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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF KING

8 WASHINGTON STATE ASSOCIATION  
9 OF COUNTIES, a Washington non-profit  
10 association; SNOHOMISH COUNTY, a  
11 Washington municipal entity; KITTITAS  
12 COUNTY, a Washington  
municipal entity; and WHITMAN  
municipal entity,

13 Plaintiffs,

14 v.

15 STATE OF WASHINGTON,

16 Defendant.  
17

No.

COMPLAINT FOR  
DECLARATORY JUDGMENT

18  
19 **I. INTRODUCTION**

20 Consistent with its commitment to encourage voter participation, the Washington State  
21 Legislature has sought to improve voter turnout by increasing the availability of ballot drop  
22 boxes throughout the State. Washington counties are supportive of this State policy and are  
23 willing and proud to facilitate this effort. But Washington law prohibits the State from imposing  
24 on counties the responsibility to pay for new programs or increased service under existing  
25 programs. Thus, the State, and not counties, should fund the significant costs of procuring,  
26 installing, and maintaining ballot drop boxes.  
27

1 Signed into law on May 16, 2017, Senate Bill 5472 (“SB 5472”)<sup>1</sup> mandated that County  
2 Auditors increase significantly the number of ballot drop boxes statewide at an estimated capital  
3 cost of over one million dollars plus yearly operating and maintenance costs. Despite SB 5472’s  
4 significant initial and continuing costs, the State did not establish a plan to reimburse or fund  
5 counties which paid the expenses for procuring, installing, maintaining, and operating the ballot  
6 drop boxes as required by law. And the State has refused to reimburse claims filed by various  
7 counties for the costs incurred to implement SB 5472. As a result, counties have and are  
8 continuing to incur substantial costs to provide expanded and mandatory ballot box services to  
9 the public. The Washington State Association of Counties (“WSAC”), Snohomish County,  
10 Kittitas County, and Whitman County (“the Counties”) thus respectfully seek a declaratory  
11 judgment that all Washington counties are entitled to reimbursement for all reasonable costs  
12 incurred to comply with SB 5472. They further seek an award of damages for Snohomish  
13 County, Kittitas County, and all other counties whose claims for reimbursement were rejected or  
14 only partially paid by the State.  
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## 16 **II. PARTIES**

17  
18 1. Plaintiff WSAC is a voluntary, non-profit association serving all 39 Washington  
19 counties, each of whom would have standing to sue to obtain reimbursement under RCW  
20 43.135.060(1) for costs incurred to comply with SB 5472. WSAC’s members include elected  
21 county commissioners, council members, and executives from each county. The Association  
22 advocates on behalf of all of its member counties to build a statewide county legislative agenda  
23 based on their shared interests, keeps members up to date on legislative activity, and works to  
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25  
26  
27 <sup>1</sup> Engrossed Substitute Senate Bill 5079 (enacted March 2019 and effective July 28, 2019) recodified SB 5472. For ease of reference, this Complaint refers to SB 5472 to encompass SB 5472 as well as its later recodification.

1 pass helpful legislation and likewise to prevent harmful legislation. WSAC's office is located in  
2 Olympia, Washington in Thurston County.

3 2. Plaintiff Snohomish County is a political subdivision of the State of Washington  
4 and is the third most populous county in the State. To comply with SB 5472, Snohomish County  
5 purchased five and installed four new drop boxes in 2017, which cost \$30,000. In 2018,  
6 Snohomish County purchased nine and installed two new drop boxes, which cost \$53,200. And  
7 as of September 2019, Snohomish County has installed four new drop boxes, which cost  
8 \$14,000. Snohomish County must install an additional nine boxes in order to comply with SB  
9 5472. Snohomish County submitted a claim for its 2017 and 2018 expenditures on December  
10 14, 2017 and September 13, 2019, respectively. The State denied Snohomish County's claim for  
11 2017 expenditures on March 14, 2018. On information and belief, the State legislature has not  
12 considered Snohomish County's claim for 2018 expenditures.  
13  
14

15 3. Plaintiff Kittitas County is a political subdivision of the State of Washington. To  
16 comply with SB 5472, in 2018 Kittitas County purchased and installed 8 new drop boxes, which  
17 cost \$16,829.41. Kittitas County also incurred \$3,000 to operate these new drop boxes. Kittitas  
18 County submitted a claim for its 2018 expenditures on February 8, 2018. The State denied  
19 Kittitas County's claim for 2018 expenditures on March 14, 2018.  
20

21 4. Plaintiff Whitman County is a political subdivision of the State of Washington. In  
22 2012, before SB 5472's passage, the County had purchased and installed 6 drop boxes for \$2,400  
23 each. It cost the County approximately \$2,000 in 2017 to staff and maintain these boxes during  
24 election time. The County would need to purchase, install, and staff 14 additional drop boxes to  
25 comply with SB 5472 and estimates this would initially cost approximately \$8,500 to \$9,000 per  
26 box, with a total capital cost of \$126,000. In addition, Whitman County estimates an annual  
27

1 operating cost for these extra 14 boxes to be \$20,000 per year. Whitman County does not have  
2 the funds available to purchase and staff these additional drop boxes. Just the cost to purchase  
3 and install 14 new boxes exceeds the entire yearly salary budget for the staff of the County  
4 elections and voter registration department.

5  
6 5. Defendant State of Washington is responsible for allocating reimbursement  
7 funding for subdivisions of the State pursuant to RCW 43.135.060(1).

### 8 III. JURISDICTION AND VENUE

9 6. This Court has subject matter jurisdiction over the parties pursuant to chapter 7.24  
10 RCW and chapter 2.08 RCW.

11 7. Venue is proper pursuant to RCW 36.01.050.

### 12 IV. RELEVANT FACTS

13 8. County Auditors are the ex-officio supervisors of all primaries and elections.  
14 RCW 29A.04.210. County Auditors are responsible for establishing ballot drop boxes and  
15 managing ballot collection. RCW 29A.40.170. SB 5472 amended existing law to make the use  
16 of drop boxes mandatory and specifies the number of boxes and general location with this  
17 language: “[t]he county auditor must establish a minimum of one ballot drop box per fifteen  
18 thousand registered voters in the county and a minimum of one ballot drop box in each city,  
19 town, and census-designated place in the county with a post office.” RCW 29A.40.170(2).<sup>2</sup>

20  
21 9. SB 5472’s Fiscal Note, prepared by the Washington Department of Commerce,  
22 states that county auditors are responsible for procurement, maintenance, and operation costs for  
23 new ballot drop boxes and assumed the required boxes will be installed immediately. The Fiscal  
24 Note states SB 5472 would require 257 boxes to be added statewide. This includes 33 boxes

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26 \_\_\_\_\_  
27 <sup>2</sup> SB 5472 was first codified in RCW 29A.40.160(15), but in 2019 ESSB 5079 recodified this provision to its own  
new section, RCW 29A.40.170.

1 needed in only four counties (Snohomish, King, Clark, and Benton) to meet the standard of one  
2 box per every 15,000 registered voters. To meet SB 5472’s standard of one box in each city,  
3 town, and census-designated place (“CDP”) with a post-office, the Fiscal Note estimates 224  
4 additional boxes would be needed statewide. The Fiscal Note estimates the one-time  
5 procurement cost for each box, including installation, to be \$4,000 per box, for a total of  
6 \$1,028,000 statewide. The Fiscal Note further estimates that yearly ongoing operational and  
7 maintenance costs for each box will be \$1,000 per box per year, for a total of \$257,000 per year  
8 statewide.  
9

10 10. Beginning in 2018, the Secretary of State’s Office announced the availability of  
11 \$100,000 in grant funding to assist “distressed rural counties” in implementing SB 5472, and  
12 sent counties forms on which they could apply for up to \$1,000 per box location installed after  
13 July 23, 2017.  
14

15 11. In the 2019 Legislative Session, the Legislature recodified SB 5472’s mandate for  
16 “one ballot drop box per fifteen thousand registered voters in the county and a minimum of one  
17 ballot drop box in each city, town, and census-designated place in the county with a post office.”  
18 ESSB 5079, Section 5, codified at RCW 29A.40.170. The Legislature did not appropriate any  
19 additional funds to assist counties with this effort and the 2019 Fiscal Note maintained that the  
20 typical cost to purchase and install a ballot box is “no more than \$4,000” statewide.  
21

22 12. Under RCW 43.135.060(1), the State is prohibited from “impos[ing]  
23 responsibility for new programs or increased levels of service under existing programs on any  
24 taxing district unless the districts are reimbursed for the costs thereof by the state.” The statute  
25 further directs that “Reimbursement by the state may be made by: (a) A specific appropriation;  
26 or (b) increases in state distributions of revenue to political subdivisions.”  
27

1           13.     Ballot boxes are not voting devices or machines as described in RCW  
2 43.135.060(4) and RCW 29A.12.150.

3           14.     SB 5472 requires that county auditors purchase and place ballot boxes in areas  
4 where there have never been any before and in some cases, where no need has been  
5 demonstrated. Indeed, many required boxes will be in close proximity, in low density areas. For  
6 example, in Pierce County a box will be required in the towns of Carbonado, which has 407  
7 registered voters, and in Wilkeson, which has 263 voters, and which are 2.6 miles apart.

8           15.     County auditors must also increase the required number of boxes in other areas  
9 where boxes have previously been provided. Because the boxes are intended to (and do) offer  
10 the amenity of an easy voting method near voters' homes, work, or commercial areas, the boxes  
11 resulting from SB 5472's mandate represent a new, or in other areas an increased, public service  
12 program.  
13

14           16.     Ballots may be submitted by mail or by drop box. On information and belief,  
15 many voters prefer the reliability and predictability of using a drop box, especially on election  
16 day when post-offices have different times in which an article must be deposited to receive the  
17 post mark for that day. That ballot drop boxes provide a quantifiable service and benefit to the  
18 public is evident in emerging data and studies. For example, in Pierce County in 2016, over  
19 60.9% of ballots were returned via drop box. Additionally, a recent study of King County voter  
20 turnout concluded increased proximity to drop boxes increases the likelihood individuals will  
21 vote. Even in the 2018 Primary, during which the State provided free postage for voters to mail  
22 in their ballots, the study found 40% of the nearly 1.8 million ballots submitted were returned by  
23 drop box. Researchers concluded that "evidence from King County suggests that increased  
24 installations get some populations in some elections to vote. This means that making the best  
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1 use of drop boxes requires deliberate choices over how many to install and where to put them.  
2 On this, the new law is overly prescriptive as it provides counties with little discretion over these  
3 decisions.”

4 17. Though SB 5472 burdens counties with the costs of establishing this new and  
5 increased voting service, the State did not establish any specific appropriation or increase  
6 revenue distribution to reimburse the counties for the costs of implementing SB 5472 as RCW  
7 43.135.060(1) requires.

8 18. In February and March, 2017, several county auditors testified in opposition to SB  
9 5472 before the Senate State Government Committee and the House State Government,  
10 Elections & Information Technology Committee. These officials explained how the estimated  
11 cost and implementation requirements for SB 5472 failed to adequately account for county  
12 budgetary constraints and all potential costs and considerations relevant to installing, procuring,  
13 maintaining, and staffing ballot drop boxes appropriately.

14 19. As a practical matter, because county auditors are responsible for the placement  
15 of ballot drop boxes, they also engage in periodic evaluation of whether placement sites are  
16 appropriately serving the community’s needs. The county auditors’ periodic evaluations  
17 anticipate the required review of county election procedures the Secretary of State conducts at  
18 least once every five years under RCW 29A.04.570(1)(b). SB 5472 does not provide funding for  
19 county auditors to evaluate the initial placement site of the drop boxes or for any ongoing  
20 evaluation.

21 20. SB 5472, as well as the funding the State Legislature allocated in the 2018 session  
22 to help “distressed rural counties,” further fail to account for the potential that the boxes,  
23 especially new, permanent ones, will be more expensive than the estimated \$4,000 average per  
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1 box. As one auditor testified, in Snohomish County, one box cost approximately \$9,000 to  
2 procure, wrap, and install a necessary cement base for its placement.

3 21. Snohomish County purchased five and installed four new drop boxes in 2017,  
4 which cost \$30,000. In 2018, Snohomish County purchased nine and installed two new drop  
5 boxes, which cost \$53,200. And as of September 2019, Snohomish County has installed four  
6 new drop boxes, which cost \$14,000. Snohomish County must install nine more boxes to  
7 comply with SB 5472. In addition, if the number of registered voters in Snohomish County  
8 increases, the number of new ballot boxes Snohomish County is required to install may also  
9 increase. Snohomish County will also incur annual ongoing operating costs necessary to site and  
10 service the new ballot boxes.  
11

12 22. Kittitas County purchased and installed 8 new drop boxes, which cost \$16,829.41.  
13 Kittitas County also incurred \$3,000 to operate these new drop boxes. Kittitas County expects  
14 the same operation cost annually for these boxes, not accounting for inflation.  
15

16 23. Whitman County estimates \$126,000 in costs for 14 additional drop boxes it is  
17 required to install, including one in Lamont, a town of just 49 registered voters. Whitman  
18 County does not have the funds to install the required 14 new boxes, yet does not qualify as a  
19 distressed rural county under RCW 43.168.020 and RCW 82.14.370 to obtain the \$1,000 per  
20 box the State has offered.  
21

22 24. SB 5472 also fails to provide funding for or reimbursement of the cost of ongoing  
23 staffing needs. At a minimum, one to two people must close and secure each ballot drop box at  
24 precisely 8:00 PM on each election day, and a team of two people must then remove the ballots  
25 and transport them to a counting center pursuant to WAC 434-250-100(3). Many boxes also  
26 require periodic staffing to assure the ballot box does not reach capacity during the 18 days  
27



1 before each election. SB 5472's Fiscal Note placed staffing under the ongoing operational and  
2 maintenance costs, but assumed a cost of only \$1,000, per box, per year. By contrast, assuming  
3 Snohomish County installs the total 19 new boxes SB 5472 requires, Snohomish County  
4 estimates an annual operating cost of approximately \$58,500 in a typical non-presidential  
5 election year and \$77,250 in a presidential election year, or \$3,078.95 or \$4,065.79 per box, per  
6 year, respectively.  
7

8 25. Statewide there are 114 census designated places "CDPs" that have post offices  
9 and 89 of them will require a new ballot drop box that the relevant county will have to pay for.  
10 CDPs can include unincorporated villages, groups of villages, commercial developments, and  
11 Air Force bases.

12 26. Many counties have submitted claims to the State for reimbursement of their  
13 compliance costs incurred to date. The State has either refused to pay, or paid only a small  
14 portion of the costs via grant funds from the Office of the Secretary of State ("OSOS").  
15

16 27. For example, Kittitas County paid \$16,829.41 to purchase and install eight new  
17 boxes as required by SB 5472. Kittitas County filed a claim seeking reimbursement of those  
18 costs on February 8, 2018 and the State denied the claim on March 14, 2018.

19 28. Lewis County paid \$32,226.53 in capital costs to purchase and install eight new  
20 boxes. Lewis County filed a claim seeking reimbursement of those costs on February 14, 2018  
21 and the State denied the claim on March 14, 2018.  
22

23 29. Clallam County paid \$10,217.84 in capital costs to purchase and install 4 new  
24 boxes and \$8,671.08 in operating costs for those boxes through 2018. OSOS awarded Clallam  
25 County only \$3,861.48 in grant funds.  
26  
27

1           30.     Cowlitz County paid \$3,475.75 in capital costs and \$1,771.24 in operating costs  
2 for purchase and installation of one new box, but received only \$1,000 in OSOS grant funds.

3           31.     Grays Harbor County purchased and installed two boxes at a cost of \$9,066.83  
4 and received \$2,688 in grant funds. Grays Harbor County estimates it will cost an additional  
5 \$63,240 to purchase and install the remaining 14 boxes required by SB 5472. Grays Harbor  
6 County submitted a claim seeking reimbursement of expenses not covered by its grant. Its claim  
7 was denied on April 30, 2019.

8           32.     Jefferson County purchased and installed three new boxes at a capital cost of  
9 \$6,462.39 plus operating costs of \$6,352. Jefferson County filed a claim on February 26, 2018  
10 and received only \$3,000 from OSOS.

11           33.     Kitsap County purchased and installed 11 new boxes at a capital cost of \$48,355.  
12 Kitsap County filed a claim on February 2, 2018. Its claim was denied on April 30, 2019.

13           34.     Snohomish, Kittitas, and Whitman Counties and WSAC support adding drop  
14 boxes to benefit voters, but the significant installation costs coupled with the ongoing logistical  
15 and operational costs impose a financial burden on counties that should be borne by the State.  
16

17  
18           **V.       FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

19           35.     Plaintiffs re-allege and incorporate the preceding paragraphs as though fully set  
20 forth herein.

21           36.     The State has failed, declined or refused to fully reimburse any county for the  
22 costs incurred in the provision of additional and increased ballot box service to the public  
23 mandated by SB 5472.

24           37.     Snohomish County has standing to bring this action for declaratory relief.  
25  
26 Snohomish County has expended \$83,200 procuring and installing additional ballot boxes and  
27

1 anticipates annual operating costs in excess of \$58,000 in a typical non-presidential election year  
2 and \$77,000 in a presidential election year.

3 38. Kittitas County has standing to bring this action for declaratory relief. Kittitas  
4 County has expended \$16,829.41 to purchase and install new boxes and anticipates annual  
5 operating costs of at least \$3,000.

6 39. Whitman County has standing to bring this action for declaratory relief. Whitman  
7 County does not have the approximately \$126,000 available that it estimates it would need to  
8 comply with SB 5472, nor additional \$20,000 in annual operating costs.

9 40. WSAC has standing to bring this action for declaratory relief on behalf of its  
10 member counties. All WSAC members are subject to the requirements of SB 5472. Protecting  
11 all member counties' rights to be reimbursed for new or increased services they provide pursuant  
12 to State mandate under RCW 43.135.060(1) is germane to WSAC's advocacy mission to  
13 represent its member counties' collective interests.

14 41. For the reasons including but not limited to those stated herein, an actual dispute  
15 exists between Snohomish, Kittitas, and Whitman Counties and WSAC, and the Defendant  
16 regarding the State's responsibility to provide funding to reimburse Washington's counties for  
17 the implementation and ongoing maintenance costs of ballot drop boxes imposed by SB 5472,  
18 which parties have genuine and opposing interests, which interests are direct and substantial, and  
19 of which a judicial determination will be final and conclusive.

20 42. Plaintiffs are entitled to a declaration that pursuant to RCW 43.135.060(1), all  
21 Washington counties shall be reimbursed for reasonable implementation and ongoing  
22 maintenance costs resulting from SB 5472.

1                               **VI. SECOND CAUSE OF ACTION: DAMAGES**

2           43. Plaintiffs re-allege and incorporate the preceding paragraphs as though fully set  
3 forth herein.

4           44. Snohomish County has standing to bring this action for damages. Snohomish  
5 County submitted a claim for its 2017 expenditures on December 14, 2017, which the State  
6 denied on March 14, 2018. Snohomish County is entitled to damages pursuant to RCW  
7 43.135.060(1) for its rejected claim of reimbursement.  
8

9           45. Kittitas County has standing to bring this action for damages. Kittitas County  
10 submitted a claim for its 2018 expenditures on February 8, 2018, which the State denied on  
11 March 14, 2018. Kittitas County is entitled to damages pursuant to RCW 43.135.060(1) for its  
12 rejected claim of reimbursement.  
13

14           46. WSAC has associational standing to bring this action for damages on behalf of its  
15 member counties whose reimbursement requests have been denied by the State. These counties  
16 are WSAC members and the damages amount requested on behalf of each county is certain,  
17 easily ascertainable, and within WSAC's knowledge. These Washington counties are entitled to  
18 damages pursuant to RCW 43.135.060(1) for claims of reimbursement wholly rejected by the  
19 State, or damages for the remainder of their claimed reimbursement amounts if the State paid  
20 less than their full costs.  
21

22                               **VII. PRAYER FOR RELIEF**

23           Plaintiffs respectfully request the following relief:

24           A. A declaratory judgment that upon the submission of appropriate documentation,  
25 the State shall promptly reimburse all Washington counties for all reasonable costs incurred or to  
26 be incurred from implementing SB 5472's requirements including annual operating costs; and  
27

1 B. An award of damages in the amount of the reasonable costs counties have already  
2 incurred from implementing SB 5472, where counties sought reimbursement from the State and  
3 their claims were either wholly rejected or only partially paid by the State; and

4 C. Such other relief as may flow from the entry of a declaratory judgment, including  
5 but not limited to injunctive relief; and

6 D. Such further relief as this Court deems necessary and proper.

7  
8 DATED this 11<sup>th</sup> day of December, 2019.

9  
10 PACIFICA LAW GROUP LLP

ADAM CORNELL

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