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DIVISION II, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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

*Petitioners,*

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.*

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PETITION FOR REVIEW

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**TABLE OF CONTENTS**

I. IDENTITY OF PETITIONERS ..... 1

II. COURT OF APPEALS' DECISION ..... 1

III. ISSUES PRESENTED FOR REVIEW ..... 2

IV. STATEMENT OF THE CASE ..... 5

    A. *Factual Background.* ..... 5

    B. *Petitioner's Allegations.* ..... 7

    C. *Decisions Below.* ..... 7

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED .... 10

    A. *Considerations Governing Acceptance of Review.* ..... 10

    B. *The Decision erroneously concludes that Article VII, § 5 of the Washington Constitution does not limit the Legislature's plenary power to spend.* ..... 13

    D. *The Budget Bills of 2008 and 2009 did not change the purpose or object of the Estate Tax.* ..... 16

    E. *The "state distinctly" requirement of Article VII, § 5.* ... 16

    F. *Article II, § 19 of the Washington Constitution invalidates the purported change in purpose or "object" of the estate tax.* ..... 17

    G. *Article II, § 37 of the Washington Constitution is violated.* ..... 19

VI. CONCLUSION ..... 20

## TABLE OF AUTHORITIES

### *Cases*

<i>Blakeslee v. Clausen</i> , 85 Wash. 260, 148 Pac. 28 (1915) .....	18
<i>Burbank Irr. Dist. No. 4 v. Douglass</i> , 143 Wash. 385, 255 Pac. 360 (1927) .....	15
<i>Central Puget So. Transit Authority</i> , 155 Wn.2d 790, 804, 123 P.3d 88 (2005) .....	17
<i>Flanders v. Morris</i> , 88 Wn.2d 183, 558 P.2d 769 (1977) .....	18-20
<i>Hemphill v. Dept. of Revenue</i> , 153 Wn.2d 544, 105 P.2d 391 (2005) ..	5, 6
<i>Inland Boatman's Union of the Pacific v. Dept. of Transportation</i> , 119 Wn.2d 697, 710, 836 P.2d 823 (1992) .....	19
<i>Potter v. Black</i> , 15 Wash. 186, 45 Pac. 787 .....	15
<i>Sheehan v. Transit Authority</i> , 155 Wn.2d 790, 804, 123 P.3d 88 (2005) .....	14
<i>Sheldon v. Purdy</i> , 17 Wn.App. 135, 141, 49 Pac. 228 (1897) ...	13, 15, 17
<i>State of Washington on the relation of Washington Toll Bridge Authority v. Cliff Yelle, State Auditor</i> , 54 Wn.2d 545, 342 P.2d 588 (1959) .....	17
<i>State, ex. rel. Board for Vocational Education v. Yelle</i> , 199 Wash. 312, 91 P.2d 573 (1939) .....	15
<i>The Washington State Legislature v. State of Washington</i> , 139 Wn.2d 129, 145, 95 P.2d 353 (1999) .....	19

*Washington State Farm Bureau Fed'n. v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007) ..... 3

***Statutes***

Federal Rule of Appellate Procedure 32.1 ..... 2

RAP 13.4(b) ..... 10

RCW Ch. 83.100. .... 4, 5, 6, 7, 9, 16, 19, 20

***Other Authorities***

*The Georgetown Law Journal*, Vol. 97 ..... 2

Washington State Constitution, Article II, § 37 ..... 4, 19, 20

Washington State Constitution, Article II, § 19 ..... 2, 4, 8, 9, 17, 18

Washington State Constitution, Article VII, § 5 ..... 2, 3, 5, 7-17

## I. IDENTITY OF PETITIONERS

This petition for review is brought by Estate of James H. Jack (the Estate) and seeks review of the decision of the Court of Appeals Division II unpublished opinion of August 26, 2015. The opinion incorrectly decides significant questions of law under the Constitution of the State of Washington and involves issues of substantial public interest that should be determined by the Supreme Court.

## II. COURT OF APPEALS' DECISION

The Estate petitions for review of the August 26, 2015 unpublished opinion (the "Decision") by Division II of the Court of Appeals. The Decision affirmed the Superior Court's dismissal of petitioner's claims. A copy of the Decision is attached as **Appendix A**.

Respondents, State of Washington, *et al.*, moved for reconsideration of the Decision despite the fact they were the prevailing party. Respondents asked the Court of Appeals to reconsider its decision in light of Respondents' arguments relating to threshold issues of standing, mootness, separation of powers, and the statute of limitations. Respondents urged that a ruling on these "threshold issues..." would render unnecessary the consideration of Appellants' constitutional claims (Respondent's Motion to Reconsider, p. 3).

The Court of Appeals denied the Motion for Reconsideration by order dated October 13, 2015. By separate order on that same date, the Court of Appeals denied Petitioner's Motion to Publish.<sup>1</sup> A copy of each Order is provided at **Appendix B and Appendix C.**

### **III. ISSUES PRESENTED FOR REVIEW**

Did the Court of Appeals err in holding that Article VII, § 5 and Article II, § 19 of the Washington Constitution do not apply to diversion of estate tax receipts from the object of the tax (education funding) to the general fund through amendments contained in budget and appropriations legislation?

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<sup>1</sup> It is baffling that the Court of Appeals, Division II, would refuse to publish its opinion in a case involving a claimed unconstitutional diversion of \$67 million in estate tax revenues to the general fund. Although unpublished opinions are allowed in Washington, federal courts have wrestled with the constitutionality of such a rule. Amid vigorous debate amongst the circuits and confusion over the varying rules of each circuit, the U.S. Supreme Court adopted Federal Rule of Appellate Procedure 32.1 in 2006. The rule reads: "**Rule 32.1 Citing Judicial Dispositions.** (a) **Citation Permitted.** A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been: (i) designated as 'unpublished,' 'not for publication,' 'non-precedential,' 'not precedent,' or the like; and (ii) issued on or after January 1, 2007. (b) **Copies Required.** If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited." Rule 32.1 was adopted by the Advisory Committee on Federal Appellate Rules. The chair of that Committee was then Judge Alito. Adoption of the Rule is covered at length in an excellent article in *The Georgetown Law Journal*, Vol. 97, at p. 621 entitled, "Unpublished Opinions: a Convenient Means to an Unconstitutional End."

While it is a fundamental principle of our system of government that the Legislature has plenary powers to enact laws, such plenary power is limited by State and Federal Constitutions. *Washington State Farm Bureau Fed'n. v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007). Article VII, § 5 of the Washington Constitution 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.

This case addresses the power of the Legislature to divert tax revenues from the “object” of the estate tax (educational purposes) by transfer of \$67 million of the collected tax into the general fund through budget and appropriation legislation. The Decision of the Court of Appeals at p. 5 incorrectly holds that Article VII, § 5 of the Washington State Constitution “restricts the legislature’s power to impose a tax, not the legislature’s plenary power to spend.” Further, the Decision at p. 6 incorrectly holds that Article VII, § 5 “applies only to legislation *establishing* taxes; it does not apply to legislation authorizing legislative spending.” The Decision ignores the explicit direction of Article VII, § 5 that tax revenue shall only be applied to the object of the tax.

Article II, § 19 of the Washington Constitution provides “No bill shall embrace more than one subject, and that shall be expressed in the title.”

The Decision erroneously holds that a budget and appropriations bill redirecting tax revenues from the stated legislative object to the general fund is neither violative of the subject in title rule nor is it violative of the single subject requirement of Article II, § 19. The Decision acknowledges that the amendments at issue were “part of budgeting or funding bills” and have “never been treated in a separate substantive bill.” (Decision at p. 10.) The Decision also states that the “specific reference to former RCW 83.100.230 in both bills provides notice to an inquiring mind that some change related to the funds in the education legacy trust account is being made in the bills.” (Decision at p. 9.)<sup>2</sup>

The Decision raises an additional constitutional challenge. Article II, § 37 of the Washington Constitution provides: “No act shall ever be revised or amended by mere reference to its title, but the Act revised or the section amended shall be set forth at full length.” A legislator’s “inquiring mind”

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<sup>2</sup> The “specific reference” to RCW 83.100.230 is contained within the budget bill synopsis along with numerous statutory citations. The amendment is found at § 924 of 929 sections covering approximately 300 pages. See Appendix E.



would have no notice that the object of the estate tax was being changed through these amendments.

Unless reversed, the Legislature will have unchecked power to tax and spend contrary to the checks and balances required under the Washington State Constitution.

#### IV. STATEMENT OF THE CASE

A. ***Factual Background.*** In *Hemphill v. Dept. of Revenue*, 153 Wn.2d 544, 105 P.2d 391 (2005), this court applied Article VII, § 5 to Washington’s estate tax ruling that Washington estate taxes paid after January, 2002 were unauthorized and illegally imposed, and directing a refund of taxes paid by class members. The court referred to the estate tax scheme in Washington holding that “a new tax burden can be created only by law that states such a purpose. *Constitution*, article VII, § 5.” *Hemphill* at p. 551.

In response to the *Hemphill* decision, the Legislature in 2005 enacted a stand-alone estate tax, codified as RCW Ch. 83.100. The new tax, as with all tax legislation, was required by Article VII, § 5 of the State Constitution

to “state distinctly the object” of the tax, which was declared to “provide funding for education,” Laws of 2005, Ch. 516, § 1.<sup>3</sup>

The legislation was clear that all proceeds from this new estate tax “*must* be deposited” into the Education legacy trust account, and withdrawals from it “*only* for support of the common schools, and for expanding access to higher education . . . and other educational improvement efforts.” RCW 83.100.220 and .230.<sup>4</sup> (Emphasis supplied.)

This lawsuit became necessary because in 2008, the Legislature, toward the end of the legislative session, in an addition to budget and appropriations legislation, added the following sentence to RCW 83.100.230:

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<sup>3</sup> The Washington Legislature enacted what is now codified as RCW Ch. 83.100 entitled “Estate and Transfer Tax Act.” Section 1 of this new Act read as follows: “The Legislature finds that the revenue loss resulting from the *Hemphill* decision will severely affect the Legislature’s ability to fund programs vital to the peace, health, safety and support of the citizens of this state. The Legislature intends to address the adverse fiscal impact of the *Hemphill* decision and provide funding for education by creating a stand-alone state estate tax.” At the same 2005 session, the Legislature passed Chapter 514, § 1101 reading as follows: Sec. 1101. The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. 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.

<sup>4</sup> This state has a history with the estate or so-called “death tax.” In 1980, the voters acting through the initiative process, abolished estate taxes, save for the off-setting credit permitted under federal law. Designating education as the sole beneficiary of the new estate tax, provided a lofty and noble reason to once again subject citizens to an estate tax. It is highly unlikely that a tax measure of such public import would have been enacted without extensive scrutiny and discussion had it been presented as a way to add tax revenues to the general fund.

During the 2007-2009 fiscal biennium, monies in the account may also be transferred into the State General Fund.

In 2009, the Legislature authorized and directed transfer of \$67 million from the Education legacy trust account to the State General Fund. (CP 192-197.)<sup>5</sup>

**B. *Petitioner's Allegations.*** Petitioner has alleged from the beginning of this litigation that every tax levied shall be 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. These are simple constitutional principles based on Article VII, § 5 of our Washington State Constitution. This constitutional provision was clearly violated by the \$67 million transfer of estate tax revenue to the State general fund.

**C. *Decisions Below.*** Petitioner taxpayer, on behalf of the Estate and similarly situated taxpayers, sought a declaratory judgment challenging the constitutionality of budget and appropriations legislation which moved

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<sup>5</sup> The amendment to RCW 83.100.230 allowing transfer of tax revenues to the general fund was not part of the budget bill known as House Bill 2687 as of January 19, 2008. (CP 175-177.) The amendment was added and read for the first time on February 22, 2008. (CP 179-185.) The Laws of 2008 were enacted during the regular session of the Legislature which adjourned March 13, 2008. (CP 188.) The Laws of 2008, Ch. 329 is entitled "Operating Budget – Supplemental Appropriations. (CP 190.) On June 9, 2009, pursuant to the "Operating Budget" Laws of 2009, Ch. 564, Sec. 1702, the Treasurer transferred \$67,000,000 from the Education legacy trust account to the general fund. (CP 64-66.)

\$67 million from the education legacy trust account to the State general fund. Petitioner contends the legislation and transfer violated Article VII, § 5 of the Washington State Constitution by diverting estate tax funds from the stated object of the tax. Estate tax revenues were to be dedicated to educational funding through the education legacy trust account. Further, petitioners contend the actions of the legislature were an unconstitutional violation of Article II, § 19 of the Washington State Constitution by attempting to temporarily change the object of the estate tax through budget and appropriations legislation.

On cross motions for summary judgment, the trial court dismissed petitioner's cause of action. The court issued a letter opinion dated October 2, 2013. (CP 305-312.) The Final Order on Motions for Summary Judgment and Plaintiffs' Motion for Reconsideration entered November 8, 2013. (CP 313-317.)

Addressing Article II, § 19 of the Washington Constitution, the trial court observed that inclusion of a provision temporarily changing the object of the estate tax "deep within an appropriations bill would appear to be a budgetary tactic rooted in fiscal desperation, rather than sound legislative policy making." (CP 311.) Nevertheless, the trial court gave substantial

deference to the Legislature and concluded the action of the Legislature satisfied Article II, § 19.

The Court of Appeals Decision held for the first time in any case in Washington that Article VII, § 5 restricts the Legislature's power to impose a tax, not the Legislature's plenary power to spend. Thus, the Court of Appeals held that Article VII, § 5 does not apply. In effect, the Decision finds this constitutional provision inapplicable to any legislative decision involving expenditure of tax revenues despite the stated object of the tax.

The Court of Appeals Decision also found Article II, § 19 of the Washington Constitution inapplicable. It found the amendments to RCW 83.100.230 in budget and appropriations legislation did not violate the subject in title rule or the single subject rule.

The Decision holds that the amendment to former RCW 83.100.230 was not a substantive change in the law in violation of the single subject rule. Contrary to the trial court's analysis, the Court of Appeals Decision finds no substantive change to RCW 83.100.230 by an amendment which redirected estate tax revenue from the original object of the tax.

## V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### A. *Considerations Governing Acceptance of Review.* RAP

13.4(b) controls acceptance of review by the Supreme Court. The case involves a significant question of law under the Constitution of the State of Washington. RAP 13.4(b)(3). Specifically, the Decision announces a previously unknown interpretation of Article VII, § 5 of the Washington State Constitution. The opinion holds that this constitutional provision “restricts the Legislature’s power to impose a tax, not the Legislature’s plenary power to spend.” (Decision at p. 5.) No prior Washington case has so held. (RAP 13.4(b)(1).) This is a unique constitutional interpretation which places no limitation on the Legislature’s power to spend tax receipts allocated to a certain fund or purpose.

In holding that Article VII, § 5 of the Washington Constitution applies only to legislation *establishing* taxes, and does not apply to legislation authorizing legislative spending, this decision is of general public interest or importance in interpreting the meaning of Article VII, § 5. In part, this constitutional provision requires every law imposing a tax to “state distinctly the object of the same *to which only it shall be applied.*” (Emphasis added.)

The Court of Appeals Decision, for the first time in any Washington case, disregards the “to which only it shall be applied” directive of this Constitutional provision. In light of the critical need for sufficient educational funding and the clear educational funding “object” of the Washington estate tax, the substantial public interest of this case cannot be overstated.

In ruling that Article VII, § 5 does not restrict the Legislature’s plenary power to transfer money, the Court of Appeals Decision has eliminated the Constitutional requirement that a tax imposed by the Legislature shall “only” be applied to the distinctly stated object of the tax.<sup>6</sup>

The Decision at p. 6 states that Article VII, § 5 is limited to legislation establishing taxes and not to legislation authorizing spending.

Article VII, § 5 covers first the imposition of a tax by creation of the legislation and the requirement that its object be distinctly stated, but goes on to discuss the *application* of the tax to its object. The application of the tax

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<sup>6</sup> The Constitutional clause that the Decision ignores “the object of the same to which only it shall be applied,” is the only clause in our Washington State Constitution that declares unconstitutional the diversion of tax revenue collected that is not within the stated object of the legislation. A careful analysis of all 32 of the articles of our state Constitution reveals that only Article VII, § 5 touches such an illegal diversion. Accordingly, if this Decision were to stand, our Washington Constitution no longer has any enforceable provision to remedy a diversion of tax revenue from the object in the bill creating the tax.

is exactly what the sentence in the Decision says it is not – “legislation authorizing legislative spending.” (Decision at p. 6.)

By ignoring the final clause of Article VII, § 5, the Decision trivializes a near universal clause in most state constitutions in our country. You can pick any state and quickly locate that state’s anti-diversion provision.<sup>7</sup>

It is outrageous that the Court of Appeals determined this significant constitutional issue involving expenditure of \$67 million dedicated to educational funding in an unpublished opinion. Either the Court of Appeals failed to grasp the import of its constitutional analysis or mistakenly determined its analysis was consistent with the Washington Constitution and case law precedent. Either shortcoming compels review.

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<sup>7</sup> For example, in South Carolina, Article X, § 5: “No tax, subsidy or charge, shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.” Ohio, Article XII, § 5: “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.” South Dakota, Article XII, § 8: “. . . no tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same, to which the tax only shall be applied. . . .” North Dakota, Article X, § 3: “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.” Wyoming, Article XV, § 13 of its Constitution: “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.”



**B. *The Decision erroneously concludes that Article VII, § 5 of the Washington Constitution does not limit the Legislature’s plenary power to spend.*** Article VII, § 5 has been part of our Washington State Constitution since statehood in 1889. Article VII, § 5 is clear and unambiguous. It has been uniformly interpreted by our courts to mean (a) the law must state the object of the tax; and (b) use of the tax for any other purpose than stated in the tax legislation is forbidden.

The court first interpreted this Constitutional provision in 1897 when a law directed the Treasurer of Whatcom County to divert funds collected through taxation for building schools to payment of a local debt. The Supreme Court declared the law to be unconstitutional. Referencing Article VII, § 5, the Court clearly based its ruling on the fact that “this is an elementary doctrine in taxation, and without the constitutional declaration it has been held almost uniformly that there should be no diversion of moneys collected by taxation for a special purpose, and placed in a fund for such purpose.” *Sheldon v. Purdy*, 17 Wn.App. 135, 141, 49 Pac. 228 (1897).

The Court of Appeals Decision distorts this clear holding, stating that the Estate’s reliance on *Sheldon v. Purdy* is “misplaced,” attempting to claim that the *Sheldon* decision found unconstitutionality because the diversion was

from a constitutionally created common school fund suggesting that such a diversion from a statutorily created fund would not be unconstitutional. (Decision at p. 7.)<sup>8</sup>

The weight of case law supports petitioner's position. *Sheldon v. Purdy* was cited in *Sheehan v. Transit Authority*, 155 Wn.2d 790, 804, 123 P.3d 88 (2005). The court referred to the "state distinctly" requirement of Article VII, § 5 of the Washington Constitution. The court stated that the section is directed not simply to the method of taxation but rather the relationship between the tax and the purpose of the tax, citing, *Sheldon v. Purdy, supra*. In *Sheehan*, the objects of the taxes were a regional transit system plan and the proposed Seattle Monorail. The court stated at p. 804 that Article VII, § 5 would render unconstitutional actions taken "to divert taxes assessed for those purposes into some wholly unrelated project or fund." However, in the *Sheehan* case, no such diversion had occurred and thus no constitutional violation existed. Had there been such a diversion the *Sheehan* result would have been different.

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<sup>8</sup> In its Letter Opinion (CP 305-312) the trial court distinguished constitutionally-based taxes from statutorily-based taxes. According to the court's analysis, if a particular tax was assigned to a constitutionally created destination, the Legislature's ability to redirect those proceeds would be much more limited than in the present case where the legislature, not the State Constitution, created the object of the estate tax. No authority is cited for this heretofore unknown constitutional interpretation.

The Court of Appeals Decision glosses over the *Sheehan* precedent stating the issue was whether the taxes imposed were unconstitutional, not whether the Legislature authorized spending the tax money. (Decision, p. 6.)

The Court of Appeals Decision holds that *Burbank Irr. Dist. No. 4 v. Douglass*, 143 Wash. 385, 255 Pac. 360 (1927) while addressing diversion of funds payable out of a special account does not address Article VII, § 5. The Decision ignores citation to *Sheldon v. Purdy* in the following quote found in *Burbank* at p. 396:

The general rule is that, where money is raised and is payable out of a special fund, the fund in question shall not be called upon to pay any other or different charges, except those for which it is created. *Potter v. Black*, 15 Wash. 186, 45 Pac. 787; *Sheldon v. Purdy*, 17 Wash. 135, 49 Pac. 228.

The Court of Appeals Decision attempts to distinguish *State, ex. rel. Board for Vocational Education v. Yelle*, 199 Wash. 312, 91 P.2d 573 (1939) holding it does not establish a constitutional cause of action challenging legislative transfers under Article VII, § 5. Yet the Court in *Yelle* cited *Sheldon v. Purdy* for the proposition that the common school fund could not be appropriated to any use but the support of the common schools. In reaching the decision, the court took language from *Collins v. Henderson*, a Kentucky case, stating:

If it be once conceded that an appropriation like this may be sustained on the ground that it is in some degree beneficial to, and is, therefore, in aid of common schools, then the number and amount of such appropriations will be limited only by the discretion of the legislature, and if it so wills, the whole fund may be diverted from the purpose to which it was solemnly dedicated, or rather re-dedicated, by the constitution, and the constitutional provision prove a mere *brutum fulmen*." *Id.* at 317 (1939).

**D. *The Budget Bills of 2008 and 2009 did not change the purpose or object of the Estate Tax.*** The Legislation at issue in this case purportedly amending the purpose or object of the estate tax did not modify or amend the substantive law provisions of RCW Ch. 83.100. The clear stated purpose of the estate tax is to provide for educational funding. That purpose, set forth in the Laws of 2005, Ch. 516, has never changed. Similarly, neither budget bill expressly added an additional purpose to the estate tax law. (CP 179-197.)

The Laws of 2008, Ch. 329, § 924 and the Laws of 2009, Ch. 564, § 1702 are parts of legislation each denominated as "Operating Budget." Neither subsection attempts by its terms to change the purpose or object of RCW Ch. 83.100.

**E. *The "state distinctly" requirement of Article VII, § 5.*** It is well established under Washington law that the "state distinctly" requirement

of Article VII, § 5 of the Washington Constitution is directed to "the relationship between the tax and the purpose of the tax." See *Sheehan v. Central Puget So. Transit Authority*, 155 Wn.2d 790, 804, 123 P.3d 88 (2005) citing *Sheldon v. Purdy*, 17 Wash. 135, 141, 49 Pac. 228 (1897).

The "state distinctly" and "to which only it shall be applied" requirements must be given meaning in the context of the issue now before the court. It cannot be seriously argued that the 2008 legislation amended the object of the estate tax by stating distinctly the new object to which only it should be applied. At best, the 2008 legislation is no different than the facts in *Sheldon v. Purdy*, 17 Wash. 135, 141, 49 Pac. 228 (1897).

**F. Article II, § 19 of the Washington Constitution invalidates the purported change in purpose or "object" of the estate tax.** Article II, § 19 of the Washington Constitution states: "No bill shall embrace more than one subject, and that shall be expressed in the title. Both the single subject rule and the subject in title rule have been violated in the present action.

In *State of Washington on the relation of Washington Toll Bridge Authority v. Cliff Yelle, State Auditor*, 54 Wn.2d 545, 342 P.2d 588 (1959), the court discussed first the legislative evil of engrafting upon measures of great public importance foreign matters for local or selfish purposes, pointing

out that if such provisions were offered as independent measures they would not have received support. The court went on to say at p. 551 that "appropriation bills would be peculiarly vulnerable to this legislative evil," quoting the 1915 case of *Blakeslee v. Clausen*, 85 Wash. 260, 148 Pac. 28 (1915):

An appropriation bill is not a law in its ordinary sense. It is not a rule of action. It has no moral or divine sanction. It defines no rights and punishes no wrongs. It is purely *lex scripta*. It is a means only to the enforcement of law, the maintenance of good order, and the life of the state government. Such bills pertain only to the administrative functions of government.

The title of the act in question, as in the present case, made reference only to budget and appropriations for miscellaneous purposes. As such, the introduction of a second subject in the same bill not covered by the title resulted in a double violation of Article II, § 19.

In *Flanders v. Morris*, 88 Wn.2d 183, 558 P.2d 769 (1977) the petitioner was a 28-year old unemployed individual who sought public assistance under the Washington statutes, contending that a bill passed by the Legislature (a section of an appropriations bill) that limited public assistance eligibility to single persons over 50 years of age was unconstitutional. The court agreed, issuing the writ and directing the Department of Social &

Health Services to pay the petitioner the public assistance to which he was entitled. Concerning the legislation and the appropriations bill that attempted to change the law, the court stated at p. 190:

Appropriations bills exist simply for the purpose of implementing general laws. As such, we hold that the general law cannot be suspended by provisions in appropriations bills which are in conflict.

In the present action the 2-year time limit for transfer of funds from the education legacy trust account to the general fund attempts to "suspend" the purpose of the estate tax as expressed in RCW 83.100.230. The *Flanders* holding is that general law cannot be suspended by provisions in appropriations bills which are in conflict with the general law. See also *The Washington State Legislature v. State of Washington*, 139 Wn.2d 129, 145, 95 P.2d 353 (1999); and *Inland Boatman's Union of the Pacific v. Dept. of Transportation*, 119 Wn.2d 697, 710, 836 P.2d 823 (1992).

***G. Article II, § 37 of the Washington Constitution is violated.***

The Decision at p. 10 accurately points out that RCW 83.100.230 was originally the product of the Revenue and Taxation Bill, Laws of 2005, Ch. 514, § 1101. The amendments at issue here were part of budgeting or funding bills. The Court of Appeals concludes that these amendments are not substantive changes in the law.

This suggests that the object of the estate tax was never changed. However, the court's analysis raises an additional constitutional challenge under Article II, § 37 of the Washington Constitution. In *Flanders, supra*, this constitutional provision was also found violated by the attempted statutory amendment in a budget bill. At p. 189 of that opinion the court noted an important purpose of Article II, § 37 is the "necessity of insuring that legislators are aware of the nature and content of the law which is being amended and the effect of the amendment on it." The provision amending RCW 83.100.230 does not provide notice of the nature and content of the law which is being amended and the effect in changing the object of the estate tax. Thus, it violates Article II, § 37.

An appropriation bill is not codified and is found in the uncoded session laws. The *Flanders* court stated that the fact that the budget bill is not codified strikes at the very heart and purpose of Article II, § 37.

## VI. CONCLUSION

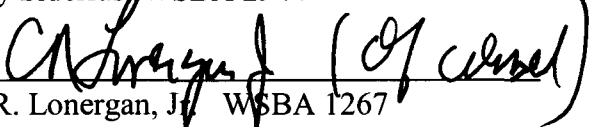
For the foregoing reasons, this court should grant review of the Decision of the Court of Appeals.

Respectfully submitted this 3rd day of November, 2015.

  
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Frank R. Sidertus WSBA 7759



  
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**Declaration of Service**

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the below date I sent by U.S. Mail, first class, postage prepaid and also electronic mail, a true copy of this document to:

Cameron Gordon Comfort  
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Dated this 3rd day of November, 2015.

  
\_\_\_\_\_  
Mary Berghammer

FILED  
COURT OF APPEALS  
DIVISION II  
2015 NOV -4 AM 10:02  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

## PETITIONER'S APPENDIX

- A. Opinion filed in *William E. Wall, et al., Appellants v. State of Washington, et al., Respondent*. Case No. 46641-4-II on appeal from Thurston County, Cause No. 12-2-01227-7
- B. Order Denying Motion for Reconsideration dated October 13, 2015
- C. Order Denying Motion to Publish dated October 13, 2015
- D. Constitutional and statutory provisions
- E. Washington laws, 2008, Chapter 329 "OPERATING BUDGET – SUPPLEMENTAL APPROPRIATIONS."

**APPENDIX A**

Opinion filed in *William E. Wall, et al., Appellants v. State of Washington, et al., Respondent*. Case No. 46641-4-II on appeal from Thurston County, Cause No. 12-2-01227-7

FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
DEPUTY

**DIVISION II**

WILLIAM E. WALL, ESTATE OF JAMES H. JACK, by and through its Personal Representative, 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 SONNTAG, Auditor of the State of Washington; and BRAD FLAHERTY, Director of the Department of Revenue, State of Washington,

Respondents.

No. 46641-4-II

UNPUBLISHED OPINION

LEE, J. —The estate of James Jack (the Estate) appeals the superior court's order granting summary judgment to the State of Washington, where the Estate challenged the constitutionality of legislative amendments to former RCW 83.100.230 that allowed the State to transfer funds out of the education legacy fund and into the state general fund during the 2007-2009 and 2009-2011 bienniums.<sup>1</sup> The Estate argued that the legislature's plenary power to enact the amendments was

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<sup>1</sup> William Wall was the other plaintiff in this case; however, the superior court dismissed him as a party based on lack of standing. Wall does not appeal the superior court's order dismissing him for lack of standing.

limited by Wash. Const. art. VII, § 5<sup>2</sup> and art. II, § 19<sup>3</sup>. We hold that art. VII, § 5 does not apply, and the requisite criteria to show a violation of art. II, § 19 has not been shown. Consequently, the Estate has failed to show a constitutional limitation exists on the legislature's power to enact the challenged amendments. Because it is unable to show the legislation authorizing the discretionary transfer of money to the state general fund was unconstitutional, the Estate cannot establish the subsequent transfer of money from the education legacy fund to the state general fund was unconstitutional. Accordingly, we affirm.

#### FACTS

In 2005, the legislature passed the "stand-alone" estate tax, former RCW 83.100.040 (2005). Former RCW 83.100.220 directed that estate taxes paid pursuant to former RCW 83.100.040 be deposited into the education legacy trust account. Under former RCW 83.100.230 (2005):

The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. 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.

Other funds are also deposited into the education legacy trust account. However, all of the funds in the account are comingled, and it is impossible to determine the source of the funds in the account.

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<sup>2</sup> Art. VII, § 5 states, "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."

<sup>3</sup> Art. II, § 19 states, "No bill shall embrace more than one subject, and that shall be expressed in the title."

No. 46641-4-II

In an appropriations bill for the 2007-2009 biennium, the legislature amended former RCW 83.100.230 (2005) to add a section that stated: "During the 2007-2009 fiscal biennium, moneys in the account may also be transferred into the state general fund." LAWS OF 2008, ch. 329, § 924. On June 9, 2009, \$67 million was transferred from the education legacy trust account to the state general fund. In an appropriations bill for the 2009-2011 biennium, the legislature amended former RCW 83.100.230 (2008), changing "2007-2009 fiscal biennium" to "2009-2011 fiscal biennium."<sup>4,5</sup> LAWS OF 2010, 1st Spec. Sess., ch. 37, § 953. In 2012, the legislature amended former RCW 83.100.230 a third time as follows:

The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for ~~((deposit into the student achievement fund))~~ support of common schools, and for expanding access to higher education through funding for new enrollments and financial aid, and other educational improvement efforts. ~~((During the 2009-2011 fiscal biennium, money in the account may also be transferred into the state general fund.))~~

LAWS OF 2012, 1st Spec. Sess., ch. 10, § 7.

On May 31, 2011, the Estate paid \$171,403 in estate taxes. On June 8, 2012, the Estate filed a complaint for declaratory judgment. The Estate alleged that the transfer of funds from the education legacy trust account into the state general fund was unconstitutional under art. VII, § 5. The Estate requested that the superior court issue an injunction preventing further diversion of funds out of the education legacy trust account. And, the Estate requested that the superior court

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<sup>4</sup> The amendments to former RCW 83.10.230 in 2008 and 2010 were made in bills involving the state's operations budget. LAWS OF 2008, ch. 329, § 924; LAWS OF 2010, 1st Spec. Sess., ch. 37, § 953.

<sup>5</sup> From the record before this court, it does not appear that there was any transfer of funds resulting from the 2010 amendments.

order the legislature to restore the amount of money transferred out of the education legacy trust account into the general fund.

The State alleged several affirmative defenses including: (1) the Estate lacked standing, (2) the Estate's action was time barred, and (3) the Estate's action was moot. The State moved for summary judgment dismissal of the Estate's claims based on those affirmative defenses. The Estate filed a cross motion for summary judgment.

The superior court rejected the State's affirmative defenses.<sup>6</sup> However, the superior court granted the State's motion for summary judgment on the merits of the Estate's claims, denied the Estate's cross motion for summary judgment, and dismissed the Estate's complaint. The Estate filed a motion for direct review with our Supreme Court. Our Supreme Court transferred the Estate's appeal for consideration by this court.

#### ANALYSIS

##### A. STANDARD OF REVIEW

We review a superior court's order on summary judgment in a declaratory judgment action de novo. *Internet Cmty. & Entm't Corp. v. Wash. State Gambling Comm'n*, 169 Wn.2d 687, 691, 238 P.3d 1163 (2010). Summary judgment is appropriate if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. CR 56(c).

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<sup>6</sup> The State argues that this court should not reach the merits of the Estate's constitutional arguments, but rather, affirm the superior court's order based on the threshold issues of standing, mootness, separation of powers, or statute of limitations. The State has not cross appealed the superior court's order denying their motion for summary judgment in part on these issues. Therefore, we do not address issues raised in the State's argument.

B. LEGALITY OF THE TRANSFER OF FUNDS

“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.” *Wash. State Farm Bureau Fed’n v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007). The Estate claims art. VII, § 5 and art. II, § 19 of the Washington State Constitution precluded the legislature’s 2008 and 2010 amendments to former RCW 83.100.230, and therefore, the amendments were invalid. Because art. VII, § 5 does not apply and art. II, § 19 does not invalidate the amendment, we hold that the Estate’s constitutional challenge fails.

1. Art. VII, § 5 Does Not Apply

The Estate argues that the amendment to former RCW 83.100.230 authorizing the transfer of money from the Education Legacy Trust Account to the general fund violates art. VII, § 5. However, that provision restricts the legislature’s power to impose a tax, not the legislature’s plenary power to spend. Therefore, we hold that art. VII, § 5 does not apply.<sup>7</sup>

Art. VII, § 5 of the Washington Constitution states:

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.

This court interprets constitutional provisions to “give effect to the manifest purpose for which it was adopted.” *Westerman v. Cary*, 125 Wn.2d 277, 288, 892 P.2d 1067 (1994). This court looks first to the plain language of the text and gives the plain language its common and ordinary

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<sup>7</sup> The State argues that art. VII, § 5 does not apply to the legislation the Estate challenges because art. VII, § 5 applies exclusively to property taxes and not estate taxes. However, as discussed below, art. VII, § 5 does not apply because the Estate is not challenging the imposition of an estate tax. Therefore, we do not address whether that provision would apply to the imposition of an estate tax.



No. 46641-4-II

meaning. *Wash. Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004), *cert. denied*, 543 U.S. 1120 (2005). Here, the plain language of art. VII, § 5 clearly demonstrates that it applies only to legislation *establishing* taxes; it does not apply to legislation authorizing legislative spending.

Art. VII, § 5 contains two restrictions on the legislature's ability to tax. First, it requires that any tax be levied pursuant to law. Art. VII, § 5. Second, it requires every law *imposing* a tax to "state distinctly the object of the same to which only it shall be applied." Art. VII, § 5. Here, the Estate does not challenge a law *imposing* a tax, it is challenging a law that *transfers* tax money. The plain language of art. VII, § 5 does not restrict the legislature's plenary power to transfer money. Accordingly, art. VII, § 5 is inapplicable.

The cases the Estate cites to support its argument that the amendments to former RCW 83.100.230 violated art. VII, § 5 do not contradict the plain language interpretation of art. VII, § 5. In *Sheehan v. Cent. Puget Sound Reg'l Transit Auth.*, 155 Wn.2d 790, 123 P.3d 88 (2005), the plaintiffs directly challenged the motor vehicle excise tax. The *Sheehan* court articulated that the issue was whether the taxes imposed were unconstitutional, not whether the legislature validly authorized spending the tax money. *Id.* at 796. *Burbank Irr. Dist. No. 4 v. Douglass*, 143 Wash. 385, 396, 255 P. 360 (1927), does to some extent, address the diversion of funds from a money payable out of a special account. However, the case does not address art. VII, § 5. Instead, it addresses whether the county was properly paying warrants pursuant to the requirements of the

No. 46641-4-II

irrigation code. *Id.* at 395-96.<sup>8</sup> Similarly, *State ex rel. State Bd. for Vocational Educ. v. Yelle*, 199 Wash. 312, 91 P.2d 573 (1939) addressed appropriations from the common school fund required by art. IX of the Washington Constitution. *Id.* at 315-16. It does not establish a constitutional cause of action challenging legislative transfers under art. VII, § 5. *Id.*

The Estate's reliance on *Sheldon v. Purdy*, 17 Wash. 135, 49 P. 228 (1897), is also misplaced. *Sheldon* was an action in which the plaintiff asked the court for a writ of mandamus ordering the county treasurer to pay coupons due upon bonds issued by the school district. *Id.* The money that the plaintiffs alleged the school district had used to pay the coupons was money from the "common-school fund" created by art. IX of the constitution. *Id.* at 138-39. The court held that, to the extent that the law required the County treasurer to divert money from the constitutionally created "common-school fund," the law would be unconstitutional. *Id.* at 141-42. However, *Sheldon* does not create a cause of action under art. VII, § 5 for a taxpayer to challenge the use of money authorized by the legislature in a statutorily created fund.

The Estate has not cited any case since *Sheldon* was decided in 1897 for the proposition that art. VII, § 5 restricts the legislature's plenary authority to spend or supports a cause of action challenging the legislature's transfer of funds between accounts. "Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). Thus, regardless of whether art. VII, § 5 applies to estate taxes or

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<sup>8</sup> The "real question" in the case was framed as: "shall warrants for operating expenses be paid in the order of their registration, regardless of the year in which they were issued, or shall such warrants when issued constitute a first claim on the expense fund for that year?" *Burbank Irr. Dist. No. 4*, 143 Wash. at 390.

No. 46641-4-II

whether it applies exclusively to property taxes, the Estate is not challenging the imposition of an estate tax, and it has not provided any authority supporting the contention that art. VII, § 5 applies to amendments authorizing the transfer of funds between accounts.

## 2. Constitutionality Under Art. II, § 19

The Estate also alleges that the amendments to former RCW 83.100.230 violate art. II, § 19 of the Washington Constitution. We disagree.

Art. II, § 19 states that “No bill shall embrace more than one subject, and that shall be expressed in the title.” Two specific rules are embodied in art. II, § 19: (1) the subject in title rule and (2) the single subject rule.

### a. Subject in Title Rule

Under the subject in title requirement of art. II, § 19, the subject of the bill must be adequately expressed in its title. *Wash. State Grange v. Locke*, 153 Wn.2d 475, 497, 105 P.3d 9 (2005). The purpose of this requirement is to guarantee notice of the subject matter of the bill. *Id.* at 491. “To be constitutionally adequate, a title need not be ‘an index to the contents [of the bill], nor must it provide details of the measure.’” *Id.* at 497 (quoting *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 217, 11 P.3d 762, 27 P.3d 608 (2000)). The title of the bill need only provide sufficient notice to inform voters and legislators of the subject matter of the bill. *Id.* “The title satisfies the subject in title requirement ‘if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law.’” *Id.* (quoting *Young Men’s Christian Ass’n v. State*, 62 Wn.2d 504, 506, 383 P.2d 497 (1963)).

No. 46641-4-II

While the Estate challenges the amendments to former RCW 83.100.230 as violating art. II, § 19, the Estate fails to meaningfully distinguish between its allegation that the bills in question violated the subject in title rule and its allegation that the bills violated the single subject rule. However, to the extent that the Estate attempts to argue that the bills violate the subject in title rule, the Estate is mistaken.

Here, the title of the bills read, “OPERATING BUDGET—SUPPLEMENTAL APPROPRIATIONS AN ACT Relating to fiscal matters; amending RCW . . . 83.100.230” and “SUPPLEMENTAL OPERATING BUDGET AN ACT Relating to fiscal matters; amending RCW . . . 83.100.230.” LAWS OF 2008, ch. 329 pmb1.; LAWS OF 2010, 1st Spec. Sess., ch. 37. Thus, the title of the bills specifically reference amending former RCW 83.100.230. The specific reference to former RCW 83.100.230 in both bills provides notice to an inquiring mind that some change related to the funds in the education legacy trust account is being made in the bills. Therefore, the subject in title bill requirement in art. II, § 19 is met.

b. Single Subject Rule

Art. II, § 19 serves the purpose of preventing “the practice of combining two bills, neither of which would pass on its own, but when the proponents of the measures combine their interests both can be enacted,” and preventing “the attachment of an unpopular bill to a popular one on an unrelated subject in order to guarantee the passage of the unpopular provision.” *Wash. State Grange*, 153 Wn.2d at 491. The Estate’s primary complaint is that, by inserting an amendment to former RCW 83.100.230 in appropriations bills, the legislature made a substantive change in the

law through an administrative appropriations bill. This argument goes toward whether the bills violate the single subject rule, not whether the bills violate the subject in title rule.

Although the Estate provides examples of circumstances in which the courts have declared bills amending substantive law in an appropriations bill as unconstitutional, the Estate fails to apply our Supreme Court's criteria to determine whether a section of a bill is amending substantive law. Applying such criteria demonstrates that the amendment to former RCW 83.100.230 is not a substantive change in the law.

Our Supreme Court has provided three non-exclusive factors to consider when determining whether a section of a bill is truly substantive in nature:

We decline to adopt a categorical definition of "substantive law," but where the policy set forth in the budget has been treated in a separate substantive bill, its duration extends beyond the two-year time period of the budget, or the policy defines rights or eligibility for services, such factors may certainly indicate substantive law is present.

*Wash. State Legislature v. State*, 139 Wn.2d 129, 147, 985 P.2d 353 (1999). Here, not a single criteria articulated by our Supreme Court applies to the amendments to former RCW 83.100.230.

First, former RCW 83.100.230 was originally the product of the Revenue and Taxation bill. LAWS OF 2005, ch. 514, § 1101. Since its creation in 2005, former RCW 83.100.230 has been amended four times: LAWS OF 2008, ch. 329, § 924; LAWS OF 2010, 1st Spec. Sess., ch. 37, § 953; LAWS OF 2012, ch. 10, § 7; and LAWS of 2015, 3rd Spec. Sess., ch. 4, § 977. All the amendments to former RCW 83.100.230 have come in budgeting or funding bills. Former RCW 83.100.230 has never been treated in a separate substantive bill. Second, both the 2008 and 2010 amendments to former RCW 83.100.230 were limited to the biennium for which the operating budget was being created. Therefore, the amendments did not last past the two year time period of the budget

No. 46641-4-II

biennium. Third, the amendments to former RCW 83.100.230 do not define any rights or eligibility for services, and former RCW 83.100.230 has never defined any rights or eligibility for services.

The Estate relies on *Flanders v. Morris*, 88 Wn.2d 183, 558 P.2d 769 (1977), to support its challenge. Like the legislation in *Washington State Legislature*, the provision at issue in *Flanders* involved age requirements for public assistance. *Id.* at 186. In *Flanders*, the court specifically noted that there had been two prior attempts to introduce age requirements for public assistance; however, when presented in separate substantive bills, the bills failed to pass both times. *Id.* at 187. The *Flanders* court recognized that the legislature had used an appropriations bill to pass a law that could not pass on its own merits, which was exactly what art. II, § 19 was meant to prevent. *Id.*

Here, there is nothing before this court that indicates the amendments to former RCW 83.100.230 had been introduced in separate bills prior to the legislature passing the amended bill. Accordingly, outside the Estate's bald assertions, there is no evidence establishing that the legislature abused an appropriations bill in the same manner as the court disapproved of in *Flanders*.

Finally, the Estate relies on *Washington Toll Bridge Authority v. Yelle*, 54 Wn.2d 545, 342 P.2d 588 (1959). In *Washington Toll Bridge Authority*, the court held that a provision regarding the funding of bonds included in an appropriations bill violated art. II, § 19. 54 Wn.2d at 550. The court determined that the provisions violated art. II, § 19 because the provision was of a "general and continuing nature," rather than being temporary in nature. *Id.* at 551. Moreover, the provision restricted the power of the Toll Bridge Authority, while at the same time vesting new

powers in the State Highway Commission. *Id.* at 551-53. Here, the amendments to former RCW 83.100.230 are not “general and continuing.” *Id.* at 551. They are limited to the specific fiscal biennium for which the appropriations were passed. And, the amendments do not restrict current powers in an agency, nor do they create or vest new powers.

In sum, the Estate fails to show, based on the Supreme Court’s explicit criteria, that the amendments to former RCW 83.100.230 constitute a substantive change in the law. And, the cases to which the Estate cites do not provide any support for the contention that the 2008 and 2010 amendments to former RCW 83.100.230 should be considered substantive. Instead, the cases on which the Estate relies apply the same criteria for determining whether a provision is a substantive change in the law as were set out in *Washington State Legislature*, 139 Wn.2d 129. Because the amendments to former RCW 83.100.230 do not meet any of the criteria, there is no basis for concluding that they were substantive changes to the law improperly inserted into the amendments.

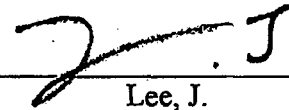
#### CONCLUSION

We hold that art. VII, § 5 does not apply, and the requisite criteria to show a violation of art. II, § 19 has not been shown. Consequently, the Estate fails to show a constitutional limitation exists on the legislature’s power to enact the challenged amendments. Because it is unable to show the legislation authorizing the transfer of funds to the state general fund was unconstitutional, the Estate cannot claim the subsequent transfer of money to the state general fund was unconstitutional.

No. 46641-4-II

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



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Lee, J.

We concur:



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Maxa, P.J.



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Melnick, J.



**APPENDIX B**

Order Denying Motion for Reconsideration dated October 13, 2015

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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

Appellant,

v.

THE STATE OF  
WASHINGTON, acting by and  
through the WASHINGTON  
STATE LEGISLATURE and  
JAMES McINTYRE, Treasurer of  
State of Washington; BRIAN  
SONNTAG, Auditor of the State  
of Washington; and BRAD  
FLAHERTY, Director of the  
Department of Revenue, State of  
Washington,

Respondents.

No. 46641-4-II

ORDER DENYING MOTION FOR  
RECONSIDERATION

*Brad*  
DEPUTY

STATE OF WASHINGTON

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DIVISION II

**RESPONDENTS, State of Washington, et al**, move for reconsideration of the Court's August 26, 2016, opinion. Upon consideration, the Court denies the motion. Accordingly, it is

**SO ORDERED.**

PANEL: Jj. Maxa, Lee, Melnick

DATED this 13<sup>th</sup> day of October, 2015.

FOR THE COURT:

*Maxa, J.*  
\_\_\_\_\_  
PRESIDING JUDGE

CASE #: 46641-4-II, Order Denying Reconsideration, Pg 2  
William E. Wall et al., v. The State of Washington, et al.

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**APPENDIX C**

Order Denying Motion to Publish dated October 13, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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

Appellant,

v.

THE STATE OF WASHINGTON, acting by and through the WASHINGTON STATE LEGISLATURE and JAMES McINTYRE, Treasurer of State of Washington; BRIAN SONNTAG, Auditor of the State of Washington; and BRAD FLAHERTY, Director of the Department of Revenue, State of Washington,

Respondents.

No. 46641-4-II

ORDER DENYING MOTION TO PUBLISH OPINION

FILED COURT OF APPEALS DIVISION II 2015 OCT 13 AM 8:33 STATE OF WASHINGTON BY [Signature] DEPUTY

APPELLANT, Estate of James H. Jack, moves for publication of the Court's August 26, 2016, opinion. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Lee, Melnick

DATED this 13<sup>th</sup> day of October, 2015.

FOR THE COURT:

[Signature: Maxa, J.] PRESIDING JUDGE

CASE #: 46641-4-II, Order Denying Reconsideration, Pg 2  
William E. Wall et al., v. The State of Washington, et al.

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**Appendix D**  
**Constitutional and Statutory Provisions**

**WA Const. Article VII, Section 5**

§ 5. *Taxes, how levied.*

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.

**WA Const. Article II, Section 19**

§ 19. *Bill to contain one subject.*

No bill shall embrace more than one subject, and that shall be expressed in the title.

**WA Const. Article II, Section 37**

§ 37. *Revision or Amendment*

No act shall be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.

**2008 Legislation – Wa. Ch. 329**

[\*924] Sec. 924 RCW 83.100.230 and 2005 c 514 s 1101 are each amended to read as follows:

The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. 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. [A> DURING THE 2007-2009 FISCAL BIENNIUM, MONEYS IN THE ACCOUNT MAY ALSO BE TRANSFERRED INTO THE STATE GENERAL FUND <A]

[\*802] Sec. 802 2007 c 522 s 805 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER – TRANSFERS

. . . .

[A> EDUCATION LEGACY TRUST ACCOUNT: FOR TRANSFER TO THE STATE GENERAL FUND FOR FISCAL YEAR 2009 ..... \$67,000,000<A]

**2009 Legislation – Wa. Ch. 564**

**Sec. 1702.** 2009 c 4 s 802 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER – TRANSFERS.**

. . .

Education Legacy Trust Account: for transfer to the state general fund for fiscal year 2009 . . . \$67,000,000

## **APPENDIX E**

Washington laws, 2008, Chapter 329 “OPERATING BUDGET –  
SUPPLEMENTAL APPROPRIATIONS.



collaborative effort and am confident the group will examine funding mechanisms, liability, and site-specific planning issues.

For these reasons, I have vetoed Sections 1019, line 22; 1027; 1030; 1032; 1037; 3028 (5); and 3040 of Engrossed Substitute House Bill 2765.

With the exception of Sections 1019, line 22; 1027; 1030; 1032; 1037; 3028 (5); and 3040, Engrossed Substitute House Bill 2765 is approved."

CHAPTER 329

[Engrossed Substitute House Bill 2687]

OPERATING BUDGET—SUPPLEMENTAL APPROPRIATIONS

AN ACT Relating to fiscal matters; amending RCW 28B.105.110, 38.52.106, 41.45.230, 41.50.110, 43.08.190, 43.08.250, 43.330.250, 50.16.010, 67.40.025, 67.40.040, 70.96A.350, 70.105D.070, 70.105D.070, 74.08A.340, 77.32.010, 83.100.230, 90.48.390, 90.71.310, and 90.71.370; reenacting and amending RCW 70.105D.070; amending 2007 c 522 ss 101, 102, 103, 104, 105, 106, 107, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 146, 147, 148, 149, 150, 151, 152, 153, 154, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 401, 402, 501, 502, 503, 504, 505, 507, 508, 509, 510, 511, 513, 514, 515, 516, 517, 519, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 701, 702, 703, 704, 705, 706, 716, 718, 719, 722, 1621, 728, 801, 805, 910, 911, 912, and 913 (uncodified); adding new sections to 2007 c 522 (uncodified); repealing 2007 c 522 s 713 (uncodified); making appropriations; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

PART I
GENERAL GOVERNMENT

Sec. 101. 2007 c 522 s 101 (uncodified) is amended to read as follows:

FOR THE HOUSE OF REPRESENTATIVES

Table with 2 columns: Description and Amount. Rows include General Fund—State Appropriation (FY 2008), General Fund—State Appropriation (FY 2009), Pension Funding Stabilization Account, and TOTAL APPROPRIATION.

The appropriations in this section are subject to the following conditions and limitations:

- (1) \$56,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to implement Senate Bill No. 5926 (construction industry).
(2) \$52,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the implementation of Third Substitute House Bill No. 1741 (oral history).