No. 79447-7

WASHINGTON STATE COURT OF APPEALS
DIVISION ONE

S. MICHAEL KUNATH, *et al.*,

Respondents,

v.

CITY OF SEATTLE,

Appellant.

BRIEF OF *AMICUS CURIAE* WASHINGTON STATE SENATORS SAM HUNT, KAREN KEISER, PATTY KUDERER, JOE NGUYEN, REBECCA SALDAÑA AND LISA WELLMAN AND WASHINGTON STATE REPRESENTATIVES SHERRY APPLETON, EILEEN CODY, LAUREN DAVIS, BETH DOGLIO, LAURIE DOLAN, JOE FITZGIBBON, NOEL FRAME, MIA GREGERSON, NICOLE MACRI, CYNTHIA RYU AND SHARON WYLIE

HARRIET STRASBERG, WSBA #15890
Attorney for *Amici*
203-Fourth Ave. E., Suite 520
Olympia, WA 98501
360-754-0304
HStrasberg@comcast.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

WASHINGTON CASES

CONSTITUTIONAL PROVISIONS

WASHINGTON STATUTES

OTHER AUTHORITIES

I. IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are legislators from the Washington State House of Representatives and Washington State Senate who are interested in ensuring that cities as well as the State may exercise their constitutional and statutory powers to raise revenues for essential public services – and to do so in ways that lessen the burden on low and middle income families imposed by Washington's current tax system. The legislators signing on as *Amici Curiae* are State Senators Sam Hunt, Karen Keiser, Patty Kuderer, Joe Nguyen, Rebecca Saldaña and Lisa Wellman and State Representatives Sherry Appleton, Eileen Cody, Lauren Davis, Beth Doglio, Laurie Dolan, Joe Fitzgibbon, Noel Frame, Mia Gregerson, Nicole Macri, Cynthia Ryu and Sharon Wylie.

II. INTRODUCTION

This Court should determine that it is within the City's authority to enact the tax on total income that the Seattle City Council adopted. The City of Seattle enacted a graduated income tax on total income to raise revenues for essential public services and to address important local needs faced by the City. The City acted within its statutory powers in enacting this tax as it is within its broad home rule authority as granted by the Optional Municipal Code. The tax is not a tax on net income.

The constitutionality of the tax must ultimately be decided by the Washington Supreme Court. Yet, this Court can and should find that the

legal underpinnings that supported the Supreme Court precedent in the 1930's no longer exist.

III. STATEMENT OF THE CASE

Amici Curiae adopt the City of Seattle's Statement of the Case as presented in its Opening Brief to the Washington Supreme Court.

IV. ARGUMENT

A. Seattle's Income Tax is Authorized by the Grant of Authority Given by the Legislature to Cities Found in RCW 35A.11.020 and RCW 35.22.570

The City of Seattle correctly found, in adopting the Ordinance at issue:

> The City of Seattle as a Washington first-class city with extensive powers, including without limitation all the powers which are conferred upon other classes of cities and towns, possesses in the legislative body of the City Council "all powers of taxation for local purposes except those which are expressly preempted by the state" and also has the authority to impose excise taxes for any lawful purpose and on any lawful activity, as provided by RCW 35A.11.020, 35.22.280(32), 35A.82.020, and 35.22.570.
>
> CP 375, ¶ 14.

Under the Option Municipal Code, the City has broad home rule authority to determine that income is subject to tax as long as it is not a tax on "net income." RCW 35A.11.020 provides broad taxing authority to cities with regard to taxation as follows:

> Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits **all** powers of taxation for local purposes except those which are expressly

> preempted by the state as provided in RCW 66.08.120, * 82.36.440, 48.14.020, and 48.14.080. (Emphasis added).

The Legislature expressly granted first class cities all powers conferred on other cities. RCW 35.22.570. When the Legislature adopted the Optional Municipal Code in 1967, it gave cities the express authority to impose taxes for local purposes except where expressly preempted by the state. No other authority is needed.

The City of Seattle does not claim that it has the constitutional right to impose taxes. Rather, it recognizes that the Optional Municipal Code gave it all necessary authority. While Respondents Levine and Burke assert that Washington State Constitution, Article XI, §12 requires that cities' power to impose a particular tax must be specifically granted by the Legislature,[1] Respondents misread Article XI, §12. That section provides:

> **The legislature shall have no power to impose taxes upon counties**, cities, towns or other municipal corporations, **or upon the inhabitants or property** thereof, **for county, city, town, or other municipal purposes**, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes. (Emphasis added).

This section does not prohibit the imposition of taxes by cities. Rather, Article XI, §12 is primarily a restriction on the state, prohibiting the state from imposing local taxes for local purposes. The Legislature may

[1] See Response of Levine and Burke Respondents to Brief of Amici Curiae Cities of Olympia, Port Townsend, Port Angeles and Association of Washington Cities, at 3, 6.

only grant general authority to municipalities to impose taxes locally but cannot itself impose taxes on the individuals or businesses in any jurisdiction. As summarized by Hugh Spitzer, the drafters' goal of preventing the state government from levying taxes at the local level is reflected in this section's prohibition on state imposition of taxes for local purposes.[2]

The Washington Supreme Court's rulings are consistent with this interpretation. In *Sator v. State Department of Revenue,* 89 Wash.2d 338, 572 P.2d 1094 (1977) this Court held that the state school levy, imposed by RCW 84.52.065, constitutes a state tax for state purposes, due to the state's constitutional obligation to provide basic support of the common schools. As such, the levy was not for local purposes but was for state purposes and did not violate the "home rule" tax restriction of Article XI, §12. Similarly, because public education is a state purpose with local benefits to the county, a statute requiring a county to levy taxes in an amount fixed by statute for school purposes does not impose tax upon a county for county purposes in violation of Article XI, § 12. *Newman v. Schlarb*, 184 Wash. 147, 50 P.2d 36 (1935); *State v. Redd,* 166 Wash. 132, 6 P.2d 619 (1932) (Art. XI, §12 prohibits the legislature from imposing taxes for local purposes).

---

[2] Spitzer, Hugh, *"Home Rule" vs. "Dillon's Rule,"* 38 Seattle University Law Review 809, 822, Fn. 77.

It is true that the Washington Supreme Court has often relied upon Article XI, §12 for the proposition that a city must be granted taxing power by the legislature. The Appellants do not dispute this. However, the City, Association for Washington Cities (AWC) and Amici herein recognize that the Legislature, in 1967, in adopting the Optional Municipal Code, intentionally granted the power very broadly. This broad grant of taxing power to code (and first class) cities was part of the home rule package embedded in the 1967 statute.

Moreover, the Legislature knows how to preempt cities from enacting specific ordinances and taxes and has exercised that authority in various realms. Certainly, the Legislature could have or could in the future prohibit a city from enacting a tax on total income. But, it has not done so.

The Legislature has prohibited cities from enacting ordinances in various arenas but not on total income. An example recently addressed by the Court concerns RCW 9.41.290's restrictions on local regulation of firearms. RCW 9.41.290 states that cities "may enact only those laws and ordinances relating to firearms that are specifically authorized by state law." Yet, in *Watson v. City of Seattle*, 189 Wash.2d 149, 401 P.3d 1 (2017), recognizing the City's broad statutory taxing authority, the Supreme Court held the flat tax on firearms imposed by the City of Seattle was consistent with and was not preempted by RCW 9.41.290's legislative preemption of regulations on firearms. Nor was the tax at issue prohibited by RCW

35.21.710, a statute establishing maximum rates for business and occupation taxes but not prohibiting other forms of taxation.

In upholding the City's authority to impose this tax on firearms, the Court stated it is appropriate for Washington courts to "liberally construe" the legislative grants of authority to cities and particularly first class cities as required by RCW 35A.01,010. *Watson,* 189 Wash.2d at 167, citing *Citizens for Financially Responsible Gov't.*, 99 Wash.2d 339, at 343, 662 P.2d 845 (1983). Therein, the Court described Washington's adoption of home rule authority, stating that the "home rule" principle seeks to limit state-level interference in governmental affairs, which "is particularly important with respect to local taxation authority." *Id*. at 167. Those same principles apply to Seattle's imposition of a tax on total income.

The Washington Supreme Court also held that a restriction on municipal authority did not extend beyond what is plainly prohibited by the Legislature in *Lawson v. City of Pasco,* 168 Wash.2d 675, 230 P.3d 1038 (2010). That case concerned the viability of a city's ordinance that prohibited placement of recreational vehicles in a residential mobile home parks. The Court held that that the ordinance did not conflict with the Manufactured/Mobile Home Landlord Tenant Act since the Act merely regulated recreational vehicle tenancies where they existed but conferred concurrent jurisdiction on local governments to regulate the conduct of mobile home park landlords and tenants. *Id*. at 679.

Cities may also freely define their taxation categories. See *Puget Sound Energy, Inc. v. City of Bellingham*, 163 Wash. App. 329, 337, 259 P.3d 345 (2011); rev. denied 173 Wash.2d 1018 (2012) (rejecting a taxpayer's challenge to the City's inclusion of non-utility activities in the activities taxed by the City because it is within the city's authority to define the activities it desires to tax); *Commonwealth Title Ins. Co. v. City of Tacoma*, 81Wash.2d 391, 394, 502 P.2d 1024 (1972) ("a city ... may define its taxation categories as it sees fit unless it is restrained by a constitutional provision or legislative enactment.")

Thus, the City of Seattle has broad authority to define its taxing categories. The Legislature prohibited cities from imposing a tax on net income but that restriction does not restrict the City from imposing a tax on total income. RCW 36.65.030. The City of Seattle has the authority to supply a definition of what income is subject to tax so long as its definition is neither a tax on "net income" nor otherwise contravenes the State Constitution. The City has successfully achieved this balance in adopting Seattle Municipal Code 5.65.

B. Existing Precedent Regarding the Constitutionality of an Income Tax Causes Harm to Low-Income Persons in Washington State

The longstanding precedent prohibiting a graduated tax on personal income has contributed to the creation of a statewide tax system that causes extreme harm to low and moderate income families. The City of Seattle has

persuasively shown both that the current precedent as found in *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933) and *Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936) are both incorrect and also harmful. *See* City of Seattle, Opening Brief, at 15-28.

That a graduated income tax was barely (by a 5 to 4 decision) ruled to be unconstitutional 85 years ago is a restriction that has decimated the ability of the state legislature and local governmental entities to raise revenue in a way that does not cause additional harm to low and moderate income families. As times have changed, there are increasing demands on public services. Federal support for a social safety net has declined. Disparities in incomes between the affluent and middle and low income families have increased. And, the harm caused by the precedent is apparent and is easily sufficient reason to reevaluate and abandon the precedent set by *Culliton* and *Jensen.*

The Institute on Taxation and Economic Policy has determined that Washington State's tax system has continued to become even more "regressive" since the Seattle ordinance was passed. The Institute conducted an analysis more recent than the one found in the record. CP 562-3. The October 2018 report finds that "Washington has the most unfair state local tax system in the country." See "*Who Pays? A Distributional Analysis of the Tax System in All 50 States*," 6th Edition, Institute on Taxation and

Economic Policy, October 2018, at pp. 7, 127.[3] The Institute explains what is meant by "regressive," namely that lower-income people "are taxed at higher rates than top-earning taxpayers," and thus the share of family income allocated toward state and local taxes for lower income people is significantly higher than for more higher income taxpayers. *Id.* at p. 3. As the study explains in describing regressive tax structures:

> [T]hose in the highest-income quintile pay a smaller share of all state and local taxes than their share of all income while the bottom 80 percent pays more. In other words, not only do the rich, on average, pay a lower effective state and local tax rate than lower-income people, they also collectively contribute a smaller share of state and local taxes than their share of all income. This adversely affects states' ability to raise revenue. *Id.*

The share of family income paid in state and local taxes has increased for Washington state's low-income families, who are paying 17.8% of their income in state and local taxes while the top 4% of taxpayers are paying only 4.7% and the top 1% of taxpayers are paying only 3% of their income respectively. *Id.* at pp. 7, 127. Middle-income families pay at a 10.9% rate, more than three times higher as a share of their family income than the wealthiest families. *Id.* The difference between the percent of income paid by those with the lowest and those with the highest income has increased from 14.4 percent to 14.8 percent between 2015 and 2018. Incomes are more unequal in Washington state after state and local taxes

[3] See https://itep.org/wp-content/uploads/whopays-ITEP-2018.pdf

are collected than before. *Id*. at 127. This regressive tax system causes harm to low-income persons.

The Washington State Tax Structure Study Committee, formed as a result of legislation passed in 2001,[4] determined what has continued to this day: Washington's taxes are paid disproportionately by that segment of our citizens whose income is lowest.

> The Committee concludes that our current system is fundamentally inequitable to low- and middle-income people, unfair to many businesses, and subject to sharp fluctuations in revenue. The Committee also finds that while our tax structure, which was put in place in 1935, might have worked well for a mid-twentieth century manufacturing economy, it doesn't work well in today's economy with its greater dependence on the service sector.[5]
>
> …
>
> Washington's tax structure is regressive. The lowest income households pay 15.7 percent of income for total excise and property taxes, while the highest income households pay 4.4 percent of income for the same taxes. Sales tax is the main cause of regressivity.[6]

Significantly, the City of Seattle has one of the most regressive tax systems of any city in the United States. Here, state and local taxes take up

[4] ESSB 6153, §138 (2001).
[5] See Tax Structure Final Report, Introduction and Summary, at iv, *available at https://dor.wa.gov/reports/tax-structure-final-report*.
[6] *Id*. at Chapter 4: Key Conclusions from the Evaluation of the Current Washington Tax Structure, at 23.

15.5% of the annual income for a low-income family.[7] Seattle has the fourth highest tax burden on low-income families in the country as found in a study comparing tax rates and tax burdens on cities nationally.[8] Seattle's taxes are also the most regressive in the state.[9]

In adopting the Ordinance at issue, the Seattle City Council appropriately delineated the harm caused by regressive taxes declaring that "regressive taxes contribute to the financial strain on low- and middle-income households, deepen poverty, diminish opportunity for low and middle-income families, disproportionately harm communities of color, hinder efforts toward establishing a more equitable city, and protect and reinforce the privilege of the wealthy." CP 373, ¶ 5.

Raising revenue is clearly a power and responsibility of the legislature and it is for local governments as well. *Emwright v. King County*, 96 Wash.2d 538, 637 P.2d 656 (1981). Local governments as well

---

[7] Balk, Gene, *Seattle taxes among nation's kindest to the rich – and harshest to the poor*, Seattle Times (March 7, 2017), *available at* https://www.seattletimes.com/seattle-news/data/seattle-taxes-among-nations-kindest-to-the-rich-and-harshest-to-the-poor/

[8] See *Tax Rates and Tax Burdens in the District of Columbia – A Nationwide Comparison*, (2016), Government of the District of Columbia, p. 13, *available at* https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/2015%2051City%20Tax%20Burden%20Study%20Final.pdf

[9] Balk, Gene, *Seattle taxes ranked most unfair in Washington – a state among the harshest on the poor nationwide*, Seattle Times (April 15, 2018), *available at* https://www.seattletimes.com/seattle-news/data/seattle-taxes-ranked-most-unfair-in-washington-a-state-among-the-harshest-on-the-poor-nationwide/

as the State need a broad range of tools for raising revenues to fund essential public services.

Since 2012, the Legislature has been looking at various ways to substantially increase revenue for public education following the Supreme Court's decision in *McCleary v. State,* 173 Wash.2d 477, 269 P.3d 227 (2012) which found that the State had failed to meet its duty under Article IX, § 1 of the Washington State Constitution to fund the actual costs of the basic education program. *Id.* at 547.

In response to *McCleary*, in the 2017 3rd Special Session, the Legislature adopted EHB 2242 to fund the actual costs of the state's basic education program. In EHB 2242, the Legislature voted to impose a new state property tax levy for the support of the common schools, causing the aggregate statewide property tax to increase to $2.70 per $1,000 of assessed value, up from $1.89 in 2017, while simultaneously decreasing local school levies by differing amounts. Due to the recent increase in home values in the Seattle area, this increase in the statewide property tax disproportionately and adversely affects long-term lower income Seattle residents, imposing a significant burden on those homeowners and renters in the Seattle area.[10] EHB 2242 provides for senior citizen property tax

[10] Lee, Jessica *'Enough is enough': Some Seattle-area homeowners say latest property-tax hikes will force them to move*, Seattle Times (April 2, 2018), *available at* https://www.seattletimes.com/seattle-news/enough-is-enough-some-local-homeowners-say-this-years-property-tax-increase-will-force-them-to-move/

relief for very low-income seniors and veterans (RCW 84.36.381 (3) and (5)(a)). Yet, many needy lower-income Seattle residents do not qualify for the exemption because their income is slightly greater than the state's maximum of $40,000 for exemptions. For those persons, the increase in the statewide property tax may be devastating.

Legislators, recognizing the harm caused by the regressive character of Washington's tax structure and looking for tools to impose a more progressive tax structure, have proposed legislation to raise more revenues from the wealthy or to otherwise provide relief to lower income persons as well as for small businesses. For example, in the 2018 legislative session, legislators proposed a bill to enact a capital gains tax and to increase the income threshold for eligibility for property tax relief. See SHB 2967 (2018). That proposed legislation contained the following sections, in pertinent part in Section 101:

> (1) the legislature finds that Washington is a great place to live, work, and raise a family. The legislature further finds that our tax system in the most upside down and regressive in the nation, allowing those that earn the most to pay the least in taxes. The legislature finds that as a percentage of personal income middle-income families pay two to four times in taxes as compared to top earners. Moreover, low-income Washingtonians pay seven times more in taxes than our wealthiest residents.
>
> (2) The legislature does not believe in becoming a high tax state; however, it finds that building a tax system that works for everyone is imperative. The legislature finds that a tax system that strengthens the middle-class economy, helps families and low-income residents, reduces the tax burden

> on small businesses, and asks the wealthiest among us and those benefiting from record Wall Street profits to contribute their fair share is essential to help all Washingtonians have the freedom to grow and thrive.

A similar example can be found in SHB 2186 (2017), a comprehensive and broad legislative tax proposal sponsored by some legislators to address the regressive tax system by among other things, eliminating certain tax preferences, enacting a capital gains tax, modifying the real estate excise tax so that it is a graduated tax, imposing a graduated business and occupation tax and eliminating tax liability for certain small businesses. This proposed legislation describes harm caused by the current tax system as well. Specifically, the findings and intent describes Washington as having a regressive tax structure and states:

> [T]he legislature recognizes that as a result of the state's regressive tax structure, Washington's small businesses are overburdened.
> ….
>
> The legislature finds that this imbalance is not only detrimental for these taxpayers, but that the consequences are damaging for our state budget. The legislature further finds that as a result of this imbalance, the state is losing the ability to fully fund our collective responsibilities, including K-12 education, higher education, economic development, affordable housing, health care, and veteran services. The legislature finds that a healthy and prosperous state requires that these foundational programs be appropriately funded.

The Respondents, without factual support, challenge the City's claim of harm. Burke Opening Brief, at 43-47. The regressive nature of the tax system in Washington state and on Seattle, in particular, is

indisputable, as explained in the three studies cited herein. When people cannot stay in their homes because of an inequitable tax burden, there is harm. When low-income families have to pay nearly 18% of their incomes in taxes while upper income families have to pay only 4%, there is harm. Given the current state of the economy and the failing social safety net, there is a need for local governments and the State to raise additional revenues to fund essential public services in a way that does not harm low-income and middle class families, and small, start-up and low margin businesses. As such, there is sufficient harm to justify overturning *Culliton* and *Jensen* and declare that they are no longer good law.

C. Existing Precedent Regarding the Constitutionality of an Income Tax Causes Harm to Government Because It Lacks Transparency

Transparency is a prerequisite for rational tax policy. Washington State has one of the most opaque and least transparent tax systems in the country. *Washington State and Local Tax System: Dysfunction & Reform*, Conway, Richard (2017).[11] When people have insufficient knowledge as to what they really pay, people have less confidence in what they are buying in government services. Lack of transparency leads directly to lack of confidence in government.

[11]https://www.seattlebusinessmag.com/sites/default/files/Washington%20Tax%20System%20Dysfunction%20and%20Reform%20%282017%29.pdf

Washington state's system is not transparent because, in large part, there is no personal income tax. Personal income taxes are totally transparent because people know how much their earned and unearned income is, and there is a corresponding amount that they then pay as taxes. However, the sales tax on which Washington state relies is much less transparent because the incremental amount is not apparent to the average taxpayer. The business and occupation (B & O) tax also is not transparent since businesses can and do pass the tax on to their customers in the form of higher prices; but consumers are unaware that they are ultimately paying that tax.

The Washington State Tax Structure Study Committee concluded in 2002 that the current structure is so flawed in meeting the most important criteria that it must be judged as unsatisfactory. In looking at transparency, the Washington State Tax Structure Study Committee determined:

> Transparency requires that tax burdens be apparent to the households that ultimately bear the tax. In other words, households should be able to determine their overall annual state tax burden, including any taxes embodied in the prices of goods and services that they buy.
>
> The finding is that a significant part of the Washington State tax system is not transparent to households. Taxes initially imposed on businesses, notably the B&O tax, constitute a larger share of state revenue in Washington than in most other states. To the extent that such taxes are passed on to consumers in the form of higher prices, the taxes are not transparent. In addition, most households are unaware of their annual sales tax burden even though sales tax paid on

> consumer purchases is explicitly stated on receipts and invoices.[12]

The reasons that the Committee found that the tax system in Washington state was not transparent in 2002 remain true today.[13] When people do not know how much they are taxed, it becomes impossible for them to judge whether they are getting an appropriate value for the tax dollars contributed. Lack of transparency of the tax system tends to undermine confidence in government. Consequently, the lack of an income tax harms the system because it leads to a lack of confidence in the system.

D. The Legal Underpinnings That Existed For The Precedent Set By the Supreme Court Nearly a Century Ago No Longer Exist

While this Court cannot reverse current precedent established by the Washington Supreme Court, it can rule that the grounds which supported that precedent are no longer valid. Here, there are sufficient grounds to overturn current precedent that an income tax is a tax on property and thus a graduated income tax is unconstitutional. The test to abandon stare decisis is a "clear showing that an established rule is incorrect and harmful." *In re Rights to Waters of Stranger Creek*, 77 Wash.2d 649, 653, 466 P.2d 508

[12] See Tax Structure Final Report, Chapter 4: Key Conclusions from the Evaluation of the Current Washington Tax Structure, at 28, *available at https://dor.wa.gov/reports/tax-structure-final-report*

[13] Balk, Gene, *Seattle taxes ranked nearly last in new tax-transparency index*, Seattle Times (April 17, 2017), *available at* https://www.seattletimes.com/seattle-news/data/washington-state-ranks-nearly-last-in-new-tax-transparency-index/

(1970). See also *Riehl v. Foodmaker, Inc.*, 152 Wash.2d 138, 147, 94 P.3d 930 (2004).

An opinion can be incorrect when it was announced, or it can become incorrect because the passage of time and the development of legal doctrines undermine its bases. The City of Seattle has persuasively shown both that the current precedent as found in *Culliton v. Chase*, 174 Wash. 363, 25 P.2d 81 (1933) and *Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936) are both incorrect and also harmful. These two decisions are incorrect because the legal underpinnings have changed since their adoption. See City of Seattle, Opening Brief, at 15-28.

One example where the Washington Supreme Court abandoned its precedent because the new information revealed that precedent's harmful effects is *State v. Devin*, 158 Wash.2d 157, 142 P.3d 599 (2006). In *Devin*, the Supreme Court overruled the longstanding precedent of *State v. Furth*, 82 Wash. 665, 144 P. 907 (1914), which had held that a defendant's death during the pendency of an appeal abates a criminal conviction. In 2006, in *Devin*, the Supreme Court concluded that the holding in *Furth* was incorrect because it was "based on the outdated premise that convictions and sentences serve only to punish criminals, and not to compensate their victims." *Devin*, 158 Wash.2d at 168; *Furth*, 82 Wash. at 667. The Washington Supreme Court determined the precedent was harmful because crime victims may experience distress when they learn that their attackers'

records have been wiped clean and because there could be adverse collateral effects in other cases and against the right to restitution. *Devin,* 158 Wash.2d at 171–72.

This Court can rule that there is no longer a sound basis for the existing legal precedent, thus making this case ripe for a final decision by the Washington Supreme Court.

V. CONCLUSION

For the foregoing reasons, this Court should rule that the appropriate authority to enact a graduated tax on total income is found in the Optional Municipal Code.

This Court should also conclude that it is time to reverse longstanding precedent prohibiting state and local governments from enacting graduated income taxes because such precedent is detrimental to the public interest and thus should encourage the Supreme Court to so rule.

DATED this 25th day of January, 2019.

Respectfully submitted,

/s/ *Harriet Strasberg*
HARRIET STRASBERG, WBSA #15890
203 Fourth Ave. E., Suite 520
Olympia, WA 98501
(360) 754-0304 - phone
(360) 754-8416 - fax
HStrasberg@comcast.net

Attorney for *Amici Curiae*

DECLARATION OF SERVICE

I, Harriet Strasberg, declare under penalty of perjury under the laws of the state of Washington, that on January 25, 2019, I electronically filed the foregoing document via the Washington State Appellate Courts' Secure Portal which will send e-mail notification of such filing to all parties of record.

Signed in Olympia, Washington, this 25th day of January, 2019.

/s/ Harriet Strasberg
Harriet Strasberg, WSBA #15890

HARRIET STRASBERG

January 25, 2019 - 1:50 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	79447-7
Appellate Court Case Title:	S. Michael Kunath, et al. v. City of Seattle, et al.
Superior Court Case Number:	17-2-18848-4

The following documents have been uploaded:

- 794477_Briefs_20190125134703D1626174_1668.pdf
  This File Contains:
  Briefs - Amicus Curiae
  The Original File Name was Amicus brief.pdf
- 794477_Motion_20190125134703D1626174_7078.pdf
  This File Contains:
  Motion 1 - Extend Time to File
  The Original File Name was Amicus Motion.pdf

A copy of the uploaded files will be sent to:

- Dawn.taylor@pacificalawgroup.com
- EStahlfeld@freedomfoundation.com
- JFlesner@perkinscoie.com
- LRona@perkinscoie.com
- VLBabani@perkinscoie.com
- aharksen@ci.olympia.wa.us
- atabor@orrick.com
- bth@pacificlegal.org
- cindy.bourne@pacificalawgroup.com
- claire@smithandlowney.com
- ddunne@orrick.com
- edwardss@lanepowell.com
- ewb@pacificlegal.org
- galexander@bgwp.net
- greg.wong@pacificalawgroup.com
- hgreenwo@cityofpa.us
- iglitzin@workerlaw.com
- jamie.lisagor@pacificalawgroup.com
- kent.meyer@seattle.gov
- knoll@smithandlowney.com
- lawyer@stahlfeld.us
- lise.kim@seattle.gov
- matt@davisleary.com
- matt@tal-fitzlaw.com
- matthew@davisleary.com
- mbarber@ci.olympia.wa.us
- mcbrider@lanepowell.com
- paul.lawrence@pacificalawgroup.com
- phil@tal-fitzlaw.com

- rmahon@perkinscoie.com
- rmckenna@orrick.com
- robbins@workerlaw.com
- sea_wa_appellatefilings@orrick.com
- sheilag@awcnet.org
- spitzerhd@gmail.com
- tricia.okonek@pacificalawgroup.com
- wbloor@cityofpa.us

Comments:

Sender Name: Harriet Strasberg - Email: hstrasberg@comcast.net
Address:
203 4TH AVE E STE 520
OLYMPIA, WA, 98501-1190
Phone: 360-754-0304

Note: The Filing Id is 20190125134703D1626174