No. 97863-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

S. MICHAEL KUNATH, et al.,

Respondents,
v.
CITY OF SEATTLE, et al.,

Appellants.

KUNATH ANSWER TO *AMICUS* BRIEFS

DAVIS LEARY PLLC

Matthew F. Davis, WSBA 20939
3233 56th PL SW
Seattle WA 98118
206-578-5800
Matthew@davisleary.com

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I. INTRODUCTION

The *amicus* briefs of the Washington State Labor Council et al., Senators Lisa Wellman et al., and Commissioner Kreidler are helpful, but not in the way that was intended. The most notable thing about them is the absence of a single reference to the constitutional definition of the term "property," which is the issue for which review is sought. In theory at least, *amicus* briefs are expected to address the legal questions before the Court. Instead, *amici* make the goal of the City and EOI to have this Court amend the Constitution by judicial fiat all the more clear.

II. ANSWER TO PETITIONS

The *amicus* brief of state senators and representatives argues that this Court can overrule its precedent upon a determination that the prior decisions were "incorrect and harmful." Senator *Amicus* at 2. The balance of brief makes compelling policy arguments why a graduated income tax would be more fair that Washington's current system, but nothing in the brief even purports to explain why *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933) is incorrect. Notably, although *amici* represent the people of Washington, their *amicus* brief asks this Court to impose an income that the people themselves have repeatedly rejected.

The *amicus* brief of the labor parties likewise argues that the Court can overrule precedent based on public policy grounds. While that statement is true in a sense, it is not applicable here. The brief gives the example of *State v. Devin*, 158 Wn.2d 157, 170-71, 142 P.3d 599 (2006), which overruled its decision in *State v. Furth*, 82 Wash. 665, 144 P. 907 (1914), In *Furth*, the Court followed the common law rule to hold that when a criminal appellant dies with an appeal pending, the underlying conviction is abated as if it never happened. This Court will overrule its prior common law decisions on policy grounds because the common law is based on policy grounds in the first instance. *See, e.g., Zellmer v.*

Zellmer, 164 Wn.2d 147, 154-55, 188 P.3d 497 (2008). Overruling a decision interpreting the constitutional definition of the term property on public policy grounds would be completely different. Definitions do not change on public policy grounds.

The *amicus* brief of Commissioner Kreidler is most curious. It frankly is difficult to see what interest the Insurance Commissioner has in this case. Like the City and EOI, he argues that this Court should accept review because of "the consequences over the State's taxation system during the past 90 years of this Court's characterization, in *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933), of income as property." OIC *Amicus* Brief at 5. In this regard, he makes the same fundamental mistake that the City and EOI do. Income is property for tax purposes not because this Court so ruled in *Culliton*; rather, income is property because of the definition adopted by the People in the 14th Amendment. Any negative consequences of that decision can only be rectified the same way, by constitutional amendment.

III. CONCLUSION

It is genuinely troubling to see *amici* so brazenly asking this Court to ignore its duty to apply the law and to impose a graduated income tax on the people for their own good. No thoughtful person could deny that Washington's tax system is unfair. However, no matter what harm Washington's regressive tax system may cause, the harm to the rule of law that a decision rewriting the Constitution would do is far greater.

DATED this 6th day of February, 2020.

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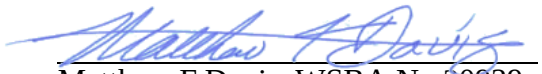

Matthew F Davis, WSBA No 20939
Attorneys for Kunath

DAVIS LEARY

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- woodward@workerlaw.com

Comments:

Sender Name: Matthew Davis - Email: matthew@davisleary.com
Address:
3233 56TH PL SW
SEATTLE, WA, 98116-3105
Phone: 206-578-5800

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