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**STATE OF WASHINGTON
DOUGLAS COUNTY SUPERIOR COURT**

CHRIS QUINN, an individual; CRAIG LEUTHOLD, an individual; SUZIE BURKE, an individual; LEWIS and MARTHA RANDALL, as individuals and the marital community comprised thereof; RICK GLENN, an individual; NEIL MULLER, an individual; LARRY and MARGARET KING, as individuals and the marital community comprised thereof; and KERRY COX, an individual,

Plaintiffs,

v.

STATE OF WASHINGTON; DEPARTMENT OF REVENUE, an agency of the State of Washington; VIKKI SMITH, in her official capacity as Director of the Department of Revenue,

Defendants,

EDMONDS SCHOOL DISTRICT, TAMARA GRUBB, ADRIENNE STUART, MARY CURRY, and WASHINGTON EDUCATION ASSOCIATION,

Intervenors.

APRIL CLAYTON, an individual; KEVIN BOUCHEY, an individual; RENEE BOUCHEY, an individual; JOANNA CABLE, an individual; ROSELLA MOSBY, an individual; BURR MOSBY, an individual; CHRISTOPHER SENSKE, an individual; CATHERINE SENSKE,

NO. 21-2-00075-09
NO. 21-2-00087-09

DEFENDANTS' ANSWER TO
CLAYTON PLAINTIFFS'
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

1 an individual; MATTHEW SONDEREN, an
individual; WASHINGTON FARM BUREAU,

2
3 Plaintiffs,

4 v.

5 STATE OF WASHINGTON, DEPARTMENT OF
REVENUE, an agency of the State of Washington;
VIKKI SMITH, in her official capacity as Director
6 of the Department of Revenue,

7 Defendants.

8 EDMONDS SCHOOL DISTRICT, TAMARA
GRUBB, ADRIENNE STUART, MARY
9 CURRY, and WASHINGTON EDUCATION
ASSOCIATION,

10 Interveners.
11

12 Defendants State of Washington Department of Revenue and Vikki Smith in her official
13 capacity as Director of the Department of Revenue answer the Clayton Plaintiffs' Complaint for
14 Declaratory and Injunctive Relief (Complaint) as follows:

15 Except as specifically admitted in this Answer, the Defendants deny every factual
16 allegation set forth in the Complaint.

17 1. Paragraph 1 of the Complaint is a rhetorical statement that requires no answer. To
18 the extent a response is required, Defendants deny the assertion that the tax imposed by ESSB
19 5096 is a state income tax, deny that Plaintiffs' opinions about state income taxes have any
20 bearing in this action, and deny that Plaintiffs' understanding of the law as it pertains to state
21 income taxes is complete or accurate.

22 2. Paragraph 2 of the Complaint contains Plaintiffs' summary of aspects of the tax
23 imposed by ESSB 5096 and requires no answer. To the extent a response is required, Defendants
24 deny that the summary is complete or accurate.

25 3. Paragraph 3 of the Complaint is a rhetorical statement that requires no answer. To
26 the extent a response is required, Defendants deny the assertion ESSB 5096 imposes an income

1 tax, deny that Plaintiffs' opinions about the federal and state tax treatment of capital gains have
2 any bearing in this action, and deny that Plaintiffs' understanding of the law as it pertains the
3 federal and state tax treatment of capital gains is complete or accurate.

4 4. Paragraph 4 of the Complaint is a rhetorical statement that requires no answer. To
5 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
6 income tax, deny that Plaintiffs' opinions about Washington voters' affinity for income taxes has
7 any bearing in this action, and deny that Plaintiffs' understanding of the legislative intent that
8 guided the passage of ESSB 5096 is complete or accurate.

9 5. Paragraph 5 of the Complaint is a rhetorical statement that requires no answer. To
10 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
11 income tax, deny that Plaintiffs' opinions pertaining to the legislative intent that guided the
12 passage of ESSB 5096 is correct or has any bearing in this action, deny that Plaintiffs' summary
13 of ESSB 5096 is accurate and complete, and deny that Plaintiffs' summary of other excise taxes
14 imposed under Washington law is complete or accurate. The Defendants admit that the tax
15 imposed by ESSB 5096 is labeled as an excise tax and that it is codified in RCW Title 82.

16 6. Paragraph 6 of the Complaint is a rhetorical statement that requires no answer. To
17 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
18 income tax, deny that Plaintiffs' understanding of the general nature of excise tax is complete or
19 accurate, deny that Plaintiffs' summary of ESSB 5096 is complete or accurate, and deny that
20 Plaintiffs' understanding of the law as it pertains the jurisdiction of the various States to impose
21 tax on capital gains is complete or accurate.

22 7. Paragraph 7 of the Complaint is a rhetorical statement that requires no answer. To
23 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
24 income tax, deny that Plaintiffs' understanding of Washington constitutional law is complete or
25 accurate, and deny that ESSB 5096 is illegal and invalid.
26

1 8. Paragraph 8 of the Complaint is a rhetorical statement that requires no answer. To
2 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
3 income tax, and deny that Plaintiffs' understanding of legislative communication is complete or
4 accurate.

5 9. Paragraph 9 of the Complaint is a rhetorical statement that requires no answer. To
6 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
7 income tax, and deny that Plaintiffs' understanding of the purpose or motivation for passing ESSB
8 5096 is complete or accurate.

9 10. Paragraph 10 of the Complaint sets forth the relief requested by the Clayton
10 Plaintiffs and does not require an answer from Defendants. To the extent an answer is required,
11 Defendants deny that Plaintiffs are entitled to any relief.

12 11. Paragraph 11 of the Complaint sets forth additional relief requested by the Clayton
13 Plaintiffs and does not require an answer from Defendants. To the extent an answer is required,
14 Defendants deny that Plaintiffs are entitled to any relief.

15 12. Defendants are without sufficient knowledge at this time regarding the factual
16 allegations contained in paragraph 12 of the Complaint and, therefore, deny the same.

17 13. Defendants are without sufficient knowledge at this time regarding the factual
18 allegations contained in paragraph 13 of the Complaint and, therefore, deny the same.

19 14. Defendants are without sufficient knowledge at this time regarding the factual
20 allegations contained in paragraph 14 of the Complaint and, therefore, deny the same.

21 15. Defendants are without sufficient knowledge at this time regarding the factual
22 allegations contained in paragraph 15 of the Complaint and, therefore, deny the same.

23 16. Defendants are without sufficient knowledge at this time regarding the factual
24 allegations contained in paragraph 16 of the Complaint and, therefore, deny the same.

25 17. Defendants are without sufficient knowledge at this time regarding the factual
26 allegations contained in paragraph 17 of the Complaint and, therefore, deny the same.

1 18. With respect to paragraph 18 of the Complaint, Defendants admit that the Farm
2 Bureau is a non-profit corporation, that it represents more than 46,000 members, and that its
3 offices are located in Lacey, Washington. Defendants are without sufficient knowledge at this
4 time regarding the remaining factual allegations contained in paragraph 18 and, therefore, deny
5 the same.

6 19. Defendants deny paragraph 19 of the Complaint. Plaintiffs have only named two
7 defendants in the caption of their Complaint, neither of which is the State of Washington.

8 20. Defendants admit paragraph 20 of the Complaint.

9 21. Defendants admit paragraph 21 of the Complaint.

10 22. With respect to paragraph 22 of the Complaint, Defendants deny that Plaintiffs
11 have properly invoked the Court's subject matter jurisdiction under article IV, section 6, of the
12 Washington Constitution or under RCW 7.24.010 and RCW 7.40.010.

13 23. With respect to paragraph 23 of the Complaint, Defendants are without sufficient
14 knowledge at this time regarding the county of residence or principle place of business of the
15 Plaintiffs and, therefore, deny the allegation that venue is proper in Douglas County. See also
16 Affirmative Defenses, paragraph 5.

17 24. Defendants deny the allegations contained in paragraph 24 of the Complaint.

18 25. Paragraph 25 of the Complaint is a general statement pertaining to the Plaintiffs
19 interest in invalidating ESSB 5096 and requires no answer. To the extent a response is required,
20 Defendants deny that Plaintiffs have properly invoked the jurisdiction of the courts to advance
21 their interest in invalidating ESSB 5096.

22 26. Defendants deny the allegations contained in paragraph 26 of the Complaint.

23 27. Defendants deny the allegations contained in paragraph 27 of the Complaint.

24 28. Paragraph 28 of the Complaint is a legal argument that requires no answer. To the
25 extent a response is required, Defendants deny that Plaintiffs' summary of article VII, sections 1
26 and 2 of the Washington Constitution is complete or accurate.

1 29. Paragraph 29 of the Complaint is a legal argument that requires no answer. To the
2 extent a response is required, Defendants deny that Plaintiffs' general description of Washington
3 Supreme Court decisions and their summary of the 1932 initiative described therein is complete
4 or accurate.

5 30. Paragraph 30 of the Complaint is a legal argument that requires no answer. To the
6 extent a response is required, Defendants deny that Plaintiffs' summary of cases cited therein is
7 complete or accurate.

8 31. Paragraph 31 of the Complaint is a legal argument that requires no answer. To the
9 extent a response is required, Defendants deny that Plaintiffs' summary of cases cited therein is
10 complete or accurate.

11 32. Paragraph 32 of the Complaint is a rhetorical argument that requires no answer. To
12 the extent a response is required, Defendants deny the allegations contained in paragraph 32 of the
13 Complaint.

14 33. Paragraph 33 of the Complaint is a rhetorical argument that requires no answer. To
15 the extent a response is required, Defendants deny the allegations contained in paragraph 33 of the
16 Complaint.

17 34. Paragraph 34 of the Complaint is a rhetorical argument that requires no answer. To
18 the extent a response is required, Defendants are without sufficient knowledge at this time
19 regarding the factual allegations contained in paragraph 34 and, therefore, deny the same

20 35. Paragraph 35 of the Complaint contains Plaintiffs' summary of aspects of the tax
21 imposed by ESSB 5096 and requires no answer. To the extent a response is required, Defendants
22 deny that the summary set out in paragraph 35 is complete or accurate.

23 36. Paragraph 36 of the Complaint contains Plaintiffs' summary of aspects of the tax
24 imposed by ESSB 5096 and requires no answer. To the extent a response is required, Defendants
25 deny that the summary set out in paragraph 36 is complete or accurate.
26

1 37. Paragraph 37 of the Complaint contains Plaintiffs' summary of aspects of the tax
2 imposed by ESSB 5096 and requires no answer. To the extent a response is required, Defendants
3 deny that the summary set out in paragraph 37 is complete or accurate.

4 38. Paragraph 38 of the Complaint contains Plaintiffs' summary of aspects of the tax
5 imposed by ESSB 5096 and requires no answer. To the extent a response is required, Defendants
6 deny that the summary set out in paragraph 38 is complete or accurate.

7 39. Paragraph 39 of the Complaint contains Plaintiffs' summary of aspects of the tax
8 imposed by ESSB 5096 and requires no answer. To the extent a response is required, Defendants
9 deny that the summary set out in paragraph 39 is complete or accurate.

10 40. Paragraph 40 of the Complaint contains Plaintiffs' summary of aspects of the tax
11 imposed by ESSB 5096 and requires no answer. To the extent a response is required, Defendants
12 deny that the summary set out in paragraph 40 is complete or accurate.

13 41. Paragraph 41 of the Complaint contains Plaintiffs' summary of aspects of the tax
14 imposed by ESSB 5096 and requires no answer. To the extent a response is required, Defendants
15 deny that the summary set out in paragraph 41 is complete or accurate.

16 42. Paragraph 42 of the Complaint is a rhetorical argument that requires no answer. To
17 the extent a response is required, Defendants deny the allegations contained in paragraph 42.

18 43. Paragraph 43 of the Complaint is a legal argument that requires no answer. To the
19 extent a response is required, Defendants deny that Plaintiffs' summary of the case cited therein is
20 complete or accurate.

21 44. Paragraph 44 of the Complaint contains Plaintiffs' general description of their
22 understanding of an excise tax and requires no answer. To the extent a response is required,
23 Defendants deny that the general description is complete or accurate.

24 45. Paragraph 45 of the Complaint contains Plaintiffs' general description of their
25 understanding of various excise taxes imposed by Washington and requires no answer. To the
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1 extent a response is required, Defendants deny that the general description and summary is
2 complete or accurate.

3 46. Paragraph 46 of the Complaint contains Plaintiffs' description of their
4 understanding of Washington law and requires no answer. To the extent a response is required,
5 Defendants deny that the description is complete or accurate.

6 47. Paragraph 47 of the Complaint is a rhetorical argument that requires no answer. To
7 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
8 income tax, and deny that Plaintiffs' understanding of the law as it pertains the distinction
9 between an income tax and an excise tax is complete or accurate.

10 48. Paragraph 48 of the Complaint is a rhetorical argument that requires no answer. To
11 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
12 income tax, and deny that Plaintiffs' understanding of information provided by the Internal
13 Revenue Service as it pertains to the distinction between an income tax and an excise tax is
14 complete or accurate.

15 49. Paragraph 49 of the Complaint is a rhetorical argument that requires no answer.
16 To the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
17 income tax, and deny that Plaintiffs' understanding of information purportedly obtained from the
18 Congressional Budget Office as it pertains to the distinction between an income tax and an excise
19 tax is complete or accurate.

20 50. Paragraph 50 of the Complaint is a rhetorical argument that requires no answer. To
21 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
22 income tax, and deny that Plaintiffs' understanding of information purportedly obtained from state
23 revenue departments as it pertains to the distinction between an income tax and an excise tax is
24 complete or accurate.

25 51. Defendants admit that Paragraph 51 of the Complaint accurately quotes a portion
26 of the final bill report pertaining to ESSB 5096. Defendants deny the assertion that ESSB 5096

1 imposes an income tax and the apparent assertion that capital gains may only be taxed through an
2 income tax.

3 52. Paragraph 52 of the Complaint is a rhetorical argument that requires no answer. To
4 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
5 income tax, and deny that Plaintiffs' understanding of the statement quoted therein is complete or
6 accurate.

7 53. Paragraph 53 of the Complaint is a rhetorical argument that requires no answer. To
8 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
9 income tax, and deny that Plaintiffs' understanding of the statement quoted therein is complete or
10 accurate.

11 54. Paragraph 54 of the Complaint is a rhetorical argument that requires no answer. To
12 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
13 income tax, and deny that Plaintiffs' understanding of the statement quoted therein is complete or
14 accurate.

15 55. Paragraph 55 of the Complaint is a rhetorical argument that requires no answer. To
16 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
17 income tax, and deny that Plaintiffs' understanding of the statement quoted therein is complete or
18 accurate.

19 56. Defendants admit the allegations contained in paragraph 56 of the Complaint.

20 57. Paragraph 57 of the Complaint is a rhetorical argument that requires no answer. To
21 the extent a response is required, Defendants deny the allegations contained in paragraph 57.

22 58. Paragraph 58 of the Complaint is a rhetorical argument that requires no answer. To
23 the extent a response is required, Defendants deny the allegations contained in paragraph 58.

24 59. Paragraph 59 of the Complaint is a rhetorical argument that requires no answer. To
25 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
26

1 income tax, and deny that Plaintiffs' understanding of the statement quoted therein is complete or
2 accurate

3 60. Paragraph 60 of the Complaint is a rhetorical argument that requires no answer. To
4 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
5 income tax, and deny that Plaintiffs' understanding of the statement quoted therein is complete or
6 accurate.

7 61. Paragraph 61 of the Complaint is a rhetorical argument that requires no answer. To
8 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
9 income tax, and deny that Plaintiffs' understanding of the statement quoted therein is complete or
10 accurate.

11 62. Paragraph 62 of the Complaint is a rhetorical argument that requires no answer. To
12 the extent a response is required, Defendants deny the assertion that ESSB 5096 imposes an
13 income tax, and deny the allegations contained in paragraph 62.

14 63. Paragraph 63 of the Complaint is a rhetorical argument that requires no answer. To
15 the extent a response is required, Defendants deny the allegations contained in paragraph 63.

16 64. Paragraph 64 of the Complaint is a rhetorical argument that requires no answer. To
17 the extent a response is required, Defendants deny the allegations contained in paragraph 64.

18 65. With respect to the statement set out in paragraph 65 of the Complaint,
19 Defendants do not believe an answer is required. To the extent paragraph 65 includes any
20 allegations of fact, Defendants incorporate and reassert their prior answers to the allegations
21 contained in paragraphs 1 through 64.

22 66. Defendants deny the allegations contained in paragraph 66 of the Complaint.

23 67. Defendants deny the allegations contained in paragraph 67 of the Complaint.

24 68. Defendants deny the allegations contained in paragraph 68 of the Complaint.

25 69. Paragraph 69 of the Complaint consists solely of a purported reservation of right
26 to raise additional claims and requires no answer. To the extent an answer is required,

1 Defendants deny that the Plaintiffs have reserved rights beyond those provided by statute or
2 under the Civil Rules.

3 70. With respect to the statement set out in paragraph 70 of the Complaint,
4 Defendants do not believe an answer is required. To the extent paragraph 70 includes any
5 allegations of fact, Defendants incorporate and reassert their prior answers to the allegations
6 contained in paragraphs 1 through 69.

7 71. Defendants deny the allegations contained in paragraph 71 of the Complaint.

8 72. Defendants deny the allegations contained in paragraph 72 of the Complaint.

9 73. Defendants deny the allegations contained in paragraph 73 of the Complaint.

10 74. Paragraph 74 of the Complaint consists solely of a purported reservation of right
11 to raise additional claims and requires no answer. To the extent an answer is required,
12 Defendants deny that the Plaintiffs have reserved rights beyond those provided by statute or
13 under the Civil Rules.

14 75. With respect to the statement set out in paragraph 75 of the Complaint,
15 Defendants do not believe an answer is required. To the extent paragraph 75 includes any
16 allegations of fact, Defendants incorporate and reassert their prior answers to the allegations
17 contained in paragraphs 1 through 74.

18 76. Defendants deny the allegations contained in paragraph 76 of the Complaint.

19 77. Defendants deny the allegations contained in paragraph 77 of the Complaint.

20 78. Defendants deny the allegations contained in paragraph 78 of the Complaint.

21 79. Paragraph 74 of the Complaint consists solely of a purported reservation of right
22 to raise additional claims and requires no answer. To the extent an answer is required,
23 Defendants deny that the Plaintiffs have reserved rights beyond those provided by statute or
24 under the Civil Rules.

1 **AFFIRMATIVE DEFENSES**

2 In further answer to Clayton Plaintiffs' Complaint and as affirmative defenses, the
3 Defendants allege as follows:

4 1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

5 2. Plaintiffs have failed to raise a justiciable claim under the Uniform Declaratory
6 Judgment Act.

7 3. Plaintiffs' claim for injunctive and declaratory relief is barred by RCW
8 82.32.150 and controlling Washington authority.

9 4. Plaintiffs have failed to properly invoke the jurisdiction of the superior court
10 under 82.32.180, which requires payment of the challenged tax before any action may be
11 initiated in any court.

12 5. Venue is improper in Douglas County Superior Court pursuant to RCW
13 82.32.180, which requires an action challenging an excise tax administered by the Department
14 of Revenue to be filed in Thurston County Superior Court.

15 **REQUEST FOR RELIEF**

16 WHEREFORE, having answered the allegations of the Clayton Plaintiffs' Complaint,
17 and having pleaded affirmatively, the Defendants request the following relief:

18 1. That the Court deny Plaintiffs' claim for relief;

19 2. That the Court dismiss this action;

20 3. That the Court order Plaintiffs to pay the Defendants for their costs and attorneys'
21 fees incurred in defense of this matter; and

22 4. For such other relief as the Court may deem just and reasonable.

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1 DATED this 1st day of October, 2021.

2 ROBERT W. FERGUSON
3 Attorney General

4 NOAH G. PURCELL, WSBA No. 43492
5 Solicitor General
6 JEFFREY T. EVEN, WSBA No. 20367
7 Deputy Solicitor General
8 PETER B. GONICK, WSBA No. 25616
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10 CAMERON G. COMFORT, WSBA No. 15188
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12 CHARLES E. ZALESKY, WSBA No. 37777
13 Assistant Attorney General
14 Attorneys for Defendants
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1 **PROOF OF SERVICE**

2 I certify that I caused to be served a copy of this document, through my legal assistant,
3 through electronic mail, per agreement, to:

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Attorney for Amicus

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

DATED this 1st day of October, 2021, at Tumwater, WA.

s/Charles Zalesky
Charles Zalesky, Assistant Attorney General