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SUPREME COURT
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FILED
SUPREME COURT
STATE OF WASHINGTON
8/5/2019
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No. 97195-1

SUPREME COURT OF THE STATE OF WASHINGTON

TAYLOR BLACK, et al.

Plaintiff-Appellants,

vs.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY,

STATE OF WASHINGTON

Defendants-Respondents.

BRIEF OF *AMICUS CURIAE*

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I. INTRODUCTION & IDENTITY OF AMICUS CURIAE

The Seattle Building & Construction Trades Council (“Council”) is a central labor organization composed of nineteen affiliate building trades unions, representing over 15,000 building and construction workers in the greater Puget Sound area. These are the workers who physically construct the Puget Sound region’s transit infrastructure and who rely on these projects to make a living.

The Council coordinates the activities, functions and interests of the affiliated local unions in the building and construction trades industry. To this end, the Council negotiates project labor agreements, community workforce agreements, and collective bargaining agreements for large scale construction projects in King County. In 1999, the Council negotiated a Project Labor Agreement (“Agreement”) with Sound Transit for the construction of Sounder Commuter and Link Light Rail projects. (<https://www.soundtransit.org/sites/default/files/documents/project-labor-agreement-for-construction-of-sounder-link-1999-2014.pdf>) The parties subsequently amended the Agreement to also include work on the Sound Transit 2 (“ST2”) and Sound Transit 3 (“ST3”) projects. To date, millions of man-hours have been worked by building and construction trades workers under this Agreement, with fifteen current projects, and dozens

more projects projected through the completion of the ST2 and ST3 portions.

Appellants (“Black”) seek to overturn a significant part of the voter approved funding for ST3 that will fund more light-rail, commuter-rail, and express-bus service in the most heavily congested traffic areas in King, Pierce, and Snohomish Counties. If Black is successful, a significant number of jobs would be put at risk, including union wage jobs, apprentice training opportunities, and workforce development initiatives for low income and under-represented individuals.

Sound Transit in its briefing explained why the enactment of RCW 81.104.160(1) did not violate art. II §37. Black’s reply focused in part on the argument that the 1996 MVET vehicle valuation schedule adopted by RCW 81.104.160(1) is not an “existing law.” (Reply Brief at 10-15) That argument is contrary to well-established authority that local taxing authority can only be delegated by a legislatively enacted “existing law,” does not reflect the Washington Attorney General’s explanation of the existing ST MVET as reflected in the recently adopted explanatory statement for Initiative 976 (I-976), and literally makes no sense as that 1996 MVET schedule currently is used to provide funding for existing and anticipated union contract jobs.

II. STATEMENT OF FACTS

In 2016, taxpayers voted to increase the motor vehicle excise tax (“MVET”) to fund more light-rail, commuter-rail, and express-bus service for the Puget Sound region, resulting in RCW 81.104.160(1). CP 406. The revenue raised by this statute is designated for the construction of numerous largescale Sound Transit projects including, a 62-mile extension of the light-rail system, an extension of the commuter rail system and the construction of over a dozen new commuter stations. The funding of this work enormously impacts the amount of available construction jobs in the region, as thousands of construction workers are needed to complete the scheduled projects.

The work associated with the Sound Transit projects is covered by the terms of a Project Labor Agreement between Sound Transit and the Council. To date, under the terms of this Agreement, building and construction trades members have worked millions of man-hours and have been paid millions of dollars in wages. The ST3 phase “will employ nearly 29,000 construction workers and will require approximately 43 million construction labor hours.” CP 770.

The Agreement further requires Sound Transit to support apprenticeship training programs and workforce development initiatives. These requirements include specific goals for apprenticeship utilization, the

development of means and methods for the removal of barriers to the inclusion of low income and under-represented individuals in apprenticeship and pre-apprenticeship programs, and set percentages for the use of female and minority apprentices. These requirements are having meaningful and important impacts on the greater community.

III. ARGUMENT

RCW 81.104.160(1) IS CONSTITUTIONAL. THE 1996 VERSION OF CHAPTER RCW 82.44 IS “EXISTING LAW” AS APPLIED TO SOUND TRANSIT.

Sound Transit collects two voter-approved motor-vehicle excise taxes based on two statutes enacted at different times: a .3% tax authorized by statute in 1992 and approved by voters in 1996 and a .8% tax authorized by statute in 2015 and approved by voters in 2016. The .3% MVET approved by voters in 1996 is levied and collected pursuant to the authority granted by the version of RCW 81.104.160 enacted in 1992. The vehicle value for that MVET is determined by the 1996 version of chapter 82.44 RCW.

In 2002, Initiative 776 was passed, repealing the MVET state-wide, including RCW 81.104.160 and the vehicle value schedule in chapter 82.44 RCW. Thereafter, this Court held in *Pierce County v. State*, 159 Wn.2d 16, 27, 51, 148 P.3d 1002 (2006), that the repeal did not apply to Sound Transit because the .3% MVET had been pledged to secure bonds. In reaching this

conclusion, the Court relied on the impairment of contracts clause in the Washington Constitution, article I, section 23, which mandates that “[n]o ... law impairing the obligations of contracts shall ever be passed.” Accordingly, the Court concluded that the section of Initiative 776 which sought to repeal Sound Transit’s taxing authority “has no legal effect of preventing Sound Transit from continuing to fulfill its contractual obligation to levy the MVET for so long as the bonds are outstanding.” *Id.* Thus, with respect to Sound Transit, the statutory authority granted by the 1996 versions of RCW 81.104.160 and chapter 82.44 RCW to levy and collect the MVET were not repealed by Initiative 776 and remain valid and enforceable law until the bonds secured by the tax are retired in 2028.

Black does not dispute this history. Rather, Black argues that the MVET is not being calculated based on an “existing law.” Ignoring this Court’s decision in *Pierce County*, Black argues that the 1996 valuation schedule was in fact repealed and there is no other legislative “existing law” that authorizes the collection of the MVET based on the 1996 schedule. Black’s argument is contrary to law and common sense.

First, Black’s argument ignores the Washington Constitution’s provision that only the Legislature can authorize local taxing authority. Specifically, art. VII, § 9 provides: “The legislature may vest the corporate authorities of cities, towns and villages with power to make local

improvements by special assessment, or by special taxation of property benefited.” Similarly, art. XI, §12 provides: “The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.”

Applying these provisions, this Court’s decisions are clear that “local taxation must be authorized by a legislative delegation of taxing power.” *Watson v. City of Seattle*, 189 Wn. 2d 149, 165, 401 P.3d 1, 9 (2017). The Court’s decision in *Pierce County* to allow Sound Transit to continue to collect an MVET based on the 1996 statutory schedule can only be explained based on the conclusion that the 1996 statutory schedule is an operative legislative delegation of taxing authority, i.e. it is “existing law.” The *McCleary* decisions requiring the Legislature to enact laws to provide adequate education funding make clear that only the Legislature, and not the judicial branch, is vested with the authority to tax or delegate taxing authority even when the constitution requires additional funding. *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012).

Second, this conclusion is consistent with the Attorney General’s understanding of the *Pierce County* decision. In an explanatory statement

drafted by the Attorney General for a recent ballot initiative,¹ the Attorney General provided the following summary of the current Sound Transit MVET:

In 2006, the Washington Supreme Court held that state law could not change the terms of any existing Sound Transit bond contracts while the bonds are still outstanding. This means that Sound Transit must continue to use the tax rate and valuation formula that were in effect at the time the bond was issued, even if state law later changes the rate or formula, until the bonds are retired, defeased, or refinanced under different contract terms.

The valuation formula is the 1996 version of chapter 82.44 RCW. Thus, that formula is “the law as it presently exists,” i.e. existing law.

Third, Black’s argument ignores that Sound Transit as a practical matter has entered into numerous job contracts based on the 1996 MVET schedule being existing law. The contractors, the Council, the Council’s affiliated local unions, and the construction workers likewise entered into these contracts based on the 1996 MVET being existing law. There is no evidence that anyone, Sound Transit, the Council, the local unions, the contractors, or the contractors’ employees, conceived that Sound Transit

¹ Initiative 976 has qualified for the November ballot. The Initiative purports to effect the Sound Transit MVET currently being collected. RCW 29A.32.040 provides that the Attorney General is responsible for drafting the explanatory statement for the voter’s pamphlet. RCW 29A.32.070 provides that part of the explanatory statement includes “[a] statement prepared by the attorney general explaining the law as it presently exists.”

was proceeding with ST3 with any question that the 1996 MVET was “existing law.”

Black’s reliance on the absence of the 1996 MVET valuation schedule from the current RCWs is misplaced. This Court has recognized that a newly enacted Washington law may reference and incorporate provisions from other laws that are not codified in the RCW. In *Trac Fone Wireless, Inc. v. Wash. Dep’t of Revenue*, 170 Wn.2d 273, 284, 242 P.3d 810 (2010), this Court found that a state statute that incorporates portions of the federal Mobile Telecommunications Sourcing Act by statutory reference is a valid and enforceable reference statute. Thus, Black’s assertion that the 1996 version of chapter 82.44 cannot be referenced in legislation because it is no longer formerly codified in the RCW is patently wrong.

Trac Fone Wireless further rebuts Black’s claim that non-codified laws cannot be part of a complete act because non-codified laws are not easily located. The 1996 version of chapter 82.44 RCW is in the same location as the current version of the statute on the official legislative website at (<http://leg.wa.gov/CodeReviser/RCWArchive>). This link contains all Washington statutes by year from 1973 to 2018. And as the Court knows from its frequent citation to statutes from early years, a legislator or citizen can as easily access the 1996 version of chapter 82.44

RCW with one mouse click on the same official state webpage. *See Retired Public Employees Council of Washington v. Charles*, 148 Wn.2d 602, 62 P.3d 470 (2003) (citing non-codified former statutes from 1989 and 1996). In fact, the 1996 version of the statute is sufficiently easy to locate that the Legislature referenced it in the 2010 amendment to RCW 81.104.160(3), which provides that “the motor vehicle excise tax must comply with chapter 82.44 RCW as it existed on January 1, 1996.” Indeed, minimally more effort is required to seek out federal statutes like the one referenced in *Trac Fone Wireless*, than is required to locate and read the 1996 version of chapter 82.44 RCW.

IV. CONCLUSION

For the above reasons, the Court should affirm the superior court’s order granting summary judgment in favor of Sound Transit.

DATED this 26th day of July, 2019.

s/Kristina Detwiler
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APPENDIX

A



Bob Ferguson
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1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

July 22, 2019

The Honorable Kim Wyman
ATTN: Lori Augino
PO Box 40229
Olympia, WA 98504-0229

Re: Ballot Title and Explanatory Statement for Initiative 976

Dear Secretary Wyman:

In accordance with RCW 29A.32.040 and RCW 29A.32.070, we are supplying the Ballot Title and Explanatory Statement for Initiative 976. The ballot title for Initiative 976 was previously established, and is repeated here solely for convenience of reference.

Ballot Title

Statement of Subject: Initiative Measure No. 976 concerns motor vehicle taxes and fees.

Concise Description: This measure would repeal, reduce, or remove authority to impose certain vehicle taxes and fees; limit annual motor-vehicle-license fees to \$30, except voter-approved charges; and base vehicle taxes on Kelley Blue Book value.

Should this measure be enacted into law? Yes [] No []

EXPLANATORY STATEMENT

The Law as It Presently Exists

A. Motor Vehicle Registration and License Fees

Owners of motor vehicles pay state and local license fees and excise taxes when they register vehicles and obtain license tabs each year. The total, combined amount depends on the type and weight of the vehicle, as well as where the vehicle is registered.

The base annual license fee ranges from \$30 to \$93 for most passenger vehicles, such as cars, motorcycles, and light-duty trucks. An additional fee is then added depending on the vehicle's weight. The vehicle weight fee can range from \$25 to \$65 for most passenger vehicles. Funds from the license and vehicle weight fee are used to pay for a variety of state transportation purposes, including road and highway repairs.

Owners of snowmobiles pay an annual license fee of \$50. The snowmobile license fee helps pay for snowmobile facilities and snowmobile safety, enforcement, and education programs

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throughout the state. Owners of commercial trailers pay \$34 for initial registration and \$30 for each annual renewal. These license fees also pay for state transportation purposes.

Additional taxes and fees may be added depending on the city and county where the vehicle is registered. These taxes and fees help pay for local transportation improvement projects, passenger-only ferries, and other transportation purposes. Some residents of King, Pierce, and Snohomish County also pay voter-approved, annual motor vehicle excise taxes (MVET) that help pay for mass transit projects run by Sound Transit. The MVET is calculated based on a vehicle valuation and depreciation schedule that is set in state law. The total rate of the current MVET is one and one tenths percent (1.1%) of the value of the vehicle as determined by the statutory formula. Future approved MVET's cannot exceed eight-tenths of one percent (0.8%) of the value of the vehicle.

Finally, other fees may be included in the total amount, such as for county filing and service fees, fees for special license plates, or fees for certain types of vehicles. For example, owners of electric vehicles currently pay a \$150 fee that goes toward paying for transportation feasibility studies and other transportation purposes. An additional \$75 transportation electrification fee will go into effect for electric vehicles on August 1, 2019. This fee will be used to support green transportation projects.

B. Taxes on Selling, Leasing, or Renting a Motor Vehicle

Each retail sale or lease of a motor vehicle is subject to an additional state excise tax known as the "motor vehicle sales/lease tax." This tax, which is in addition to general sales and use taxes, is set at three-tenths of one percent (0.3%) of the selling price of every motor vehicle in the state. Off-road vehicles, snowmobiles, and other non-highway vehicles are not subject to the tax. Farm tractors and vehicles are also not subject to the tax so long as the vehicles are not used for marijuana production. Funds from the motor vehicle sales/lease tax pay for transportation services in the state.

Regional transit authorities in King, Pierce, and Snohomish counties may also impose additional sales and use tax on car rentals. The rate of the tax may not exceed 2.172 percent (2.172%) of the selling price of the rental. Funds from this tax are used to provide mass transit services run by Sound Transit.

C. Sound Transit Funding

State law authorizes Sound Transit to collect multiple types of taxes from some King, Pierce, and Snohomish County residents to help pay for mass transportation projects. These taxes include the MVET and the additional sales and use tax on rental cars previously described, as well as a local property tax and a local sales and use tax on purchases made within the district. Sound Transit also uses federal grants, transit fares, interest earnings, and other revenue to pay for its transportation projects.

Since 1999, Sound Transit has issued and sold public bonds to finance its transportation projects. Sound Transit uses the revenue from the MVET and other taxes to pay the principal and interest on the bonds. It promised its bondholders that it would continue to collect the taxes until

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the bonds are retired. In 2006, the Washington Supreme Court held that state law could not change the terms of any existing Sound Transit bond contracts while the bonds are still outstanding. This means that Sound Transit must continue to use the tax rate and valuation formula that were in effect at the time the bond was issued, even if state law later changes the rate or formula, until the bonds are retired, defeased, or refinanced under different contract terms.

The Effect of the Proposed Measure if Approved

This measure would reduce funding for state and local transportation projects by repealing, reducing, or removing state and local authority to impose certain vehicle taxes and fees. The measure would limit annual state and local license fees for motor vehicles weighing 10,000 pounds or less to \$30, unless the fee is approved by voters. License fees, such as the motor vehicle weight fee and transportation benefit district fees, would be eliminated. The electric vehicle license fee would be lowered to \$30. The transportation electrification fee would remain the same. The license fee for snowmobiles and commercial trailers would be lowered to \$30. Other fees, such as service and filing fees, would remain the same. The measure would also eliminate the state motor vehicle sales/lease tax and eliminate authority to impose a local motor vehicle excise tax that supports passenger-only ferries.

Any regional transit authority, such as Sound Transit, that has issued bonds financed by a motor vehicle excise tax would be required to defease, refinance, or retire the bonds early, if the bond contracts allow such action. Once the bonds have been defeased, refinanced, or retired, the authority to impose the MVET and the additional sales and use tax on rental cars would be repealed automatically. If the regional transit authority is not able to completely defease, refinance, or retire the bonds by March 31, 2020, any existing voter-approved MVETs would remain unchanged, and the maximum rate of future voter-approved MVETs would be reduced from 0.8% to 0.2%.

The measure would also require that any future vehicle taxes, including voter-approved MVETs, be determined by using a vehicle's base model Kelley Blue Book value. The base value would not include any applicable federal excise taxes, state and local sales and use taxes, transportation or shipping costs, and preparatory and delivery costs. The measure would require the Department of Licensing to use a vehicle's base model Kelley Blue Book value for any appeal of the valuation of the vehicle.

Sincerely,



CALLIE A. CASTILLO
Deputy Solicitor General
(360) 664-0869

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2019, I electronically filed the foregoing **MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF** and **BRIEF OF *AMICUS CURIAE*** with the Clerk of the Court using the Washington State Appellate Courts' Portal, which will electronically send a copy to the following:

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SIGNED in Seattle, Washington this 26th day of July, 2019.

s/Kristina Detwiler
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July 26, 2019 - 12:33 PM

Transmittal Information

Filed with Court: Supreme Court
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Appellate Court Case Title: Taylor Black, et al. v. Central Puget Sound Regional Transit Authority, et al.
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