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SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, ASSOCIATED GENERAL CONTRACTORS OF WASHINGTON, DIANE GLENN, ALAN NOLAN, RON PERKEREWICZ, and DOUG ORTH,

Plaintiffs,

v.

GOVERNOR JAY INSLEE, WASHINGTON STATE BUILDING CODE COUNCIL, JAMES MILLBAUER, in his Official Capacity as an Appointee to the State Building Code Council, and ANTHONY MASCHMEDT, in his Official Capacity as an Appointee to the State Building Code Council,

Defendants.

Case No.

INFORMATION AND PETITION FOR QUO WARRANTO JUDGMENT, WRIT OF MANDAMUS, AND DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Building Industry Association of Washington, Associated General Contractors of Washington, Diane Glenn, Alan Nolan, Ron Perkerewicz, and Doug Orth submit the following information and petition for quo warranto judgment, writ of mandamus, and declaratory and injunctive relief:

I. PARTIES

1. Plaintiff Building Industry Association of Washington (“BIAW”) is a Washington non-profit trade association that promotes the interests of Washington homebuilders. BIAW represents more than 8,000 member companies that employ approximately 265,000 people in all aspects of home construction.

1 2. Plaintiff Associated General Contractors of Washington (“AGC”) is a Washington
2 non-profit trade association that promotes the interests of Washington contractors. It is the largest
3 and oldest commercial construction trade association in Washington, representing over 700
4 member companies.

5 3. Plaintiff Diane Glenn owns a construction consulting company in Bellevue,
6 Washington. Glenn was the immediate past-Chair of the Washington State Building Code Council.
7 Glenn was nominated by BIAW as part of the 2021 slate of candidates to represent general
8 construction, specializing in residential and multifamily building construction on the Washington
9 State Building Code Council.

10 4. Plaintiff Alan Nolan is a residential and commercial contractor from Spokane,
11 Washington. Nolan was nominated by BIAW as part of its 2021 slate of candidates to represent
12 general construction, specializing in residential and multifamily building construction on the
13 Washington State Building Code Council.

14 5. Plaintiff Ron Perkerewicz provides inspection and permit services for residential
15 construction in Bremerton, Washington. Perkerewicz was nominated by BIAW as part of its 2021
16 slate of candidates to represent general construction, specializing in residential and multifamily
17 building construction on the Washington State Building Code Council.

18 6. Plaintiff Doug Orth works for a commercial and industrial construction firm in
19 Puyallup, Washington. Orth is a former chair of the Washington State Building Code Council and
20 was nominated by AGC in 2021 to represent general construction, specializing in commercial and
21 industrial building construction on the Washington State Building Code Council.

22 7. Defendant Jay Inslee is the Governor of the State of Washington with his primary
23 office located at 416 Sid Synder Avenue SW, Olympia WA 98504. Governor Inslee has
24 responsibility to appoint the members of the Washington State Building Code Council in
25 accordance with RCW 19.27.070.

26 8. Defendant Washington State Building Code Council (“SBCC” or “the Council”) is
27 a subagency of the Department of Enterprise Services of the State of Washington with its office

1 located at 1500 Jefferson Street SE, Olympia, WA 98501. The SBCC is made up of 15 voting
2 members with collective responsibility to review, develop, and adopt the state building code.

3 9. Defendant James Millbauer was appointed by Governor Inslee on April 16, 2021,
4 to serve on the SBCC to represent “general construction, specializing in commercial and industrial
5 building construction.” Millbauer works as a journeyman pipefitter at a government worksite and
6 is a City of Kennewick councilmember. Miller is named in his official capacity as an appointee to
7 the SBCC.

8 10. Defendant Anthony Maschmedt was appointed by Governor Inslee on July 6, 2021,
9 to serve on the SBCC to represent “general construction, specializing in residential and
10 multifamily building construction.” Maschmedt is named in his official capacity as an appointee
11 to the SBCC.

12 **II. JURISDICTION**

13 11. This Court has jurisdiction over the subject matter and the parties pursuant to article
14 IV, section 6 of the Washington Constitution and RCW 2.08.010.

15 12. Venue is proper under RCW 4.12.020 and .025.

16 **III. FACTUAL HISTORY**

17 13. The Legislature established the SBCC in RCW 19.27.070, which specifies the
18 make-up of the council and the procedure by which the council members must be appointed.

19 14. The SBCC consists of 15 members, who must represent a variety of elected
20 officials, civil servants, community members, and types of building industries. RCW 19.27.070(1).

21 15. Seven members of the Council must represent private sector or professional
22 organizations. RCW 19.27.070(1)(g).

23 16. Two of the private sector members must represent general construction: one
24 specializing in commercial and industrial building construction, and one specializing in residential
25 and multifamily building construction. RCW 19.27.070(1)(g)(i)-(ii).

26 17. The governor has statutory responsibility to appoint the members of the SBCC.
27 RCW 19.27.070.

1 18. “Before making any appointments” to the SBCC, the governor “shall seek
2 nominations from recognized organizations which represent the entities or interests” that are
3 specified in RCW 19.27.070 for council membership. RCW 19.27.070(5). The governor “shall
4 select appointees” from the list of nominations provided by the trade associations, “unless no
5 names are put forth by the trade associations.” RCW 19.27.070(5).

6 19. Terms of office on the Council are “for three years, or for so long as the member
7 remains qualified for appointment.” RCW 19.27.070(4)(a). The statute provides no limits on how
8 many terms an SBCC councilmember may serve in office.

9 20. An SBCC councilmember who is appointed to represent a specific private sector
10 industry must maintain sufficiently similar private sector employment or circumstances throughout
11 the term of office to remain qualified to represent the specified industry. RCW 19.27.070(4)(d).
12 Any person appointed to represent a specific private sector industry must be removed from the
13 Council if they no longer qualify for appointment, including if they enter employment outside the
14 industry or outside the private sector. *Id.*

15 21. A non-qualifying member may not vote on Council actions, but may participate as
16 an ex officio, nonvoting member until a replacement is appointed. RCW 19.27.070(4)(e). The
17 governor shall appoint a qualified replacement for the member within 60 days of receiving notice
18 that the member is not qualified. *Id.*

19 22. BIAW is a trade association representing residential and multifamily building
20 construction in Washington.

21 23. AGC is a trade association representing commercial and industrial building
22 construction in Washington.

23 24. Both BIAW and AGC have provided nominees to the governor for appointment to
24 the Council in years past. Previous council members nominated by BIAW and AGC and appointed
25 by Governor Inslee include Plaintiffs Diane Glenn and Doug Orth, who represented the residential
26 and multifamily building construction sector and the commercial and industrial building
27 construction, respectively.

1 25. Dianne Glenn's second term of office ended January of 2021.

2 26. Doug Orth's second term office ended January of 2021.

3 27. On February 5, 2021, BIAW provided a list of three nominees to the office of
4 Governor Inslee: Diane Glenn, Alan Nolan, and Ron Perkerewicz, for the SBCC council position
5 representing residential and multifamily building construction.

6 28. On January 13, 2021, AGC notified Governor Inslee's office that it nominated
7 Doug Orth to be re-appointed to the Council, representing commercial and industrial building
8 construction. Governor Inslee's office responded requesting two additional nominees for the
9 appointment, and stated that the Governor's office "normally implements the following limit: two
10 full terms or ten years (whichever is less)," noting that Mr. Orth had served on the Council since
11 January 2015.

12 29. In April 2021, Governor Inslee appointed James Millbauer to the seat representing
13 general construction, specializing in commercial and industrial building construction. Mr.
14 Millbauer is a journeyman pipefitter and city councilmember. He was not the nominee provided
15 by AGC.

16 30. In July 2021, Governor Inslee appointed Anthony Maschmedt to the seat
17 representing general construction, specializing in residential and multifamily building
18 construction. Anthony Maschmedt was not on the list of nominees provided by BIAW.

19 31. To date, James Millbauer and Anthony Maschmedt sit on the SBCC as voting
20 council members despite lacking proper qualifications or appointment to their respective seats.

21 **IV. CAUSES OF ACTION**

22 **A. QUO WARRANTO**

23 32. Plaintiffs bring a quo warranto action to challenge the entitlement of Defendants
24 James Millbauer and Anthony Maschmedt to sit on the SBCC as appointed members.

25 33. Plaintiffs BIAW and AGC have a special interest in the SBCC positions at issue as
26 the two recognized organizations in Washington representing the interests of general construction,
27 specializing in residential and multifamily building construction and commercial and industrial

1 building construction, respectively. BIAW and AGC each provided Governor Inslee with their lists
2 of nominees to the SBCC with the reasonable and legitimate, statutory expectation that the
3 Governor would adhere to RCW 19.27.070 and select the appointment from their respective
4 nominees.

5 34. Plaintiffs Diane Glenn, Alan Nolan, Ron Perkerewicz, and Doug Orth have a
6 special interest in the two Council positions at issue because they are the duly-nominated persons
7 representing their respective industries from BIAW and AGC. Only Glenn, Nolan, or Perkerewicz
8 is entitled to hold the SBCC councilmember position representing general construction,
9 specializing in residential and multifamily building construction under RCW 19.27.070. Only Orth
10 is entitled to hold the SBCC councilmember position representing general construction,
11 specializing in commercial and industrial building construction under RCW 19.27.070.

12 35. Defendants James Millbauer and Anthony Maschmedt hold their positions as
13 SBCC members without proper qualification or appointment under RCW 19.27.070. James
14 Millbauer was not the nominee provided to the Governor by AGC for the position. Anthony
15 Maschmedt was also not the nominee provided to the Governor by BIAW for the position
16 representing general construction, specializing in residential and multifamily building
17 construction.

18 36. The Court should issue a judgment under RCW 7.56.100 determining that James
19 Millbauer and Anthony Maschmedt unlawfully hold the position of SBCC councilmembers in the
20 State, should be restrained from acting in that capacity, and excluded from office in forfeit.

21 **B. WRIT OF MANDAMUS**

22 37. RCW 19.27.070 sets forth specific mandatory duties and requirements that the
23 Governor must comply with in order to appoint qualifying members to the SBCC. The governor
24 must seek nominations to the SBCC from specific, recognized trade organizations and to select
25 appointees from the list of nominees put forth by the organizations.

1 38. RCW 19.27.070 provides no discretion to the governor to select nominees to the
2 SBCC from any other source other than the lists provide by the trade organizations, “unless no
3 names are put forth by the trade associations.”

4 39. Governor Inslee acted outside of his authority when he appointed James Millbauer
5 and Anthony Maschmedt to the SBCC in violation of the required procedures set forth in
6 19.27.070.

7 40. Plaintiffs BIAW and AGC have been aggrieved by Governor Inslee’s failure to
8 select nominees to the SBCC from their provided lists of nominees.

9 41. Plaintiffs Diane Glenn, Alan Nolan, Ron Perkerewicz, and Doug Orth have been
10 aggrieved by Governor Inslee’s failure to select two of them for the respective positions on the
11 SBCC.

12 42. There is no plain, speedy, and adequate remedy in the ordinary course of law to
13 compel Governor Inslee to comply with his mandatory duties under RCW 19.27.070 other than a
14 writ of mandamus.

15 43. Plaintiffs seek a writ of mandate against Governor Inslee to compel him to comply
16 with RCW 19.27.070 by selecting two appointees to the SBCC from the lists of qualified nominees
17 provided by BIAW and AGC, to wit: Diane Glenn, Alan Nolan, or Ron Perkerewicz, and Doug
18 Orth.

19 44. Plaintiffs further seek a writ of mandate against Governor Inslee causing him to
20 appoint qualified replacements to the SBCC within 60 days as required by RCW 19.27.070.

21 **C. DECLARATORY JUDGMENT**

22 45. There is an actual, present, and justiciable controversy between Plaintiffs and
23 Defendants concerning the validity of James Millbauer and Anthony Mashmedt’s appointments to
24 the SBBC and the Governor’s compliance with RCW 19.27.070.

25 46. A judicial determination under RCW 7.24.020 concerning these issues will
26 conclusively terminate the dispute.

27 47. Plaintiffs are entitled to a declaration that Governor Inslee failed to comply with

1 his mandatory duties under RCW 19.27.070 when he appointed James Millbauer and Anthony
2 Mashmedt to the SBCC.

3 48. Plaintiffs BIAW and AGC are further entitled to a declaration setting forth their
4 clear legal right under RCW 19.27.070 to nominate seats on the Council representing their
5 industries and to have Governor Inslee select appointees from their respective lists.

6 49. Plaintiffs Glenn, Nolan, Perkerewicz, and Orth are further entitled to a declaration
7 setting forth their clear legal right under 19.27.070 to be selected by Governor Inslee for
8 appointment to the SBCC as the list of qualified, nominees submitted by BIAW and AGC.

9 **V. PRAYER FOR RELIEF**

10 For all the above reasons, Plaintiffs request the following relief from the court:

11 1. A quo warranto judgment issued against James Millbauer and Anthony Mashmedt
12 declaring their unlawful right to be appointed as members of the SBCC;

13 2. A writ of mandate compelling Governor Inslee to comply with RCW 19.27.070 in
14 appointing the members representing general construction, specializing in commercial and
15 industrial building construction and residential and multifamily construction, from the nominees
16 provided by BIAW and AGC;

17 3. A declaratory order declaring the rights among the parties under the Uniform
18 Declaratory Judgment Act, RCW 7.24, and other relief afforded by that Act;

19 4. An injunctive order enjoining further violation of Plaintiffs' rights and prohibiting
20 James Millbauer and Anthony Mashmedt from serving as voting members of SBCC pending their
21 proper replacement;

22 5. An award of costs and expenses, including reasonable attorneys' fees, as allowed
23 in RCW 7.24.100, RCW 7.56.100, or other provision of law; and

24 6. For all other relief deemed just and appropriate by the Court.
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1 DATED: September 8, 2021

2 LANE POWELL PC

3
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