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

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

((~~(b)~~)) (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;

((~~(c)~~)) (d) Set the levy or levies at a rate less than the maximum rate allowed for the district; or

((~~(d)~~)) (e) Include any combination of the conditions in this subsection.

(5) Except as otherwise ((~~provided~~)) expressly stated in an approved ballot measure under this section, ((~~after the expiration of a limited period under subsection (4)(a) of this section or the satisfaction of a limited purpose under subsection (4)(b) of this section, whichever comes first,~~)) subsequent levies shall be computed as if:

(a) The ((~~limited~~)) proposition under ((~~subsection (4) of~~)) 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 ((~~limited~~)) proposition.

NEW SECTION. **Sec. 2.** This act applies prospectively only to levy lid lift ballot propositions under RCW 84.55.050 that receive voter approval on or after the effective date of this act.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 19, 2008.

Passed by the House March 6, 2008.

Approved by the Governor April 1, 2008.

Filed in Office of Secretary of State April 2, 2008.

Appendix D

EXHIBIT
6

CHAPTER 288

[Engrossed Substitute House Bill No. 283]

PROPERTY TAXATION

AN ACT Relating to revenue and taxation; amending section 84.40.030, chapter 15, Laws of 1961 as last amended by section 1, chapter 43, Laws of 1971 first ex. sess. and RCW 84.40.030; amending section 10, chapter 146, Laws of 1967 ex. sess. and RCW 84.40.045; amending section 84.41.030, chapter 15, Laws of 1961 and RCW 84.41.030; amending section 84.41.040, chapter 15, Laws of 1961 and RCW 84.41.040; amending section 84.48.080, chapter 15, Laws of 1961 and RCW 84.48.080; amending section 84.52.052, chapter 15, Laws of 1961 as amended by section 1, chapter 113, Laws of 1963 ex. sess. and RCW 84.52.052; amending section 84.56.020, chapter 15, Laws of 1961 as amended by section 3, chapter 216, Laws of 1969 ex. sess. and RCW 84.56.020; amending section 84.69.020, chapter 15, Laws of 1961 as amended by section 1, chapter 224, Laws of 1969 ex. sess., and RCW 84.69.020; amending section 1, chapter 27, Laws of 1971 first ex. sess.; adding a new section to chapter 15, Laws of 1961 and to chapter 84.04 RCW; adding new sections to chapter 15, Laws of 1961 and to chapter 84.36 RCW; adding new sections to chapter 15, Laws of 1961 and to chapter 84.48 RCW; creating new sections; repealing section 1, chapter 132, Laws of 1967 ex. sess., section 62, chapter 262, Laws of 1969 ex. sess. and RCW 84.36.128; repealing section 3, chapter 8, Laws of 1970 ex. sess. and RCW 84.36.129; repealing section 1, chapter 174, Laws of 1965 ex. sess., section 1, chapter 146, Laws of 1967 ex. sess., section 6, chapter 92, Laws of 1970 ex. sess. and RCW 84.54.010; making an appropriation; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 84.40.030, chapter 15, Laws of 1961 as last amended by section 1, chapter 43, Laws of 1971 first ex. sess. and RCW 84.40.030 are each amended to read as follows:

All property shall be assessed fifty percent of its true and fair value in money. ((~~In determining the true and fair value of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt as a criterion of value the price for which the said property would sell at auction, or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such price as he believes the same to be fairly worth in money at the time such assessment is made. The true cash value of property~~

000319

been used by the annexing unit in the absence of such annexation, plus (3) the additional dollar amount calculated by multiplying the increase in assessed value in the annexing district resulting from new constructions and improvements to property by the regular property tax levy rate of that annexing taxing district for the preceding year.

NEW SECTION. Sec. 23. If by reason of the operation of RCW 84.52.050, as now or hereafter amended the statutory millage limitation applicable to the levy by a taxing district has been increased over the statutory millage limitation applicable to such taxing district's levy in the preceding year, the limitation on the dollar amount of a levy provided for in this 1971 amendatory act shall be increased by multiplying the otherwise dollar limitation by a fraction, the numerator of which is the increased millage limitation and the denominator of which is the millage limitation for the prior year.

NEW SECTION. Sec. 24. Subject to any otherwise applicable statutory millage limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in sections 20 through 23 of this 1971 amendatory act if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. 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. The ballot of the proposition shall state the millage rate proposed. After a levy authorized pursuant to this section is made, the dollar amount of such levy shall be used for the purpose of computing the limitations for subsequent levies provided for in this 1971 amendatory act.

NEW SECTION. Sec. 25. Sections 20 through 24 are added to chapter 15, Laws of 1961 and to Title 84 RCW, and shall constitute a new chapter therein.

Sec. 26. Section 84.52.052, chapter 15, Laws of 1961 as amended by section 1, chapter 113, Laws of 1963 ex. sess. and RCW 84.52.052 are each amended to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, shall not prevent the levy of additional taxes, not in excess of five mills a year and without anticipation of delinquencies in payment of taxes, in an amount equal to the interest and principal payable in the next succeeding year on general obligation bonds, outstanding on December 6, 1934, issued by or through the agency of the state, or any county, city, town, or school district, or the levy of additional

000334

Appendix E

EXHIBIT
11

2007

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
SIXTIETH LEGISLATURE
Convened January 8, 2007. Adjourned April 22, 2007.

Published at Olympia by the Statute Law Committee under
Chapter 44.20 RCW.

K. KYLE THIESSEN
Code Reviser

http://www1.leg.wa.gov/codereviser

Sec. 1. RCW 9.41.250 and 1994 sp.s. c 7 s 424 are each amended to read as follows:

(1) Every person who:

((~~(1)~~)) (a) Manufactures, sells, or disposes of or possesses any instrument or weapon of the kind usually known as slung shot, sand club, or metal knuckles, or spring blade knife, or any knife the blade of which is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement;

((~~(2)~~)) (b) Furtively carries with intent to conceal any dagger, dirk, pistol, or other dangerous weapon; or

((~~(3)~~)) (c) Uses any contrivance or device for suppressing the noise of any firearm,

is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Subsection (1)(a) of this section does not apply to:

(a) The possession of a spring blade knife by a law enforcement officer while the officer:

(i) Is on official duty; or

(ii) Is transporting the knife to or from the place where the knife is stored when the officer is not on official duty; or

(b) The storage of a spring blade knife by a law enforcement officer.

Passed by the Senate April 17, 2007.
Passed by the House April 4, 2007.
Approved by the Governor May 8, 2007.
Filed in Office of Secretary of State May 10, 2007.

CHAPTER 380

[Engrossed Senate Bill 5498]

LOCAL TAXING DISTRICTS—FUNDING SOURCES

AN ACT Relating to revising voter-approved funding sources for local taxing districts; and amending RCW 82.14.450 and 84.55.050.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.14.450 and 2003 1st sp.s. c 24 s 2 are each amended to read as follows:

(1) A county legislative authority may submit an authorizing proposition to the county voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. Funds raised under this tax shall not supplant existing funds used for these purposes. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the county or city receiving the services, and major nonrecurring capital expenditures. The rate of tax under

this section shall not exceed three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county.

(3) The retail sale or use of motor vehicles, and the lease of motor vehicles for up to the first thirty-six months of the lease, are exempt from tax imposed under this section.

(4) One-third of all money received under this section shall be used solely for criminal justice purposes. For the purposes of this subsection, "criminal justice purposes" means additional police protection, mitigation of congested court systems, or relief of overcrowded jails or other local correctional facilities.

(5) Money received under this section shall be shared between the county and the cities as follows: Sixty percent shall be retained by the county and forty percent shall be distributed on a per capita basis to cities in the county.

Sec. 2. RCW 84.55.050 and 2003 1st sp.s. c 24 s 4 are each amended to read as follows:

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. 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 ((~~(3)(b)~~)) (2) of this section. The ballot of the proposition shall state the dollar rate proposed and shall clearly state ((~~any~~)) the conditions, if any, which are applicable under subsection ((~~(3)~~)) (4) of this section.

(2) 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 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, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. Elections for this purpose must be held at a primary or general election. The title of each ballot measure must state the specific purposes for which the proposed annual increases during the specified period of up to six consecutive years shall be used, and funds raised under the levy shall not supplant existing funds used for these purposes. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in

contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(3) After a levy authorized pursuant to this section is made, the dollar amount of such levy shall be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, except as provided in subsection((~~s (3) and (4)~~)) (5) of this section.

((~~(3)~~)) (4) If expressly stated, a proposition placed before the voters under subsection (1) or (2) of this section may:

(a) Limit the period for which the increased levy is to be made;

(b) ((~~Subject to statutory dollar limitations in RCW 84.52.043, authorize annual increases in levies for any county, city, or town for multiple consecutive years, up to six consecutive years, during which period each year's authorized maximum legal levy shall be used as the base upon which an increased levy limit for the succeeding year is computed, but the ballot proposition must state the dollar rate proposed only for the first year of the consecutive years and must state the limit factor, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. Elections for this purpose must be held at a primary or general election. The title of each ballot measure must state the specific purposes for which the proposed levy increase shall be used, and funds raised under this levy shall not supplant existing funds used for these purposes;~~

~~(c)~~)) Limit the purpose for which the increased levy is to be made, 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;

((~~(d)~~)) (c) Set the levy at a rate less than the maximum rate allowed for the district; or

((~~(e) Provide that the maximum allowable dollar amount of the final annual levy of the period specified in the measure shall be used to compute the limitations provided for in this chapter on levy increases occurring after the expiration of the period; or~~

~~(f)~~)) (d) Include any combination of the conditions in this subsection.

((~~(4)~~)) (5) Except as otherwise provided in an approved ballot measure under this section, after the expiration of a limited period under subsection (4)(a) of this section or the satisfaction of a limited purpose under subsection (4)(b) of this section, whichever comes first, subsequent levies shall be computed as if:

(a) The limited proposition under subsection ((~~(3)~~)) (4) of 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 limited proposition.

Passed by the Senate April 2, 2007.

Passed by the House April 13, 2007.

Approved by the Governor May 8, 2007.

Filed in Office of Secretary of State May 10, 2007.

Appendix F

SAMPLE EDITS TO PROPOSED BALLOT TITLE IN
ORDINANCE TO MEET ALLEGED 75-WORD LIMIT

[This proposition would] authorize King County to levy an additional property tax to ~~provide~~ fund~~ing~~ ~~for~~ capital costs to replace the Children and Family Justice Center~~, which serve 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 valuations for collections in 2013. The 2013 levy amount would become the base upon which levy increases would be computed for each of the eight succeeding years, all as provided in Ordinance XXX.

[This proposition would] authorize King County to levy an additional regular property tax to provide funding for capital costs to replace the Children and Family Justice Center, which serve the justice needs of children and families. ~~It would authorize King County to levy an additional regular property tax of~~ The additional 2013 rate would be $0.07 per $1,000 of assessed valuations ~~for collections in 2013~~. The 2013 levy amount would become the base upon which levy increases would be computed for each of the eight succeeding years, all as provided in Ordinance XXX.

Appendix G

Comparison of ballot titles submitted by County

Jurisdiction	Name of Levy	Relevant language of levy	Distinguishing factor	Implementation
King County	Proposition 1 -- Children and Family Justice Center Levy	"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."	Voters approved a particular increase for one year. Vague statement as to future increases.	Admission that first year levy amounts used to calculated later levy limits
King County	Proposition 1 - Levy Lid Lift for Veterans, Seniors and Vulnerable Populations	The King County Council passed Ordinance 18555 concerning funding for veterans, seniors and vulnerable populations. If approved, this proposition would replace an expiring levy and fund capital facilities and regional health and human services for veterans and military servicemembers and their families, seniors and their caregivers, and vulnerable populations. It would authorize an additional property tax for six years beginning with a 2017 rate of $0.10 per $1,000 of assessed valuation for collection in 2018. The first year levy amount would be the base for computing annual increases up to 3.5% for collection in 2019 through 2023, as provided in Ordinance 18555.	Voters approved a one year increase with that year's collections being used to calculate future levy limits.	Unknown

Comparison of ballot titles submitted by County

Chelan County	Fire protection District No. 5	“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)”	Voters approved a particular increase for ten years.	Unknown
Cheney	Public Safety and Capital Plan Levy	"This proposition would increase the City's regular property tax rate to 0.6962 to a total authorized rate of $3.10 per $1,000 of assessed value for collection and 2016 and annually thereafter."	Voters approved a permanent increase.	Unknown
Bellevue	Proposition No. 1 Levy for Fire facilities.	“this proposition would increase the City’s regular property tax levy by $0.125 to the total authorized rate of $1.255 (if only this proposition passes) per $1000 of assessed value for collection in 2017 and for 19 years thereafter as allowed by chapter 84.55 RCW”	Voters approved a particular increase for nineteen years.	Unknown
Bellevue	Proposition No. 2 levy for Neighborhood Safety	“this proposition would increase the City’s regular property tax levy by $0.150 to the total authorized rate of $1.280 (if only this proposition passes) per $1000 of assessed value for collection in 2017 and for 19 years thereafter as allowed by chapter 84.55 RCW”	Voters approved a particular increase for nineteen years.	Unknown
Bellingham	Proposition No. 2016-1 Greenways IV Levy	“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.”	Voters approved a particular increase for ten years.	Unknown

Seattle	Initiative Measure No. 122	This initiative would “create a voluntary program for public campaign financing through $100 vouchers issued to registered voters funded by ten years of additional property taxes”	Voters approved a particular increase for ten years.	Unknown
Seattle	Property tax Levy Renewal for Affordable Housing	“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.”	Voters approved a particular dollar amount of levy, spread over seven years.	Unknown
Seattle	Proposition No. 1 Regular Tax Levy including Seattle Public Libraries.	[This proposition] authorizes regular property taxes above RCW 84.55 limits, allowing an 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.”	Voters approved a particular dollar amount of levy, spread over seven years.	Unknown
Seattle	Proposition Numbers 1A and 1B	“This proposition authorizes regular property taxes above RCW 84.55 limits, allowing additional 2015 collection of up to $14,566,630 (approximately 11C per $1,000 assessed value), totaling $58,266,518 over four years.”	Voters approved a particular dollar amount of levy, spread over four years.	Unknown
Spokane	Library Operations Levy	This measure authorizes an increase in the regular property tax levy for 2018 by $0.07 per $1000 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.”	Voters approved a particular increase for ten years.	Unknown

Spokane	Proposition NO. 3 – City of Spokane Operations Levy	This proposition authorizes an increase in the regular property tax levy for 2014 by $0.07 per $1,00 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."	Voters approved a particular increase for four years.	Unknown
Tacoma	Proposition No. 3.	"Proposition No. 3 would authorize the City to increast 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 companines for ten years beginning in 2016,"	Voters approved a particular increase for ten years.	Unknown
Washougal	Replacement Levy for 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 (C0.10) per $1,000 of assessed valuation. If this proposition is approvied 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."	Voters approved a particular increase for one year.	Unknown
Dupont	Proposition No. 1 Six Year Levy Lid Lift for Advanced Life Support Services	"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."	Voters approved a particular increase for six years.	Unknown

Comparison of ballot titles submitted by County

Duvall	Proposition No. 1 Levy Lid Lift for Big Rock Ballfied 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 $.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,”	Voters approved a particular increase for one year.	Unknown
San Juan County Fire Protection District No. 2	Proposition No. 1	"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."	Voters approved a particular increase for ten years.	Unknown
San Juan County	Six Year Levy Lid Lift	"This proposition will cancel an existing levy lid lift for the year 2015 and replace it in 2014 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."	Voters approved a particular increase for five years.	Unknown
San Juan Island Park and Recreation District	Proposition No. 1	"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 of the tax years 2016-2021, subject to the limit factors of RCW 84.55,”	Voters approved a particular increase for six years.	Unknown

SMITH & LOWNEY

May 25, 2018 - 2:51 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	95307-4
Appellate Court Case Title:	End Prison Industrial Complex v. King County
Superior Court Case Number:	16-2-07355-2

The following documents have been uploaded:

- 953074_Briefs_20180525144411SC654407_6826.pdf
  This File Contains:
  Briefs - Respondents Supplemental
  The Original File Name was 180525 Supplemental Brief with Appendix FINAL.pdf

A copy of the uploaded files will be sent to:

- claire@smithandlowney.com
- david.hackett@kingcounty.gov
- dawn.taylor@pacificalawgroup.com
- dheid@auburnwa.gov
- elamb@spokanevalley.org
- janine.joly@kingcounty.gov
- jweiss@wsac.org
- kymberly.evanson@pacificalawgroup.com
- paoappellateunitmail@kingcounty.gov
- paul.lawrence@pacificalawgroup.com
- shae.blood@pacificalawgroup.com
- sydney.henderson@pacificalawgroup.com
- thomas.kuffel@kingcounty.gov

Comments:

Sender Name: Kai McDavid - Email: kai@smithandlowney.com
Filing on Behalf of: Eric D. 'Knoll' Lowney - Email: knoll@smithandlowney.com (Alternate Email: knoll@smithandlowney.com)

Address:
2317 E John St
Seattle, WA, 98112
Phone: (206) 860-1570

Note: The Filing Id is 20180525144411SC654407