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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

CHRIS QUINN, *et al.*

Plaintiffs,

v.

STATE OF WASHINGTON; DEPARTMENT
OF REVENUE, *et al.*

Defendants,

and

EDMONDS SCHOOL DISTRICT, *et al.*

Intervenors.

APRIL CLAYTON, *et al.*

Plaintiffs,

v.

STATE OF WASHINGTON, DEPARTMENT
OF REVENUE, *et al.*

Defendants,

and

EDMONDS SCHOOL DISTRICT, *et al.*

Intervenors.

No. 21-2-00075-09
No. 21-2-00087-09

INTERVENOR EDUCATION
PARTIES' JOINDER IN
DEFENDANTS' REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT AND SUPPLEMENTAL
BRIEF

1 As detailed in Defendants' motion for summary judgment, Engrossed Substitute Senate
2 Bill 5096 (ESSB 5096) imposes a valid excise tax on certain transactions by Washington's
3 wealthiest residents that will provide critical funding for public education in Washington. In their
4 opposition, Plaintiffs argue ESSB 5096 is invalid on multiple constitutional grounds. Intervenor
5 Education Parties join Defendants' reply in support of their motion for summary judgment in its
6 entirety. Education Parties submit this supplemental brief solely to address Plaintiffs' continued
7 reliance on a line of cases holding that "income is property" for constitutional taxation purposes.
8 *See, e.g., Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933); *Jensen v. Henneford*, 185 Wash.
9 209, 53 P.2d 607 (1936); *see also* Pls.' Opp'n Defs.' Mot. Summ. J. at 17-20.

10 Education Parties acknowledge that this Court is bound by vertical *stare decisis*. While
11 that is the case, it creates a conundrum for trial courts when faced with incorrect precedent.
12 Should a trial court blindly follow that precedent without at least recognizing the possibility that
13 it is incorrect and harmful? Here, Plaintiffs offer no substantive argument countering Education
14 Parties' briefing. This likely is because Plaintiffs' reliance on the Supreme Court's cases from
15 the 1930s deeming income to be "property" cannot withstand careful scrutiny. Those cases are
16 unfounded, incorrect, and harmful, and should no longer be followed. *See* Education Parties'
17 Joinder in Defs.' Mot. Summ. J. at 1-6; Education Parties' Joinder in Defs.' Opp'n Pls.' Mot.
18 Summ. J. at 1-3. Accordingly, if the Court concludes that the capital gains tax is not an excise
19 tax (which it should not), the Court should at a minimum recognize that *Culliton* and its progeny
20 are incorrect and harmful and should not be followed in general, even if at the same time the
21 Court determines it is bound to do so.

22 In summary, this Court should grant Defendants and Education Parties summary
23 judgment, deny Plaintiffs' motion, and dismiss Plaintiffs' claims.

DATED this 21st day of January, 2022.

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PACIFICA LAW GROUP LLP

By s/ Gregory J. Wong
Gregory J. Wong, WSBA #39329
Sarah S. Washburn, WSBA #44418

Attorneys for Intervenors

CERTIFICATE OF SERVICE

1 I am and at all times hereinafter mentioned was a resident of the State of Washington, over
2 the age of 21 years and not a party to this action. On the 21st day of January, 2022, I caused to be
3 served a true copy of the foregoing document upon:

4 Scott Edwards
5 Callie Castillo
6 Lane Powell PC
7 1420 Fifth Avenue, Suite 4200
8 Seattle, WA 98101-2375
9 EdwardsS@lanepowell.com
10 CastilloC@lanepowell.com
11 Craig@lanepowell.com
12 Docketing@lanepowell.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via email service agreement
- via electronic court filing
- via hand delivery

9 Robert McKenna
10 Amanda McDowell
11 Daniel Dunne
12 Orrick Herrington & Sutcliffe
13 701 Fifth Avenue, Suite 5600
14 Seattle, WA 98104
15 rmckenna@orrick.com
16 Amcdowell@orrick.com
17 ddunne@orrick.com
18 abrecher@orrick.com
19 lpeterson@orrick.com
20 CaseStream@orrick.com

16 Eric Stahlfeld
17 c/o The Freedom Foundation
18 PO Box 552
19 Olympia, WA 98507
20 ESTahlfeld@freedomfoundation.com
21 KElder@freedomfoundation.com

1 ROBERT W. FERGUSON
Attorney General
Cameron G. Comfort
2 Sr. Assistant Attorney General
Noah G. Purcell
3 Solicitor General
Jeffrey T. Even
4 Deputy Solicitor General
Peter B. Gonick
5 Deputy Solicitor General
Charles Zalesky
6 Assistant Attorney General

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via email service agreement
- via electronic court filing
- via hand delivery

7 ATTORNEY GENERAL OF WASHINGTON
Revenue and Finance Division
8 7141 Cleanwater Dr. SW
PO Box 40123
9 Olympia, WA 98504-0123
(360) 753-5515
10 noah.purcell@atg.wa.gov
cam.comfort@atg.wa.gov
11 jeffrey.even@atg.wa.gov
peter.gonick@atg.wa.gov
12 chuck.zalesky@atg.wa.gov
carrie.parker@atg.wa.gov
13 carly.summers@atg.wa.gov

14 *Attorneys For Defendants*

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

17 DATED this 21st day of January, 2022.

18 *s/ Thien Tran*
Thien Tran, Paralegal/Legal Assistant