

No. 73607-3

SUPREME COURT OF THE STATE OF WASHINGTON

PIERCE COUNTY, et al.,
Plaintiffs/Respondents

v.

STATE OF WASHINGTON, et al.,
Defendants/Appellants

**AMICUS CURIAE BRIEF
ON BEHALF OF THE BOND MARKET ASSOCIATION**

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Amicus Curiae Brief on Behalf of
The Bond Market Association

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I. INTRODUCTION

The Bond Market Association (“TBMA”) respectfully submits this brief as *amicus curiae*. TBMA asks that the Court reconsider its earlier opinion and rule that Initiative No. I-776 (“I-776”) violates Article I, § 23 of the Washington State Constitution as it applies to outstanding bonds.

TBMA represents approximately 200 securities firms and banks that underwrite, trade, and distribute approximately \$22 trillion in debt in the United States and international markets. TBMA’s members deal in a wide variety of public and private fixed-income securities. Its member firms collectively represent in excess of 95 percent of the initial distribution and secondary market trading of municipal bonds, corporate bonds, mortgage, and other asset-backed securities and other fixed-income securities.

TBMA believes that the Washington Supreme Court decision regarding Article I, § 23 of the Washington State Constitution will have a significant adverse affect on such debt obligations generally and those of Washington municipalities specifically. The Court’s decision will create uncertainty on the part of potential underwriters and investors in Washington municipal bonds that revenue pledged to the payment of such bonds will remain pledged over the life of the bonds. Such uncertainty

translates to greater risk and therefore higher costs to municipalities, and ultimately to taxpayers.

II. STATEMENT OF INTEREST

TBMA seeks to address a single issue that has broad implications to the security of the municipal debt capital markets: the importance of the “contract clause” contained in Article I, § 23 of the Washington State Constitution. The bond markets depend, for their continued effective functioning, on the ability of bond issuers, investors, and other market participants to rely on agreed contractual commitments that have assured legal consequences. As more fully set forth in the brief of Plaintiffs/Respondents, this Court’s position that I-776 does not impair King County’s existing contracts with bondholders is inconsistent with its earlier rulings on this topic and at odds with generally accepted doctrine. That position endangers the security of a major component of governmental financing. In that vein, TBMA respectfully submits this brief to provide a broad market perspective to the Court in resolving this issue. See also Declaration of Lynnette Kelly Hotchkiss attached hereto.

III. BACKGROUND

This case involves a challenge to I-776 by a number of Washington municipalities and individual taxpayers. I-776 repealed a

local option vehicle license fee and a local option motor vehicle excise tax (“MVET”). The local option license fee had been adopted by King County in 1990 and the MVET had been imposed by the Central Puget Sound Regional Transit Agency (“Sound Transit”) following voter approval in 1996.

Prior to the election on I-776, King County issued \$38 million of bonds and pledged both the local option vehicle license fee and its full faith and credit as security for the repayment of the bonds. In 1999, Sound Transit issued \$350 million of bonds and pledged the MVET, a local sales tax and a local car-rental tax as security for the repayment of the bonds.

I-776 was challenged in King County Superior Court. The trial court held that I-776 was unconstitutional on several grounds, including that it impaired the contract between King County and its bondholders. On October 30, 2003, this Court reversed the trial court and upheld I-776 as constitutional, including a holding that it did not impair the contractual obligations regarding the King County bonds.

IV. ARGUMENT

Clear legal rules are particularly important for capital markets, which “demand certainty and predictability.” *Central Bank v. First Interstate Bank*, 511 U.S. 164, 188 (1994). The Court’s earlier decision

on impairment of contracts will create uncertainty and unpredictability for Washington state and local government bond issuers.

I-776 violates Article I, § 23 of the Washington State Constitution in that it impairs the contractual rights of holders of King County's bonds issued prior to its effective date. Article I, § 23 of the Washington State Constitution, commonly known as the "Contracts Clause," guarantees that "No . . . law impairing the obligations of contracts shall ever be passed." When the State interferes with its own contracts, the courts impose a more stringent standard under Article I, § 23 than it does under laws regulating contractual relationships between private parties. *Tyrpak v. Daniels*, 124 Wn.2d 146, 151, 874 P.2d 1374 (1994). Since political subdivisions of the State are considered to be part of the State for purposes of the Contracts Clause, the State's impairment of a political subdivision's contract is viewed in the same disfavored light. *See Tyrpak* at 154-157.

A. A Bond Resolution or Ordinance is a Contract.

A resolution or an ordinance of a state or local government authorizing the issuance of debt obligations is a contract between such governmental entity and the holders of its bonds. A contract does not include future changes in law. *Continental Ill. Nat'l Bank v. State of Washington*, 696 F.2d 692, 694 (9th Cir. 1983). This Court has recognized that a contract is valid for the purpose of constitutional analysis even if it

is made after the statute in question is passed (but before that statute takes effect) because until the statute's effective date arrives, "no rights may be acquired under it, and no one is bound to regulate his conduct according to its terms." *Longview v. Lynn*, 6 Wn.2d 507, 527, 108 P.2d 365 (1940).

B. A Repeal of Any Security Under a Bond Resolution or Ordinance is a Substantial Impairment within the Meaning of Article I, § 23.

A contract "is impaired by a statute which alters its terms, imposes new conditions or lessens its value." *Caritas Servs., Inc. v. Dept. of Social and Health Servs.*, 123 Wn.2d 391, 404, 869 P.2d 28 (1994). Applying I-776's repeal of a local option vehicle license fee to an existing properly adopted bond resolution or ordinance altered the terms of the bond resolution or ordinance and lessened its value to both parties, the county and its bondholders, by removing a source of revenue already pledged to bondholders. Further, absent the payment of just compensation, the repeal of a particular security provision impairs an obligation of contract even though bondholders might have retained other contractual security. *Continental Bank*, supra, at 700. Therefore, the fact that other sources of revenue had also been pledged to the payment of the bonds does not affect the fact that the contract was impaired by the removal of one of those sources of pledged revenue.

If there is a substantial impairment, it must be both reasonable and necessary to serve a legitimate public purpose. *See Tyrpak* at 152; *see also Caritas Servs., Inc.*, at 402-403). No facts in the record support the Court's conclusion that simply because King County disclosed the pending I-776 vote to investors, and observed that the County's general obligation pledge would protect bondholders if the measure passed, investors did not actually rely on the \$15 license fee in deciding to purchase the bonds at the interest rates offered. Further, no argument has been made in this case to support a claim that eliminating part of the collateral pledged for the King County bonds is reasonable and necessary to uphold the State's authority to legislate by initiative under the Washington State Constitution.

C. The Washington Supreme Court's Decision Threatens the Certainty Necessary to a Secure an Efficient Capital Market.

Determining that I-776 does not violate Article I, § 23 of the Washington State Constitution would materially undermine the *certainty* that is essential to the efficient operation of the municipal bond capital markets. The implications of this Court's decision are very broad because the Court interpreted the Contract Clause in a way that may apply to a wide variety of municipal obligations. Laws should establish a clear,

predictable framework that enables parties to understand their legal rights, obligations and liabilities.

Raising capital depends on parties' ability to assess and assume risk. Where risk increases, capital will become more expensive or cannot be raised at all. When market participants are subjected to increased risk, they will pay less or charge more for the risks they take in purchasing or selling securities – to the extent they do not decline to participate in a particular transaction altogether. Capital becomes more expensive, harming issuers, and ultimately taxpayers and investors, as well as other parties subjected to increased uncertainty and liability. The Contract Clause contained in Article I, § 23 of the State Constitution provides the certainty to contractual obligations that is essential for the municipal bond market to function.

The Court's interpretation on the Contracts Clause threatens to create considerable greater uncertainty regarding contractual commitments of Washington State and its political subdivisions. The degree of uncertainty created by the Court's decision is potentially far broader than the facts of this case immediately suggest. First, it permits the repealing of a specific security that bondholders would certainly have considered in making their decision to buy King County's bonds. Second, it permits legislation enacted *after* municipal bonds have been issued, sold, and

delivered to amend a *pre-existing* contract between the issuer and bondholders in a way that adversely impacts bondholders' security.

Third, it misinterprets the purpose and effect of an official statement in a municipal bond transaction as being a document that can diminish an issuer's contractual obligation under its bond resolution or ordinance. Such a result is certainly not contemplated by the federal or state securities laws. Municipal bonds and other evidences of indebtedness are securities within the meaning of the Securities Act of 1933 (15 U.S.C. § 77a, *et seq.*) (the "1933 Act") and the Securities and Exchange Act of 1934 (15 U.S.C. § 78a, *et seq.*) (the "Exchange Act"). They are also securities within the meaning of various state securities laws. While municipal securities offerings generally are exempt from the registration requirements and civil liability provisions of the 1933 Act and the reporting requirements of the Exchange Act, such offerings are not exempt from the coverage of the antifraud provisions of Section 17(a) of the 1933 Act, Section 10(b) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder. Further, SEC Rule 15c2-12 indirectly regulates disclosure practices in municipal securities offerings. The adequacy of the disclosure provided in municipal security offering materials is tested against an objective standard; an omitted fact is material if there is a substantial likelihood that, under all circumstances, the omitted fact would

have assumed actual significance in the deliberations of the reasonable investor. That is, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the “total mix” of the information made available. *TSC Industries, Inc. v. Northway, Inc.* 426 U.S. 438, 449 (1976). The Court’s decision that the disclosure of the potential enactment of an initiative in the official statement somehow altered the contract with bondholders, is wrong. Such an interpretation does not promote the goal of full disclosure in the municipal market. Further, disclosure of an initiative actually increases the risk to the bondholder that the security structure will be undermined.

The Court’s interpretation of the Contract Clause has especially negative implications for the management of the risk by participants in the municipal capital markets because it permits the alteration of contracts with the holders of municipal securities. Certainty in municipal obligations is essential to allowing parties to assess and manage risks associated with raising capital. The provisions of bond resolutions and ordinances define obligations related to the security for municipal securities, therefore permitting the assessment and evaluation of risks. An interpretation of the Contract Clause in a manner that will alter contractual obligation of a state or local government will significantly increase risks to

purchasers of municipal securities, increase the cost of capital projects for state and local governments and consequently increase cost to voters and taxpayers.

In sum, the uncertainty inherent in the Court's decision threatens to increase the risks to purchasers of municipal securities and the costs to state and local governments as they participate in selling and buying municipal securities to raise capital. This result, in turn, threatens the liquidity, effectiveness and efficiency of capital markets and could result in increased costs being imposed by investors on issuers.

V. CONCLUSION

For these reasons, TBMA respectfully asks that the Court reconsider, and reverse, its earlier decision and hold that I-776 violates Article I, § 23 of the Washington State Constitution as it applies to the repealing of pledged fees to the repayment of outstanding bonds.

RESPECTFULLY SUBMITTED this 26th day of November, 2003.

LUKINS & ANNIS, P.S.

By _____
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Mary J. Edwards, WSBA No. 30955
Jared B. Black, WSBA No. 29293

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ON PETITION FOR REVIEW FROM
COURT OF APPEALS, DIVISION III

DECLARATION OF LYNNETTE KELLY HOTCHKISS

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LYNNETTE KELLY HOTCHKISS DECLARES:

1. Capacity. I am Senior Vice President and Associate General Counsel to The Bond Market Association (“TBMA”) and have held that position since 2001. I have worked for TBMA since 1999, starting as Vice President and Associate General Counsel and have been a public finance lawyer since 1984. TBMA represents securities firms and banks that underwrite, trade and distribute debt securities, in the United States and international markets. As an officer of TBMA and one of its associate general counsel, I have personal knowledge of the facts stated in this Declaration and am competent to testify to those facts.

2. The Bond Market Association. TBMA is a non-profit trade association headquartered in New York City. It traces its origins to 1912 and currently has approximately 200 member and associate-member firms and affiliates. The bond market provides one of the most liquid securities markets in the world, with approximately \$22 trillion of issuer debt outstanding. The member firms of TBMA are very active in the marketing and underwriting of bond issues. To choose a recent year as an example, in 1999, TBMA’s membership collectively accounted for over 97 percent of the nation's bond underwriting activity. TBMA speaks for the vast majority of market participants and advocates their positions

within industry and with federal, state and local government authorities across the United States.

3. The Bond Markets. Bond markets on a national and international basis are presently experiencing robust activity. New issue activity in the U.S. bond markets stayed on its record pace through the first three quarters of 2003 and ahead of the same period in 2002. Issuance totaled \$5.38 trillion, up 40.3 percent from the \$3.84 trillion issued during the same period in 2002. Bonds are considered by investors across the nation to be secure and stable investments. Compared to other investment opportunities, bonds are generally considered to be “low risk” investments.

4. Municipal Bonds. A major component of the bond market is the primary and secondary trading market for municipal bonds. Municipal bond buyers, like bond buyers generally, are accurately perceived as being “risk averse.” Historically speaking, municipal bonds are securities that have significantly lower than average risks of default. Most municipal bond issues are evaluated by credit rating agencies, such as Moody’s Investor Services or Standard & Poor’s. Credit rating agencies accord most municipal bond issues higher credit ratings than private sector corporate bonds. These higher ratings reflect the strong, rather than speculative, credit qualities of those state and local

governments which issue municipal bonds. Many municipal bonds qualify for a federal income tax exemption with respect to the interest payable on such bonds. In addition, many municipal bonds are repayable from stable public revenue streams, such as property taxes. When these facts are combined with a strong credit rating, municipal bonds are typically welcomed into the financial markets. Such bonds will usually bear a lower rate of interest than other debt instruments, such as corporate bonds. These low rates of interest mean that state and local governments can borrow more cheaply than can private entities. Because taxpayers are the ultimate source of repayment for a municipal bond, all taxpayers resident within a particular governmental jurisdiction save money when their respective local governments have access to the capital markets at low cost.

5. Low Interest Rates -- The General Obligation Pledge.

One important factor in maintaining a low interest rate environment for municipal bonds is maintaining the legal certainty of repayment. One of the most certain methods employed by local government issuers for maintaining the certainty of repayment is for that issuer to make a so-called “general obligation” pledge to bondholders, to declare that a particular bond issue is backed by the issuer’s “full faith and credit.” This is a promise to pay in full out of *any* available resource. Across the United

States, one common and stable available resource is the property tax that local governments are authorized to impose. However, legal requirements that differ from jurisdiction to jurisdiction will dictate when and how a property tax backed general obligation bond may be issued and sold.

6. Multiple Revenue Pledges -- The Double Barreled Municipal Bond. In many instances, a municipal bond issuer will choose to make several pledges of available resources in order to strengthen an unstable or unpredictable revenue stream in issuing a particular bond. In the municipal bond industry, the phrase “*double barreled bond*” is frequently used to describe a bond that was marketed and sold based on the pledge of a fluctuating revenue stream (such as a motor vehicle excise tax) or a relatively untested revenue stream (such as a start-up utility’s rates), combined with the pledge of a better known or more predictable revenue stream, such as an *ad valorem* property tax. Whenever several revenue streams are pledged to repay particular municipal bonds, credit rating agencies and bond insurers will take each revenue stream into account in assessing the credit strength of the issuer and the relative likelihood of prompt and full payment of the bonds concerned.

7. Market Perceptions. Many municipal bonds that are issued to build roads, mass transit facilities, sewer and water systems, electric power systems and the like utilize special tax pledges (such as sales taxes

that fluctuate with time or motor vehicle excise taxes) or use revenue pledges. In the experience of TBMA and its member firms, some of these revenue streams may be perceived by the marketplace to be less highly-valued because of their sensitivity to short or long-term economic cycles. Because such sources are more volatile than other sources, bond buyers may require additional margins of safety before purchasing a particular bond issue. These may take the form of bundled pledges of revenue sources, reserve requirements, credit enhancement such as bond insurance, or the like.

8. Washington Double Barreled Bonds and the Phenomenon of Credit Erosion. In the state of Washington, the use of double barreled bonds is well-established. For example, the state of Washington has itself issued bonds to fund highway programs, pledging a motor vehicle fuel tax plus the State's full faith and credit. Prior to the passing of Initiative No. 776, King County issued \$38,000,000 in principal amount of double barreled bonds pledging both King County's full faith and credit and a local option vehicle license fee.

In the experience of TBMA and its member firms, bond buyers, such as the purchasers of the bond issues mentioned above, appreciate that multiple sources of repayment are pledged. Even though only one such source might conceivably be sufficient to repay the entire bond issue, the

existence of multiple sources reduces the overall risk of cyclical or other fluctuations in the tax basis and improves the credit strength of the borrower in the eyes of the investor. If one payment source is removed from the bonds such as the above, by judicial action or otherwise, the remaining pledge will be the only legally available security for debt repayment. In TBMA's experience, this dilution leads to an erosion of the credit worthiness of that borrower and in some instances to credit downgrades. Just because there was no negative rating impact with respect to the King County bonds, it does not necessarily follow that other credits of the state of Washington, such as the State's gas tax bonds, will not be negatively impacted if the gas tax revenue stream which serves as a second source of revenue was removed. Further, it is likely that rating agencies and the market in general, will view double barreled bonds from the state of Washington as less secure, and therefore less valuable, than similar bonds in other states, given the Court's decision in this matter.

9. The High Cost of Increased Market Risk. Credit rating agencies, such as Moody's Investors Service, keep close watch on the historical default probabilities in analyzing and reporting the different ratings categories of municipal bonds. In November 2002, Moody's released a study titled *Moody's U.S. Municipal Bond Rating Scale*. In that report, Moody's showed that between 1970 and 2000, the chance that an

“Aa” rated bond would default within the first 10 years of issuance was 0.033% (3/100ths of 1%). The same calculation for bonds rated “Baa” showed a statistically insignificant increase to 0.059% (or 6/100ths of 1%). The difference in default risk between a bond rated “Aa” and a one rated “Baa” (two full categories lower) was a 0.026% (less than 3/100ths of 1%) increase in the chance of default. Ratings are intended to capture the likelihood of default in stress situations, rather than a normal state of economic affairs. However small this increase in risk may be, it leads to a disproportionate increase in interest rate expense, and hence to an increased burden on taxpayers. The difference in interest rates between 10-year bonds rated “Aa” and 10-year bonds rated “Baa,” as reported on Friday, November 21, 2003 in *The Bond Buyer* (a trade newspaper circulated and read by many municipal finance professionals across the United States) was 83 basis points, or 0.83% on an annual basis. To take a simple example of a local government issuing \$100,000,000 in principal amount of 10-year bonds rated “Aa” versus a local government issuing \$100,000,000 in principal amount of 10-year bonds rated “Baa” on November 21, 2003, the government with the lower credit rating can expect to pay \$830,000 more *each year* in debt service than the “Aa” rated issuer.

10. Increased Risk and Increased Cost -- All Taxpayers Pay.

The removal of a pledged, albeit nominally weaker revenue source, can easily create a climate of uncertainty and inject a new risk that leads to the creation of a “risk premium” in a state or for a particular issuer’s bonds. It is the experience of TBMA and its member firms that even a very small difference in the risk of a bond default will result in a drastic difference in both bond ratings and price. Increased risk translates into increased interest rates, increased interest rates leads to correspondingly higher debt service burdens on local governments and higher debt service dictates a higher tax burden on the taxpayers who ultimately pay to redeem and retire the municipal debt of their governments.

11. Contract vs. Disclosure Document. In determining whether or not to purchase bonds, a potential municipal bond buyer normally considers the legal, contractual pledge by the issuer in the bond resolution or ordinance, as well as the unqualified legal opinion of bond counsel, as to the validity of that pledge. A potential buyer would then look to the disclosure document (the official statement) for economic and demographic information to describe the ways in which outside variables in the economy (such as changes in population, wealth, employment, consumption, etc.) have historically changed in ways that affect the amounts of pledged taxes/revenues received. Official statements often

describe potential risks involved with particular investments. However, in the experience of our member firms, potential buyers would not expect that the very fact that an official statement describes information about pending initiatives would undercut the contractual legal framework of the bonds. Underwriters and issuers should not be placed in the untenable position of dealing with the consequence of increased risk that a revenue source will be taken away as a result of disclosure of such possibility in the official statement. If information in the official statement could readily be used in Washington state to alter the force and effect of the legal documents, investors would be forced to scrutinize each official statement from each Washington state and local issuer in a manner unprecedented in the United States municipal markets.

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

Executed at New York City, New York this 25th day of November, 2003.

LYNNETTE KELLY HOTCHKISS

No. 73607-3

SUPREME COURT OF THE STATE OF WASHINGTON

PIERCE COUNTY, et al.,
Plaintiffs/Respondents

v.

STATE OF WASHINGTON, et al.,
Defendants/Appellants

ON PETITION FOR REVIEW FROM
COURT OF APPEALS, DIVISION III

**MOTION OF THE BOND MARKET ASSOCIATION
FOR LEAVE TO FILE AMICUS CURIAE BRIEF
PURSUANT TO RAP 10.6(b)**

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1. Identity of Moving Party. The Bond Market Association (“TBMA”) is a non-profit trade association headquartered in New York, New York that traces its organization to 1912. TBMA represents approximately 200 securities firms and banks that underwrite, trade and distribute approximately \$22 trillion in debt in the United States and international markets. The member firms of TBMA include the most well-known and largest municipal bond underwriting firms in the United States, as well as regional firms throughout each of the 50 states. TBMA can present a unique and respected view from Wall Street and nationally as to the likely consequences of the Court’s decision upholding the constitutionality of Initiative No. 776 (“I-776”) under the Washington State Constitution.

2. Statement of Relief Sought. TBMA moves under RAP 13.4(h) for leave to file an *amicus curiae* brief. The brief supports TBMA’s position that this Court should reconsider and change its prior decision, and hold instead that I-776 repeal of certain pledged fees in fact violates Article I, §23 of the Washington State Constitution as it applies to outstanding municipal bonds.

3. Grounds for Relief and Argument. Pursuant to RAP 13.4(h) and 10.6, the following information is provided in support of this motion:

a. *TBMA's Interest.*

TBMA's members deal in a wide variety of public and private fixed-income securities in a \$22 trillion debt marketplace domestically and abroad. Among other activities, TBMA provides a market perspective to courts and policymakers on securities litigation, regulation and legislation and undertakes numerous industry initiatives to improve industry practices and market efficiency.

TBMA has a strong interest in maintaining the clarity, predictability and enforceability of obligations of state and local governments throughout the United States.

TBMA has a specific interest in the case at hand. Member firms of TBMA have acted as underwriters on municipal bond issues directly impacted by this Court's decision upholding the constitutionality of I-776.

TBMA believes that the Washington Supreme Court decision regarding Article I, §23 of the Washington State Constitution will have a significant adverse affect on municipal debt obligations throughout the United States, and on specific Washington municipal entities, including but not limited to King County and Sound Transit.

b. *TBMA's Familiarity with the Issues and the Scope of Argument to be Presented by the Parties -- Qualifications of Counsel.*

TBMA is familiar with the issues raised by the petition for review and the scope of the arguments that have been presented by the parties to the appeal. Counsel for TBMA are experienced municipal and municipal finance lawyers licensed to practice in the state of Washington and held in good standing with the Washington State Bar Association. Counsel to TBMA have over 30 years of experience acting as bond counsel to municipal issuers throughout the state of Washington. Counsel Roy J. Koegen is the author of the *Washington Municipal Financing Deskbook* (1993), the definitive handbook for municipal finance lawyers practicing in the state of Washington. In addition, TBMA's counsel has reviewed key briefings submitted to the Court in connection with the case at hand and rulings of this Court and the trial court in regards to I-776.

TBMA is also of the view that the granting of permission to file an *amicus curiae* brief is particularly appropriate where, as here, the *amicus* has unique information or a perspective that can help the Court beyond the help that the lawyers for the parties are able to provide. *See Miller-Wohl Co. v. Commissioner of Labor & Industry*, 694 F.2d 203 (9th Cir. 1982) (per curiam).

c. *Issues to Which TBMA's Amicus Curiae Brief will be Directed.*

This case involves issues of significant public interest both inside and outside the state of Washington regarding the security and marketability of municipal securities generally and the securities of certain state of Washington issuers in particular. TBMA seeks to address a single issue that has broad implication for the security of the municipal debt capital markets in the United States: the circumstances that make the “Contract Clause” contained in Article I, §23 of the Washington State Constitution applicable to the issue of the constitutionality of I-776.

d. *TBMA’s Reason for Believing that Additional Consideration is Necessary on this Specific Issue.*

TBMA believes that the Court’s decision will have a significant adverse affect on approximately \$388 million in principal amount of outstanding debt obligations of both King County and Sound Transit. TBMA believes that the Court has not had the benefit of obtaining the financial industry’s view on the likely impact on Wall Street that the Court’s decision relative to I-776 has and will have, both with respect to two specific bond issues already outstanding and with respect to future debt issuance by local governments located within the state of Washington.

As a matter of economics, TBMA is of the view that a government’s ability to raise capital depends on the ability of prospective

investors to assess, analyze and assume risk. Where risk increases, even incrementally, capital becomes disproportionately more expensive. In some circumstances, even a marginal increase in risk will dictate that capital cannot be raised at all. TBMA's industry experience dictates that when market participants are subjected to increased risk, they will pay less (or charge more) for the risks they take in purchasing or selling securities. TBMA is convinced that the Court has need of TBMA's perspective as an industry trade association on the importance of the "Contract Clause" contained in Article I, §23 of the State Constitution, inasmuch as it historically has provided certainty to bondholders with respect to the contractual obligations of government bond issuers.

The Court's interpretation finding the Contracts Clause inapplicable to King County's bonds under I-776 threatens to generate considerable additional uncertainty regarding contractual commitments of the state of Washington and its many political subdivisions, which will invariably lead to increased borrowing costs and larger taxpayer burdens for the taxpayers of the state of Washington.

e. *Conclusion.*

TBMA believes that this Court will benefit from considering the additional perspective of TBMA and the arguments to be presented by counsel to TBMA that can only be presented upon the filing of an

accompanying *amicus curiae* brief. TBMA respectfully requests that the Court grant TBMA leave to file an *amicus curiae* brief; that the Court thereafter accept the accompanying *amicus curiae* brief for filing and that the members of the Court carefully review the arguments articulated within such brief in deliberating on the matter of the constitutionality of I-776 as applied to the outstanding bonds of King County and Sound Transit.

RESPECTFULLY SUBMITTED this 26th day of November,
2003.

LUKINS & ANNIS, P.S.

By _____
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