

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

TAYLOR BLACK, ANNE BLACK,
JERRY KING, RENE KING, ROGER
STRUTHERS, MARY LOUISE
STRUTHERS, AND FRANK MAIETTO,
individually and on behalf of a class of all
persons similarly situated,

Plaintiffs,

v.

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY, and STATE OF
WASHINGTON,

Defendants.

No. 19-2-11073-8

CENTRAL PUGET SOUND
REGIONAL TRANSIT
AUTHORITY'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION

1 **I. INTRODUCTION**

2 In 1996, Sound Transit¹ district voters approved a .3% MVET (ST MVET) as part of the
3 funding to construct a regional transit system. The ST MVET is calculated by multiplying the
4 .3% rate times the vehicle value established in chapter 82.44 RCW, which includes a schedule
5 listing the depreciation percentage to be applied based on vehicle age. In 1998, Referendum 49
6 amended the schedule to lower slightly the values for two and three-year old vehicles starting in
7 July 1999 (the 1999 schedule). Since July 1999, the State Department of Licensing (“DOL”) has
8 collected the ST MVET using the 1999 schedule.
9

10 In December 1998, Sound Transit sold \$350 million in bonds secured by a pledge to
11 collect the ST MVET, among other revenue, as security for bond repayment. The bond contract
12 specified that effective July 1, 1999, the 1999 schedule established by Referendum 49 would be
13 used to calculate the ST MVET. The bond contract further explained that this change would
14 reduce anticipated ST MVET revenue by 1.0-1.5%. As set forth in the bond contract, the 1999
15 schedule has been used continuously to calculate the ST MVET since July 1999. The bonds are
16 scheduled to be paid off in 2028.
17

18 In 2002, I-776 attempted to repeal all local MVETs, including the ST MVET. But
19 because Sound Transit’s bond contract pledged to collect the MVET until bond repayment, DOL
20 continued to calculate and collect the .3% MVET using the 1999 schedule. Sound Transit’s right
21 to continue to collect the ST MVET using the 1999 schedule was confirmed by the Washington
22 Supreme Court in *Pierce County v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006) (*Pierce County*
23 *II*), where the Court held “the statutory provisions governing [Sound Transit] in existence when
24
25

26 _____
27 ¹ Central Puget Sound Regional Transit Authority is commonly known as and referenced herein as Sound Transit.
CENTRAL PUGET SOUND REGAIONAL TRANSIT
AUTHORITY’S OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION - 1

1 the bonds were issued and sold” were included within “the contractual obligations . . . protected
2 by the constitution. . . .” 159 Wn.2d at 30.

3 Plaintiffs (Black) seek an injunction to alter the status quo and order the State to reduce
4 the ST MVET collected by switching to a vehicle valuation schedule adopted in 2006. The 2006
5 schedule was not intended to apply to Sound Transit, has never been applied to Sound Transit,
6 and would impair Sound Transit’s bond contact in violation of *Pierce County II*. Black cannot
7 show a clear legal or equitable right to reduce ST MVET collections by switching to the 2006
8 valuation schedule, or a legitimate fear of invasion of their rights, or actual and substantial
9 injury, all of which must be shown to obtain an injunction. For each of these independent
10 reasons, an injunction is unwarranted.

11
12 First, *Pierce County II* prohibits enforcement of any law that reduces the ST MVET
13 collected until the Sound Transit bonds are retired in 2028. The Court held that any reduction in
14 the ST MVET would unconstitutionally impair Sound Transit’s bond contact. The use of the
15 2006 valuation schedule, however, would reduce the ST MVET and under *Pierce County II*
16 would unconstitutionally impair Sound Transit’s bonds. *Pierce County II* thus precludes the
17 injunction Black seeks. There is no merit to the claim that the Sound Transit MVET can be
18 lowered by adoption of the 2006 schedule without violating the Washington Constitution’s
19 prohibition on impairment of contracts. Second, the sole legal basis for Black’s claim is their
20 assertion that SB 6379, a 2010 enactment, is unconstitutional. But the calculation of the ST
21 MVET is not based on the 2010 amendment. It is based on *Pierce County II*. ST’s MVET
22 authority is also codified in RCW 81.104.160, which was amended in 2015. Thus, Black’s
23 constitutional challenges to the 2010 enactment have no bearing on the continuing calculation of
24 the Sound Transit MVET. Even ruling the 2010 enactment unconstitutional (which it is not)
25
26
27

1 would not grant Black a clear legal or equitable right to require use of the 2006 schedule. Third,
2 Black's arguments are based on an erroneous interpretation of the various MVET valuation
3 enactments since 1999. The Legislature did not intend the 2006 enactment to apply to Sound
4 Transit. And DOL continued to use the 1999 valuation without any complaint after adoption of
5 SB 6379 in 2006. Moreover, the 2010 and 2015 enactments were intended to comply with *Pierce*
6 *County II*, which protected the ST MVET that used the 1999 schedule. Those enactments did not
7 require the State and Sound Transit to raise the MVET collected. Fourth, Black makes no
8 showing of actual or substantial injury in light of both the available refund mechanism and the
9 failure to provide evidence of harm to any of the plaintiffs. Fifth, a preliminary injunction is not
10 in the public interest because Sound Transit and its taxpayers will forever lose tens of millions of
11 dollars needed to fund voter-approved transit projects if the injunction is first granted, and then
12 Black loses on the merits (which they will). There simply is no process for the State and DOL to
13 go back and collect that lost MVET revenue. On the other hand, Black would simply have to
14 wait for a monetary refund in the event they prevail.

15
16
17 Black's motion for preliminary injunction should therefore be denied.

18 **II. COUNTERSTATEMENT OF FACTS**

19 **A. Sound Transit's History**

20 In 1996, voters approved a .3% motor-vehicle excise tax and a .4% sales tax to fund the
21 "Sound Move" transit plan. Declaration of Tracy Butler ("Butler Decl.") at ¶ 3. The plan funded
22 commuter-rail service to twelve cities from Tacoma to Everett, a 16-station light-rail line from
23 SeaTac Airport to the University of Washington, light rail in downtown Tacoma, and express-
24 bus service connecting 28 cities. Declaration of Mattelyn L. Tharpe ("Tharpe Decl."), Ex. A. In
25 2008, voters approved a .5% sales tax increase and continued use of the .3% MVET to fund the
26
27

1 Sound Transit 2 Plan (“ST2”), which adds 36 miles of light rail, and more commuter-rail and
2 express-bus service. Butler Decl., Ex. A. In 2016, voters approved an additional .8% MVET, a
3 .5% sales tax, a property tax and continued use of the .3% MVET to fund ST3. ST3 adds 62-
4 miles to the light-rail system in Pierce, King and Snohomish Counties; extends commuter rail
5 from Lakewood to DuPont; and adds bus rapid transit along State Route 522/523 from Shoreline
6 to Woodinville, and along I-405 from Burien to Lynwood. Tharpe Decl., Ex. C.

8 **B. The Pledge of the ST MVET to Repay Bonds**

9 The vehicle valuation schedule in the 1996 version of ch. 82.44 RCW (RCW 82.44.041)
10 was initially used to determine a vehicle’s taxable value in calculating the ST MVET approved
11 in 1996. In 1998, Referendum 49 lowered the value of two and three-year-old vehicles, which
12 lowered the ST MVET owed for those vehicles. From July 1, 1999 (when the referendum took
13 effect) to the present, the 1999 schedule has been used to calculate the Sound Transit MVET.
14 Butler Decl. ¶ 29.

16 In December 1998, Sound Transit sold \$350 million in bonds. The bonds were secured by
17 a pledge of both the ST MVET and sales tax. The MVET pledge was particularly valuable to
18 potential bondholders because of the stable revenue compared to the sales tax pledged.
19 Declaration of Jeffrey Brown (“J. Brown Decl.”) ¶4. Moreover, the bond’s Tax Levy Covenant
20 required that Sound Transit not reduce its MVET. *Id.* ¶5. The bond documents (Bond Purchase
21 Contract, Official Statement, and authorizing resolutions enacted by the Sound Transit Board)
22 described the MVET pledge including a description in the Official Statement of the change in
23 valuation as a result of Referendum 49. *Id.* ¶¶5-8. Sound Transit committed to collecting its
24 MVET using the 1999 schedule until the bonds were paid off in 2028. Butler Decl. at ¶29.

1 In addition to the 1999 bonds, Sound Transit has eight series of outstanding bonds and
2 four outstanding loans with a total debt balance of \$2,334,865,824. All outstanding bond and
3 debt contracts include a pledge to collect the .3% MVET as security until the 1999 bonds are
4 retired in 2028. Butler Decl. ¶ 20.

5
6 **C. Initiative 776 and Pierce County II**

7 In 2002, I-776 attempted to repeal part of RCW 81.104.160 and other statutes necessary
8 to impose a local MVET, including the vehicle depreciation schedule in RCW 82.44.041 used to
9 calculate the ST MVET. See Laws of 2003, ch. 1, §5(6). Sound Transit sued to declare I-776
10 unenforceable as to the ST MVET on grounds of contract impairment. In *Pierce County II*, the
11 Supreme Court held that the I-776's attempted repeal of Sound Transit's authority to collect the
12 ST MVET pledged to repay the 1999 bonds violated Const. art. I, § 23. As elaborated, *infra*, the
13 Court reaffirmed that a bond contract is impaired by legislation that "alters its terms, imposes
14 new conditions, or lessens its value." *Pierce County II*, 159 Wn.2d at 30 (emphasis added).

15
16 **D. The 2006, 2010 and 2015 Acts**

17 In 2006, the Legislature enacted SB 6247 to authorize local governments to create
18 regional agencies to build roads funded in part by a new MVET and specified a vehicle valuation
19 schedule for the new MVET. Laws of 2006, ch. 318, §1. The SB 6247 bill report stated that the
20 new valuation method was intended to be used prospectively and apply to new taxes authorized
21 after 2006. Butler Decl. ¶23 & Ex. J. The bill report acknowledged that the new valuation
22 method would not apply to preexisting MVETs collected by local jurisdictions which had
23 outstanding debt obligations that required use of the old valuation method. *Id.* The bill report
24 identified Sound Transit as a jurisdiction that would continue to use the older valuation method
25 because the new valuation method would generate less tax revenue and violate its outstanding
26

1 debt obligations. *Id.* Likewise, the Fiscal Note to SB 6247 stated: “The new MVET rates
2 established in this bill are not intended to apply to the RTA [Sound Transit]” *Id.* Ex. K. Because
3 voters rejected the roads ballot measure, the new schedule in RCW 82.44.035 has never been
4 applied to determine the value of any vehicle.

5
6 In 2010, the Legislature codified *Pierce County II* as part of a technical amendments bill.
7 Laws of 2010, ch. 161, § 903. The bill reflected that the ST MVET must use the depreciation
8 schedule in RCW 82.44.041 (otherwise repealed by I-776) as required by *Pierce County II*. The
9 technical amendments bill added the following to RCW 81.104.160:

10 Any motor vehicle excise tax previously imposed under the provisions of RCW
11 81.104.160(1) shall be repealed, terminated, and expire on December 5, 2002,
12 except for a motor vehicle excise tax for which revenues have been contractually
13 pledged to repay a bonded debt issued before December 5, 2002, as determined by
14 Pierce County et al. v. State, 159 Wn.2d 16, 148 P.3d 1002 (2006). In the case of
bonds that were previously issued, the motor vehicle excise tax must comply with
chapter 82.44 RCW as it existed on January 1, 1996.

15 Laws of 2010, ch. 161, §§ 903, 910. 29. The amendment contained a factual error; it listed
16 January 1, 1996 as the date for compliance with the depreciation tables in chapter 82.44 RCW
17 instead of July 1, 1999, which was the date required in the bond contract and at issue in *Pierce*
18 *County II*. Butler Decl. ¶27-29. Black claims that the 2010 technical amendment was intended
19 to raise the Sound Transit MVET, but no legislative history supports that assertion. DOL
20 continued to use the 1999 valuation schedule for Sound Transit’s MVET. Butler Decl. ¶30.

21
22 Black’s motion contains a significant false assertion in discussing the 2010 technical
23 amendment. Black asserts: “In 2010, apparently realizing that its continued use of old schedules
24 was indefensible . . . , [Sound Transit] slipped an amendment of that section into a ‘technical
25 amendments’ bill” Black did not support this inaccurate assertion with any supporting
26 declaration. And Sound Transit neither drafted nor had a role in causing any provision of the
27

1 2010 Act to be proposed and passed by the Legislature. Declaration of Desmond Brown (“D.
2 Brown Decl.”) ¶4. “Neither Sound Transit legal staff nor [general counsel] was aware of the
3 existence of the above-cited provision of the 2010 Act before it was proposed or enacted into
4 law.” *Id.* ¶6.

5
6 The 2010 technical amendment was carried forward and re-codified in the 2015
7 amendment to RCW 81.104.160. The 2015 amendment is not before this Court, and is the
8 subject of separate litigation initiated by Black and their lawyers, which is pending before the
9 Washington Supreme Court.

10 **E. The Impact of Imposing the 2006 Valuation Schedule**

11 If Sound Transit were required to use the 2006 valuation as urged by Black, the agency’s
12 financial forecast model indicates that it would collect \$475.9 million less MVET revenue
13 between July 1, 2006 and 2028 (when the 1999 bonds are retired) than currently forecasted. This
14 constitutes a loss of approximately 25% of the ST MVET revenue collected during this
15 timeframe. Butler Decl. ¶25. If Sound Transit were required to change to the 2006 valuation
16 method now, the agency is forecast to collect \$223.1 million less MVET revenue between
17 November 1, 2019 and 2028. Butler Decl. ¶ 26. Without this revenue, the voter-approved capital
18 projects and transit services as currently approved cannot be implemented within the agency’s
19 existing financial policies. *Id.*

20 Changing from the 1999 valuation method to the 2006 method would profoundly and
21 negatively impact Sound Transit’s bondholders. Such changes were “never contemplated by the
22 prospective bondholders.” J. Brown Decl. ¶9. If known at the time, the significantly lower
23 MVET collections would have made the interest rate and costs associated with the 1999
24 financing much higher, and the bonds more difficult to market. *Id.* ¶¶11-12. Thus, “a change in
25 the statutory valuation tables to reduce the vehicle value to which the 0.3% tax is applied has the
26 same effect as lowering the tax rate,” which would violate the “contractual pledge to

1 bondholders to levy and collect the full 0.3% MVET until the bonds are retired.” *Id.* ¶13. And,
2 lowering the vehicle valuation schedule would “materially and significantly adversely [affect]
3 the financial framework and contractual promises upon which the Sound Transit Bonds were
4 sold.” *Id.*

5 Finally, using the 2006 schedule would adversely impact a significant number of
6 taxpayers in Sound Transit’s district. Specifically, “vehicles in years 11 through 15 actually
7 have a higher value using the 2006 schedule than they do under the version currently used by
8 Sound Transit pursuant to the bond contracts.” Butler Decl. ¶24. As a result, “nearly a quarter of
9 the vehicle owners would actually see a tax increase if Sound Transit switched to the 2006”
10 schedule. *Id.*

11 III. ARGUMENT

12 “An injunction is distinctly an equitable remedy and is ‘frequently termed the strong arm
13 of equity, or a transcendent or extraordinary remedy, and is a remedy which should not be lightly
14 indulged in, but should be used sparingly and only in a clear and plain case.’” *Kucera v. Dep’t of*
15 *Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). A party seeking an injunction must show “(1)
16 that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate
17 invasion of that right, and (3) that the acts complained of are either resulting in or will result in
18 actual and substantial injury to him.” *Tyler Pipe Indus., Inc. v Dep’t of Revenue*, 96 Wn.2d 785,
19 792, 638 P.2d 1213 (1982). If the party fails to show any of these elements, the court must deny
20 the injunction. *Kucera*, 140 Wn.2d at 209-10. Black cannot show any of these elements.

21 A. Black Shows no Clear Legal or Equitable Right.

22 The Washington Constitution provides: “no law...impairing the obligation of contracts
23 shall ever be passed.” Art. I, § 23. The test for contract impairment is well established: “(1) does
24 a contractual relationship exist, (2) does the legislation substantially impair the contractual
25
26
27

1 relationship, and (3) if there is a substantial impairment, is it reasonable and necessary to serve a
2 legitimate public purpose.” *Tyrpak v. Daniels*, 124 Wn.2d 146, 152, 874 P.2d 1374 (1994);
3 *Caritas Services, Inc. v. Dept. of Social and Health Svcs.*, 123 Wn.2d 391, 403, 869 P.2d 28
4 (1994). Where legislation impairs a government’s own bond contracts, the law will “face more
5 stringent examination under the Contract Clause than would laws regulating contractual
6 relationships between private parties.” *Tyrpak*, 124 Wn.2d at 151 (quoting *Allied Structural*
7 *Steel Co. v. Spannaus*, 438 U.S. 234, n.15, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978)).

9 In *Pierce County II*, the Supreme Court held that the “Sound Transit Bonds constitute a
10 contract between Sound Transit and the bondholders protected by the contract clause of the
11 Washington Constitution.” 159 Wn.2d at 29–30.² The Court elaborated that “the contractual
12 obligations in municipal bonds protected by the constitution include the terms in the municipal
13 bonds, the official statement, the authorizing resolutions, **and the statutory provisions**
14 **governing the applicable municipal corporation in existence when the bonds were issued**
15 **and sold.”** *Id.* at 30 (emphasis added). In holding that I-776 impaired the contract to sell the
16 1999 bonds, the Court reaffirmed that a bond contract is impaired by legislation that “alters its
17 terms, imposes new conditions, **or lessens its value.”** *Id.* at 30 (emphasis added); *see also*
18 *Ruano v. Spellman*, 81 Wn.2d 820, 828, 505 P.2d 447 (1973) (“That action, though indirect,
19 which diminishes the value of the contract constitutes a prohibited impairment is an established
20 rule.”). This is because “the financial framework of a bond contract is detrimentally affected and
21 bond obligations are impaired when a law put into effect after bonds were issued **diminishes a**
22 **tax source** (i.e., repeals a tax or **reduces the tax base**) that was pledged to support repayment of
23 _____
24

25
26
27 ² The Court was referring to the \$350 million of bonds issued in 1999, entitled the “Central Puget Sound Regional
Transit Authority Sales Tax and Motor Vehicle Excise Tax Bonds, Series 1999.” *Id.* at 24.

1 the bonds.” *Pierce County II*, 159 Wn.2d at 30. Indeed, the senior managing bond underwriter
2 testified that “the public bond market rating agencies, bond insurers, and bond investors all relied
3 on the continued collection of the MVET **at its fully pledged level until the Sound Transit**
4 **Bonds matured in 2028.**” J. Brown Decl., Ex. A, ¶24 (emphasis added).

5
6 Black concede that “*Pierce County II* allowed CPSRTA and the State to continue to rely
7 on prerepeal RCW 81.104.160 as written in 1996.” Mot. at 10. Black fail to acknowledge,
8 however, that “prerepeal RCW 81.104.160” included the valuation schedule in place at the time
9 the bonds were issued. The statute authorized a transit authority to “submit an authorizing
10 proposition to the voters, and if approved,... levy and collect an excise tax, at a rate approved by
11 the voters, but not exceeding eighty one-hundredths of one percent **on the value, under chapter**
12 **82.44 RCW**, of every motor vehicle owned by a resident.” Laws of 1992, ch. 194, Sec. 13
13 (emphasis added). At the time the bonds were issued, chapter 82.44 RCW encompassed the
14 1996 valuation schedule, as amended in 1998 by Referendum 49. Butler Decl. ¶¶ 17-18.
15 Because the valuation schedule in effect in chapter 82.44 RCW on July 1, 1999 determined the
16 total MVET revenue collected when the MVET was pledged to bondholders, the statute as it
17 existed on that date was part of the financial framework at the time the bonds were issued and,
18 therefore, part of the contractual obligation to the bond holders. J. Brown Decl., Ex. A, ¶21.

19
20 Plaintiffs also concede that “an amendment to valuation schedules *could* substantially
21 impair a contract.” Mot. at 10 n. 22 (emphasis in original). Plaintiffs then incorrectly assert that
22 *Pierce County II* failed to address reduction, rather than repeal, of the ST MVET. While it is
23 true that the Court described the impairment in terms of section 6 of I-776, which repealed the
24 MVET, it further emphasized that any reduction in the MVET would be an impairment:
25
26
27

1 At the time the bonds were issued and sold, Sound Transit had an **unconditional**
2 **grant of power to levy and collect the MVET**, subject to limitations on amount
3 and receipt of voter-approval, which it obtained. The pledge of the two major taxes,
4 the sales tax and MVET, was a critical part of the financial framework inducing the
5 bondholders to invest in the bonds. Investors purchasing the Sound Transit Bonds
6 were told that they could rely on two major revenue streams, which are quite
7 different in character, to secure the bonds. The sales tax depends on the amount of
8 taxable sales that occur within Sound Transit's taxing district each month. Such
9 monthly sales vary based on the strength/weakness and performance of the local
10 economy and are therefore somewhat volatile. **By contrast, the MVET revenue**
11 **depends on the value of all currently owned vehicles.** MVET revenues provide
12 a stable revenue stream because vehicle owners pay the tax regardless of their
13 current rate of spending on new purchases. Significantly, while Sound Transit
14 reserved the right to reduce the sales tax pledged and covenanted to bondholders,
15 **the Sound Transit bonds did not reserve the right to reduce the MVET pledged**
16 **to bondholders in any amount.**

17 *Pierce County II*, 159 Wn.2d at 34–35 (emphasis added).

18 The Court's analysis in *Pierce County II* was consistent with a long line of Washington
19 decisions finding contractual impairment where tax revenues or a tax base were reduced (rather
20 than repealed outright). As early as 1922, the Washington Supreme Court recognized that laws
21 changing the method of valuation of property for purposes of taxation could not be applied
22 retroactively. *See State ex rel. Clancy v. Columbia Irrig. Dist.*, 121 Wash. 79, 90, 208 P. 27
23 (1922). In *Clancy*, the law in effect when the bonds were issued provided for property valuation
24 based on the county auditor's determination for state and county purposes. The law was later
25 amended to assess according to benefits. The Court explained that to the extent the "latter
26 method of assessment injuriously affects the security of obligations issued under a previous law,"
27 the previous law must apply. *Id.*

Similarly, *State ex rel. Washington Mut. Sav. Bank v. City of Bellingham* involved bonds
issued under a 1925 statute that required cities to establish "local improvement guaranty funds"
to which a total tax credit not to exceed 5 percent of bonds or warrants issued after April 7, 1926

1 was pledged. 8 Wn.2d 233, 240, 111 P.2d 781, 785 (1941). The Court addressed whether a 1927
2 act, amending the tax pledge to an annual tax credit not exceeding five percent of the bonds then
3 outstanding, could retroactively eliminate bondholders' rights to the tax credit afforded by the
4 1925 act as to bonds issued under the protection of that act. *Id.* at 246. The Court concluded that
5 the tax credit afforded by the 1925 act "entered into and became a substantive portion of" the
6 bondholders' contract. *Id.* Because the tax credit was intended as security for the benefit of
7 bondholders, "subsequent legislation must be held ineffective in so far as destroying or **reducing**
8 the value of the tax credit is concerned." *Id.* (emphasis added). Thus, to construe the 1927 act
9 (which would result in a lower tax credit) retroactively "would amount to an unconstitutional
10 impairment of the contractual obligation between the city and appellant, as owner of bonds
11 issued under the protection of the act of 1925." *Id.*

12
13
14 Then, in *Tyrpak*, a change in the boundaries of a political subdivision, and the resulting
15 reduction of the tax base, was held to be an unconstitutional impairment of the subdivision's
16 bond contracts. The Port of Vancouver had issued and sold bonds to the public secured in part by
17 property taxes collected within the Port's boundaries. 124 Wn.2d at 148. The Court struck down
18 a law that would have permitted the Port of Camas-Washougal to annex areas of the Port, thus
19 "reducing its available tax base." *Id.* at 154. The Court held that reduction of the taxable property
20 pledged to pay the outstanding bonds unconstitutionally impaired the Port's bond contracts:
21

22 It cannot be disputed that removal of the land area proposed for annexation will
23 reduce the amount of taxes collectible by the Port of Vancouver. It is also true that
24 the principal method for repaying the bond obligations is the collection of such
25 taxes....Although this proposed annexation will not cause the Port of Vancouver's
26 tax base to fall below the minimum necessary for repayment, the excess taxes
27 collected by the Port of Vancouver, over and above those necessary to meet their
bond obligations, form additional security against routine economic fluctuations,
making the bonds more financially attractive.

1 *Id.* at 154-55. *Tyrpak* further emphasizes that outstanding bonds are impaired by the reduction of
2 a pledged tax even where the remaining security might be sufficient for repayment. *See also*
3 *Pierce Cty. II*, 159 Wn.2d at 36; *Municipality of Metro. Seattle v. O'Brien*, 86 Wn.2d 339, 351,
4 544 P.2d 729 (1976) (although contracted-for security substantially exceeded municipality's debt
5 service requirements, the excess was an important reason for favorable bond ratings and thus an
6 important factor in bondholders' decision to purchase the bonds).

7
8 The above Washington decisions are consistent with established precedent under the
9 federal Contract Clause holding that, short of repeal, **diminishment** of a municipality's ability to
10 collect promised tax revenues constitutes impairment.³ *See, e.g., Van Hoffman v. City of Quincy*,
11 71 U.S. (4 Wall.) 535, 549, 554-55, 18 L. Ed. 403 (1866) (statute limiting city tax power to 50
12 cents per \$100 of property to meet debts and current expenses of city impaired bonds issued
13 under previous statute authorizing levying of sufficient special tax to pay bonds; Court
14 concluded, "It is the duty of the city to impose and collect the taxes in all respects as if [the latter
15 statute] had not been passed."); *Louisiana ex rel. Nelson v. Police Jury of the Parish of St.*
16 *Martin*, 111 U.S. 716, 721, 4 S. Ct. 648, 28 L. Ed. 574 (1884) ("when a contract is made upon
17 the faith that taxes will be levied, legislation repealing **or modifying** the taxing power of the
18 corporation, so as to deprive the holder of the contract of all adequate and efficacious remedy, is
19 within the constitutional inhibition" (emphasis added)).

20
21
22 In sum, Const. art. I, § 23, the *Pierce County II* decision and substantial additional
23 precedent compel the conclusion that subsequent legislation cannot modify the valuation statute

24
25
26 ³ Article 1, § 10 of the United States Constitution also provides that "no state shall pass... any law impairing the
27 obligation of contracts." The federal and Washington state provisions are applied coextensively. *Haberman v.*
Washington Public Power Supply System, 109 Wn.2d 107, 145, 744 P.2d 1032 (1987); *Ruano v. Spellman*, 81
Wn.2d 820, 825, 505 P.2d 447 (1973).

1 in effect when the 1999 bonds were issued. To do so would alter the financial framework on
2 which the bondholders relied and impair the bond contract in the same manner as repealing the
3 MVET would. Notably, the *Pierce County II* Court also emphasized that there was absolutely no
4 rationale for the impairment in I-776 other than a purported “change in tax policy”. The Court
5 held “this justification has been soundly rejected for over a century. *Pierce Cty. II*, 159 Wn.2d at
6 37–38. Plaintiffs fail to offer any justification for the impairment that would occur should Sound
7 Transit be required to shift to the 2006 valuation schedule. Butler Decl. ¶ 26; J. Brown Decl. ¶
8 17. As a result, there is no scenario where the State or this Court could apply the 2006 valuation
9 schedule to Sound Transit’s MVET. Because Black cannot show a clear legal or equitable right
10 to apply the 2006 valuation schedule, their Motion should be denied.
11

12 **B. The 2010 Amendment is not the Authority for the ST MVET.**
13

14 As noted above, *Pierce County II* prohibits the application of the 2006 valuation method
15 to the ST MVET until the 1999 Bonds are retired. Regardless, the path Black posits for the Court
16 to impose the 2006 valuation schedule is based solely on the alleged unconstitutionality of the
17 2010 act. But the 2010 act is not the act that authorizes Sound Transit to use the 1999 valuation
18 schedule. *Pierce County II* and the most recent legislative delegation of authority to Sound
19 Transit codified in the 2015 amendment, RCW 81.104.160(3), both independently authorize and
20 require that Sound Transit use the 1999 valuation schedule. Granted, the 2015 amendment
21 recodified the 2010 act, but the 2015 amendment is a distinct legislative act that currently
22 governs the calculation of the ST MVET. In other words, in order to challenge the current
23 calculation of the ST MVET, Black needs to demonstrate at a minimum that the 2015
24 amendment is unconstitutional. But the 2015 amendment is not at issue in this Court. Rather, the
25 2015 amendment is currently before the Washington Supreme Court in a different lawsuit in a
26

1 case involving the same parties before this Court. The case is there on appeal from a summary
2 judgment **against** plaintiffs finding the 2015 act constitutional. Thus, issues about the
3 constitutionality of the 2015 act cannot be raised here. *Crosby v. Cty. of Spokane*, 137 Wn.2d
4 296, 313, 971 P.2d 32 (1999)(“an appeal does not suspend or negate res judicata effects of a
5 decision”). Because Sound Transit and the State do not rely on the 2010 amendment as
6 authorization for the current calculation of the ST MVET, Black’s claims about the 2010
7 amendment are legally irrelevant and do not support a claim to application of the 2006 schedule.
8

9 **C. Black Fails to Prove an Actual or Substantial Injury.**

10 In addition to lacking any clear or equitable right, Black also cannot demonstrate they
11 will suffer and actual or substantial harm absent an injunction. Indeed, Black fails to identify any
12 injury they have suffered other than speculative financial loss dependent on their assertions that
13 the 2010 act is unconstitutional. For example, Black does not present any evidence regarding any
14 specific injury that any individual taxpayer will suffer. Black provides no affidavits from any
15 plaintiff even establishing the specific tax payment they claim they have to pay based on their
16 vehicle age that would be avoided by implementing the 2006 schedule. Indeed, we do not even
17 know whether any of the plaintiffs’ MVET will go up or down. Approximately 21% to 23% of
18 vehicle owners in the Sound Transit district would see their taxes go up if an injunction were
19 granted. Butler Decl. ¶ 24.
20
21

22 The seminal case of *Tyler Pipe Indus., Inc. v. State, Dep’t of Revenue*, 96 Wn.2d 785,
23 796, 638 P.2d 1213 (1982) involved a preliminary injunction to avoid paying taxes alleged to be
24 unconstitutional. Like Black, Tyler Pipe did not provide any evidence of actual and substantial
25 injury other than paying the taxes. The Court noted that “[p]ayment of the tax, in and of itself,
26 does not constitute the actual and substantial injury required for issuance of an injunction.” *Id.* at
27

1 794-95. The Court concluded: “Since Tyler Pipe has put nothing into evidence to establish
2 actual and substantial harm, it is reduced to argue that any dollar loss constitutes actual and
3 substantial harm regardless of its impact. An injunction is an extraordinary equitable remedy
4 designed to prevent serious harm. Its purpose is not to protect a plaintiff from mere
5 inconveniences or speculative and insubstantial injury.” *Id.*; *see also*, *Wash. Fed’n of State*
6 *Emps., Council 28 v. State*, 99 Wn.2d 878, 891, 665 P.2d 1337 (1983) (no actual and substantial
7 injury where plaintiffs failed to submit affidavits of employees affected by state payroll plan).
8

9 Moreover, no potential for injury exists here because there is a statutory procedure for
10 refunds from overpayment of motor vehicle excise taxes. *See* RCW 82.44.120. Black ignores this
11 statutory remedy, asserting that drivers can only “hope for a refund at some future date.” Motion
12 at 18. That is plainly incorrect and absurd. RCW 82.44.120 and the accompanying provisions of
13 RCW 46.68.010 establish a **mandatory** and adequate administrative remedy for refunds.
14

15 **D. A Preliminary Injunction is not in the Public’s Interest.**

16 Black also fails to address the final element for a preliminary injunction: courts must
17 balance the interests of the parties and the public. *Kucera*, 140 Wn.2d at 200; *Tyler Pipe Indus.*,
18 96 Wn.2d at 792. Balancing the equities here weighs heavily in favor of denial of a preliminary
19 injunction. An injunction would prevent Sound Transit from collecting essential revenue
20 necessary to complete construction of voter-approved projects. An injunction would also be
21 contrary to the public’s well-established interest in the efficient collection of taxes. Finally, an
22 injunction would increase the MVET for a meaningful portion of the affected population. This
23 vastly outweighs Black’s interest in the application of the valuation schedule of their choice.
24

25 While Black has an adequate statutory remedy at law to recover any taxes paid in error,
26 Sound Transit has no such remedy to recover taxes lost should this Court grant an injunction.
27

1 Black asks the Court to order Sound Transit and the State to collect MVET based on the 2006
2 statutory valuation tables, not the 1999 tables currently used. Between October 18, 2019 and
3 September 30, 2020, Sound Transit is expected to collect \$23,086,000 more MVET revenue
4 using the 1999 statutory valuation tables than it would using the 2006 tables. Butler Decl. at ¶
5 32. If an injunction is granted and Sound Transit ultimately prevails on the merits, that lost
6 revenue would be unrecoverable. Sound Transit has no means to recoup the underpayment from
7 vehicle owners who have already received their annual registration certificate and license tabs.
8 Butler Decl. at ¶ 32. Without the revenue forecasted to be collected between November 1, 2019
9 and 2028, the voter-approved capital projects and transit services as currently approved cannot
10 be implemented within Sound Transit’s existing financial policies. Butler Decl. at ¶ 26. In
11 contrast, if Black were entitled to relief, RCW 82.44.120 provides a mandatory and adequate
12 administrative remedy. The harm to Sound Transit if the Court grants an injunction would thus
13 be far greater than Black’s having to wait for a refund should they prevail.
14
15

16 Granting an injunction would also be contrary to the public’s interest. The public’s
17 “strong interest in the collection of taxes has led to a long-standing public policy which disfavors
18 the issuance of injunctions.” *Tyler Pipe Indus.*, 96 Wn.2d at 796. The projects funded by the
19 MVET revenue at issue will affect over 48 million riders: Link Light Rail carried 24.4 million
20 riders; Sounder Commuter Rail carried 4.6 million riders; ST Express carried 18.2 million riders;
21 and Tacoma Link Light Rail carried nearly 1 million riders. Tharpe Decl., Ex. E. Sound Transit
22 is currently implementing the Sound Move, Sound Transit 2, and Sound Transit 3 regional transit
23 system plans to plan, build, and operate regional bus, commuter rail, light rail, HOV access
24 ramps, park and ride lots, and transit centers throughout the urban areas in King, Pierce, and
25 Snohomish Counties. Current projects under construction and funded by the MVET include
26
27

1 light-rail extensions from downtown Tacoma to the Hilltop neighborhood, from Angle Lake to
2 Federal Way, from Northgate to Lynnwood, and from Seattle to Mercer Island, Bellevue and
3 Redmond. The MVET will also fund light rail extensions to Tacoma Community College, West
4 Seattle, and Ballard, among others. Butler Decl. at ¶ 2. Tax revenues are also used to fund
5 operation, maintenance, and state of good repair costs for existing facilities. Butler Decl. at ¶ 3.
6 The public has a vested interest in the completion of these important transportation projects and
7 the maintenance of existing facilities and services that affect millions of people. It is in the
8 public's interest to facilitate Sound Transit's performance of its statutory duty and collection of
9 revenue so that essential public services can continue. *See Tyler Pipe Indus.*, 96 Wn.2d. at 797.
10 Finally, the public's interest will not be served by increasing the MVET for owners of older cars,
11 and who may be unable to afford such an increase. Overall, the balance of the equities favors
12 denial of Black's motion.
13
14

15 IV. CONCLUSION

16 *Pierce County II* prohibits any change in the ST MVET that lowers collections from that
17 set forth in the 1999 bond contract documents. Adopting the 2006 valuation schedule would have
18 that prohibited result. Moreover, Sound Transit does not rely on the 2010 act, the only act at
19 issue in this lawsuit, for authority to assess the ST MVET based on the 1999 valuation schedule.
20 Black has also made no showing of actual and substantial injury. Having to pay taxes that are
21 subject to refund does not qualify. The balance of the equities and public interest heavily favor
22 denying an injunction: Sound Transit and its taxpayers will lose over \$20 million needed for
23 voter-approved projects; Black will face at most a wait for a refund. Finally, almost 25% of
24 Sound Transit's taxpayers would see an MVET increase if an injunction is granted. For each and
25 all of these reasons, Black's motion should be denied.
26
27

1 DATED this 15th day of October, 2019.

2 PACIFICA LAW GROUP LLP

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY

3 By /s/ Paul J. Lawrence

By /s/ Desmond Brown

4 Paul J. Lawrence, WSBA #13557
5 Matthew J. Segal, WSBA #29797
6 Nicholas W. Brown, WSBA #33586
Michelle Vaughan, WSBA #54751

Desmond Brown, WSBA #16232
Mattelyn L. Tharpe WSBA #53743

7 *Attorneys for Defendant Sound Transit*

Attorneys for Defendant Sound Transit