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NO. 89603-8

**SUPREME COURT OF THE STATE OF WASHINGTON**

WILLIAM E. WALL, ESTATE OF JAMES H. JACK by and through its Personal Representatives, SHARON A. JACK and LINDA R. LEIBICH,

Appellants,

v.

THE STATE OF WASHINGTON acting by and through the WASHINGTON STATE LEGISLATURE and JAMES MCINTYRE, Treasurer of the State of Washington; BRIAN SONTAG, Auditor of the State of Washington; and BRAD FLAHERTY, Director of the Dept. of Revenue, State of Washington,

Respondents.

# BRIEF OF RESPONDENTS

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## I. INTRODUCTION

In June 2009, pursuant to express statutory authority and legislative direction, State Treasurer James McIntire transferred $67 million from the education legacy trust account into the state general fund. Nearly two years later, in May 2011, appellant Estate of James H. Jack (Estate) paid estate taxes that, like all state estate taxes, were deposited into the education legacy trust account. None of the estate taxes it paid were transferred to the general fund. In October 2012, more than a year later, the Estate joined this action that William E. Wall filed in June 2012. The action challenged the June 2009 transfer on statutory grounds and article VII, section 5 of the Washington Constitution.

The trial court declined to dismiss on statute of limitations, standing, mootness, and separation of powers grounds, but granted summary judgment to the state defendants on the merits, holding that the June 2009 transfer did not violate article VII, section 5. The trial court also held that the transfer did not violate article II, section 19, a new argument raised by plaintiffs for the first time on reconsideration of the trial court's summary judgment order.

The trial court should be affirmed. Rather than reaching the merits, however, the Court should dismiss this appeal on statute of limitations, standing, mootness, or separation of powers grounds.

## II. STATEMENT OF ISSUES

1. Should the trial court have dismissed on statute of limitations, standing, mootness, or separation of powers grounds?

2. Under the "settled doctrine" of this State, article VII, section 5 does not apply to excise taxes. Did the trial court err in holding that article VII, section 5 applies to the estate tax, which is an excise tax?

3. The Legislature amended RCW 83.100.230 in 2008 to authorize transfers from the education legacy trust account to the general fund. Pursuant to that authority and legislative direction, the State Treasurer transferred $67 million from the education legacy trust account into the general fund in June 2009. The State collected all of the transferred funds after the 2008 amendment's effective date. Assuming article VII, section 5 applies to estate taxes, did the trial court correctly hold that the June 2009 transfer did not violate that provision?

4. Did the trial court correctly apply the applicable non-exclusive three-factor test to hold that the 2008 amendment to RCW 83.100.230 authorizing transfers from the education legacy trust account to the general fund did not violate article II, section 19?

## III. STATEMENT OF FACTS

In 2005, the Legislature responded to the Court's decision in *Estate of Hemphill v. Department of Revenue*, 153 Wn.2d 544, 105 P.3d 391 (2005), by enacting the Estate and Transfer Tax Act, RCW 83.100, as a stand-alone state estate tax. Laws of 2005, ch. 516, § 1. The Legislature found that the lost revenues resulting from *Hemphill* would "severely impact [its] ability to fund programs vital to the peace, health, safety, and support of the citizens of this state." *Id.*

The 2005 Legislature directed that estate taxes be deposited into the education legacy trust account. Laws of 2005, ch. 516, § 16 (codified at RCW 83.100.220). A separate bill creating that account provided: "Expenditures from the account may be used only for deposit into the student achievement fund and for expanding access to higher education through funding for new enrollments and financial aid, and other

educational improvement efforts." Laws of 2005, ch. 514, § 1101 (codified at RCW 83.100.230 as amended). Taxes other than the estate tax also were designated for deposit into the education legacy trust account. *See* Laws of 2005, ch. 514, § 1102 (directing that 71 percent of additional cigarette tax revenues be deposited into the educational legacy trust account) (codified at RCW 82.24.026 as amended).[1]

Since 2005, the Legislature has amended RCW 83.100.230 three times. In 2008, it added one sentence that provided: "During the 2007-2009 fiscal biennium, monies in the account may also be transferred into the state general fund." Laws of 2008, ch. 329, § 924. Two years later, the Legislature amended that additional sentence by replacing "2007-2009" with "2009-2011." Laws of 2010, 1st Sp. Sess., ch. 37, § 953. In 2012, it removed the expired amended sentence and replaced "deposit into the student achievement fund" with "support for the common schools." Laws of 2012, 1st Sp. Sess., ch. 10, § 7.[2] The current version of RCW 83.100.230 thus no longer authorizes transfers to the general fund.

The State Treasurer made one transfer under the 2008 amendment to RCW 83.100.230. On June 9, 2009, at the Legislature's direction, he transferred $67 million into the general fund from the education legacy trust account. Laws of 2009, ch. 564, § 1702; CP at 65 (¶ 3). Because estate tax receipts, receipts from other taxes, and investment earnings are

[1] Currently, all the additional cigarette tax revenues collected under RCW 82.24.026 are deposited into the general fund. Laws of 2011, ch. 334, § 1.

[2] The Legislature also repealed the student achievement fund in the same bill. Laws of 2012, 1st Sp. Sess., ch. 10, § 9.

commingled in the education legacy trust account, the funds transferred on June 9, 2009, cannot be traced to a particular source. CP at 65 (¶ 4). Undisputed evidence in the record, however, establishes that the $67 million transferred in June 2009 was comprised solely of funds collected after the effective date of the 2008 legislation authorizing such transfers. CP at 104 (¶ 3), 284-85 (¶¶ 3-5).

At least one transfer has occurred in the opposite direction. In fiscal year 2007, the State Treasurer transferred $215 million from the general fund into the education legacy trust account. CP at 104 (¶ 5). Therefore, the amount of funds transferred from the general fund into the education legacy trust account has exceeded the June 2009 transfer by more than threefold.

In 2012, two of the attorneys eventually representing Mr. Wall and the Estate requested that the Attorney General and the named state defendants institute legal action to "recover funds misappropriated by the Legislature of the State of Washington in violation of Article VII, Section 5 of the Washington State Constitution."[3] CP at 21. The Attorney General's Office declined to institute the requested action. CP at 25.

On June 8, 2012, just one day shy of three years after the June 9, 2009 transfer, Mr. Wall filed a complaint naming as defendants the State of Washington acting through its Legislature, and State Treasurer James

[3] The letter did not mention article II, section 19 of the Washington Constitution.

McIntire,[4] former State Auditor Brian Sontag,[5] and former Department of Revenue Director Brad Flaherty[6] (hereinafter State Respondents). CP at 336-47. Mr. Wall filed an amended complaint on October 11, 2012. CP at 2 (Docket No. 16), 14-25. The amended complaint added the Estate as a second plaintiff. CP at 14.

The complaint and amended complaint both asserted the following claims:

- Article VII, section 5 of the Washington Constitution required the new estate tax to "state distinctly the object of the tax, which Laws of 2005, ch. 516, § 1 declared was to 'provide funding for education.'" CP at 337 (¶ 3.3), 15 (¶ 3.3).
- During the 2007-09 and 2009-11 fiscal biennia amounts exceeding "$100 million" were transferred from the education legacy trust account into the general fund and "thereafter appropriated and spent by the defendants for general state purposes other than the educational purposes provided in RCW 83.100.230, in violation of that express statutory provision and in violation of Article VII, Sec. 5[.]" CP at 338-39 (¶¶ 3.9 & 4.1), 16-17 (¶¶ 3.9 & 4.1).
- Defendants diverted and deposited receipts from estate taxes into accounts other than the education legacy trust account. CP at 339 (¶ 4.2), 17 (¶ 4.2).[7]

State Respondents filed answers denying these claims and asserting several affirmative defenses. CP at 8-12, 327-31.

After engaging in discovery, State Respondents moved for summary judgment based on the affirmative defenses asserted in their

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[4] The complaint's caption misspelled Mr. McIntire's last name. *See* CP at 336.

[5] Troy Kelley succeeded Mr. Sontag as State Auditor in January 2013.

[6] Carol Nelson replaced Mr. Flaherty as the Director of the Department of Revenue in February 2013.

[7] Neither the complaint nor the amended complaint mentioned or asserted a claim based on article II, section 19.

answers. CP at 26-44. Mr. Wall and the Estate cross moved for summary judgment on the merits of their claims. CP at 70-81. On July 31, 2013, the trial court entered an order on the parties' motions. The trial court rejected State Respondents' affirmative defenses with the exception of dismissing Mr. Wall for lack of standing. CP at 151-52. It also rejected State Respondents' argument that article VII, section 5 applies only to property taxes. CP at 152. The trial court otherwise ruled in favor of State Respondents on the merits, concluding that: (1) the Legislature may change the object of the estate tax, as was done in 2008; and (2) the transfer of estate tax funds collected after the 2008 amendment to RCW 83.100.230 would be constitutional because those taxes were collected when the object of the tax authorized transfers to the general fund. CP at 152-53. The trial court then set an additional hearing on the parties' motions to afford Mr. Wall and the Estate the opportunity to conduct discovery on whether any of the funds transferred in June 2009 were collected prior to the 2008 amendment. CP at 153, 167.

After conducting limited discovery, Mr. Wall and the Estate moved for reconsideration. CP at 247-67. They argued that the 2008 amendment did not change the purpose or object of the estate tax. CP at 253-55; *see also* CP at 296 (arguing also that the Legislature cannot change the object of the estate tax). They also raised a new argument, that the amendment violated the single subject requirement in article II, section 19. CP at 255-60. In addition, Mr. Wall and the Estate also urged the trial court to reconsider its ruling that article VII, section 5 did not bar the

Legislature from amending RCW 83.100.230 to add an additional object of the estate tax. CP at 260-65. Finally, they implicitly admitted they could not prove that any of the funds transferred in June 2009 had been collected before April 1, 2008. *See* CP at 266.

State Respondents answered that the trial court correctly held that the Legislature may prospectively change how estate funds are used. CP at 269-72. They next argued that undisputed evidence established that all the funds transferred in June 2009 were collected after April 1, 2008. CP at 272-74; *see also* CP at 104 (¶ 4), 284-85 (¶¶ 4-5). State Respondents also asserted that amending a statute to provide that funds in an account may be transferred to the general fund satisfies article VII, section 5's "state distinctly" requirement. *See* CP at 275. With respect to the new argument based on article II, section 19, State Respondents contended that it was untimely. CP at 276. They further argued, however, that Mr. Wall and the Estate failed to prove that the 2008 amendment violated article II, section 19. CP at 276-80.

Following a second hearing, the trial court entered a final order that incorporated by reference its previous summary judgment order, denied the motion for reconsideration, and dismissed the amended complaint with prejudice. CP at 315-16. The Estate then filed a petition for direct review to the Washington Supreme Court.[8] CP at 318-24.

[8] The trial court dismissed Mr. Wall based on lack of standing. CP at 152. The Brief of Appellants does not argue the trial court erred in dismissing Mr. Wall, thus the Estate is the only true appellant.

## IV. ARGUMENT AND AUTHORITIES

### A. General Legal Standards Of Review

The Estate's primary argument is that the 2008 amendment to RCW 83.100.230 permitting transfers to the general fund violated article II, section 19, as well as article VII, section 5, of the Washington Constitution. A statute is presumed constitutional, however, and the challenging party must "prove that the statute is unconstitutional beyond a reasonable doubt." *School Dists.' Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605, 244 P.3d 1 (2010). The burden faced by the challenging party is heavy. Courts will not "'strike a duly enacted statute unless fully convinced, after a searching legal analysis, that the statute violates the constitution.'" *Id.* at 606 (quoting *Island Cnty. v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998)).

Questions of law and summary judgment rulings are reviewed de novo. *Schroeder v. Excelsior Mgmt. Grp. LLC*, 177 Wn.2d 94, 104, 297 P.3d 677 (2013). In addition, an appellate court may affirm a summary judgment order on any ground supported by the record. *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989). A reconsideration motion is reviewed for abuse of discretion. *Rivers v. Wash. State Conf. of Mason Contractors*, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002).

### B. The Court Should Affirm The Dismissal Of The Estate's Claims Without Reaching The Merits

The Court should not reach the merits of whether the 2008 amendment to RCW 83.100.230 or the June 2009 transfer was improper.

First, the Estate's action was untimely under the applicable statute of limitations. Second, the Estate lacks standing. Third, the Estate's challenge to a long-past transfer is moot. Fourth, the separation of powers doctrine should prevent the Court from considering political and policy questions concerning the prudence of the Legislature's balancing of revenues and expenditures. Therefore, the order dismissing the action filed by the Estate should be affirmed, but without reaching the merits.

### 1. Mr. Wall and the Estate filed their lawsuit after the two-year limitation period in RCW 4.16.130 expired.

Mr. Wall filed this action on June 8, 2012. CP at 336. The Estate joined the action in the amended complaint, and thus first asserted a claim against State Respondents on October 11, 2012. CP at 2 (Docket No. 16), 14-25. The fund transfer at the core of this dispute occurred on June 9, 2009. CP at 65; Br. of Appellants at 1-2 ("Did the trial err in ruling that the Legislature's diversion of $67 million from the Education Legacy Trust Account to the State General Fund in 2009 was permissible under both Article VII, Section 5 and Article II, Section 9 [sic] of the Washington Constitution."). The trial court should have applied the two-year limitation period in RCW 4.16.130 and dismissed this action as untimely.

RCW 4.16 contains various statutes of limitations for civil actions. No statute of limitations in that chapter expressly applies to an action that alleges a "diversion" of funds by the State Treasurer, pursuant to legislative direction, between two statutory accounts. If a limitation

period is not otherwise specified, the two-year limitation period provided by RCW 4.16.130 applies: "An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued."

Claims challenging an act or omission of a government official traditionally have fallen within this two-year limitation period. 15A WASH. PRAC., HANDBOOK CIVIL PROCEDURE § 5.22 at 131 (2013-2014 ed.). The Court of Appeals, for example, recently held that RCW 4.16.130 barred a negligence claim filed in 2010 against the Department of Transportation alleging that it failed to follow the state hydraulic code when installing angled bridge piers in 1986. *Wolfe v. Dep't of Transp.*, 173 Wn. App. 302, 306, 293 P.3d 1244, *rev. denied*, 177 Wn.2d 1026 (2013); *see also Thompson v. Wilson*, 142 Wn. App. 803, 812-13, 175 P.3d 1149 (2008) (RCW 4.16.130's two-year limitation period applies to judicial review of coroner's determinations); *Unisys Corp. v. Senn*, 99 Wn. App. 391, 397, 994 P.2d 244 (2000) (RCW 4.16.130's two-year limitation period applies to claim that the Washington Life and Disability Insurance Guaranty Association failed to assure performance of contractual obligations of insolvent insurer).

Here, the Estate objects to a $67 million transfer by the State Treasurer. That claim challenges an act of a public official and thus falls squarely within the RCW 4.16.130's two-year limitation period. Because Mr. Wall failed to file this action until nearly three years after the June 2009 transfer, the trial court should have held RCW 4.16.130 barred it.

The trial court instead concluded that the Estate's action was timely because either a three-year limitation period applies or the action was filed within a "reasonable" time under the Uniform Declaratory Judgment Act (UDJA), RCW 7.24. CP at 162. The trial court erred.

The Estate relied below on the three-year limitation period in RCW 4.16.080(2). CP at 112-14. That statute applies to "[a]n action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated." The three-year limitation period in RCW 4.16.080(2) "has generally been applied to torts and tort-like claims." *Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 837, 991 P.2d 1126 (2000).

The Estate's claims are neither torts nor tort-like claims. In the amended complaint, the Estate alleged no injury to personal property or to the person or rights of another. Rather, it merely claimed to "have an interest in the proper appropriation of Washington estate tax receipts for the purposes intended by the Legislature in enacting the tax."[9] CP at 17 (¶ 4.3). Later, in response to the State Respondents' summary judgment

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[9] When asked during discovery to describe the actual harm or injury it had suffered, the Estate did not allege any actual injury or harm, but responded:

> I feel a deep commitment to constitutional fidelity by the branches of government. Here, that faith has been breached by the impermissible amendment to taxing legislation. Our State Constitution does not condone "bait and switch" where a tax is passed for a stated purpose only to have that purpose changed unlawfully by the Legislature.

CP at 53, 55. A breach of one's faith in the branches of government surely is not the type of injury contemplated by RCW 4.16.080(2).

motion, Sharon A. Jack (a co-personal representative of the Estate) submitted a declaration stating: "It is a violation of the duty to my sister and me *diverting taxes we paid* to some unknown general purpose when the law that was passed required that they be restricted to an educational trust fund." CP at 107 (¶ 5) (emphasis added). But not a single penny of the estate taxes paid by the Estate possibly could have been "diverted" from the education legacy trust account to the general fund because Mr. Jack died on September 9, 2010, and his estate did not pay estate taxes to the State until May 31, 2011, well after the challenged transfer occurred in June 2009.[10] CP at 53-54.

The core of the Estate's allegation is not that it has suffered any actual injury or harm, but that it believes the State Treasurer, despite the Legislature's direction, should not have transferred $67 million from the education legacy trust account into the general fund in June 2009. That is a claim challenging an act of a government official governed by the two-year limitation period in RCW 4.16.130, not the three-year limitation period in RCW 4.16.080(2) that applies to tort and tort-like claims.

The Estate argued to the trial court that "[w]hen faced with the question of diversion of funds by government belonging to a 'special fund,' courts routinely apply a three-year statute of limitations." CP at

[10] Even if the Estate had paid estate taxes prior to June 9, 2009, any claim that such taxes were "diverted" to the general fund would be pure speculation. The Estate concedes that "the funds transferred from the Education Legacy Trust Account to the General Fund on June 9, 2009 cannot be traced to a particular source." Br. of Appellants at 11 (citing CP at 64-66). From April 2008 through May 2009, cigarette tax revenues and investment earnings contributed more than enough funds ($98.96 million and $10.92 million respectively) to cover the entire $67 million transfer. CP at 104 (¶ 3).

113 (citing *Quaker City Nat'l Bank of Philadelphia v. City of Tacoma*, 27 Wash. 259, 67 P. 710 (1902), and *Amende v. Bremerton*, 36 Wn.2d 333, 217 P.2d 1049 (1950)). The Estate misstated the holdings of *Amende* and *Quaker City*, which involved claims against cities that failed to repay bond or warrant holders. Unlike the Estate, the plaintiffs in both cited cases sought to recover money. *Amende*, 36 Wn.2d at 334; *Quaker City*, 27 Wash. at 260. The Court held that "[a]ctions *seeking recovery of money* alleged to be wrongfully diverted from special funds, are subject to [RCW 4.16.080(2)]." *Amende*, 36 Wn.2d at 340 (emphasis added) (citing *Quaker City*). But here, the Estate seeks to vindicate its faith in the government rather than to recover money.[11] The three-year limitation period in RCW 4.16.080(2), therefore, does not apply.[12]

Finally, with respect to the UDJA, the Estate asserted it needed to bring its claim only within a reasonable time. CP at 114-15. "What constitutes a reasonable time under the UDJA is determined by analogy to the time allowed for ... a similar [action] as prescribed by statute, rule of

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[11] The Estate also cited *Trimen Development Co. v. King Cnty.*, 124 Wn.2d 261, 276, 877 P.2d 187 (1994), in support of applying a three-year limitation period. CP at 113. *Trimen* is inapplicable as it too involved a refund claim and thus, unlike this action, was an action to recover money.

[12] Even if the three-year limitation period provided by RCW 4.16.080(2) applied, the trial court nonetheless should have dismissed this action. The Estate first asserted a claim against the State Respondents on October 11, 2012. CP at 2 (Docket No. 16), 14-25. Thus, the Estate did not file its claim until three years and 124 days after the June 9, 2009, transfer. The Estate may argue that its claim relates back to June 8, 2012, the date Mr. Wall filed the initial complaint. But the purpose of CR 15(c) "is to permit amendment provided the defendant is not prejudiced and has notice." *Beal v. City of Seattle*, 134 Wn.2d 769, 782, 954 P.2d 237 (1998). *Here, no proper plaintiff filed a timely action against the State Respondents.* As such, to allow the Estate's untimely claim to relate back to an action filed by a plaintiff who lacked standing to bring the action would prejudice the State Respondents and should not be permitted.

court, or other provision." *Schreiner Farms, Inc. v. Am. Tower, Inc.*, 173 Wn. App. 154, 159, 293 P.3d 407 (2013) (bracket in original; internal quotation marks omitted). The claim raised here, as explained above, compares to those governed by RCW 4.16.130. Consequently, the trial court should have concluded that a two-year limitation period is reasonable and dismissed this action.

In the alternative, the Estate asserted that "[a]rguably no statute of limitations applies." CP at 115. As support, it cited *Automobile United Trades Organization v. State*, 175 Wn.2d 537, 542, 286 P.3d 377 (2012), for the proposition that "challenges to unconstitutional legislation have never been subject to a limitations period under the UDJA." CP at 114-15. In *Automobile United*, the Court declined to apply laches or a reasonable time limitation to bar a constitutional challenge to the hazardous substance tax that had been in place for 22 years. *Id.*, 175 Wn.2d at 541-43.

The rule announced in *Automobile United* does not negate the application of any statute of limitations or reasonable time limitation to an action challenging the June 2009 transfer. For example, an action filed in 2025 challenging the June 2009 transfer unquestionably would be untimely and should be barred. The proper reading of *Automobile United* is that laches does not bar an otherwise timely action merely because the Legislature long ago passed the statute being challenged on constitutional grounds. Thus, if the Legislature had instead amended RCW 83.100.230 in 2008 to authorize transfers to the general fund without limiting such

transfers to the 2007-09 biennium, and such a transfer occurred in 2024, that the statute had been amended 16 years prior to the 2024 transfer would not bar a *proper* plaintiff from *timely* challenging the 2024 transfer in 2025. But the argument that no statute of limitations applies to the 2009 transfer should be rejected.

In sum, the trial court should have dismissed this action on the basis that it was barred by the applicable statute of limitations.

**2. The Estate lacks standing.**

The trial court also should have dismissed the Estate for lack of standing. Standing is a threshold issue that is reviewed de novo. *In re Estate of Becker*, 177 Wn.2d 242, 246, 298 P.3d 720 (2013). Without standing, a court lacks jurisdiction to consider a party's claims. *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986).

Although the trial court dismissed Mr. Wall for lack of standing, it did not grant State Respondents' motion with respect to the Estate. CP at 152. For the trial court, the crucial difference was that the Estate "paid this Estate Tax. ... I find that the heightened connection ... nexus ... between those who have paid the Estate Tax is a line I'm going to draw on standing." CP at 163 (ellipses in original). However, because the Estate did not pay estate tax until almost two years after the June 2009 transfer, CP at 54, that is not a material factor upon which the trial court should have concluded the Estate had standing.

The Estate cited the UDJA as the jurisdictional basis for its claims. CP at 15 (¶ 2.1). "A challenge to the constitutionality of a statute by means of a declaratory judgment action must be justiciable before it will be considered." *Snohomish Cnty. v. Anderson*, 124 Wn.2d 834, 840, 881 P.2d 240 (1994). The elements of a justiciable controversy under the UDJA are:

> (1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

*Id.*; *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (internal quotation marks omitted). "Inherent in these four requirements are the traditional limiting doctrines of standing, mootness, and ripeness[.]" *To-Ro Trade Shows*, 144 Wn.2d at 411. Standing primarily relates to the third justiciability element. *See id.* at 411-12; *see also Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 203, 11 P.3d 762 (2000) (noting that standing tends to overlap justiciability requirements under the UDJA).

The UDJA provides that "[a] person ... whose rights, status or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder." RCW 7.24.020. To have standing under the UDJA, a party must satisfy

two requirements. First, "the interest sought to be protected is arguably within the zone of interests to be protected or regulated by statute or constitutional guarantee in question." *Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004) (internal quotation marks omitted). Second, the challenged action must have caused economic or other "injury in fact" to the party seeking standing. *Id.* The party challenging the law must also demonstrate that the alleged injury can be redressed through court relief. *See, e.g., High Tide Seafoods*, 106 Wn.2d at 702 (1986) ("for a plaintiff to receive 'standing' to bring a lawsuit, it must allege a personal injury fairly traceable to the challenged conduct and likely to be redressed by the requested relief").

In *To-Ro Trade Shows*, To-Ro filed an action under the UDJA challenging the constitutionality of a statute under which unlicensed dealers could not display their vehicles at trade shows in Washington. The Court upheld an order dismissing To-Ro's action, agreeing that To-Ro, a trade show producer, failed to meet the third justiciability requirement:

> To-Ro did not show that its "interests" in the dispute over DOL's enforcement of the dealer licensing statute were "direct and substantial" as opposed to "potential, theoretical, abstract or academic." Under the Act, "[o]ne may not ... challenge the constitutionality of a statute unless it appears that he will be *directly* damaged in person or in property by its enforcement."

*Id.* at 411-12 (citations omitted, emphasis in original).

Here, the Estate did not allege any direct damage or injury in fact resulting from the challenged transfer. *See* CP at 14-15 (¶ 1.2). Nor did it allege any involvement with the educational system or that it was harmed

by a presumed loss in available education funding. The Estate did not even allege that the State spent less money on education as a result of the transfer.[13] Rather, the Estate claimed "as an estate taxpayer, [to] have an interest in the proper appropriation of Washington estate tax receipts for the purposes intended by the Legislature in enacting the tax." CP at 17 (¶ 4.3). The Estate later expanded on that interest through Ms. Jack's declaration alleging that "diverting" estate taxes paid by the Estate to "some unknown general purpose" violated a duty owed to her sister and her. *See* CP at 107 (¶ 5). But the violation of duty Ms. Jack decried could not have occurred because the Estate did not pay estate tax to the State until nearly two years *after* the June 2009 transfer. CP at 54.

The trial court agreed with State Respondents that Mr. Wall lacked standing. CP at 152. Mr. Wall neither alleged nor established that he was damaged in person or in property by the 2008 amendment to RCW 83.100.230 or by the June 2009 transfer. Rather, like the Estate, Mr. Wall merely alleged an interest in the proper appropriation of Washington estate tax and a "deep commitment to constitutional fidelity by the branches of government." CP at 17 (¶ 4.3), 53. That allegation, as the trial court properly concluded, was inadequate to establish the required harm to establish standing. And Mr. Wall did not appeal the ruling.

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[13] The State spent between $13.6 billion and $15 billion annually on education from the general fund during fiscal years 2006 through 2012. CP at 68 (¶ 6). The Estate offered no evidence establishing that the challenged transfer in any way decreased funding of education. Instead, it merely submitted Sharon Jack's declaration that asserted, without supporting evidence, that the transferred money was "devot[ed] to other general fund purposes, whatever those may be[.]" CP at 107.

The trial court should have dismissed the Estate as well. The one difference between Mr. Wall and the Estate for purposes of standing is that Mr. Wall did not pay any estate tax. But the Estate's payment of tax almost two years after the June 2009 transfer is not a reason to conclude that it was directly or substantially harmed. Like Mr. Wall, the harm alleged by the Estate was, at best, "potential, theoretical, abstract, or academic." *See To-Ro Trade Shows*, 143 Wn.2d at 411-12.

The Estate, having suffered no direct damage or injury in fact, argued to the trial court that it had general taxpayer standing.[14] CP at 117. The Estate relied on *State ex rel. Boyles v. Whatcom Cnty. Superior Court*, 103 Wn.2d 610, 694 P.2d 27 (1985), which it quoted for the proposition that the Court "recognizes litigant standing to challenge governmental acts on the basis of status as a taxpayer." CP at 118 (quoting *State ex rel. Boyles*, 103 Wn.2d at 614). In turn, *Boyles* cited *Calvary Bible Presbyterian Church v. Bd. of Regents*, 72 Wn.2d 912, 917-18, 436 P.2d 189 (1975). *Calvary Bible* demonstrates why the Estate lacks standing.

In *Calvary Bible*, two churches and their ministers sued the Board of Regents of the University of Washington seeking an injunction restraining the Board from offering any course "dealing with the historical, biographical, narrative, or literary features of the bible." *Id.* at 914. The trial court dismissed the churches on the ground they lacked

[14] A prerequisite to bring such an action is that "a taxpayer first request action by the Attorney General and refusal of that request before action is begun by the taxpayer." *State ex rel. Boyles v. Whatcom Cnty. Superior Court*, 103 Wn.2d 610, 614, 694 P.2d 27 (1985). Here, neither Mr. Wall nor the Estate satisfied that condition. Only their attorneys made a request to the Attorney General. CP at 21-23.

standing to sue as taxpayers. *Id.* at 915. The Court affirmed the dismissal of the churches.

The Court first explained:

> The traditional approach is that a taxpayer must show that he has a unique right or interest that is being violated, in a manner special and different than the rights of other taxpayers, before he may maintain an action against the state or one of its agencies, to test the constitutionality of a statute or an administrative policy.

*Id.* at 917; *accord Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 6, 802 P.2d 784 (1991). The Court also noted its responsibility to protect the other branches of government from legal actions brought by those whose rights are not affected. *Calvary Bible*, 72 Wn.2d at 917.

Next, the Court frankly acknowledged some inconsistency on its part in determining standing. *Id.* Notwithstanding that inconsistency, the Court stated: "In one field, however, it is rather certain that the plaintiff must at least be a taxpayer." *Id.*; *see also Dick Enters., Inc. v. Metro. King Cnty.*, 83 Wn. App. 566, 573, 922 P.2d 184 (1996) (disappointed bidder had no taxpayer standing where it failed to show "it pays the type of taxes funding the project").

Here, since the Estate did not pay estate tax until May 2011, none of the tax it paid could possibly have been included in the June 2009 transfer. The Estate thus failed to establish that it had a unique right or interest that was violated, in a manner that is different from the rights of other taxpayers. *See Am. Legion*, 116 Wn.2d at 8 (holding, in an action seeking to challenge a city's use of gambling taxes, that the plaintiff

lacked standing where it provided no argument demonstrating it had a unique right or privilege different than other taxpayers that was violated by the city's levy and subsequent use of the gambling tax). Consequently, although the threshold to show "injury" under the doctrine of taxpayer standing is relatively low, the Estate failed to meet it.

In sum, the trial court should have granted State Respondents' motion to dismiss the Estate for lack of standing.

**3. This lawsuit is moot.**

The trial court, without explanation, rejected State Respondents' argument that the Estate's request for relief is moot and thus declined to dismiss on that ground. CP at 152. The trial court erred.

The Legislature amended RCW 83.100.230 in 2008 and, the following year, it directed the transfer of $67 million from the education legacy trust account into the general fund. Laws of 2009, ch. 564, § 1702. The Legislature limited the transfer authority granted in 2008 to the 2007-09 biennium. Laws of 2008, ch. 329, § 924.[15] The 2007-09 biennium has long since passed, as have the 2009-11 and 2011-13 biennia. The budget and supplemental budget passed during the 2007-09 biennium, and the expenditures undertaken pursuant thereto, cannot be undone. Therefore, the courts no longer can provide effective relief.

[15] In 2010, the Legislature extended the authority to make such transfers to the 2009-11 biennium, Laws of 2010, 1st Sp. Sess., ch. 37, § 953, but it never exercised that authority. *See* CP at 65 (¶ 3).

Furthermore, the transfer of $67 million from the education legacy trust fund into the general fund did not impact the State's constitutional duty "to make ample provision for the education of all children." *McCleary v. State*, 173 Wn.2d 477, 514, 269 P.3d 227 (2012). That duty exists regardless of whether education legacy trust account funds or general funds are appropriated to meet it. Thus, granting the relief requested by the Estate—ordering the State Treasurer to transfer $67 million from the general fund into the education legacy trust account—would have no impact on education spending. At most, it would mean that the Legislature would appropriate $67 million more from the education legacy trust account on education and $67 million less from the general fund on education.

"A case is moot if a court can no longer provide effective relief." *SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 602, 229 P.3d 774 (2010); *see also Cooper v. Dep't of Insts.*, 63 Wn.2d 722, 723-24, 388 P.2d 925 (1964) (dismissing as moot a challenge to an expired proviso that lowered the maximum permissible income for admission to a veterans' home). In *SEIU Healthcare*, the petitioner sought an order requiring the Governor to submit a budget that included funding for a 2009-11 collective bargaining agreement. *SEIU Healthcare*, 168 Wn.2d at 602. The Legislature had adopted and the Governor already had signed the 2009-11 biennial budget. *Id.* at 603. The Court held that no relief was possible: "This lapse of time has foreclosed the opportunity for

meaningful relief and rendered the writ sought by SEIU ineffective." *Id.* Accordingly, the Court held that the petition was moot. *Id.* at 604.

Here, the transfer of funds from the education legacy trust account to the general fund, and their appropriation, cannot be undone. As of June 9, 2014, five years have passed since the State Treasurer transferred the funds. The transferred funds were spent several biennia ago, and the authorization to spend them expired long ago. *See* Const. art. VIII, § 4 (appropriations are temporary in nature). As such, the lapse of time has foreclosed the opportunity for meaningful relief. "'When an appeal is moot, it should be dismissed.'" *State v. Deskins*, 180 Wn.2d 68, 80, 322 P.3d 780 (2014) (quoting *Klickitat Cnty. Concerned Citizens Against Imported Waste v. Klickitat Cnty.*, 122 Wn.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993)). The Estate's action is moot and the trial court should have dismissed it.

**4. Separation of powers prevents the Court from granting the relief the Estate seeks.**

The separation of powers doctrine "serves mainly to ensure that the fundamental functions of each branch remain inviolate." *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009). Political and legislative policy questions are not justiciable. *Nw. Animal Rights Network v. State*, 158 Wn. App. 237, 243-45, 242 P.3d 891 (2010); *Nw. Greyhound Kennel Ass'n, Inc. v. State*, 8 Wn. App. 314, 319, 506 P.2d 878 (1973). Legislative decisions about how to fund various obligations involve political questions. *See Wash. Fed'n of State Employees v. State*, 107 Wn.

App. 241, 246, 26 P.3d 1003 (2001) (whether Public Employees Retirement System plan should be declared a trust does not present a justiciable controversy, but rather, is a matter for the Legislature).

Here, a court order requiring the State Treasurer to transfer money from the general fund to the education legacy trust account would violate the separation of powers doctrine. *See, e.g., Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 390, 932 P.2d 139 (1997) (request for order requiring Legislature to appropriate funds so that Department of Ecology could more timely process water permits would violate separation of powers); *see also SEIU Healthcare*, 168 Wn.2d at 602 (acknowledging important separation of powers problem with compelling Governor to include in her budget pay increases for in-home personal care providers who contract with the state). In *Hillis*, the Court explained: "While it may be very tempting for this Court to order the Legislature to appropriate a reasonable amount of funds ... so that water rights applicants could have their requests for water decided in a timely manner, such action would violate the separation of powers doctrine." *Id.* at 389-90.

The State Constitution vests in the Legislature the responsibility to write budgets. *See* Const. art. VIII, § 4 (requiring an "appropriation by law" to make payments out of the state treasury). Legislative decisions about how to appropriate funds in various accounts to spend on education involve complicated, contentious, and difficult matters such as federal funding, competing priorities, accounting practices, and other legislative, executive, administrative, and policy considerations. For example, the

Legislature in 2007 determined that $215 million should be transferred into the education legacy trust account from the general fund. CP at 104 (¶ 5). The following year, it amended RCW 83.100.230 to authorize transfers in the opposite direction during the 2007-09 biennium. And, pursuant to that authority, the Legislature in 2009 determined that $67 million should be transferred into the general fund from the education legacy trust account. Such decisions are for the Legislature, not the courts. This action, therefore, should be dismissed on separation of powers grounds.[16]

### C. If The Merits Are Reached, The Court Should Conclude That Article VII, Section 5 Does Not Apply To The Estate Tax

Faced with arguably conflicting lines of authority, the trial court held that "Article VII, Section 5 of the Washington Constitution applies to taxes other than property taxes, including estate taxes[.]" CP at 152. The trial court declined to follow three cases decided by the Court relatively soon after adoption of the Washington Constitution, each of which expressly hold that article VII, section 5 applies only to taxes on property. *See* CP at 164; CP at 86-87 (relying on *State v. Clark*, 30 Wash. 439, 71 P. 20 (1902); *State v. Sheppard*, 79 Wash. 328, 140 P. 332 (1914); and *Standard Oil Co. v. Graves*, 94 Wash. 291, 162 P. 558 (1917), *rev'd on*

[16] That a party asserts a constitutional challenge is not a basis to refuse to dismiss on separation of powers grounds. For example, in *State ex rel. Washington Toll Bridge Authority v. Yelle*, 61 Wn.2d 28, 33, 377 P.2d 466 (1962), the Court declined to consider an article II, section 19 challenge based on the enrolled-bill rule (a rule founded in separation of powers concerns). *See Brown*, 165 Wn.2d at 722-24 (discussing enrolled-bill rule and cases in which the Court has refused to consider constitutional challenges to bills).

*other grounds*, 249 U.S. 389, 39 S. Ct. 320, 63 L. Ed. 662 (1919)). Instead, it relied on several recent cases in which the Court applied article VII, section 5 to taxes other than property taxes, but none of which addressed the threshold issue of whether article VII, section 5 even applied at all. *See* CP at 164; CP at 127-30 (relying on *Okeson v. City of Seattle*, 150 Wn.2d 540, 78 P.3d 1279 (2003); *Lane v. City of Seattle*, 164 Wn.2d 875, 194 P.3d 977 (2008); *Sheehan v. Cent. Puget Sound Reg'l Transit Auth.*, 155 Wn.2d 790, 123 P.3d 88 (2005); and *Estate of Hemphill v. Dep't of Revenue*, 153 Wn.2d 544, 105 P.3d 391 (2005)).

The trial court explained why it chose to follow the more recent cases:

> I'm persuaded in the language and holdings of the newer cases that, to the extent there is uncertainty, I find the Court is clearly applying Article VII, Section 5 to taxes other than property taxes. Perhaps this is the case where they will make that clear, perhaps not, but I'm going to find that Article VII, Section 5 does apply to this case.

CP at 164. But where the Court "expresses a clear rule of law ... [it] will not—and should not—overrule it sub silentio." *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280, 208 P.3d 1092 (2009) (citing *State v. Studd*, 137 Wn.2d 533, 548, 973 P.2d 1049 (1999) (declining to overrule binding precedent sub silentio)). The Court's early cases express a clear rule of law: article VII, section 5 applies only to property taxes. The early cases have not been expressly overruled and thus remain good law. The trial court should have applied them and held that article VII, section 5 does not apply to the estate tax.

Article VII of the 1889 Constitution contained nine sections, of which section 5 is the basis for the Estate's claims. It has remained unchanged and provides: "No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied." Const. art. VII, § 5. In the 30 years following the Washington Constitution's adoption, the Court issued three opinions addressing whether article VII, section 5 applies to taxes other than property taxes. Each time, the Court held that article VII, including section 5, *applies only to taxes on property.*[17]

The Court first considered whether article VII, section 5 applied to an excise tax in *State v. Clark*, 30 Wash. 439, 71 P. 20 (1902).[18] In *Clark*, the Court rejected a challenge to Washington's first inheritance tax based in part on article VII, section 5. The Court described the estate's argument based on section 5 and two other sections of article VII as "not tenable" because the inheritance tax was not a tax on property:

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[17] Professor Cooley, a preeminent authority on taxation, has stated that constitutional provisions—like article VII, section 5—that require a law imposing a tax to state the object to which it shall be applied, apply only to property taxes: "[This type of] provision applies only to annually recurring taxes, and taxes imposed generally on the entire property of the state, and is not applicable to succession taxes upon legacies[.] ..." 2 Thomas M. Cooley, *The Law of Taxation* 1106-07 (4th ed. 1924).

[18] Prior to *Clark*, the Court discussed article VII, section 5 in four opinions. In *Mason v. Purdy*, 11 Wash. 591, 40 P. 130 (1895), the Court questioned whether the constitutional provision even applies to local property tax levies. *Id.* at 594. But it decided not to resolve that issue because the local levy at issue satisfied the requirements of article VII, section 5. *Id.* at 594-95. In *Eidemiller v. City of Tacoma*, 14 Wash. 376, 44 P. 877 (1896), the Court followed *Mason v. Purdy* in a property tax case. *Id.* at 380-81. And in *Sheldon v. Purdy*, 17 Wash. 135, 49 P. 228 (1897), and *State ex rel. Latimer v. Henry*, 28 Wash. 38, 68 P. 368 (1902), the Court again addressed article VII, section 5 in cases involving property taxes.

> The objection urged here, that the statute is in conflict with §§ 1, 2, and 5 of article 7 of the state constitution, relating to taxation, *is not tenable*, because the charge made upon the passing of the estate is not a tax on property. It is an impost or excise on the right to pass the estate and the privilege of the devisee to take. *That it is not within the provision relating to the tax on property is well settled by practically unanimous authority.*

*Id.* at 445 (emphasis added). *Clark* is binding precedent and directly on point.[19] It should have controlled the Estate's claim based on article VII, section 5.

Twelve years later, in *State v. Sheppard*, 79 Wash. 328, 140 P. 332 (1914), the Court again held that article VII, section 5 applies only to property taxes. In *Sheppard*, a criminal defendant claimed that a peddlers' licensing statute violated article VII, section 5 by failing to state distinctly the object to which the license taxes collected under the statute would be applied. *Id.* at 329. The Court styled the controlling question as: "Does [article VII, section 5] have reference to a tax of this nature or only to a tax upon property?" *Id.* Citing and discussing *Clark*, the Court answered that the provisions of article VII have reference only to a tax on property. *Id.* at 329-30. The Court further explained:

> The only taxes mentioned in article 7, or elsewhere in the constitution are property taxes, and from the reading of that article as a whole, *we are of the opinion that the limitation here sought to be invoked is no more applicable to this tax than the equality rule is applicable to the inheritance tax.* This tax, like the inheritance tax, finds no mention in the constitution, and liked the inheritance tax, is

[19] The distinction between an inheritance tax and an estate tax is immaterial in determining the nature of the tax. *In re Sherwood's Estate*, 122 Wash. 648, 657-79, 211 P. 734 (1922). An estate tax, like other succession taxes, is a tax on the *transfer* of property and thus is an excise tax, not a tax on property. *In re Lloyd's Estate*, 53 Wn.2d 196, 199, 332 P.2d 44 (1958).

> exacted by virtue of the inherent power of the legislature, unrestrained, we think, by any constitutional rule of the exercise of that power. ...

*Id.* at 330 (emphasis added).

Three years later, in a challenge to an oil inspection tax, the Court once again addressed a taxpayer's argument that article VII, section 5 applies to taxes other than the property tax. *Standard Oil Co. v. Graves*, 94 Wash. 291, 162 P. 558 (1917), *rev'd on other grounds*, 249 U.S. 389, 39 S. Ct. 320, 63 L. Ed. 662 (1919).[20] The Court summarily rejected the argument because the oil inspection tax was not a property tax. *Id.* at 304. The Court reasoned: "It has become the *settled doctrine* of this state that the provisions of the state constitution, found in article 7, relative to taxation, refer to taxes upon property, and have no application to ... excise taxes." *Id.* (citations omitted; emphasis added).[21]

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[20] The United States Supreme Court concluded that the tax violated the federal Commerce Clause. *Standard Oil Co.*, 249 U.S. at 396-97.

[21] The Court has repeatedly held that other sections in article VII are limited to taxes on property. *See, e.g., Fleetwood v. Read*, 21 Wash. 547, 554-55, 58 P. 665 (1899) (sections 1, 2, and 9 of article VII do not apply to a city license tax because a tax on occupation is not a tax on property); *Garfinkle v. Sullivan*, 37 Wash. 650, 656, 80 P. 188 (1905) ("a tax on trades, professions, and occupations [is] not a tax on property which [falls] within the inhibition imposed by the constitutional provisions in relation to uniformity of taxation"); *State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 203-07, 117 P. 1101 (1911) (uniformity provisions of article VII are inapplicable to workers' compensation contributions); *City of Seattle v. King*, 74 Wash. 277, 279, 133 P. 442 (1913) (article VII has "no application to license taxes upon occupations but relate[s] only to taxes levied upon property"); *McQueen v. Kittitas Cnty.*, 115 Wash. 672, 676-77, 198 P. 394 (1921) (sections 1 and 2 of article VII relate to the taxation of property and thus do not apply to license tax on dogs); *State v. Hart*, 125 Wash. 520, 523, 217 P. 45 (1923) (article VII, section 2 is inapplicable because tax on distributors of liquid fuels "is an excise tax as distinguished from a property tax"); *Ajax v. Gregory*, 177 Wash. 465, 473-74, 32 P.2d 560 (1934) (article VII, section 6 is inapplicable to liquor license fees); *Ernst v. Hingeley*, 11 Wn.2d 171, 182-83, 118 P.2d 795 (1941) (article VII, section 6 is inapplicable to unemployment taxes).

Other state courts interpreting constitutional provisions similar to article VII, section 5 have also held that they apply only to taxes on property. *See, e.g., Arizona*

Thus, in three cases that have not been overruled, the Court has clearly expressed that article VII, section 5 applies only to property taxes. This "settled doctrine" should not be cast lightly aside, particularly given that the Court first expressed it just 13 years after the adoption of the Washington Constitution. *See generally Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 120, 937 P.2d 154, 943 P.2d 1358 (1997) ("State cases ... from the time of the constitution's ratification, rather than recent case law, are more persuasive in determining whether the state constitution gives enhanced protection in a particular area."); *accord Anderson v. King Cnty.*, 158 Wn.2d 1, 61, 138 P.3d 963 (2006) (Alexander, C.J., concurring). Because the estate tax is not a tax on property, the trial court should have held that article VII, section 5 does not apply to it.

The trial court, however, declined to follow *Clark*, *Sheppard*, and *Standard Oil*, applying instead several more recent cases in which the Court applied or mentioned article VII, section 5 with respect to taxes other than property taxes. But none of those cases considered the threshold question of whether article VII, section 5 even applied.[22]

The first such case is *Okeson v. City of Seattle,* 150 Wn.2d 540, 78 P.3d 1279 (2003). *Okeson* held that a municipal ordinance imposing a tax

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*Farm Bureau Fed'n v. Brewer*, 226 Ariz. 16, 243 P.3d 619, 627 (Ct. App. 2010) (holding that constitutional provision providing that "[e]very law which imposes, continues, or revives a tax shall distinctly state the tax and the objects for which it shall be applied" applies only to property taxes); *Solberg* v. *Davenport,* 211 Iowa 612, 232 N.W. 477, 479-80, 481-83 (1930) (holding the same).

[22] The Estate's brief does not discuss *Clark*, *Sheppard*, or *Standard Oil*. Rather, the Estate simply asserts that article VII, section 5 applies to all taxes and that the estate tax is a tax. Br. of Appellants, at 12-13.

for streetlights on ratepayers violated article VII, section 5 because it did not explicitly state that it imposed a tax or state the object to which such a tax would be applied. *Id.* at 558.[23] *Lane v. City of Seattle*, 164 Wn.2d 875, 194 P.3d 875 (2008), followed *Okeson* with respect to Seattle's attempt to impose a tax on ratepayers for fire hydrants. But *Lane* rejected a challenge to a tax on Seattle Public Utility to pay for fire hydrants, reasoning that *Okeson* held "simply that cities must have statutory authority to impose taxes and must enact them properly as 'taxes.'" *Id.* at 887. In neither *Okeson* nor *Lane* did the Court overrule, explain, or discuss *Clark*, *Sheppard*, and *Standard Oil*, or their clear holdings that article VII, section 5 applies only to property taxes.

The Court in *Sheehan v. Central Puget Sound Regional Transit Authority,* 155 Wn.2d 790, 123 P.3d 88 (2005), also briefly addressed article VII, section 5 without discussing the provision's historical interpretation. In rejecting a challenge to an ordinance implementing a motor vehicle excise tax to pay for public transit, the Court commented that the constitutional provision "would render unconstitutional actions taken to divert taxes assessed for those purposes into some wholly unrelated project or fund." *Id.* at 804. The Court did not find, however, that spending funds from the motor vehicle excise tax fund on public transit violated article VII, section 5. *Id.* And once again, it did not

[23] Unfortunately, neither party in *Okeson* called to the Court's attention the cases holding that article VII, section 5 applies only to property taxes. See Br. of Appellants, *Okeson*, at 17-18, 27-28, 34-37; Br. of Resp'ts, *Okeson*, at 30-32, 40-41; Appellants' Reply Br., *Okeson*, at 1-2. 10-17.

address the "settled doctrine" that article VII, section 5 applies only to property taxes.

*Okeson*, *Lane*, and *Sheehan* involved local taxes.[24] In 2005 and 2013, the Court mentioned article VII, section 5 in opinions involving excise taxes, specifically the former and the current state estate tax. In *Estate of Hemphill v. Department of Revenue*, 153 Wn.2d 544, 105 P.3d 391 (2005), after concluding that the former estate tax remained a "pickup" tax, the Court without analysis cited article VII, section 5 for the proposition that "[a] new tax burden can be created only by law that states such a purpose." *Id.* at 551. Thereafter, in *Clemency v. State*, 175 Wn.2d 549, 290 P.3d 99 (2012), the Court quoted a portion of article VII, section 5, but only to support the proposition that tax statutes must be construed in favor of the taxpayer and against the taxing power. *Id.* at 563. In neither *Hemphill* nor *Clemency* did the Court discuss its cases holding that article VII, section 5 applies only to property taxes.

Case law expressly holding that article VII, section 5 applies only to property taxes cannot be harmonized with case law applying article VII, section 5 to taxes other than property taxes. Consequently, one or the other line of cases should be overruled. *See In Re Bond Issuance of Greater Wenatchee Reg'l Events Ctr. Pub. Facilities Dist.*, 175 Wn.2d 788, 801 n.12, 287 P.3d 567 (2012) ("where cases conflict, the

[24] A significant difference between local taxes and state taxes is that the Legislature may not impose local taxes but vests in local governments the power to assess and collect taxes for local purposes. Const. art. XI, § 9. In contrast, the Legislature possesses plenary authority with respect to state taxes. *Wash. State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007).

responsibility of the court is to harmonize them or overrule one line or the other, and not simply ignore the conflict"). The settled rule of law expressed in the early cases is clear and unequivocal. The Court, when specifically asked in *Clark*, *Sheppard*, and *Standard Oil*, held that article VII, section 5 applies only to property taxes. Stare decisis requires "a clear showing that an established rule is incorrect and harmful before it is abandoned." *Lunsford v. Saberhagen Holdings,* 166 Wn.2d at 280 (citations omitted). No showing has been made that this State's "settled doctrine" expressed in *Clark*, *Sheppard*, and *Standard Oil* is either incorrect or harmful. Therefore, these cases are good law, and the trial court erred in applying article VII, section 5 to the estate tax.[25]

## D. Even If Article VII, Section 5 Did Apply, The June 2009 Transfer Would Not Violate That Provision

### 1. The Legislature possessed the plenary power to amend RCW 83.100.230 and add an additional object to the statute.

The trial court held that the Estate failed to prove that the June 2009 transfer violated article VII, section 5. CP at 315. The letter ruling on reconsideration explains the trial court's reasoning:

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[25] The "state distinctly the object" requirement of article VII, section 5 makes sense as applied to property taxes. The jurisdictions that may impose property tax levies include the state (the state levy for support of common schools), counties, county road districts, cities, fire protection districts, hospital districts, school districts, rural libraries, and many more districts. *See* RCW 82.52 (Levy of Taxes). Thus, the "state distinctly the object" requirement ensures that counties impose property taxes only for county purposes, hospital districts impose property taxes only for hospital purposes, and so on. The same assurance is not necessary for excise taxes because such taxes usually are deposited into the general fund and may be applied to any governmental obligation. *See Sheppard*, 79 Wash. at 331. The Legislature, of course, may voluntarily choose to limit an excise tax or statutory fund to specific purposes. But it always may later change its mind and alter or expand those purposes.

> The Court reaffirms its decision that the practical reach of Art. VII, Sec. 5 depends upon whether the tax and destination fund are statutorily-based or constitutionally-based. If the tax and destination are created by statute, the legislature has far more constitutional ability to alter the tax's destination. On the other hand, if the tax and destination are constitutionally-created, then the legislature's abilities are far more limited. ...
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> ...
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> ... [S]ince the education legacy trust account is statutorily-created, the legislature had plenary authority to legislatively alter the usage of the tax proceeds to include the state's general fund, provided that the alteration was properly passed by the legislature. To hold otherwise, would be to permit the act of a previous legislature to weaken the 2008 legislature's authority. ...
>
> Plaintiffs argue strongly that the Court's interpretation of Art. VII, Sec. 5 renders the provision meaningless. The Court disagrees. While admittedly far less potent under this Court's interpretation than that urged by Plaintiffs, Art. VII, Sec. 5 would still prevent the legislature, or perhaps the executive branch, from diverting tax process [sic] from one purpose to another unless the legislature properly passed legislation to accomplish it. In this case, for example, the appropriation in 2009 would have violated Art. VII, Sec. 5 but for the 2008 legislation changing the language of RCW 83.100.230.

CP at 308-10 (footnote omitted; underlining in original). If article VII, section 5 applies, the trial court correctly held that the Estate failed to prove a violation of that provision.

RCW 83.100.220 has remained unchanged since the Legislature created the current Estate and Transfer Tax Act in 2005. The statute always has provided that all receipts from the taxes collected under the Act must be deposited into the education legacy trust account. And undisputed evidence in the record establishes that all estate tax receipts have been deposited into that fund. CP at 68 (¶ 5).

The Legislature did, however, temporarily expand the permissible uses of the education legacy trust account. Initially, the account could be "used only for deposit into the student achievement fund and for expanding access to higher education through funding for new enrollments and financial aid, and other educational improvement efforts." RCW 83.100.230 (2005). The Legislature amended RCW 83.100.230, effective April 1, 2008, to permit transfers from the account to the general fund during the 2007-09 fiscal biennium. Laws of 2008, ch. 329, § 924.

The Estate argues that "any legislative action attempting to redirect or change the purpose of the [estate] tax would be unconstitutional." Br. of Appellants at 33. But the Estate ignores a fundamental tenet of state constitutional law, the Legislature's plenary power to enact and change laws, within the limits of the state and federal constitutions:

> It is a fundamental principle of our system of government that the legislature has plenary power to enact laws, except as limited by our state and federal constitutions. Each duly elected legislature is fully vested with this plenary power. *No legislature can enact a statute that prevents a future legislature from exercising its law-making power. That which a prior legislature has enacted, the current legislature can amend or repeal.* Like all previous legislatures, it is limited only by the constitutions. To reason otherwise would elevate enactments of prior legislatures to constitutional status and reduce the current legislature to a second-class representative of the people.

*Wash. State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007) (emphasis added; footnote omitted); *see also Belas v. Kiga*, 135 Wn.2d 913, 919, 959 P.2d 1037 (1998) ("The Legislature

possesses a plenary power in matters of taxation except as limited by the Constitution.").

The Court of Appeals recently addressed this fundamental tenet of constitutional law in the context of article VII, section 5. In *Washington State Hospital Association v. State*, 175 Wn. App. 642, 309 P.3d 534 (2013), it considered a challenge to a bill amending a funding statute. The court confirmed that a legislature cannot prevent a future legislature from amending the law:

> A legislature, here the 2010 legislature, cannot prevent a future legislature, here the 2011 legislature, from exercising its plenary power to enact laws, including the amendment or repeal of prior laws. And here, despite what might appear to have been legitimate expectations on the part of the Washington State Hospital Association (WSHA) to a continuing commitment to a funding scheme to maintain and increase state funds available for federal Medicaid matching money, that is all that occurred. The 2011 legislature changed the commitment made by the 2010 legislature.

*Id.* at 644.

In *Washington State Hospital Association*, similar to the situation here, the Legislature amended a statute to expand the permissible uses of a statutory fund. In 2010, the Legislature established a hospital assessment for deposit into the dedicated hospital safety net assessment fund to generate additional state funding for the Medicaid program to ensure federal matching funds at the 2009 reimbursement rate. *Id.* at 645. The 2010 legislation limited how the funds could be spent. *Id.* at 646. It further provided that the entire act would be invalid if monies were

otherwise disbursed. *See id.* Nonetheless, in 2011, the Legislature amended the subject statute to allow $199.8 million from the dedicated fund "to be expended in lieu of the state's general fund payments to hospitals from July 1, 2011 through June 30, 2013." *Id.* at 646.

The Washington State Hospital Association contended that the amendment violated article VII, section 5 by diverting the assessment funds to the general fund contrary to the purpose of the original enactment. *Id.* at 647. The court disagreed and held that the "action was within the plenary power of the 2011 legislature." *Id.* at 648. The court also reasoned that 2011 amendment still accomplished the purpose of the original act to maintain reimbursement rates at the 2009 level. *Id.* at 649.[26]

Here, for the Estate to prevail, article VII, section 5 would have to prohibit the Legislature, once it has enacted a tax, from ever amending the object to which that tax may be applied. But no language in article VII, section 5 expressly or implicitly prohibits the Legislature from changing the object to which a statutory tax may be applied. Thus, the 2005 Legislature neither did nor could prevent a future legislature from changing the object to which the estate tax may be applied. *See Wash. State Farm Bureau*, 162 Wn.2d at 290.

[26] The purpose of the original Estate and Transfer Tax Act was to address the lost revenues resulting from the Court's *Hemphill* decision, which the Legislature found would "severely impact [its] ability to fund programs vital to the peace, health, safety, and support of the citizens of this state." Laws of 2005, ch. 516, § 1.

The Estate relies on *Sheldon v. Purdy*, 17 Wash. 135, 49 P. 228 (1897), and several out-of-state cases to support its argument that the object of the estate tax cannot be amended. Br. of Appellants at 29-34. These cases are distinguishable. Each involved a constitutionally-based tax or fund, and/or legislative efforts to expend money collected for one purpose on a different purpose.[27] For example, *Sheldon* involved constitutional funds and property tax levies collected for a specific purpose, the support of common schools. *See* 17 Wash. at 139-40 (discussing the constitutional common school fund and referring to the second fund at issue (Hill's Gen. Stat. § 817 (1891)) as a "fund, under the constitution, [ ] devoted to the support of public schools").[28] In *State ex rel. Edwards v. Osborne*, 195 S.C. 295, 11 S.E.2d 260, 265 (1940), the court held that a 1940 statute appropriating money that was levied pursuant to a 1929 act violated a constitutional provision requiring the Legislature to provide for an annual tax sufficient to defray the estimated expenses for the State for each year. *Id.* at 265. In addition, the court found it material that the taxes at issue were collected *before* the adoption

[27] The Estate argues that no authority supports differentiating between constitutionally-based taxes and statutorily-based taxes. *See* Br. of Appellants at 7. But one obvious difference is that article XXIII, sections 1 and 2 of the Washington Constitution impose requirements applying to amendments to constitutional provisions that do not apply to amendments to statute. Consequently, the Legislature could not change the object of the highway fund created by article II, section 40 merely by passing a statute establishing additional objects. Rather, the object of that constitutional fund could be amended only in accordance with the requirements of article XXIII, sections 1 and 2.

[28] The Estate's reliance on *State ex rel. Bd. for Vocational Educ. v. Yelle*, 199 Wash. 312, 91 P.2d 573 (1939), discussed elsewhere in its brief, likewise is misplaced. Br. of Appellants at 15-17. It too involved what the Court described as constitutionally protected funds.

of the 1940 statute. *See id.* at 268. Finally, in *Byre v. Dale*, 64 N.D. 41, 250 N.W. 99, 104 (1933), the Court described the tax at issue as "a constitutional tax" and a "constitutional fund appropriated for a specific purpose [that] can be used in no other way".

Here, the estate tax indisputably is based in statute and the education legacy trust account is a statutory fund. Indeed, the Estate does not argue to the contrary. Furthermore, undisputed evidence in the record establishes that the State collected all the funds transferred in June 2009 *after* the Legislature amended RCW 83.100.230 in April 2008. CP at 104 (¶ 3), 284-85 (¶¶ 3-5). The Legislature thus did not impose a tax for one purpose and then appropriate it for another purpose.[29] Rather, the 2008 Legislature had a different vision for the education legacy trust account than the 2005 Legislature. The bills amending RCW 83.100.230 in 2008 and directing the June 2009 transfer both fell well within the Legislature's plenary taxation authority. *See Belas*, 135 Wn.2d at 919.

The Estate failed to prove the unconstitutionality of the Legislature's actions beyond a reasonable doubt.

### 2. The trial court correctly rejected the Estate's "state distinctly the object" argument.

The Estate also argues that the 2008 legislation amending RCW 83.100.230 did not effectively "amend[ ] the object of the estate tax by stating distinctly the new object to which only it should be applied." Br.

[29] Thus, the Court need not and should not address the issue of whether a transfer of funds collected prior to the effective date of legislation amending the object of a tax would be unconstitutional.

of Appellants at 29. The trial court correctly rejected that argument. *See* CP at 309-10.

The Estate argues that amending RCW 83.100.230 to authorize transfers from the education legacy trust account to the general fund was not sufficiently distinct because it "allows a new use of dedicated funds contrary to the enacted tax legislation." Br. of Appellants at 29. But its argument simply ignores both the 2008 amendment to RCW 83.100.230 and that the general fund may be used for any public purpose. As the Court has explained with respect to general fund taxes:

> This tax, like the inheritance tax, finds no mention in the constitution, and like the inheritance tax, is exacted by virtue of the inherent power of the legislature, unrestrained, we think, by any constitutional rule of the exercise of that power. When revenue so derived is, by law, directed to be paid into the state, county, or municipal treasury without specific direction as to its application, we think the conclusion necessarily follows that it is intended to become the property of the state, county, or municipality as the case may be. ...
>
> We think it is, also, *manifest that all revenues coming into the treasury of a municipality in pursuance of law, unless the law specifically provides otherwise, becomes a part of the general fund, applicable as such to the payment of the general obligations of such municipality without any specific legislative direction therefor*; except it be the proceeds of such a tax as the constitution requires shall be levied only in connection with a legislative statement of its purpose and applicability. ...

*State v. Sheppard*, 79 Wash. at 330-31 (emphasis added).

Because general fund taxes may be used for any public purpose, stating that a tax may be transferred to the general fund clearly and unequivocally explains that such tax may be so used. *See* Cooley, *supra*, at 1106 ("a statement in a tax law, that the money to be raised is to be paid

into the treasury to the credit of the general fund, [sufficiently complies] with the requirement" to state the object of the tax). Indeed, to conclude otherwise would have monumental untoward consequences. Most state excise taxes in Washington, including the business and occupation tax and the retail sales tax, are deposited in the general fund. *See* RCW 43.79.010 ("All moneys paid into the state treasury, except moneys received from taxes levied for specific purposes ... *shall be paid into the general fund of the state.*") (Emphasis added). Under the Estate's argument, RCW 43.79.010 would violate article VII, section 5 and effectively eliminate the Legislature's ability to have a general fund.

In sum, article VII, section 5 does not require that the Legislature state the specific program or activity for which general fund taxes will be used. Stating that a tax will be deposited in or may be transferred to the general fund is more than sufficient. The trial court properly afforded the Legislature's plenary taxation authority its due deference. The Estate failed to prove beyond a reasonable doubt a violation of the "state distinctly the object" requirement of article VII, section 5.

### E. The Amendment To RCW 83.100.230 in 2008 Did Not Violate Article II, Section 19

Before the trial court, the Estate for the first time on reconsideration argued that the 2008 bill amending RCW 83.100.230 violated article II, section 19. CP at 255-60; *see also* CP at 310. Because the Estate did not make this argument until reconsideration, the trial court should not have considered it, particularly since the dispositive motion

deadline had passed. *Hook v. Lincoln Cnty. Noxious Weed Control Bd.*, 166 Wn. App. 145, 158, 269 P.3d 1056 (2012) ("Generally, new theories of the case presented as part of a motion for reconsideration need not be considered."). In any event, the trial court correctly held that the Estate failed to prove a violation of article II, section 19. CP at 310-11.

Article II, section 19 imposes two separate requirements: (1) no bill shall embrace more than one subject (single subject rule) and (2) no bill shall have a subject not expressed in the title (subject in title rule). *City of Fircrest v. Jensen*, 158 Wn.2d 384, 389-90, 143 P.3d 776 (2006). These rules are liberally construed to sustain the validity of the legislation. *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 628, 62 P.3d 470 (2003). The dual purposes of article II, section 19, are (1) to prevent "'logrolling" (drafting a measure that requires a legislator to vote for something he or she disapproves to secure approval of an unrelated law), and (2) to notify legislators of the subject matter of a measure. *Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 655, 278 P.3d 632 (2012).

The Estate appears to argue that the amendment to RCW 83.100.230 in 2008 violated both the single subject rule and the subject in title rule. Br. of Appellants at 22-28 (mentioning the dual purposes of article II, section 19 and discussing cases addressing both rules). The essence of the Estate's argument is that "under Washington law [ ] an appropriations bill cannot abolish or amend existing law." *Id.* at 22. The Estate's brief fails to adequately explain the two separate constitutional

requirements imposed by article II, section 19, fails to apply the non-exclusive three-factor test for determining whether law in a budget bill is substantive, and fails to cite or distinguish relevant case law.

The scope of budget legislation is primarily restrained by the single subject rule. An appropriations bill violates the single subject rule if it is substantive "because a budget bill, by its nature, appropriates funds for a finite time period—two years—while substantive law establishes public policy on a more durable basis." *Wash. State Legislature v. State,* 139 Wn.2d 129, 145, 985 P.2d 353 (1999). The non-exclusive three-factor test for determining whether an appropriations bill is substantive and therefore violates the single subject rule is: "(1) it has been treated in a separate substantive bill in the past; (2) its duration extends beyond the two-year time period of the budget; and (3) the policy defines rights or eligibility for services." *Charles*, 148 Wn.2d at 629 (citing *Wash. State Legislature*, 139 Wn.2d at 145).

As the trial court found, the second and third factors cut strongly towards the 2008 amendment's constitutionality. The second factor is whether the bill extends beyond two years. The transfer authorization added by the 2008 amendment was only for a period of two years, consistent with an appropriations bill rather than substantive legislation. *See* Laws of 2008, ch. 329, § 924 (adding to statute: "During the 2007-2009 fiscal biennium, moneys in the account may also be transferred into the state general fund."). This is in contrast to the bill addressed in *State ex rel. Washington Toll Bridge Authority v. Yelle*, 54 Wn.2d 545, 342 P.2d

588 (1959), a case relied on by the Estate. *See* Br. of Appellants at 23-24. There the Legislature provided the State Highway Commission "*continuing authority*" to pledge motor vehicle fuel taxes to guarantee bonds for bridge financing. *Wash. Toll Bridge Auth.*, 54 Wn.2d at 551 (emphasis in original).

The third factor is whether the bill defines rights and benefits. That factor was critical in *Flanders v. Morris*, 88 Wn.2d 183, 558 P.2d 769 (1977), another case the Estate discusses. Br. of Appellants at 24-26. A recipient of public benefits had her rights cut off by an appropriations bill. *Flanders*, 88 Wn.2d at 189 ("For 37 years, the statutory law of this state has provided for public assistance on the basis of need with no age restriction. The new restriction is clearly an amendment to [the statute], adding to the restrictions already enumerated there.").[30] Here, the Estate had no vested rights in the transferred funds, nor did the 2008 legislation affect any benefit owed to it. This factor also clearly tilts in favor of constitutionality.

The first factor is whether the bill's subject has been treated in a separate substantive bill in the past. Much of the 2008 budget bill appropriates monies to certain programs or entities, and are the normal subjects of an appropriations bill. This would encompass the authorization to transfer funds from the education legacy trust account to

[30] This quotation comes from the part of the *Flanders* opinion analyzing article II, section 37, but it was also clearly relevant to the Court's article II, section 19 analysis. *See id.* at 184, 188.

the general fund. A statutory amendment about into which funds tax revenues must or may be placed is undoubtedly budget related.

The Estate may try to argue that amending RCW 83.100.230 to allow for such a transfer had been dealt with in substantive legislation previously. But the 2008 Legislature had not previously proposed substantive legislation authorizing transfers from the education legacy trust account to the general fund. Thus, this factor does not cut against the legislation as it did in *Flanders*. In that case, evidence in the record established that legislators had twice sought to amend public benefits legislation through a substantive bill, and only after these failures did they attach the change to a budget bill. *Id.* at 186. Here, no evidence in the record indicates that the Legislature had previously failed to amend RCW 83.100.230 in substantive legislation.

Remarkably, the Estate's brief fails to address the most factually similar case. In *Retired Public Employees Council of Washington v. Charles*, the Court upheld contribution rate changes for state workers in a budget bill. The *Charles* plaintiffs argued that the lower employer contribution rates were previously attempted in substantive legislation. The Court, however, declined to give weight to the prior legislative attempt to amend the statute. *Charles*, 148 Wn.2d at 630 (the plaintiffs "failed to show beyond a reasonable doubt that [the applicable statutory sections] contain substantive law that was incapable of passing on its own merits"). The plaintiffs also argued that the changes impacted workers beyond a two-year period. The Court rejected that argument because "the

appropriate inquiry is whether the changes extend beyond the two-year time period of the budget, not whether there may be 'impacts' beyond the budget period." *Id.* On the third factor, the Court held that the plaintiffs did "not have specific pension rights in the physical system and individual statutes in effect when they began to work." *Id.* at 631.

This case presents a much weaker case for finding substantive legislation than existed in *Charles*. In *Charles*, there was evidence of a prior attempt of legislation in a non-budget bill, the new contribution rates were likely to impact the employees for more than two years, and the plaintiffs had a right to a pension that met the State's promise to pay present and future pension liabilities. *Id.* at 629-31. Nothing like these facts exist in this case. And tellingly, the Estate does not even discuss the non-exclusive three-factor test applied by the courts. The trial court correctly rejected the Estate's "single subject rule" challenge.

To the extent it is separate from the "single subject" challenge, the Estate's "subject in title" challenge likewise fails. The Legislature is afforded great latitude in titling appropriation bills "because their purpose is to allocate state funds to such a great number of state needs." *Charles*, 148 Wn.2d at 628. Courts do not favor a narrow construction of the term "subject" in article II, section 19. *Id.* They also resolve any reasonable doubts in favor of constitutionality. *Id.*

The title of the 2008 legislation at issue provided:

> AN ACT *Relating to fiscal matters*; *amending RCW ... 83.100.230*, ...; reenacting and amending RCW 70.105D.070; amending 2007 c 522 [listing numerous

sections]; adding new sections to 2007 c 522 (uncodified); repealing 2007 c 522 s 713 (uncodified); making appropriations; and declaring an emergency.

Law of 2008, ch. 329 (E.S.H.B. 2687) (emphasis added).[31]

This was a broad title, which is permissible. A title may be broad or narrow because "the legislature in each case has the right to determine for itself how comprehensive shall be the object of the statute." *Wash. Ass'n for Substance Abuse*, 174 Wn.2d at 655. The title here did not merely refer to "supplemental appropriations," but was an act "relating to fiscal matters." The destination and expenditure of estate taxes plainly relates to fiscal matters. Additionally, the act's title specifically states that it amends RCW 83.100.230. The title thus provided sufficient notice to interested parties. *See Charles*, 148 Wn.2d at 628 ("A title complies if it gives notice that would lead to inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law."). The trial court correctly rejected the Estate's "subject in title" challenge.

## V. CONCLUSION

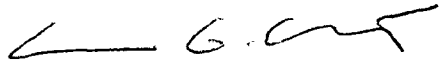
The trial court's summary judgment order of dismissal can and should be affirmed on statute of limitations, standing, mootness, or separation of powers grounds. If the merits are reached, the Court should reverse the trial court's holding that article VII, section 5 applies to the estate tax. But even if article VII, section 5 is applied, the Court should

[31] The Estate twice misstates that the title of E.S.H.B. 2687 is "Operating Budget – Supplemental Appropriations." Br. of Appellants at 10, 20. The Estate also includes the same words when it quotes the bill's "complete" title on page 22 of its brief. However, the words "Operating Budget – Supplemental Appropriations" are not part of the bill's title, but instead are an informal caption placed in the session law by the Code Reviser that is not part of the bill enacted by the Legislature.

affirm the trial court's holdings that the Estate failed to prove a violation of either article VII, section 5, or article II, section 19.

RESPECTFULLY SUBMITTED this 13th day of June, 2014.

ROBERT W. FERGUSON
Attorney General



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