No. 97195-1

SUPREME COURT OF THE STATE OF WASHINGTON

TAYLOR BLACK, et al.

Plaintiffs-Appellants,

vs.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

and

the STATE OF WASHINGTON,

Defendants-Respondents.

Response To Brief Of Amicus Seattle Building & Construction Trades Council

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TABLE OF CONTENTS

CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

I. Introduction And Summary Of Argument

The 2015 Legislature authorized a new motor vehicle excise tax and elected to displace the existing valuation table contained in RCW 82.44.035 during the first decade of that new tax. This case asks whether the Legislature thereby amended the existing statute containing a governing valuation table, and if so, whether WASH. CONST. ART. II § 37 required it to set forth the amendment "at full length."

Instead of focusing on the central question posed by this case, the brief submitted by Amicus Seattle Building & Construction Trades Council ("Trades Council") asks a single question: Was repealed RCW 82.44.041 "existing law" when the new Act was passed in 2015? In Trades Council's view, the "existing law" question is the first of a set of dominos. If the first can be tipped over, argues Trades Council, all the other dominos will fall:

> (1) Repealed RCW 82.44.041 was "existing law" in 2015;
>
> (2) An act that refers to "existing law" is a reference statute under this Court's Art. II § 37 jurisprudence;
>
> (3) Any reference statute is an Art. II § 37 "complete act;"
>
> (4) All "complete acts" are exempt from the "full length" requirement of Art. II § 37; therefore,
>
> (5) RCW 81.104.160(1) is constitutional.

According to Trades Council, if RCW 81.104.160(1) "refers to" an "existing law," Plaintiffs' constitutional challenge fails. Trades Council therefore laser-focuses on attempting to demonstrate that a long-since repealed statute is "existing law." Trades Council's brief misdirects this Court on at least three grounds:

First, Trades Council's question misunderstands the "reference statute" category of complete acts and the scope of the exception to the "full length" requirement of Art. II § 37. If the Legislature *adopts* a statute by reference, it typically does not thereby *amend* it. But that is not the question here. Plaintiffs do not argue that by *referring* to "the law as it existed on January 1, 1996" the Legislature thereby *amended* 1996's RCW 82.44.041. Rather, Plaintiffs argue that by displacing RCW 82.44.035 with repealed RCW 82.44.041—"the law as it existed on January 1, 1996"—the Legislature amended RCW 82.44.035. The fact that it accomplished the amendment by a reference to a repealed statute does not make RCW 81.104.160(1) the kind of "reference statute" approved in Art. II § 37 cases.

Second, Trades Council attempts to minimize the obscurity of the reference to the "law as it existed on January 1, 1996" by arguing that the valuation table supposedly in use in place of RCW 82.44.035 can be found by "one mouse click"—thereby attempting to buttress the claim that RCW 81.104.160(1) is a "complete act." Not only is this irrelevant, but Trades Council actually highlights the extraordinary difficulty facing any taxpayer who wants to understand how tax liability is calculated after the Legislature's referential re-enactment of a repealed statute.

Third, Trades Council overstates (and thereby misrepresents) the holding in *Pierce Cty. v. State*, 159 Wash. 2d 16 (2006) ("*Pierce County II*"), which permitted Sound Transit to continue levying an MVET after I-776's repeal of the ST1 MVET. According to Trades Council, *Pierce County II* **required** Sound Transit to continue using the same valuation schedule in

imposing the MVET pledged to the service of the ST1 bonds. This question has no bearing on the 2015 MVET and valuation schedule addressed here. Not only irrelevant, the question was never raised in *Pierce County II* and runs contrary to the extensive caselaw applying the Contracts Clauses of both the Washington and United States Constitutions.

II. ARGUMENT

The Legislature authorized a new motor vehicle excise tax in 2015, and elected to displace the valuation table contained in RCW 82.44.035 during the first decade of that new tax. This case asks whether the Legislature amended RCW 82.44.035, and whether Art. II § 37 required that such an amendment be set forth "at full length." Trades Council attempts to avoid that question. It addresses only a component of a component of the first part of this Court's well-known two-part test for Art. II § 37 compliance, and then misrepresents the law applying it.

A. The Reference Statute Category Of Art. II § 37 Only Covers The Law Being Challenged

In the Art. II § 37 context, this Court has often (but not always) held that when the Legislature employs the common drafting style of incorporating an existing law by reference into a new act, it does not thereby amend the incorporated act and violate Art. II § 37 by the very act of incorporation. Instead, this Court often (but not always) describes such acts as one of the forms of "complete act" under the first prong of the Art. II

§ 37 test.[1] Importantly, it has only done so when a challenger asserts that the incorporated law was amended by virtue of being incorporated.

1. Trades Council Misrepresents The "Reference Statute" Exception To Art. II § 37's Full Length Requirement

Trades Council's brief attempts to show that a repealed statute was "existing law," but its irrelevant argument is based on its misreading of this Court's approval of "reference statutes" in the Art. II § 37 context. Like CPSRTA, Trades Council urges that any statute which incorporates an existing law is therefore a "reference statute" that avoids Art. II § 37 analysis entirely. This seriously misrepresents this Court's jurisprudence.

In Art. II § 37 reference statute cases, when the Legislature applied existing law to new fields by reference, objections to the new statute have come from parties who attempt to evade liability under the new law by claiming that, by incorporating the referred-to statute, the new statute amended it. If true, the new law falls and the violator avoids liability. Applied here, Plaintiffs' challenge would instead have taken this form: Did the 2015 Legislature 'amend' repealed RCW 82.44.041 by incorporating it by reference into RCW 81.104.160(1)? Of course, no one is asking that question. Even if the 2015 Legislature had referred to "existing law"

[1] Thus, Trades Council's "existing law" argument is relevant only to the first part of this Court's two-part test for compliance with Art. II § 37, namely the question of whether the challenged statute is a "complete act." As discussed below, the act is not complete under any form of the first prong, and Trades Council mimics CPSRTA's request that this Court ignore the second prong.

contained in the actual Revised Code of Washington, it could still run afoul of Art. II § 37 if it amended *a different statute*.

To illustrate this point, imagine the existence of a Chapter 82.99 RCW, governing excise taxes on boats, which contained a valuation schedule. Imagine further that in authorizing a new MVET the Legislature chose to adopt the valuation schedule contained in "Chapter 82.99 RCW" and did so by reference rather than by setting it forth at full length. If there were no existing automotive valuation schedule which the reference would displace, it would fit the classic definition of a reference statute. If a person challenged the MVET authorization statute for having amended "Chapter 82.99 RCW" without setting it forth at full length, this Court would likely dismiss it as falling within the "reference statute" exception to Art. II § 37.

However, that hypothetical would have a dramatically different outcome if, as in this case, there was already an existing statute specifying how vehicles would be valued for purposes of an MVET. That statute would be displaced by the reference to "Chapter 82.99 RCW." In such a case, a challenger would assert that the incorporation of the boat valuation schedule **amended the existing MVET valuation schedule**, not the boat schedule. That is precisely the situation here. Whether RCW 81.104.160(1) makes reference to existing law, repealed law, or any other identified text, it violates Art. II § 37. It does so because, even if it did reuse an existing law in a new context, it thereby also suspended application of a different existing law, RCW 82.44.035. It thereby amended it and triggered the "full length" requirement of Art. II § 37. Thus, whether it re-enacted a repealed law by

reference or merely referred to an existing law as Trades Council and CPSRTA insist, it still violated Art. II § 37 in its effect on RCW 82.44.035.

2. The Acceptable And Unacceptable Use Of Reference Statutes

This Court has never simply absolved the Legislature from compliance with Art. II § 37 because it adopts an existing statute by reference. That drafting style can be employed consistent with Art. II § 37, but can also violate it. Two cases illustrate the difference between the proper use of a reference statute and the improper (and therefore unconstitutional) use. The first is *State v. Rasmussen,* 14 Wash. 2d 397 (1942).[2] Rasmussen, a chiropractor, was convicted of practicing without a proper license. Chiropractors had previously been licensed by the Department of Chiropractic Examiners, but an intervening statute had abolished the Department of Chiropractic Examiners and transferred licensing authority to the Department of Licensing. Instead of repeating all of the procedures and authority of the Department of Licensing, the new statute simply incorporated it by reference.

Rasmussen sought to overturn his conviction for unlicensed practice by arguing that the new statute (that transferred licensing authority to the Department of Licensing) was unconstitutional because Art. II § 37 required that the new statute set forth the Department of Licensing statute "at full length." He claimed that because the authority of the Department

[2] *Rasmussen*, the leading case on the acceptable use of a reference statute, is not even cited, much less explained, in Trades Council's brief.

of Licensing had been expanded to include chiropractors, that resulted in an amendment, triggering the "full length" requirement.

This Court rejected Rasmussen's challenge, finding that there was no amendment to the Department of Licensing statute. Incorporating it by reference, and thereby applying its text, unchanged, to new coverage, did not "amend or revise" the Department of Licensing statute and did not trigger the requirements of Art. II § 37.

The two distinguishing features of cases in which "reference statutes" have survived a challenge under Art. II § 37 are (1) that the challenged statute incorporates, unaltered, the procedures of another statute, and (2) that the incorporated statute was allegedly amended. Here, it is not the statute being referred to—the 1996 valuation schedule—that was amended, but rather a different statute. Therefore, the exception recognized in *Rasmussen* and similar cases has no application.

The leading case illustrating an improper use of incorporation by reference is *Weyerhaeuser Co. v. King County*, 91 Wash. 2d 721 (Wash. 1979), a case very closely analogous to the challenge here. In *Weyerhaeuser*, the challenged statute referred to and incorporated another statute. This Court nonetheless found it unconstitutional because the new statute did not merely incorporate another statute, but actually changed it, thereby triggering the "full length" requirement of Art. II § 37.

Significantly, in *Weyerhaeuser* this Court never once referred to Laws of 1975, ch. 200, Section 11 as a "reference statute," even though the

law specifically incorporated by reference an entire chapter of the Shoreline Management Act:

> No county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:
>
> . . .
>
> (4) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971", except that in relation to "shorelines" as defined in RCW 90.58.030, the following shall apply:

Laws of 1975, ch. 200, Section 11. This obviously incorporates by reference Chapter 90.58 RCW. Subsections 4(a) and 4(b) then proceeded to suspend the applicability of Chapter 90.58 RCW as to "'shorelines' as defined in RCW 90.58.030 . . ." *Id.* The Court rejected this entire section as an amendment to various sections of Chapter 90.58 RCW, without ever justifying it as a "reference statute." Significantly, the Court did not even agree that the section was a "complete act":

> An act qualifying as an exception must be a complete act, independent of prior acts and standing alone as the law on the particular subject which it treats. . . The enactment in question here, however, cannot be understood without reference to both the FPA and the SMA. It is therefore not a complete act and is not excepted from application of the constitutional requirement.

Weyerhaeuser, 91 Wash. 2d at 732. Complete acts are those in which "the scope of the rights or duties created or affected by the legislative action can be determined without referring to any other statute or enactment." *El Centro de la Raza v. State*, 192 Wash. 2d 103, 129 (2018) (internal quotation marks omitted).

As this Court found, "[r]eaders of the SMA cannot know from the language of that statute that its broad grant of authority over activities in the shorelines is severely restricted, as to forest practices only, by an unidentified provision of the FPA. This is precisely the weakness sought to be avoided by the constitutional requirement that an amended statute be set out in full in the amending act." *Weyerhaeuser*, 91 Wash. 2d at 731.

Precisely the same description applies to RCW 81.104.160(1). Readers of Chapter 82.44 RCW "cannot know from the language of that statute that its broad grant of authority over [vehicle valuation] is severely restricted, as to [the ST3 MVET] only, by an unidentified provision of" Chapter 81.104 RCW. Here, just as in *Weyerhaueser*, the mere fact that the Legislature incorporated some text by reference into the Act neither asks nor answers the relevant question: did the Act amend an existing statute? This Act did, and nothing in this Court's Art. II § 37 jurisprudence, including its "reference statute" cases, holds that the Act's amendatory nature can be ignored.

3. *Tracfone* Is Irrelevant

When Trades Council[3] (and CPSRTA[4]) cite *TracFone Wireless, Inc. v. Wash. Dep't of Revenue*, 170 Wash. 2d 273 (2010) as an example of an acceptable "reference statute," they misrepresent how, why, and under which circumstances this Court has held that the drafting form of

[3] Trades Council brief at 8.

[4] Respondent's brief at 24.

incorporation by reference does not trigger the mandate of Art. II § 37. In that case, the Court noted that the law had incorporated definitions of federal law by reference into Washington law. But *TracFone* is not an Art. II § 37 case—the case does not interpret the "reference statute" exception under Art. II § 37, nor address any aspect of that clause. If it were an Art. II § 37 case, the challenger would have asserted that by referring to and incorporating federal law, the Washington Legislature amended the federal law to which it referred. Such an argument would have been absurd. It is equally absurd to suggest that RCW 81.104.160(1) is a "reference statute" because it refers to "the law as it existed on January 1, 1996."

B. The Act Is Not Complete In Any Sense

Trades Council offers an additional criticism of Appellant's challenge to RCW 81.104.160(1). As one way to illustrate that RCW 81.104.160(1) is not a "complete act," Plaintiffs pointed to the difficulty of identifying the repealed valuation schedule that is currently in use, displacing RCW 82.44.035 during the first decade of the MVET. Plaintiffs pointed out that this Court has described a complete act as one in which "the scope of the rights or duties created or affected by the legislative action can be determined without referring to any other statute or enactment." *El Centro*, 192 Wash. 2d at 129. But this statute, Plaintiffs pointed out, instructed a reader to search out and find the version of a 1990 law that was in force on January 1, 1996. While other statutes had been found unconstitutional because they required a reference to other statutes or enactments, RCW 81.104.160(1) cannot be understood unless an obscure

repealed statute can be located. Just as this Court in *Weyerhaeuser* found that the challenged act to fail the "complete act" part of the test for compliance with Art. II § 37, here too the Act is not complete because it cannot be understood without seeking out and finding that long-repealed statute.[5]

In an attempt to rebut this criticism, Trades Council claims that "the law as it existed on January 1, 1996" can be found with "one mouse click," pointing to the main web page of the Code Archive maintained by the Office of Code Reviser. The problems this highlights are myriad. For starters, unlike, *e.g.*, a law incorporating the federal funds rate as the measure of statutory interest, a person likely needs legal training to know what to look for and how to find it, even in order to find the Archive. And once at the Archive, the site gives no explanation of what a searcher is seeking or how to find the governing valuation table. Thus, Trades Council's citation to the Code Reviser's archives demonstrates that the Act is not complete as this Court uses that term in the Art. II § 37 context.

First, Trades Council points generically to the Code Reviser's archive, implying a person can readily find the valuation table that is so extensively discussed in the briefs. But nothing in the challenged Act, nor in the archive, informs a reader that a valuation table is even required to calculate MVET liability. Thus, even before beginning this legal spelunking, the taxpayer must have more information than is contained in the five sentences of the Act, simply to know what to look for in order to calculate

[5] This situation is worse than the incompleteness of the act in *Weyerhaeuser*. That statute required finding two existing statutes, rather than a repealed one.

tax liability. For this reason alone, the Act is not "complete" in the generic sense, and certainly not as this Court has used that term in Art. II § 37 cases.

But, crediting the assumption by Trades Council that a reader knows what to look for and can sort out how to proceed, the process required to find the governing valuation table is unlike finding any reference that this Court has sanctioned as a "complete act." It certainly takes more than "one mouse click," except for a person who already knows the right answer. Indeed, simply attempting to follow the trail from the single breadcrumb dropped by Trades Council highlights the problem. Start where they point:
leg.wa.gov/CodeReviser/RCWArchive
Then select 1996:
leg.wa.gov/CodeReviser/RCWArchive/Pages/1996RCWArchive.aspx
From there, a third click gets to Volume 7a, containing Titles 75 through 82:
leg.wa.gov/CodeReviser/RCWArchive/Documents/1996/Vol7a.pdf

Presumably from there, Trades Council thinks that a reader can readily find the valuation table of repealed RCW 82.44.041 by scrolling to p. 675 of that 722 page .pdf file. But the first page of this volume tells the reader that it "Contain[s] all laws of a general and permanent nature through the 1996 regular session, which adjourned sine die March 7, 1996." Of course, the reader of the challenged Act is looking for the law as it existed on January 1, 1996, not on March 7, 1996. How is one to know whether the table on p. 675 is "the law as it existed on January 1, 1996?" As Plaintiffs pointed out, one might understand the end notes identifying dates of historical changes, or one might search backwards for changes. In other words, in order to know

whether one has found the right law, one would likely continue the search for an earlier version, to confirm non-amendment between the two. Thus, the 1995 volume might be next, found here:

leg.wa.gov/CodeReviser/RCWArchive/Documents/1995/1995pt2.pdf

But that volume suggests that Chapter 82.44 RCW in 1995 contained no valuation table at all. A reader might conclude the table in the 1996 volume was not in force on January 1 of that year, but then have no idea where to go next. However, if he knows that the odd year RCW volumes are 'supplements,' not the complete RCW, he might instead know to compare 1996 to 1994 instead of to 1995. That would finally reveal that the RCW contained the same valuation tables from 1994 through March 7, 1996. With this, the taxpayer could conclude that he has found the relevant valuation table that was in force on January 1, 1996. This is not the "one mouse click" result claimed by Trades Council.

The standard for a complete act is one in which "the scope of the rights or duties created or affected by the legislative action can be determined without referring to any other statute or enactment." *El Centro*, 192 Wash. 2d at 129. The obscure reference in this Act, made to an entire chapter of a statute that had been repealed 15 years prior to its enactment, does not satisfy this Court's test. Trades Council has done no more than clarify what no party has contested: the relevant text does, in fact, exist somewhere. But, as Plaintiffs have repeatedly shown, and neither Trades Council nor CPSRTA attempt to dispute, this Court has ***never*** sanctioned

the re-enactment of a repealed statute through incorporation by reference, in the Art. II § 37 context or for any other reason.

C. Even A Complete Act Must Satisfy The Second Prong

Trades Council's brief, by attempting to characterize the challenged act as a "reference statute" version of "complete act," ignores the second part of this Court's test for compliance with Art. II § 37. But as this Court made clear in *El Centro*, even a complete act is unconstitutional if it "renders erroneous" an existing statute, as is the case here. In addition to insuring that both legislators and the public are adequately informed of the effect of a new statute, enforcement of Art. II § 37 is designed to maintain the integrity of the Revised Code of Washington. If statutes are amended without being set forth at full length, the Code is no longer reliable, as RCW 82.44.035 now no longer is. It has instead become a trap for the unwary. Even if RCW 81.104.160(1) qualified as a "complete act," it would still be unconstitutional under the second prong of this court's test for compliance with Art. II § 37.

D. *Pierce County II* Says Nothing About Valuation Tables For This Or Any MVET

In defending the constitutionality of RCW 81.104.160(1), Trades Council repeats the argument made by CPSRTA that this Court in *Pierce County II* **required** CPSRTA to continue using the repealed (and significantly higher) valuation schedule for as long as the bonds serviced by the original ST1 MVET were still outstanding. Trades Council argues that, once a bond has been issued to which tax revenue has been pledged, or the

government has entered into any other contract where the counterparty might rely on tax revenue, it is unconstitutional for the legislative body to change any of the features of the method by which the tax is calculated.

As acknowledged by CPSRTA in its Motion for Summary Judgment, this question is irrelevant to the Legislature's choice to use the 1996 valuation table for a new MVET. This was a choice, not a mandate, that merely had to be implemented consistent with Art. II § 37. *See* CPSRTA Motion at 7, CP 384 (quoting a senator who preferred to use only one valuation table for old and new MVETs "for ease of collection and to make it more simple for our taxpayers"). In 2006, this Court could not and did not mandate how the Legislature elected to value vehicles for an MVET authorized nine years after *Pierce County II*, and neither Trades Council nor CPSRTA offer more than bare assertion to the contrary.

But further, the claim that the valuation schedule was mandated even as to the old tax has no support in *Pierce County II*. In that case, this Court held that WASH. CONST. ART. I § 23 prohibits the Legislature (or the people acting through the initiative process) from abolishing the MVET altogether while bonds serviced by it were outstanding. But the Court never held, in that case or any other, that *any* alteration of *any* feature of such a tax would be unconstitutional.

1. Neither *Pierce County II* Nor Art. I § 23 Imposes Any Constraint On The Policy Choices Reflected In The Act

When the Legislature authorized the new ST3 MVET in 2015, it could elect to use any tax rate and any valuation table—or indeed, any other

method of car valuation, such as the Kelley Blue Book. The only constraint imposed by the Constitution was the *method* of adoption. **If the choice of a valuation table amended existing law**, the amendment had to be set forth at full length. Even when the amendment is only "temporary," the full length requirement applies. *Flanders v. Morris,* 88 Wash. 2d 183 (1977).

Far from mandating new tax policy nine years into the future, in *Pierce County II* this Court repeated and applied the three-part test to determine if a legislative act violates Art. I § 23: "(1) does a contractual relationship exist, (2) does the legislation substantially impair the contractual relationship, and (3) if there is substantial impairment, is it reasonable and necessary to serve a legitimate public purpose." *Pierce County II*, 159 Wash. 2d at 28. In applying the second prong of the test, this Court applied the definition of "substantial impairment" by asking whether "the legislation detrimentally affects the financial framework which induced the bondholders to originally purchase the bonds, without providing alternative or additional security." *Id.* at 30 (internal quotation marks omitted). Because I-776 purported to eliminate the MVET altogether, the Court found that the bondholders' security was detrimentally affected. *Id.* at 34.

Whether the substitution of the valuation schedule in RCW 82.44.035 for the previous (now repealed) schedule would "substantially impair" the ability of Sound Transit to repay the debt financed by the ST1 MVET (by "detrimentally affect[ing] the financial framework which induced the bondholders to originally purchase the bonds, without

providing alternative or additional security") was not decided by *Pierce County II*, because the issue was never presented. How could it have been? The new schedule was not even enacted until the case in *Pierce County II* was on appeal to this Court for the second time. This Court said nothing concerning the valuation schedule that would govern the continued MVET, because the question was never raised in the case. The ST1 MVET was established with only one valuation schedule; the ST1 MVET and schedule were repealed; the lawsuit was filed. Throughout the pendency of the litigation, there was no alternative valuation schedule for anyone to even consider as potentially applicable. The valuation schedule in RCW 82.44.035 was not enacted until very shortly before the final decision in the case, and the question of whether it did or could govern the ST1 MVET was never raised as an issue by the parties or addressed in the Court's decision.

If the legislature permitted CPSRTA to continue collecting the tax, but adjusted the formula(e) by which the tax was calculated, a challenge to that legislation would be required to meet the same standard of "substantial impairment" that the Court applied to I-776 in *Pierce County II*. But "[t]he contracts clause does not prohibit the states from repealing or amending statutes generally, or from enacting legislation with retroactive effects." *Haberman v. Washington Public Power Supply System*, 109 Wash. 2d 107, 145 (Wash. 1987). Disregarding this binding authority, and without engaging in any contracts clause analysis, Trades Council asserts that *any* alteration in the formula for computing its MVET was constitutionally prohibited. Yet, Trades Council points out that the Legislature later explicitly authorized

CPSRTA to continue the use of the older schedule as to the ST1 MVET. The fact that the Legislature made this exception shows that the decision in *Pierce County II* did not by itself require the use of the older schedule; it only permitted it.

Even a cursory examination of the relevant statutes and this Court's contracts clause jurisprudence suggests that, if the question had even been presented, this Court would never have concluded that the MVET valuation schedule, found in an entirely separate section of the RCW, created a statutory contract that could never be altered. "Generally, a statute is treated as a contract when the language and circumstances demonstrate a legislative intent to create rights of a contractual nature enforceable against the State." But, the Court continued, "[s]tatutorily created contract rights, however, are rare." *Washington Federation of State Employees v. State*, 127 Wash. 2d 544, 561 (Wash. 1995) (internal citations omitted). Nothing in repealed RCW 82.44.041 suggests that when the legislature created a vehicle valuation schedule generically applicable to any locally imposed motor vehicle excise tax, without any remark on whether or not any such tax might ever exist much less be pledged to a bond, thereby "demonstrate[d] a legislative intent to create rights of a contractual nature enforceable against the State." *Id.* Plainly, it did not.

2. Trades Council's Misreading Of *Pierce County II* Would Have Damaging Effects On Tax Policy

To accept Trades Council's reading of *Pierce County II* would do lasting damage to the legislature's authority over taxation. If, after adopting

a tax and pledging that tax revenue for the repayment of borrowed funds, the legislative body were *legally prevented* from changing features of that tax, it would hamper future efforts to raise taxes. Changing technology, changing economic and social circumstances, even natural disasters, can result in dramatic changes to property values. Adjustments in the valuation schedules to generate more accurate methods of assessing property for tax purposes is essential to maintain public confidence in the fairness of the tax system, especially over multi-decade bond terms. Indeed, one notable difference between the 2006 schedule as compared to earlier schedules is a slightly ***higher*** valuation for some older vehicles, reflecting a legislative consideration that by 2006, older vehicles retained slightly more value.

If, following *Pierce County II*, the Legislature had chosen to apply RCW 82.44.035 to ST1, CPSRTA's bondholders or other affected parties could evaluate and question whether by doing so the Legislature "substantially impaired" the contract between CPSRTA and its bondholders. But that question has never been asked—much less answered. To import that analysis into *Pierce County II*, as argued by Trades Council, rewrites the case and would be detrimental to sound tax policy. Public debt must be protected from legislative action that would impair tax authority to the point where the debt has been effectively repudiated. But as long as repayment is not substantially impaired, the legislative body may adjust taxes to insure that the basis for taxation remains equitable over time.

This Court has never extended the substantial impairment rule as a blanket ban on revisiting the formula by which taxes are calculated. In

particular, a formula that initially provides a fair method of equitable taxation may become inaccurate or inequitable by changes in technology or other unforeseen developments. Trades Council asks this Court to rewrite *Pierce County II* in a way that would completely constrain the ability of the taxing authority to adjust the tax formulas to modernize value assessments.

III. Conclusion

Trades Council asks this Court to make the "reference statute" exception to Art. II § 37 a loophole for the Legislature to evade the constitution's requirement of setting forth amendments "at full length" and invites this Court to expand the scope of the Contracts Clause beyond all recognition and thereby impair the adoption of sound tax policy. This Court should disregard both invitations, and reverse the judgment below.

Submitted this August 27, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2019, I electronically filed the foregoing RESPONSE TO BRIEF OF AMICUS SEATTLE BUILDING & CONSTRUCTION TRADES COUNCIL 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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