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SUPREME COURT OF THE STATE OF WASHINGTON

AUTOMOTIVE UNITED TRADES ORGANIZATION, a Washington
nonprofit corporation, TOWER ENERGY GROUP, a California
corporation,

Appellants,

v.

STATE OF WASHINGTON; and JIM MCINTYRE, WASHINGTON
STATE TREASURER,

Respondents.

CORRECTED
BRIEF OF AMICUS CURIAE WASHINGTON PUBLIC PORTS
ASSOCIATION

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ORIGINAL

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I. INTRODUCTION

The Washington Public Ports Association (“WPPA”) submits this amicus curiae brief in support of the State of Washington’s request that the Court affirm the lower court judgment in this case. WPPA represents the 75 port districts in Washington State, many of which are recipients of grants funded by the Hazardous Substance Tax (“HST”) challenged as unconstitutional in this case. Indeed, Washington public port districts have undertaken cleanup of some of the most complex hazardous waste sites in the state (at an average cost of \$3.34 million per project), which would not have been possible without the grants funded by the HST. Many of these complex cleanups are still in progress, and the ports that have taken them on are relying on the continued availability of HST revenues to fund the grants needed to complete the cleanups, restore the environmental quality of the lands, and put the properties back into productive use.

Petitioners Automotive United Trades Organization’s and Tower Energy Group’s (collectively “AUTO”) challenge to the constitutionality of the HST fails for two primary reasons. First, as a matter of statutory and constitutional interpretation, the HST is simply not a “gas tax” within the meaning of article II, section 40 of the State Constitution (“Amendment 18”), the proceeds of which must be directed to the Motor Vehicle Fund (“MVF”) and used solely for highway purposes. Second,

AUTO's challenge is barred by laches. AUTO's 22 year delay in challenging the HST significantly prejudices ports and local governments that have committed themselves to multi-million dollar environmental cleanups in reliance on the continued availability of HST funds.

II. INTEREST OF AMICI

Established by the Legislature in 1961, WPPA advances the interests of the state's port districts by promoting trade and economic development, as well as maritime commerce, recreational marinas, airports, roads, industrial properties, and recreational facilities across the state. WPPA focuses on governmental relations, education, and advocacy on behalf of the port community, which includes participation as amicus curiae in cases that impact the interests of its member ports.

As set forth in WPPA's Motion for Leave to File Amicus Curiae Brief, WPPA member ports have received almost half of the Remedial Action Grant funds awarded by the Department of Ecology ("Ecology") since 1989. With these grants, funded exclusively by the HST, ports have cleaned up blighted lands and returned them to productive use, as well as restored and enhanced natural habitat throughout the State. Because the cleanups ports undertake are increasingly complex and therefore increasingly expensive, ports rely more than ever on the availability of Remedial Action Grants to ensure the cleanups can be completed.

Indeed, to be eligible for Remedial Action Grants for more than the simplest cleanups, ports must enter into enforceable orders and consent decrees with Ecology or the Environmental Protection Agency (“EPA”). Ports enter into the orders and decrees in reliance on the availability of grant funding, yet the orders and decrees require the completion of cleanup actions even if the grant funds were to become unavailable. WPPA’s members would therefore be directly, significantly and negatively impacted if the HST is declared unconstitutional or the proceeds of the HST are diverted away from these essential grant programs.

III. BACKGROUND

A. The Model Toxics Control Act and Local Governments

As the parties’ briefs set forth, the Model Toxics Control Act (“MTCA”) (now codified at Chapter 70.105D RCW) was originally adopted as Initiative 97 in 1988. The stated purpose of the law (which includes the HST) is “to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state’s lands and waters.” RCW 70.105D.010(2).

MTCA also authorized Ecology to identify “potentially liable persons” (“PLPs”) who are strictly, jointly and severally liable for the cleanup of hazardous waste sites. RCW 70.105D.030(1)(b), .040(1), (2)

.050(1). The categories of parties who can be held strictly liable include current owners of contaminated properties. RCW 70.105D.040(1)(a). Local governments, such as ports, often end up owning polluted properties they played no part in contaminating due to tax foreclosure, escheat or abandonment when local businesses or industries fail. *See, e.g.* Flannery P. Collins, *The Small Business Relief and Brownfields Revitalization Act: A Critique*, 13 Duke Env'tl. Law & Policy Forum 303, 304 (2003) (indicating property owners "often choose to abandon" contaminated properties rather than incur the cost to clean them up); CP 275 (Washington Department of Ecology, Economic Vitality and Environmental Cleanup in Washington State, Pub. No. 10-09-046 (Feb. 2010) (hereafter "Economic Vitality Report")) (noting the Port of Ridgefield inherited a \$50 million cleanup when its primary tenant went bankrupt and abandoned the property). The mere fact of owning these properties can make local governments strictly, jointly and severally liable for their cleanup. *See, e.g., East Bay Mun. Utility Dist. v. United States Dep't. of Commerce*, 142 F.3d 479, 480 (D.C. Cir. 1998) (in which a municipal utility district was liable under the federal Superfund law to clean up contamination at an abandoned mine site the utility had taken title to).

Yet, local governments have a vested interest in turning those "brownfields" into productive, job-creating, income-producing and tax

revenue-generating properties once again. *See* CP 273-74 (Economic Vitality Report). MTCA's grant programs recognize and facilitate the important role local governments play in revitalizing brownfields sites. By providing state funds for cleanups, MTCA's grant programs leverage the substantial matching funds local governments invest in cleanups and lessen the impact of the cleanups on local taxpayers. *See* CP 273-74 (*Id.*); WAC 173-322-070(1); *see also* Charles R. Bartsch & Barbara Wells, *Northeast-Midwest Inst. Financing Strategies for Brownfield Cleanup and Redevelopment*, at 5 (2003) (stating government funds are essential to filling gaps in funding for brownfield redevelopments).¹ Indeed, the revitalization of properties in Washington State with the help of Remedial Action Grants has led to the creation of tens of thousands of jobs and generated billions in state and local tax revenues. *See*, CP 277, 279-282, 285-294 (Economic Vitality Report) (detailing the anticipated tax revenues and jobs created by three brownfield cleanups conducted by local governments using remedial action grants funded by the HST).

¹ This is part due to the fact that it is virtually impossible for a private investor to get a return on the investment necessary to complete a complex cleanup. This reduces the chance that private developers will take on redeveloping significantly contaminated properties. For example, cleaning up the Lower Duwamish Waterway is will cost an estimated \$350,000,000. Although the cleanup will rid the sediments in the waterway of harmful pollutants and improve water quality and habitat, the remediated waterway simply will not generate a new business, industry or income stream that will produce revenue in amount that can provide a return on that \$350,000,000 investment. Accordingly, governmental funds are critical to leveraging private investment in cleaning up and redeveloping contaminated properties. *See, id.*

B. The Remedial Action Grant Program

As set forth in the parties' briefs, the Hazardous Substances Tax is "a tax on the privilege of possession of hazardous substances in [Washington]." RCW 82.21.030(1). HST revenues are required go into two toxic control accounts: the State Toxics Account, and the Local Toxics Account. RCW 82.21.020(2); RCW 70.105D.070(2), (3). Tax revenues paid into the Local Toxics Account "shall be used for grants and loans to local governments" to help fund, among other things, cleanup of hazardous waste sites. RCW 70.105D.070(3)(a)(i) (grants to local governments for "remedial actions").

Ecology administers the grant program and the Legislature funds the grants through appropriations from the Local Toxics Account. RCW 70.105D.070(4); WAC 173-322-040(6). Local governments apply for grants by itemizing specific cleanup tasks they need to complete as part of the project, and the budget for each task. *See* Washington Department of Ecology, Application for Remedial Action Grant (found on Ecology's web site at <http://www.ecy.wa.gov/pubs/ecy070104.pdf>). After Ecology awards a grant commensurate with the project budget, the grant recipient pays cleanup costs as they are incurred, and submits paperwork to Ecology to receive quarterly reimbursements of up to half those costs. WAC 173-322-070(8)(b); 173-322--080(7)(b).

Two primary Remedial Action Grants are available for local governments: Oversight Remedial Action Grants (“Oversight Grants”) and Independent Remedial Action Grants (“Independent Grants”). *See* WAC 173-322-070; 173-322-080. Oversight Grants only fund cleanups local governments conduct under an order or decree issued by Ecology under MTCA, or under an order or decree issued by EPA under the comparable federal cleanup law.² WAC 173-322-070(2)(c)(i), (ii). In 2008 alone, over 70% of Ecology’s Remedial Action Grant program budget went to Oversight Grants. *See, e.g.*, CP 247-248 (Department of Ecology, Model Toxics Control Account, Fiscal Year 2008 Annual Report, at 52-53, Pub. No. 08-09-048 (2008) (hereafter “Ecology 2008 Annual Report”) (indicating that of the \$60,788,842 in Remedial Action Grants Ecology funded in 2008, \$42,230,050 (i.e. 69.5%) went to Oversight Grants).

In contrast, Independent Grants are reimbursements to local governments that have independently cleaned up property without Ecology oversight to a successful conclusion. WAC 173-322-080(1). However, the only local government cleanups eligible for Independent Grants are those costing \$400,000 or less. WAC 173-322-050(3)(b).

² The comparable federal law is the Comprehensive Environmental Compensation, Response and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, also known as the federal “Superfund” law.

Recent amendments to MTCA create incentives in the grant programs for local governments to integrate cleanup actions with economic development, habitat restoration and providing public recreational opportunities. *See* RCW 70.105D.070(3)(c). This means cleanups increasingly turn into, or feed into, larger public works projects that provide economic and other benefits for local communities. *See* CP 273 (Economic Vitality Report) (noting cleanups range from “relatively small ‘dig and haul’ projects to large public works” that create “a platform for job and tax growth” by returning abandoned properties to productive use).

C. Remedial Action Grants Awarded to Ports

Since the inception of the program, ports have received an increasing proportion of the Remedial Action Grant funds awarded by Ecology, and put the funds towards cleanup projects throughout the State. *See* CP 247 (Ecology 2008 Annual Report, at 52) (indicating Ports in 6 counties received 72%³ of the Remedial Action Grant funds awarded by Ecology in 2008). Over time, the percentage of total grant funds awarded to ports has increased, as ports have undertaken some of the more costly and complex cleanups in the State, involving contaminated lands,

³ The 72% figure was derived by adding the 2008 grant amounts awarded to the Ports of Ridgefield, Seattle, Anacortes, Vancouver, Gray's Harbor, Olympia and Bellingham in 2008, and dividing that total (\$30,517,683) by the “Oversight Remedial Action Total” (\$42,230,050). CP 247

groundwater and sediments. *Id.* (indicating the grant awards to ports in 2008 averaged \$2,774,334.82⁴ for projects with total costs as high as \$10.5 million).

Because the cleanups ports undertake tend to cost significantly more than \$400,000, ports are only eligible for Oversight Grants and must therefore enter into an enforceable order or decree with Ecology or EPA to even be eligible for Remedial Action grant funding. WAC 173-322-070(2)(c)(i), (ii). This means ports receiving Oversight Grant funds must first assume the legal liability to complete the remedial action, regardless of whether the state grant support they expect to receive is diverted elsewhere.⁵

D. Port Cleanups Funded by Remedial Action Grants

Ports are created to acquire and develop facilities for maritime commerce, transportation (by air, rail or vehicle), and for industrial improvements. RCW 53.04.010(1). Port cleanup projects therefore often involve more than simple cleanup, but also incorporate facilities and infrastructure improvements, as well. As municipal corporations, ports

⁴ This figure was derived by dividing the total grant funds awarded to ports in 2008 (\$30,517,683) by the total number of those awards (11).

⁵ Remedial Action Grant funding is subject to Legislative appropriation each biennium, even for cleanups that extend over several biennia. Though the Legislature has faced tighter budgets in recent years and has wanted to use Local Toxics Fund monies for other purposes, the Legislature has historically appropriated virtually all the grant funds requested. In addition, for the 2009 through 2011 biennium, the Legislature authorized the creation of separate, dedicated grant-funded accounts for potential disbursement of grants over several biennia. RCW 70.105D.070(3)(d).

have the ability to levy taxes and issue bonds (*see, e.g.* RCW 53.08.050; 53.36.030; 53.40.010), and ports have done so to help pay the cost of these increasingly complex and expensive brownfields projects.

Ecology evaluated several brownfield redevelopments ports conducted, or are in the process of conducting, with the help of grants funded by the HST. *See* CP 275-278; 288-294 (Economic Vitality Report) (discussing cleanups conducted by the Ports of Ridgefield and Bellingham); *see also* CP 245 (Ecology 2008. Annual Report, at 50) (describing the Port of Bellingham's successful brownfield redevelopment aided by Remedial Action grant funds); and CP 189-91 (Declaration of James Pendowski, at ¶¶8, 11 (February 9, 2011) ("Pendowski Dec.")). Ecology reported:

- **The Port of Ridgefield:** Using grant funds, the Port remediated and redeveloped more than 75 acres of uplands, and protected valuable river systems and wildlife refuge habitat from the risks associated with the contamination. The Port created productive, revenue-generating lands that support more than 500 local jobs and provide needed local tax revenues. *Id.*
- **The Port of Bellingham:** Using grant funds, the Port is part of remediating more than 228 acres of land divided into five cleanup sites. The millions in Remedial Action grant funds are "critical to the [cleanup] effort's financial feasibility" and are helping return the contaminated lands to productive and innovative uses, like public/private partnerships to develop a university and a technology "Innovation Zone." When completed, the revitalized properties are anticipated to generate hundreds of millions in tax revenues and create more than 6,000 annual jobs. The Port is currently relying on the availability of more than \$40 million in continued grant funding to finish cleanups that are in progress;

without them the Port's cleanups will stall for years, or stop altogether. *Id.*

This is just a small subset of the projects ports have been able to take on with both their significant financial contributions and matching Remedial Action Grant funds. Further, many Ports have cleanup projects still in progress, for which they have issued bonds or levied taxes, and for which they are currently receiving grant funds. *See, e.g.* CP 288 (Economic Vitality Report). (indicating Ecology has awarded a series of Remedial Action Grants for Bellingham cleanups that are still in progress); *see also* CP 190-91 (Pendowski Dec., at ¶ 11). Indeed, across the state Ecology has awarded grants to ports that remain active and remain to be disbursed for these ongoing cleanups.

IV. ARGUMENT

A. The Lower Court Correctly Found the HST is Constitutional

1. AUTO Cannot Meet its Burden in This Case

To establish that the HST violates Amendment 18, AUTO must overcome the strong presumption that the tax is constitutional. *See Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 149 Wn.2d 660, 671, 72 P.3d 178 (2003). Indeed, to prevail, AUTO must prove not just that the HST is unconstitutional, but that it is unconstitutional beyond a reasonable doubt. *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 808, 982 P.2d 611 (1999). Where, as here, a

constitutional provision is unambiguous, it should be read according to its plain meaning, “without resorting to subtle and forced construction for the purpose of limiting or extending its operation.” *State ex. Rel. O’Connell v. Slavin*, 75 Wn.2d 554, 558, 452 P.2d 943 (1969).

Further, if an initiative like the HST is susceptible to several interpretations, some of which may cause it to be unconstitutional, “the court . . . *will adopt* a construction which will sustain its constitutionality if it is at all possible to do so.” *Parents Involved in Community Schools*, 149 Wn.2d at 671 (emphasis added) (quoting *State ex. rel. Morgan v. Kinnear*, 80 Wn.2d 400, 402, 494 P.2d 1362 (1972)). Here, the lower court correctly found that it is more than merely possible to sustain the constitutionality of the HST, but that a plain reading of the tax and Amendment 18 require it.

2. The Plain Language of the HST and Amendment 18 Do Not Require HST Revenues Be Diverted to the Motor Vehicle Fund

Amendment 18 consists of two parts. The first requires that the “gas tax” and any other taxes levied for highway purposes be deposited in the Motor Vehicle Fund and spent for defined highway purposes. *See* Const. art. II, § 40. The second part, the “proviso,” limits the tax revenues that must be deposited into the Motor Vehicle Fund. *Id.* Specifically, the proviso states Amendment 18 “*shall not be construed to include revenue from general or special taxes or excises not levied primarily for highway*

purposes.” Id. (emphasis added). The proviso has consistently been interpreted as having a substantive effect independent of the first part of Amendment 18. *Heavey*, 138 Wn.2d at 812 (finding Amendment 18 must be read to give effect to both its parts); *see also* CP 176-77 (AGO 2001, No. 2, at 3-4). Indeed, the proviso acts as a substantive limitation on the taxes subject to the first part of Amendment 18 (i.e. a substantive limit on the taxes required to be deposited in the MVF).

More specifically, the effect of the proviso is that taxes “not levied primarily for highway purposes” must go towards their intended purposes; not into the MVF for highway purposes. By way of example, a 2001 Attorney General Opinion that analyzes a similar issue sets out several taxes that have been on the books for decades that relate to (or even directly tax the sale of) oil, gas, or petroleum products, and yet which are not considered to be “gas taxes” subject to the first part of Amendment 18. CP 177-79 (2001 AGO No. 2, at 4-6) (citing the motor vehicle excise tax and business and occupation tax as examples).

It is because these taxes were “not levied primarily for highway purposes,” that they were not considered to be the kind of taxes required to be funneled into the MVF. *Id.* The most notable example in the Attorney General Opinion is the business and occupation (“B&O”) tax, which is a general tax imposed since 1939 on retail and wholesale sales, including sales of gasoline. *Id.*, at CP 178. However, there has never been an

argument that the B&O tax must be deposited in the MVF. *Id.* (noting that since the tax's inception, the Legislature has never treated the B&O tax on fuel sales as a "gas tax" within the meaning of Amendment 18). Because the B&O tax is a general tax and not levied primarily for highway purposes, it has always been considered governed by the proviso, and not a tax that must be paid into the Motor Vehicle Fund. *Id.*

Similarly, here, the Hazardous Substances Tax was "not levied primarily for highway purposes," but rather to "to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's lands and waters." *See* RCW 70.105D.010(2); *see also* RCW 82.21.030 (titling the HST a "Pollution Tax"). Therefore, according to the plain language of the HST and Amendment 18, the HST falls within the Amendment 18's proviso and its proceeds should not be diverted to the MVF for highway purposes.⁶ *See, Heavey*, at 138 Wn.2d at 812. The unambiguous language of the HST and Amendment 18 demonstrate that AUTO has not, and cannot, carry its "heavy burden of establishing unconstitutionality beyond a reasonable doubt." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000).

⁶ WPPA also agrees with the State that the HST is not a "gas tax" within the meaning of Amendment 18's first part. WPPA will not repeat the argument here, but notes that AUTO's arguments that the HST is a "gas tax" within the meaning of Amendment 18 are the kind of forced statutory construction courts should not countenance. *See, O'Connell*, 75 Wn.2d at 558.

B. Laches Precludes AUTO's Untimely Challenge the HST 22 Years After its Enactment

Laches precludes recovery where a plaintiff delays in seeking a judicial remedy, and such delay causes prejudice to either the defendant, other persons or the public. *See Lopp v. Peninsula School District*, 90 Wn.2d 754, 759, 585 P.2d 801 (1978). The "main component of the doctrine is not so much the period of time in bringing the action, but the resulting prejudice to the defendant and others." *Clark County P.U.D. No. 1 v. Wilkinson*, 139 Wn.2d 840, 849, 991 P.2d 1161 (2000). The requisite prejudice arises from either the plaintiff's acquiescence or changed conditions. *Lopp*, 90 Wn.2d at 759-60.

WPPA's members will suffer direct and significant prejudice if, at this late date, the HST were found unconstitutional or its proceeds diverted to a use other than those specified in the HST and MTCA. As set forth above, over the past 24 years ports have agreed to take on some of the most complex and costly cleanups in the state. *See e.g.* CP 275, 288 (Economic Vitality Report) (noting the Ports of Ridgefield and Bellingham have committed themselves to cleanups with total costs as high as \$50,000,000). Indeed, ports have signed onto enforceable orders and decrees, committing themselves to multi-million dollar cleanups in anticipation of receiving grant reimbursements for half those costs. *See, e.g.* CP 288 (Economic Vitality Report) (indicating Ecology's award of

millions in Remedial Action Grants is “critical” to the complex financial package put together to fund the ongoing Bellingham Bay cleanups).

If the HST were today declared unconstitutional and no longer available for cleanups, ports would be required to replace the millions of dollars in grant funding they were to receive with some alternative source of funds, and do so in these unusually tight economic times. Yet, the options for other state funds for local government cleanups are, at best, limited. The same holds true for potential federal sources of funds for brownfields projects. See Julianne Kurdila, Elise Rindfleisch, *Funding Opportunities for Brownfield Redevelopment*, 34 B.C. Env'tl. Aff. L. Rev. 479, 483 (2007) (stating the maximum amount available under a federal cleanup grant is \$200,000 per site). There is simply no alternative source of funds in amounts necessary to complete cleanups of this magnitude that can take the place of the grants funded by the HST.

Even more problematic for these ports is the fact that they have changed their legal positions in reliance on the availability of the grant funds. As set forth above, to obtain Remedial Action grant funds, ports had to enter into enforceable orders and decrees that require them to complete the cleanups. Ports may have also issued bonds or levied taxes for a brownfields project, and already invested millions into cleanups that are not yet complete. If the grant funds now disappear, ports are left with these significant legal obligations and no financial means to fulfill them.

Indeed, Ecology and EPA orders and decrees contain significant penalties if a port is not able to complete the required work. MTCA orders and decrees provide for fines of up to \$25,000 per day of noncompliance, and up to three times the amount Ecology incurs as a result of the noncompliance. RCW 70.105D.050(1). Similarly, penalties for noncompliance with an EPA order or decree include fines of up to \$25,000 per day. 42 U.S.C. § 9606.⁷ Ports and other local governments relying on receiving the full amount of a Remedial Action Grant would be put in an untenable position if those grant funds were suddenly no longer available.

At a minimum, the significant change in conditions of recipients of Oversight Grants funded by the HST demonstrate the requisite prejudice to support the conclusion that laches bars AUTO's claim here. *See Lopp*, 90 Wn.2d at 805 (finding a school district's issuance of a bid for its bonds and extensive construction planning before a challenge to the bonds was filed to be changed conditions supporting a finding of laches); *Citizens for a Responsible Government v. Kitsap County*, 52 Wn. App. 236, 240-41, 758 P.2d 1009 (1988) (finding a challenge to a zoning ordinance barred by laches due to the changed conditions of developers who had begun or

⁷ If a port cannot complete a cleanup due to a lack of funding, it also puts Ecology in an enforcement position, thereby diverting Ecology's limited resources away from other agency priorities.

completed projects before the challenge was filed); *Bylinski v. City of Allen Park*, 169 F.3d 1001, 1003 (6th Cir. 1999).

Bylinski is particularly instructive, as it involved a similar situation as ports face in this case. In *Bylinski*, taxes that funded a water treatment plant the defendants were required to build pursuant to a federal consent decree were challenged. *Id.* at 1002. The plaintiffs waited to challenge the tax until three years after the taxes were levied, the water treatment plant was 85% complete, and \$220 million in bonds had been issued for the project. *Id.* The court ruled the challenge was barred by laches because “the defendants were obviously prejudiced by the delay, given the outlay of funds already expended and the near-completeness of the entire project,” as well as their obligation to complete the project pursuant to the consent decree. *Id.* at 1003.

Here, the majority of local governments that have been awarded grants funded by the HST are in the same position – they have projects that are in progress, they have invested their own funds, issued bonds or levied taxes to help pay for the cleanups, and they have consent decree obligations that require them to complete the cleanups. Like the local governments in *Bylinski*, ports’ conditions changed significantly and ports have changed their positions considerably in the 24 years MTCA grants have been helping ports pay for cleanups. WPPA’s member ports will be undeniably prejudiced if the HST is declared unconstitutional and the

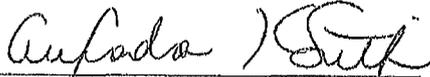
grant funds they had been awarded are suddenly no longer available. *See Bylinski*, 169 F.3d at 1003.

V. CONCLUSION

The State's Remedial Action Grant program has been a national model for brownfields redevelopment, and is one of the primary reasons so many contaminated urban properties in Washington State have been revitalized and put back into productive use. Without grants funded by the HST, local governments simply do not have the financial resources to take on these cleanups, thereby leaving contaminated properties to languish and not contribute to the local economy or tax base.

Local governments have come to rely on the availability of these funds over the 24 years MTCA has been in effect. There is no reason AUTO could not have raised this exact challenge to the HST 22 years ago, before ports and other local governments legally bound themselves to completing multi-million dollar cleanups and dedicated significant resources to them. For the reasons set forth above and in the State's Response Brief, WPPA respectfully requests that the lower court judgment be affirmed.

RESPECTFULLY SUBMITTED this 19th day of April, 2012.



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Association

DECLARATION OF SERVICE

I, Alexandra K. Smith, declare as follows:

On Thursday, April 19, 2012, I served the Brief of Amicus Curiae Washington Public Ports Association via e-mail to the following:

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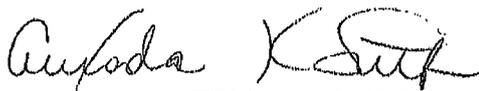
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I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

DATED this 19th day of April, 2012.


ALEXANDRA K. SMITH

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Rec. 4-19-12

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Pursuant to the Court's April 12, 2012 Notation Ruling, the Washington Public Ports Association submits the attached document for filing with the Court in the above-referenced case.

Alexandra K. Smith, WSBA No. 20058

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