IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

WASHINGTON BANKERS ASSOCIATION, a Washington Public Benefit Corporation, and AMERICAN BANKERS ASSOCIATION, a District of Columbia Non-Profit Corporation, Plaintiffs, v. STATE OF WASHINGTON, DEPARTMENT OF REVENUE OF THE STATE OF WASHINGTON, and VIKKI SMITH, as Director of the Department of Revenue of the State of Washington, Defendants.	Case No. **COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs, by and through their attorneys, allege the following Complaint for Declaratory Relief against Defendants the State of Washington, the Department of Revenue of the State of Washington, and Vikki Smith, as Director of the Department of Revenue of the State of Washington:

I. NATURE OF THE CASE

1. Substitute House Bill 2167 ("SHB 2167" or the "Act"), titled an "AN ACT Relating to tax revenue; adding a new section to chapter 82.04 RCW; and creating a new section," was rushed through the Washington State Legislature in the final two days of the 2019 Regular Session and signed into law by Governor Jay Inslee on May 21, 2019. The Act imposes a

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1.2% Business and Occupation ("B&O") surtax on gross income of "specified financial institutions," effective January 1, 2020.

2. A "specified financial institution" is defined in the Act as any registered bank, thrift institution, savings and loans association, or other financial institution "that is a member of a consolidated financial institution group that reported on its consolidated financial statement for the previous calendar year net income of at least one billion dollars, not including net income attributable to noncontrolling interests, as the terms 'net income' and 'noncontrolling interest' are used in the consolidated financial statement."

3. Because the net income threshold in SHB 2167 is set at one billion dollars, the only financial institutions that qualify as "specified financial institutions" under SHB 2167—and thus, the only financial institutions subject to the Act's 1.2% B&O surtax—are approximately twenty large financial institutions that are domiciled outside of Washington and that do business in interstate commerce and in Washington. By design, no Washington-domiciled financial institution is taxed under SHB 2167.

4. Taxing only out-of-state financial institutions was the explicit intent of the Act's sponsors and proponents, who waited until two days before the end of the Legislative Session to introduce SHB 2167 notwithstanding the requirement of Article II, Section 36 of the Constitution of the State of Washington for legislation to be introduced at least ten days prior to the close of the Legislative Session, barring a two-thirds vote in both houses. The Act's proponents steamrolled SHB 2167 through the Washington State House of Representatives and Senate without the benefit of a complete fiscal note or meaningful review by legislative committees, the Department of Revenue, the Attorney General, or the public.

5. Plaintiffs seek a declaratory judgment that SHB 2167 is unlawful and invalid because (1) the Act was enacted in violation of Article II, Section 36 of the Constitution of the State of Washington, and (2) the Act's imposition of a 1.2% surtax on gross income of specified financial institutions, all of whom are out-of-state entities, discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution.

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II. PARTIES

6. Plaintiff Washington Bankers Association ("WBA") is a Washington Public Benefit Corporation that represents the interests of commercial banks operating throughout the state of Washington. WBA's principal place of business is in Seattle, Washington. More than 97% of all commercial bank deposits in Washington are held in WBA member banks, which range in size from multi-state financial institutions to local family-owned and community banks. WBA's mission is to support and advance the banking industry in the Pacific Northwest and beyond, and it engages with lawmakers and provides advocacy and educational services to support its mission and the missions of its members. On information and belief, financial institutions that meet the Act's definition of "specified financial institutions" and will be subject to the surtax the Act imposes beginning on January 1, 2020 are among WBA's member banks. WBA has a direct interest in representing its members' legal, business, and financial interests in Washington, including its members' interests in avoiding and removing extraordinary tax burdens imposed in violation of the Washington Constitution and the United States Constitution.

7. Plaintiff American Bankers Association ("ABA"), a nonprofit organization organized under the laws of the District of Columbia and headquartered in Washington, D.C., represents the interests of banks of all sizes and their employees across the United States. ABA provides educational tools and insights to its members; supports and promotes technological advancements to make banking services more efficient, convenient, and secure; and advocates to promote government policies that support the banking industry's diversity and the role of banks as drivers of economic growth and job creation. On information and belief, ABA member banks include all of the approximately twenty financial institutions that meet the Act's definition of "specified financial institutions" and will be subject to the surtax the Act imposes beginning on January 1, 2020. ABA has a direct interest in representing its members' legal, business and financial interests in Washington, including its members' interests in avoiding and removing extraordinary tax burdens imposed in violation of the Washington Constitution and the United States Constitution.

8. Defendant is the State of Washington.

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9. Defendant Department of Revenue of the State of Washington ("DOR") is an agency of the State of Washington. DOR exercises general supervision and control over the system of taxation throughout the State of Washington.

10. Defendant Vikki Smith is the Director of the DOR, charged with the administration and enforcement of taxes at issue in this Complaint, and is sued in her official capacity. Ms. Smith has served as the Director of the DOR since June 4, 2015.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter. Washington superior courts have original jurisdiction in all cases at law that involve "the legality of any tax" and "have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." RCW 2.08.01; RCW 7.24.010. This Court has jurisdiction and authority to grant Plaintiffs' request to find the surtax created by SHB 2167 unconstitutional and to declare SHB 2167 null and void.

12. Venue is proper in King County Superior Court. Persons or corporations "having any claim against the state of Washington" may file their actions in the superior court located in "the county of the residence or principal place of business of one or more of the plaintiffs." RCW 4.92.010. Venue is proper in King County because WBA's principal place of business is in Seattle, Washington.

IV. STANDING

13. WBA has associational standing to challenge the Act's constitutionality. WBA's members include "specified financial institutions" as defined in SHB 2167 that pay taxes in this state and will suffer immediate, concrete, and specific economic injury beginning as of January 1, 2020, the date the unconstitutional B&O surtax on specified financial institutions becomes effective under the Act. WBA has a direct interest in protecting its members from the burdens of unlawful and unconstitutional taxes. WBA's primary mission is to support and advance the banking industry in the Pacific Northwest. In support of its mission, WBA regularly engages in dialogue with lawmakers and policy makers concerning legislation that affects banking, including the reduction of barriers for its members to do business and serve customers in Washington, and

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sustainable economic development for all the state's citizens. Neither the claims asserted nor the declaratory judgment relief requested requires the participation of individual WBA members in this lawsuit.

14. ABA has associational standing to challenge the Act's constitutionality. ABA's members include non-Washington financial institutions that pay taxes in this state and will suffer immediate, concrete, and specific economic injury beginning as of January 1, 2020, the date the Act's unconstitutional B&O surtax on specified financial institutions goes into effect. ABA has a direct interest in protecting its members from unconstitutional taxes. In support of its mission, ABA regularly advocates in support of legislation and policies that allow banks of all sizes to better serve their customers and communities, and to avoid unlawful burdens on their members' businesses and operations. Neither the claims asserted nor the relief requested requires the participation of individual ABA members in this lawsuit.

15. The Court may also hear this action because it involves a controversy of substantial public importance that immediately affects significant segments of the population who have banking relationships, and because it has a direct bearing on commerce, finance, and all other sectors of the state's economy that depend on financial institutions operating in competitive and efficient markets. By nearly doubling the B&O tax on specified financial institutions—all of which are non-Washington financial institutions—employing and serving a significant portion of the public throughout the state, the Act will have an imminent effect on broad segments of the economy and population. The resolution of Plaintiffs' claims will also have a substantial effect on the state Legislature's abuse of "title-only bills" to evade constitutional requirements for legislation.

V. ALLEGATIONS OF FACTS

16. House Bill 2167 ("HB 2167") was introduced in the House of Representatives and referred to the House Finance Committee on April 10, 2019, under the sponsorship of Representative Gael Tarleton, 36th District. HB 2167, titled "AN ACT Relating to tax revenue; and creating a new section," contained a single section that read in its entirety, "The legislature intends to enact legislation concerning tax revenue."

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17. HB 2167 was a "title-only" bill, a bill which contains a title and a number but is without legislative substance. Title-only bills are introduced for the express purpose of having a vehicle on which to graft substantive legislation to be introduced at a later time.

18. Title-only bills are an artifice created by legislators to evade the Washington State Constitution's requirements for the timely introduction and consideration of legislation. Article II, Section 36 of the Washington State Constitution provides:

> WHEN BILLS MUST BE INTRODUCED. No bill shall be considered in either house unless the time of its introduction shall have been at least ten days before the final adjournment of the legislature, unless the legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house, said vote to be taken by yeas and nays and entered upon the journal, or unless the same be at a special session.

19. As their name suggests, title-only bills are introduced at least ten days before the end of the legislative session with only a title and no substantive content. Once introduced, title-only bills remain on the legislative "shelf," available as needed to be substantively amended with content in the final days of the legislative session without the approval of a two-thirds supermajority of both houses that is required by Article II, Section 36. The "substituted" bills are then rushed through the legislative process without the minimum ten days for legislators, much less Washington's public, to review, consider, and react to the policy proposals they contain.

20. The use of title-only bills to evade the requirements of Article II, Section 36 of the Washington State Constitution is an open and notorious practice by Washington legislators. The Washington State Legislature even includes a definition of "title-only bill" in the "Glossary of Legislative Terms" publicly available on its website. As defined by the Washington State Legislature, a title-only bill is "[a] bill which contains nothing more than a title and a number. It is introduced in order to have a vehicle on which to amend substance at a later time."[1]

21. HB 2167 was one of 26 title-only bills introduced during the 2019 Regular Session, and one of four title-only bills that were substituted with bills containing substantive content in the final *two days* of the Session, rushed through the Legislature, and signed into law

[1] *Glossary of Legislative Terms*, Washington State Legislature, https://app.leg.wa.gov/billinfo/glossary.aspx.

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on May 21, 2019. In fact, the Washington State Legislature maintains a separate topical index of "title-only bills" because title-only bills lack a substantive topic.[2]

22. The sponsors of HB 2167 provided no substantive information to lawmakers, legislative analysts, or the public about its contents. On April 10, 2019, a legislative coordinator at the DOR notified DOR staff that HB 2167 and HB 2168 had been introduced in the House earlier that day, writing, "They are Title Only bills, so anyone's guess what they will include."

23. On April 26, 2019, two days before the close of Session, SHB 2167 was substituted for HB 2167 and read for the first time before the House Finance Committee. SHB 2167 revealed for the first time during the Session that its proponents intended to impose a new 1.2% B&O surtax on financial institutions with consolidated annual net income in excess of one billion dollars. This new tax represented an approximately 80% B&O tax rate increase on affected financial institutions—all of which are out-of-state entities—from a prior rate of 1.5% to the new aggregate B&O rate of 2.7%. It is expected to raise over $100 million in the state budget biennium that commenced July 1, 2019, and over $200 million per biennium thereafter.

24. The House Finance Committee held a single public hearing on SHB 2167 the same day it was introduced, April 26. During the hearing, the Committee's staff fiscal analyst was unable to answer questions raised by legislators concerning the number of in-state and out-of-state financial institutions that would be subject to the proposed tax. At the hearing, Representative Drew Stokesbary, 31st District, questioned whether SHB 2167 raised "potential dormant Commerce Clause impacts if we are only applying taxes to out of state businesses"—a question that went unanswered by Committee staff or by the bill's sponsor, House Finance Committee Chair Tarleton.[3] In connection with the hastily convened hearing, testifying members

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[2] A list of the 26 title-only bills introduced during the 2019 Regular Session is available on the Washington State Legislature's website. *See Bills by Topic Results: Title Only Bills*, Washington State Legislature, https://app.leg.wa.gov/billsbytopic/Results.aspx?year=2019&subject=TITLE%20ONLY%20BILLS. The title-only bills that were passed in substituted form during the 2019 Regular Session are SB 6004, HB 2140, HB 2167, and HB 2168.

[3] A video recording and unofficial transcript of the House Finance Committee's April 26, 2019 public hearing is provided by Washington's public access television service, TVW. *See House Finance Committee, April 26, 2019 Public Hearing: HB 2167, HB 2168 and Possible Executive Session: HB 2167, HB 2168*, https://www.tvw.org/watch/?eventID=2019041278. Representative Stokesbary's comments appear in the video recording at 10:22-10:35.

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of the public, including Plaintiff WBA, objected that they had no meaningful opportunity to review the bill, and raised concerns that legislators had not properly vetted, or even identified, the consequences of nearly doubling the effective B&O tax rate on an undisclosed number of financial institutions. No fiscal note was available for review during the hearing, as the bill's sponsors had only requested one from the Office of Financial Management the day before, on April 25.

25. Later that same day, a Committee staff fiscal analyst emailed Chair Tarleton, Committee members, and staff to respond to questions posed during the Committee hearing on SHB 2167, including particularly whether "any Washington domiciled banks . . . would be subject to the additional B&O rate." The fiscal analyst responded that the "Department of Revenue is checking," but observed that "no state chartered banks would be subject to the additional tax or were assumed in the fiscal estimate" because "no state chartered banks . . . generated one billion dollars in the previous year." The conclusion that no Washington-chartered banks would be hit with the SHB 2167 surtax was confirmed by DOR staff the following morning, when they reported that DOR "could not identify any state-chartered banks that are a member of a 'consolidated financial institution group' that had net income of $1 billion or more."

26. SHB 2167 was debated on the floor of the House of Representatives at 2:40 a.m. on April 27, 2019. During this debate, the bill's sponsor, Representative Tarleton, attempted to allay legislators' concerns that the bill might negatively affect in-state financial institutions. Representative Tarleton explained that SHB 2167 targeted "literally less than two dozen entities, that are parent companies or their affiliates" and described the targets of SHB 2167 as "mega-banks" and "the very largest banks in the world that have the capacity [sic] and access to capital all over the world." Representative Tarleton's comments from the debate appear, in part, below:

> "While it is true that business models might vary among these various players, the fact remains that those institutions, those entities that will be subjected to an increase in their business and occupation tax rate from 1.5 to 2.7 percent are only those few—**literally less than two dozen entities—that are parent**

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> **companies or their affiliates** that are bringing in more than a billion dollars of net income on an annual basis on their consolidated financial statements."[4]
>
> "Recognizing that these mega-banks are not actually serving many communities in under-served and rural communities around the state, we have learned in this state's history as well as today that we rely substantially on community banks and credit unions to go where no one else will go. **I'd rather see opportunities to expand participation for those entities rather than rewarding those who have chosen not to be there when their profits were at their highest. So, let's help the community banks and the small credit unions and let's make sure that the largest banks in the world are going to pay the tax.**"[5]
>
> ". . . **these largest institutions that do business all over the world** and have plenty of resources to invest in our local communities, when they choose not to, that is making a choice about their business practices. **If they have not chosen to participate in local economies and put money into local communities, it's hard for me to imagine that the credit we give them**, the benefits we give them, will return to invest in the people that need it the most. **So, I'd rather see local institutions working with local banks.** In my own district, Mr. Speaker, we have lots of local banks that have supported the fishing community, for example, over literally decades and decades, **and I'm hoping that we see a resurgence of that kind of participation in the local economy**."[6]
>
> "**These are the very largest banks in the world that have the capacity and access to capital all over the world** and they don't necessarily come right here at home where we live, and we need them. And before we give extra credit to those who are in a position to help support all of us, **let's try to make sure that they are literally in a position to demonstrate that they want to be here in our own communities** supporting us while they benefit from the very extensive resources of this state." **"I haven't seen the commitment to the local communities from these largest institutions that we need to see to support our state**."[7]

27. Representative Tarleton's comments leave no doubt that SHB 2167 was introduced at the last possible moment of the 2019 Regular Session to target fewer than two dozen large, out-of-state financial institutions, disadvantaging them in comparison to Washington-based financial institutions.

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[4] *House Floor Debate, April 27, 2019*, https://www.tvw.org/watch/?eventID=2019041311. Representative Tarleton's comments appear in the video recording at 2:10–3:15.

[5] *Id.* at 5:46–6:34.

[6] *Id.* at 8:12–9:06.

[7] *Id.* at 22:35–23:41.

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28. The Ways and Means Committee of the Washington Senate held its only public hearing on SHB 2167 later in the same day, April 27. In a repeat showing of the House Finance Committee hearing the day before, lawmakers sought basic information about the bill including which taxpayers would be subject to the tax, while members of the public including WBA argued that they had not been given sufficient time to understand and provide feedback on the bill.

29. The partial fiscal note produced that day confirmed that approximately twenty taxpayers—the "largest banks in the world" as described by Representative Tarleton earlier that morning—were expected to be subject to the new tax. A DOR staff member later explained that the estimated number of affected taxpayers was "based on who we *think* is subject to the increased B&O," before admitting, "[w]e did not have a lot of time to do the fiscal note/estimates as this bill was unforeseen and near the end of session."

30. SHB 2167 was debated on the floor of the Washington State Senate on April 28, 2019. Senators from both political parties expressed concern that the bill was being rushed through the Legislature in the final two days of the 2019 Regular Session without proper deliberation or review by the Washington State Office of the Attorney General and that its targeting of large out-of-state financial institutions unconstitutionally discriminated against interstate commerce. Their comments appear below:

Senator	Statement on the Floor of the Washington State Senate
Sen. John Braun (R), 20th Dist., Centralia	Mr. President, this a bill that just came into existence two days ago. We know that we haven't had a legal analysis from our attorney general. **We know that there are potentially large Commerce Clause [implications].** We've had the private sector weigh in with, I think, very legitimate concerns about whether this is even legal from a federal law standpoint. This bill has come without any significant deliberation from the House to the Senate. It moved in one day through the Senate committee.[8]
Sen. Mark Mullet (D), 5th Dist., Issaquah	I can 100% guarantee to every person in this body that not at one point has [the Senate Banking Committee] looked at **this issue that was presented on Friday—out of the blue, from nowhere**—in any way, shape or form. And I think, if we as a body are going to take a bill that clearly seems to violate the

[8] *Senate Floor Debate, April 28, 2019*, https://www.tvw.org/watch/?eventID=2019041266. Senator Braun's comments appear in the video recording at 1:37:12–1:37:48.

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	Commerce Clause, it clearly says if you're an out-of-state bank—because the way we've defined the definition of a billion dollars in net profits, not a single bank in Washington meets that definition. **So, in-state banks pay half the tax rate of what the out-of-state banks will pay. This is a violation of the Commerce Clause.**[9]
Sen. Steve Hobbs (D), 44th Dist., Lake Stevens	I don't know why this [bank tax bill] didn't go through a financial committee. It should have . . . . The fact of the matter is that **this policy was slapped in a title-only bill and jammed through at the last minute.**[10]
Sen. Steve O'Ban (R), 28th Dist., Pierce County	**You can't have a differential tax scheme, like we're proposing here, that so clearly, so obviously differentiates between in-state and interstate banks without failing the smell test.** So maybe this could be drafted in a way that avoids [the] interstate commerce failures of this bill. So, for that reason we shouldn't be doing at the eleventh hour—like much of what we've been doing when it comes to tax policy over the last forty-eight hours seem so rushed, ill-conceived. I think it will have tremendous unintended consequences.[11]
Sen. Tim Sheldon (D), 35th Dist., Hoodsport	Mr. President these are big issues, but **just to use the lines that "oh it's the one hundred fifth day" . . . is it really a way to get around the process?** We are about process, Mr. President . . . . Let's do this the right way and get it right instead of making big mistakes and landing ourselves in a huge lawsuit.[12]

31. Despite bipartisan warnings from both houses of the Legislature and the public that SHB 2167 suffered from a flawed legislative process and created an unconstitutional differential tax rate for in-state and out-of-state financial institutions, SHB 2167 was adopted by a 53-43 majority[13] in the House of Representatives and a bare 25-24 majority in the Senate; signed by the Speaker of the House and the President of the Senate; and then delivered to the Governor on April 28, the last day of the 2019 Regular Session of the Legislature. Governor Inslee signed the bill into law on May 21, 2019.

[9] *Id.* at 1:39:42–1:40:19.

[10] *Id.* at 3:25:59–3:26:14.

[11] *Id.* at 1:41:40–1:42:21.

[12] *Id.* at 1:45:49–1:46:21.

[13] Representatives Richard DeBolt, 20th District, and Matt Shea, 4th District, were excused from the vote.

32. SHB 2167 was sharply rebuked by editorial boards across the state. *The Columbian* called the Legislature's passage of SHB 2167 in the final 48 hours of the Session "an affront to the notion of responsible government." *The Seattle Times* accused the Legislature of "bypass[ing] the state constitution and cut[ing] the public out of the process." The *Walla Walla Union-Bulletin* called the process that led to SHB 2167's passage a "disturbing" example of "sleight-of-hand dealmaking made out of sight of the taxpayer." *The News Tribune* in Tacoma wrote that the Legislature's "blatant disregard for public process . . . . stinks." *The Spokesman Review* criticized the Legislature for passing a "half-baked" bill that likely "violates the U.S. Constitution by treating in-state and out-of-state banks differently." All these editorial boards stated the obvious: SHB 2167 effectively only taxes "out-of-state banks." Selections of their commentary on SHB 2167 appear below:

Editorial Board	Commentary on SHB 2167
In Our View: State budget process in need of transparency, The Columbian, May 9, 2019.	Another item that received scant consideration is a sharp increase to the business and occupation tax **paid by out-of-state banks**. Increasing the tax might or might not be a good idea. **But introducing and passing it in the final 48 hours of the session, with little input from stakeholders, is an affront to the notion of responsible governance.**
Title-only bills are an insult to democracy, The Spokesman Review, May 12, 2019.	If Democrats had run the bill through the banking committee, they might have slowed down because there's a good chance it violates the U.S. Constitution by treating in-state and out-of-state banks differently. **What makes title-only bills particularly odious, aside from the fact that they exist simply to skirt the intent of the state constitution, is that they deny Washingtonians an opportunity to be engaged participants in their government.** Title-only bills are a rush job. They almost always were negotiated behind closed doors and, as with the bank tax, are half-baked because they didn't go through the normal legislative process. Washington deserves better.
Editorial Board, *Washington lawmakers dodge the constitution*	In the final hours before the end of the 2019 legislative session, Democrats in Olympia rammed through a tax increase on big banks. **They used a parliamentary gimmick called a "title-only**

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with title-only bills, The Seattle Times, May 6, 2019.	**bill" to bypass the state constitution and cut the public out of the process**. **Democrats didn't have two-thirds support for their new bank tax, so they used title-only bill HB 2167, which emerged fully baked from behind closed doors. It targets out-of-state banks** and would nearly double the business and occupation tax on those with at least $1 billion in profits worldwide.
Editorial Board, *New tax hard to swallow; Washington Democrats pull fast one in Legislature's last weekend*, The News Tribune, April 30, 2019.	Democrats threw caution aside in the last 48 hours by steamrolling [SHB 2167]. Reasonable people can disagree on the merits of raising taxes. **But a blatant disregard for public process, which often turns up in the waning days of legislative sessions, stinks.**
Editorial Board, *Washington's Legislature must be more transparent*, Walla Walla Union-Bulletin, May 13, 2019.	**Unfortunately, the sleight-of-hand dealmaking made out of sight of the taxpayer remains**. It's disturbing our elected officials are not as transparent as they could—or should—be. **In this case, lawmakers used a "title-only bill" as the vehicle to push through a tax increase on big banks in the final hours of the legislative session.** *The Seattle Times* reported Democrats used title-only bill HB 2167, which emerged from behind closed doors with all the blanks filled in. It calls for large out-of-state banks to have their business and occupation tax nearly doubled ….
Editorial Board, *A troubling short cut for state tax increase on banks*, The Herald, May 7, 2019.	**In all lawmakers gave the legislation about 55 hours of consideration allowing only quickly called testimony in hearings, limited floor debate and little opportunity for the public to consider—much less weigh in on—whether the tax increase on banks would be a good idea.**

33. The Legislature's substitution of a title-only bill with SHB 2167 on April 26 was an egregious misuse of the legislative process to railroad a massive tax increase on out-of-state interests through the Legislature without the minimum ten days for analysis, hearing and deliberation mandated by the Washington State Constitution.

34. The dormant Commerce Clause of the United States Constitution prohibits states from passing protectionist taxes that punish out-of-state business interests and wall their citizens off from free and competitive markets. A decision upholding SHB 2167 will open the floodgates to protectionist taxes from state lawmakers across the country who—just like the Washington lawmakers who passed SHB 2167—are eager to fill their state's coffers with tax revenues from a

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select few out-of-state sources while simultaneously providing a home-court advantage to local businesses. Such protectionist measures will undoubtably harm Washington once lawmakers in other states set their sights on taxing Washington's largest and most successful businesses. SHB 2167's unconstitutional discrimination against interstate commerce was obvious to lawmakers and editorial boards across the state and was the bill's explicit purpose as articulated by its sponsor, Representative Tarleton.

35. If SHB 2167 is not invalidated, then beginning in 2020, Plaintiffs' members will suffer damages by being required to file tax returns and pay the 1.2% B&O surtax created by SHB 2167.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT THAT SHB 2167 VIOLATES ARTICLE II, SECTION 36 OF THE WASHINGTON STATE CONSTITUTION

36. Plaintiffs rely on the allegations of Paragraphs 1 through 35.

37. There is an actual, present and justiciable controversy as to whether SHB 2167 violates Article II, Section 36 of the Washington State Constitution, which requires legislation to be introduced at least ten days before the final adjournment of the legislative session. A judicial determination on the illegality, invalidity, and unenforceability of SHB 2167 will conclusively resolve these issues of substantial public concern and the parties' dispute.

38. Plaintiffs reserve the right to raise any and all legal bases under Washington law to challenge the constitutionality, legality, validity or enforceability of SHB 2167.

SECOND CAUSE OF ACTION
DECLARATORY JUDGMENT THAT SHB 2167 VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION

39. Plaintiffs rely on the allegations of Paragraphs 1 through 38.

40. There is an actual, present, and justiciable controversy as to whether SHB 2167 violates the dormant Commerce Clause of the United States Constitution, which prohibits states from imposing taxes that discriminate with respect to interstate commerce. SHB 2167 discriminates against interstate commerce by imposing a separate B&O surtax that applies exclusively to large financial institutions with headquarters out-of-state.

41. SHB 2167 defines "specified financial institutions" using a metric—consolidated financial statements reporting at least one billion dollars in net income—that effectively applies only to financial institutions with a principal place of business outside of Washington.

42. SHB 2167 does not apply to or impose an additional B&O tax on any Washington-based financial institutions.

43. The imposition of a direct and substantial surtax on out-of-state financial institutions injures them by imposing tax and administrative burdens that are not shared with Washington-based financial institutions, directly raising the expense and reducing the profitability of their operations within Washington, and ultimately making specified financial institutions less competitive in the commercial banking industry in Washington and in commerce among the states, while enhancing the competitive standing of Washington-chartered and Washington-based financial institutions, both within Washington and in commerce among the states.

44. SHB 2167 was intended to and has the effect of disadvantaging and burdening interstate commerce for the purpose of advantaging and protecting financial commercial banking interests headquartered in Washington, both within Washington and in commerce among the states.

45. A judicial determination on the illegality, invalidity, and unenforceability of SHB 2167 will conclusively resolve these issues of substantial public concern and the parties' dispute.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered as follows:

1. Declaring that SHB 2167 is illegal, invalid, and unenforceable in its entirety.

2. Awarding Plaintiffs attorneys' fees, costs, and expenses of bringing this suit, to the extent permitted by law or equity.

3. Awarding any other and further relief as the Court deems just, proper, and equitable.

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