No. 103357-5

SUPREME COURT OF THE STATE OF WASHINGTON

BRIAN WIKLEM,

Appellant,

v.

CITY OF CAMAS AND CLARK COUNTY

Respondents.

# RESPONDENTS' ANSWER TO PEITION FOR REVIEW

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## I. INTRODUCTION

Camas is a city of approximately 27,000 residents. The city adopted a utility tax in 2022 for the first time. Under RCW 35.21.706, the exclusive and controlling statute applicable here, Wiklem was afforded the opportunity to canvass for the requisite number of verified signatures to allow the ordinance to be subjected to a referendum, but he failed in this attempt. Wiklem concedes that the ordinance in question includes a sunset clause of December 31, 2024, which renders ongoing proceedings moot. The deadline to get the referendum vote on the ballot before the ordinance sunsets passed on August 6, 2024. Therefore, Wiklem is asking this Court to engage in an entirely academic exercise. Respondents urge this Court to decline to do so.

Even if this Court were to reach the merits, Wiklem's strained and spurious arguments were already fully answered and briefed in Respondents' Answer to Statement of Grounds for Direct Review filed with this Court on November 9, 2023, and

Respondents' Response to Appellant's Opening Brief filed on January 3, 2024. Ultimately, this Court declined the request for Direct Review and issued an order transferring this case to Division II of the Court of Appeals on March 6, 2024. When the case was transferred, Wiklem was granted accelerated review, and the published decision was issued on July 9, 2024. *Wiklem v. City of Camas et al*., __Wn. 2d.___, 551 P. 3d 1077 (2024).

The Court of Appeals' analysis of this case is consistent with Washington precedent and the standards of review for granting the extraordinary remedy of a writ of mandate or the other writs requested by Wiklem, and he offers no persuasive argument to the contrary. He has fallen short of his burden to prove that review is warranted. Further, all the applicable RAP 13.4(b) criteria should be reviewed through the lens of mootness. Therefore, the Petition should be denied.

## II. IDENTITY OF THE RESPONDENTS

Respondents are the City of Camas and Clark County. The City of Camas adopted the utility tax ordinance at issue in this

case. Clark County was responsible for verifying signatures on the utility tax referendum petition submitted by the Wiklem. For this Answer, Respondents are submitting a joint response.

## III. COUNTERSTATEMENT OF THE CASE

As stated above, the Respondents' prior briefing addressed the history of the adoption of the ordinance, the municipal code and statutory framework related to the referendum process at issue here, a detailed description of the procedures utilized by the County to verify the signatures on the referendum petition, and a summary of the filings and the procedural steps followed by the parties, culminating in the superior court granting the Respondents' Motion to Dismiss and denying Wiklem's Motion for Reconsideration. Respondents adopt their prior briefing herein rather than repeat the same arguments. Respondents do, however, address mootness in this Answer, which was the only issue not previously briefed.

## IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. This case is moot and the petition should be denied.

At the outset, this Court should reject the Petition as the issues Wiklem requests this Court review are now moot and because this court "can no longer provide effective relief." *Orwick v. City of Seattle,* 103 Wn.2d 249, 253, 692 P.2d 793 (1984). "A case is moot, and should be dismissed, when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief." *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005).

Wiklem concedes, and Respondents agree, that this case is moot. This Court has regularly dismissed election-related appeals as moot where the election has already occurred, there is no longer an effective remedy, and the case depends on particular facts. *E.g., Pedersen v. Maleng*, 101 Wn.2d 288, 289-90, 677 P.2d 767 (1984) (challenge to timeliness of recall petition was moot after recall election had occurred, mayor was

recalled, and new mayor had been elected); *see also West v. Reed*, 170 Wn.2d 680, 681-82, 246 P.3d 548 (2010) (challenge to referendum certification was moot because voters had approved the referendum and no effective relief could be granted); *State ex. rel. Jones v. Byers*, 24 Wn.2d 730, 733-34, 167 P.2d 464 (1946) (challenge to a vote to reconfigure various school districts based on alleged untimeliness of a required comprehensive plan was moot after the election approving the new districts); *see generally State ex rel. Chapman v. Superior Court of Benton County*, 15 Wn.2d 637, 643, 131 P.2d 958 (1942) (listing additional mootness cases).

In the instant case, the specific issues and requests for relief raised now are moot under the line of election-related cases. Camas exercised its lawful authority to adopt a utility tax under RCW 35.21.706, which included the opportunity for a referendum. The legislative determination of the City Council in adopting the ordinance was to include a sunset date, but the time has now passed for this ordinance to be timely subject to a

referendum. Therefore, the Wiklem's other issues would be purely academic questions.

B. This Court should decline to enter an advisory opinion in this matter.

The exception to the general mootness rule for matters "of continuing and substantial public interest" does not apply here. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P. 2d 512 (1972). This Court, in its discretion, may decide an appeal that has otherwise become moot when the essential elements of "[1] the public or private nature of the question presented, [2] the desirability of an authoritative determination for the future guidance of public officers, and [3] the likelihood of future recurrence of the question" warrant review. Id. *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994); *Hart v. Dep't of Soc. & Health Servs*., 111 Wn.2d 445, 448-49, 759 P.2d 1206 (1988) (cataloging cases in which the mootness exception was invoked) (internal quotation marks omitted). The *Hart* Court emphasized that an appellate court must faithfully apply all of

the *Sorenson* criteria in order to ensure the "actual benefit to the public interest in reviewing a moot case outweighs the harm from an essentially advisory opinion." *Hart*, 111 Wn. at 450.

The content of election-related matters and issues of statutory interpretation are often matters of substantial public interest, and thus generally weigh in favor of applying the exception. However, Wiklem has not raised the need for this Court to interpret the operative statute that applies to this utility tax ordinance. Nor has Wiklem demonstrated how he meets the criteria for any of his requested writs to issue that would enable judicial review. To the extent that Wiklem requests a broad statement from this Court about how utility tax statutes can be subject to a referendum challenge through various writs or whether the signature verification process is subject to court review in future circumstances, the appellate courts have recognized good reasons for avoiding such advisory opinions.

*See also Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994) (declaratory judgment action must involve a concrete, ripe, and not moot disagreement to avoid "prohibited ... advisory opinions.") (citation omitted); *see also To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 416, 27 P.3d 1149 (2001) (discretion to render advisory opinion exercised rarely and only where public interest is overwhelming). The second and third criteria, the desirability of future authoritative guidance for public officials and the likelihood of recurrence, weigh against further review by this Court. This case is unique to its facts and procedural history. Accordingly, this Court should not exercise its discretion to review this issue under an exception to the mootness doctrine.

C. <u>This Court should not reach the question of whether the criteria in RAP 13.4(b) have been met, but if it does, Wiklem has not met his burden for discretionary review.</u>

Under RAP 13.4(b)(1), Wiklem does not demonstrate the Court of Appeals decision conflicts with Supreme Court precedent. Rather, he just states a disagreement between his interpretation and that of the Court of Appeals regarding the

discretionary nature of signature verification. Under RAP 3.4(b)(3), Wiklem must show there is a significant question of constitutional law involved. Instead, Wiklem relies on the mere assertion that because this case involves an election issue it meets this standard. This is insufficient to present a constitutional challenge to this Court. *State v. Johnson*, 119 Wn. 2d 167, 171, 829 P.2d 1082 (1992) (passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration); *see also* RAP 10.3(a)(6).

Clark County Elections determines signature validity by following the laws pertaining to RCW 29A.40.110 through 29A.40.160 and WAC 434-379-009 through 434-379-020. Wiklem asked for, and was denied, the extraordinary remedy of a writ of mandamus, writ of review and writ of certiorari directed at the discretionary acts of Clark County officials trained under the applicable legal standards for reviewing the sufficiency of signatures to a petition. The well-established standards associated with court review of such requests for relief

were followed by both the Skamania County Superior Court and the Court of Appeals and should be allowed to stand. Finally, under RAP 13.4(b)(4) to be entitled to review, Wiklem must establish this case presents an "issue of substantial public interest that should be determined by the Supreme Court." As argued above, he cannot do so. This is a procedural case related to the granting of a Motion to Dismiss and a denial of a Motion for Reconsideration where the Court had before it a substantial number of materials unique to the tactics chosen by Wiklem.

## V. CONCLUSION

This Court should decline review because this case is moot and no exception to the mootness doctrine applies here. Yet, if the Court proceeds to consider discretionary review despite mootness, Wiklem still has failed to demonstrate that review is warranted under RAP 13.4(b). Therefore, Respondents respectfully request this Court affirm the Court of Appeal's decision, which affirmed the superior court's dismissal of the case under Civil Rule 12(b)(6).

The undersigned certifies that this Respondent's Answer to Petition for Review contains 1,758 words in compliance with Court Rules.

Respectfully Submitted this 6th day of September, 2024, by:

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## CERTIFICATE OF SERVICE

I, Jesica I. Allee, herby certify that on this 6th day of September, 2024, I electronically filed the foregoing, RESPONDENTS' ANSWER TO PETITION FOR REVIEW using the Washington State JIS Appellate Courts' Portal, which will send notification of such filing to the following as well as emailed to the following:

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# CLARK COUNTY PROSECUTING ATTORNEY

## September 06, 2024 - 9:39 AM

### Transmittal Information

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