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NO. 97863-8

SUPREME COURT OF THE STATE OF WASHINGTON

S. MICHAEL KUNATH, et al.

Respondents,

v.

CITY OF SEATTLE

Petitioner.

**BRIEF OF *AMICI CURIAE* WASHINGTON STATE LABOR
COUNCIL, AFT WASHINGTON, SEIU 925, SEATTLE
EDUCATION ASSOCIATION, THE TRANSIT RIDERS UNION,
WASHINGTON PHYSICIANS FOR SOCIAL RESPONSIBILITY,
SOUTH SEATTLE CLIMATE ACTION NETWORK, AND 350
SEATTLE**

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici Curiae are a collection of labor organizations and community groups that advocate on behalf of working and poor people to promote fair wages, income equality, access to health benefits, a dignified retirement, access to quality educational opportunities, healthy families and workplaces, environmental justice, and safe and affordable public transit. *Amici* offer their perspectives about the harms to the public interest caused by state Supreme Court precedent, which overturned a successful people's graduated income tax initiative and which effectively prohibits state and local governments from implementing a progressive income tax.

II. INTRODUCTION

In July 2019, the Court of Appeals ruled that the City of Seattle's (the City's) graduated income tax ordinance violates the State Constitution's uniformity clause in Article VII, Section 1. *Amici* now join both the City and the Economic Opportunity Institute (EOI) in their petitions for review of that decision. Because this case involves significant questions of law under the state Constitution and questions of substantial public interest, review should be granted per RAP 13.4(b)(3) and (4).

Washington's regressive tax structure contributes to income inequality, such that in Seattle the lowest income persons pay a far higher percentage of their income in taxes (18%) than those at the highest end of

the income scale. (4.8%). Caruchet, Matthew, *Who Really Pays: An Analysis of the Tax Structures in 15 Cities Throughout Washington State* at 35 fig.22, (EOI), April 2018) (“*Who Really Pays*”).¹ Meanwhile, a lack of income tax corresponds with the lack of adequate public resources to fund vital public services. Inadequate funding for public services threatens the well-being of children, families, teachers, the elderly, people with disabilities, and many others alike. It also prevents cities from adequately addressing the escalating climate crisis. Public sector workers are doubly disadvantaged; they experience the strain imposed by regressive taxes through suppressed wages as well as inadequate funding for their own families’ educations and other essential public services.

If upheld, Seattle’s income tax ordinance will relieve the tax burden on low- and middle-income residents while collecting revenue only from residents on the higher end of the income spectrum. The public impact of that ordinance is significant, especially given the disparities that Washington’s current tax system imposes. As such, this Court should grant discretionary review per RAP 13.4(b)(3) and (4) of the Court of Appeals’ decision that such a tax ordinance violates the State Constitution.

¹ This report is available at: <http://www.opportunityinstitute.org/research/post/who-really-pays-an-analysis-of-the-tax-structures-in-15-cities-throughout-washington-state/>.

III. STATEMENT OF THE CASE

On July 10, 2017, the Seattle City Council unanimously passed ordinance 125339, which enacted an income tax on the affluent, imposing a 2.25% tax on the total income of Seattle residents exceeding \$250,000 for a single filer and \$500,000 for a joint filer. CP 374, 377-78. Shortly thereafter, twenty-eight plaintiffs filed four separate lawsuits challenging the City's authority to impose such an ordinance. EOI intervened, and the cases were ultimately consolidated.

The trial court declared the Ordinance invalid in November 2017. CP 1430-41. The City of Seattle and EOI appealed and requested direct review from this Court, which then transferred the case to Division I of the Court of Appeals. In July 2019, the Court of Appeals held that the state Constitution's uniformity requirement bars Seattle's graduated income tax. *Amici* urge this court to accept review of that decision.

IV. Argument

A. Review Of The Court Of Appeals' Decision Is Appropriate Under RAP 13.4(b)(3) And (4).

Discretionary Review by the Supreme Court of a Court of Appeals decision terminating review is appropriate where, as here, the case concerns a significant question of law under the Constitution of the State of Washington and issues of substantial public interest. RAP 13.4(b)(3),

(4). The Court of Appeals' ruling that the City's income tax ordinance violates the State Constitution's meets both of these criteria.

As explained below, Washington's tax structure is both regressive and inadequate as a funding source for vital services, causing significant public harm. Those shortcomings make the Court of Appeals' decision all the more significant to the public; it renders a potential solution to both problems unconstitutional based on decades-old case law that has since proven incorrect, harmful and detrimental to the public interest. Accordingly, this Court's review of that decision is appropriate because it falls squarely within the bounds of RAP 13.4(b)(3) and (4).

B. *Stare Decisis* Should Not Apply Because Precedent Effectively Outlawing A Progressive Income Tax Has Proven To Be Incorrect, Harmful, And Detrimental To The Public Interest.

Amici join appellants in urging this Court to accept review in this case in order to review the viability of Seattle's progressive income tax. Prior decisions of this court effectively outlawing such a tax—*Culliton v. Chase*, 174 Wash. 363, 374, 25 P.2d 81 (1933); *Jensen v. Henneford*, 185 Wash. 209, 220, 53 P.2d 607 (1936)—have proven to be incorrect and harmful, with a detrimental impact on the public interest. The harms wrought by these decisions make it time for this Court to revisit the constitutionality of a progressive income tax.

Adherence to *stare decisis* should not foreclose this Court's review. Though *stare decisis* as a doctrine establishes stability in court-made law, *In re Strange Creek and Tributaries in Stevens Cty.*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970), courts also acknowledge that "stability should not be confused with perpetuity. If the law is to have current relevance, courts must have and exert the capacity to change a rule of law when reason so requires." *Id.* at 657 (overruling long-standing precedent deemed harmful when it would have destroyed the public benefit in the best use of the State's trust lands). Even an opinion that was correct when it was announced "can become incorrect because the passage of time and the development of legal doctrines undermine its bases." *State v. Abdulle*, 174 Wn.2d 411, 415-16, 275 P.3d 1113 (2012).

A case can be incorrect based on "inconsistency with public-policy considerations." *State v. Barber*, 170 Wn.2d 854, 863-64, 248 P.3d 494 (2011). This Court has repeatedly found precedent "harmful" because it has detrimental impact on the public interest. *Id.* at 865 (collecting cases where "the common thread was the decision's detrimental impact on the public interest"); *State v. Devin*, 158 Wn.2d 157, 170-71, 142 P.3d 599 (2006) (overruling precedent that denied compensation to crime victims and caused emotional harm); *State v. Baldwin*, 150 Wn.2d 448, 461, 78

P.3d 1005 (2003). Precedent prohibiting state and local income taxes is significantly detrimental to the public interest and should be overturned.

C. Washington Tax Structure Is The Country’s Most Regressive.

Washington State has the most regressive tax structure in the country. *See, e.g.,* Davis, Carl, et. al., *Who Pays? A Distributional Analysis of the Tax Systems in all 50 States* at 3 (6th ed., Institute on Taxation and Economic Policy (ITEP), October 2018 (hereafter, “*Who Pays?*”)²; Conway Jr., Richard, *Washington State and Local Tax System: Dysfunction & Reform* (rev: Feb. 28, 2017) (hereafter, “*Dysfunction & Reform*”). The regressive features of Washington’s tax structure include the State’s lack of personal income tax, imposition of a gross receipts tax in lieu of a corporate profits tax, failure to provide funding for the Earned Income Tax Credit, comparatively high reliance on sales taxes, comparatively high combined state and local sales tax rate, and comparatively high cigarette tax rate. CP 563, *Who Pays?* At 127.

That structure disproportionately burdens and low- or middle-income people, such that ITEP estimates Washington’s state and local taxes were the most unfair in the country. *Who Pays?* at 126. The poorest

² *Who Pays?* assesses tax fairness by measuring effective state and local tax rates paid by all income groups. It is available here: <https://itep.org/wp-content/uploads/whopaysITEP-2018.pdf>. A portion of the 2015 edition of this report summarizing Washington data is in the record, CP 562-63, as is a reference to the complete 2015 report, CP 319, which is available at <https://itep.org/wp-content/uploads/whopaysreport.pdf>. Citations to the 2018 report update a portion of the record relied on by the parties.

20% of Washingtonians pay up to six times as much in state and local taxes as their wealthier counterparts. *Id.* at 7. Specifically, the poorest 20% pay 17.8% of their income in taxes, while middle-income families pay 11% and the top one percent of high income households pay only 3%. *Id.* at 126. Sales and excise taxes take up \$13.3% of the poorest families' income compared to 8.1% for middle-income families and just 1.7% for the wealthiest one percent of Washingtonians. *Id.* at 126-27. Likewise, the poorest 20% of families pay 4.5% of their income on property taxes, while the top 1% pays on 1.3%. *Id.*

State tax codes that tax lower-income people at higher rates than wealthy people, tax income derived from wealth at a lower rate than income derived from work, or rely heavily on consumption taxes also worsen the racial divide. *Id.* at 12. The Seattle City Council thus correctly found that regressive taxes diminish opportunity for low-and middle-income households, deepen poverty, disproportionately harm communities of color, and hinder efforts toward establishing a more equitable city while reinforcing the privilege of the wealthy. CP 373.

D. Washington's Lack of Income Tax Burdens Public Services And Causes Significant Harm.

Tax revenue in Washington also fails to keep up with the demand for public goods and services. *Dysfunction & Reform* at vii, 9-10. *Who*

Really Pays at 6, tbl. 1 and 30-32. As a result, government-funded services suffer from continued under-funding, to the substantial detriment of the people who live and work there. Seattle in particular faces competing demands for vital underfunded public services due to a host of challenges, including a homelessness state of emergency; inadequate affordable housing; a lack of mental and public health services; transit demands; education equity and racial achievement gaps; climate change; and potential imminent, drastic reductions in federal funding. CP 372.

Education is a prime example. The State's K-12 class sizes rank 42nd in the country,³ and educators are under constant pressure to use their own personal funds to supply classrooms⁴ while they struggle to make ends meet in their own lives. Though the City Council unanimously adopted a resolution to make voluntary preschool available to all of Seattle's 3- and 4-year-old children, levy funding provides only a fraction of eligible children with access to the program.⁵ In the context of higher education, inadequate funding has led to an overreliance on tuition, making post-secondary education inaccessible to many residents⁶ and

³ http://www.nea.org/assets/docs/180413-Rankings_And_Estimates_Report_2018.pdf.

⁴ <https://www.seattletimes.com/nation-world/teachers-shell-out-nearly-500-a-year-from-their-own-pockets-on-school-supplies/>; <https://www.nytimes.com/2018/05/16/us/teachers-school-supplies.html>.

⁵ <https://www.kingcounty.gov/~media/depts/elections/how-to-vote/voters-pamphlet/2018/11/local-edition.ashx#page=37>.

⁶ See <https://www.wsac.wa.gov/roadmap/funding>.

consequently jeopardizing job security and living wages⁷ for faculty. *See, e.g.,* CP 172; *Dysfunction & Reform* at v, 5, 13.

Inadequate funding also burdens public transit, which counts on sales tax revenue as a major funding source. Since the Great Recession began in 2008, transit agencies across the state have faced major funding shortfalls due to declines in sales tax revenue.⁸ The Access Paratransit system, which serves riders with disabilities, is impacted particularly, as it is necessarily more expensive to operate, leaving the most vulnerable riders without reliable transit services in the wake of inadequate funding.⁹

In sum, Washington's tax structure significantly burdens communities across the state, because insufficient tax revenue inadequately funds vital public services. *Amici* asks this Court to take that significance into account by granting review of the Court of Appeals' ruling that Seattle's progressive income tax conflicts with the State Constitution's uniformity clause.

⁷<https://www.sbctc.edu/resources/documents/colleges-staff/programs-services/student-services/fall-2018-ss-sb-report.pdf>.

⁸*See, e.g.,* <https://www.seattletimes.com/seattle-news/community-transit-to-cut-busservice-by-another-20/>; <https://smartgrowthamerica.org/app/legacy/documents/coalition/2009/11/RAWA-White-Paper.pdf>; <https://www.pscleanair.org/DocumentCenter/View/3328/PSCAAGHG-Emissions-Inventory?bidId>.

⁹<https://metro.kingcounty.gov/tops/accessible/pdf/AccessRideGuide.pdf>; <https://komonews.com/news/local/audit-shows-metro-transits-access-system-needsimprovement>


E. Imposing an Income Tax Could Increase Funding Without Imposing The Cost On Those Who Can Least Afford It.

Seattle's City Budget Office estimates that Seattle's progressive income tax could generate approximately \$140 million in annual revenue. CP 402. The City could then adjust its other taxes such that residents with less income would no longer pay a disproportionately large percentage of their income in taxes, resulting in both an increase in revenue and a more fair distribution of who contributes that revenue. *See, generally, Who Pays?; Dysfunction & Reform.* That revenue would go directly toward addressing the harms described above, relieving some of the existing strain on low- and middle-income households.

V. CONCLUSION

For the foregoing reasons, *amici* request that this Court grant the City of Seattle's and EOI's petition for review of the Court of Appeals' decision under RAP 13.4(b)(3) and (4).

DATED this 14th day of January, 2020.



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DECLARATION OF SERVICE

I, Jennifer Woodward, declare under penalty of perjury in accordance with the laws of the State of Washington that the original of the preceding document with the Washington State Supreme Court using the appellate e-filing system, which will provide notice of such filing to all required parties.

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Jennifer Woodward, Paralegal

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