DISCUSSION DRAFT

October 12, 2016

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

WILL KNEDLIK *qua* a citizen and taxpayer, Plaintiff, *versus* STATE OF WASHINGTON *qua* the state authorized under and subject to the United States Constitution, the Enabling Act of 1889 and the Washington State Constitution and operating under a Contempt Order from its entry on September 11, 2014 to date; and Hon. KIM WYMAN *qua* Secretary of State, Defendants, *cum* 64th State Legislature; Hon. Randy Dorn; American Federation of Teachers; Eastside Transportation Association; El Centro de la Raza; League of Education Voters; League of Women Voters; Network for Excellence in Washington Schools; Paramount Duty; Sound Transit; Washington Association of School Administrators; Washington Education Association; and Washington State School Directors' Association, Interested Parties.	CAUSE NO. COMPLAINT FOR RELIEF UNDER UNIFORM DECLARATORY JUDGMENTS ACT AND FOR INJUNCTIONS TO ENFORCE, *INTER ALIA*, ADJUDICATION THAT SOUND TRANSIT 3 TAXES VIOLATE AN ORDER AS ENTERED AGAINST DEFENDANT STATE OF WASHINGTON, ON SEPTEMBER 11, 2014, FOR ITS CONTEMPT OF COURT, THROUGH LEGISLATIVE ACTS TO GRANT, AS A CONTEMNER, $308-TO-$345 BILLION AT LEAST, AND OVER HALF A TRILLION DOLLARS MORE PROBABLY, IN FINITE STATE TAX AUTHORITY, AND THUS LIMITED STATE REVENUE CAPACITY, IN A MANNER PRECLUDING USE OF SAME TO HONOR, BELATEDLY, "THE PARAMOUNT DUTY OF THE STATE TO MAKE AMPLE PROVISION FOR THE EDUCATION OF ALL CHILDREN RESIDING WITHIN ITS BORDERS" (WASHINGTON STATE CONSTITUTION, ARTICLE IX, SEC. 1) AND TO CONCEAL ITS GRANT; THE UNITED STATES CONSTITUTION IN MULTIPLE REGARDS; THE FEDERAL ENABLING ACT OF 1889; THE WASHINGTON STATE CONSTITUTION IN NUMEROUS RESPECTS; AND MULTIPLE FEDERAL-AND-STATE STATUTES, ALONG WITH RESERVATION OF CONSTITUTIONAL-AND-OTHER RIGHTS OF PLAINTIFF

COMES NOW plaintiff WILL KNEDLIK *qua* a citizen and taxpayer and prays, hereby, for formal judicial declarations, and for all injunctions required to enforce each term of same, as follows:

INTRODUCTION

1. The Sound Transit 3 tax-ballot proposal to be presented to state citizens in parts of three counties at the General Election on November 8, 2016 would divert – if lawfully approvable and if then approved – at least $308-to-$345 billion in finite state tax authority, and thus limited state revenue capacity, from 2017 to 2082, so as to preclude use of judicially constrained funds indispensable to fulfill, belatedly, "the paramount duty of the state to make ample provision for the education of all children residing within its borders" (Washington State Constitution, Article IX, sec. 1, Preamble).

2. For reasons stated in greater detail hereinbelow, if ST3 taxes could be approved legally, as intended, to benefit a single junior taxing district operating in just three of 39 counties, diversions of judicially constricted state tax authority from public schools would more probably exceed one half trillion dollars, over those 65 years, if not in reality far more, and duration for such expropriations of judicially limited state revenue capacity from basic education would likely be perpetual, given huge capital reserves forever required to replace costly rail systems, so as thereby permanently to obligate trillions of dollars quintessential to fund Defendant STATE OF WASHINGTON's "paramount duty."

3. Gigantic rerouting of judicially narrowed state monies from every child statewide – despite Defendant STATE's constitutionally mandated "paramount duty" to pay for basic education **amply** – was nominally granted by Interested Party 64th State Legislature, on July 1, 2015, while it was not merely acting under a formal Order for contempt of court entered nine months earlier (due to serial failures by multiple legislatures, across decades, to fulfill "the paramount duty of the state to make ample provision for the education of all children"), but was then also defying an unprecedented court order, during regular-and-special legislative sessions in 2015, so as to result in a $100,000-per-day fine imposed by the Washington State Supreme Court to punish said ongoing contempt (to be paid by all state citizens, every other state resident and each state business, as well as nonprofit groups),

all less-than-45 days after Interested Party 64th Legislature had acted to shift $308-to-$345 billion at least from public schools, over-half-a-trillion dollars more likely and trillions beyond most probably.

4. These astonishingly irregular legislative circumstances derive from Interested Party 64th Legislature's approval of Second Engrossed Substitute Senate Bill 5987, during its Third 2015 Special Session, based on Interested Party Sound Transit's strong-arm lobbying nominally to obtain $15 billion in new taxing authority over 15 years, on said former Interested Party's failure to require preparation of an adequate Fiscal Note to analyze ST3 taxation despite its patent crowding-out effect on judicially restricted state revenue capacity and on the latter Interested Party's no-holds-barred tactics to hold hostage, in 2015, the entire state transportation budget essential for much-too-long-deferred maintenance of hence rapidly deteriorating bridges, highways, roads and streets, **statewide**, to coerce acquiescence to its $15 billion ransom (instead of a lower $11 billion alternative on offer to it then).

5. **No** Fiscal Note on Sound Transit 3's highly adverse effects on state tax authority was ever prepared for, or reviewed by, Interested Party 64th Legislature as an entity acting with obliviousness to state Supreme Court orders, to its own practices mandating analysis of finances, if above $50,000, and to common sense before casual removal of hundreds of billions of dollars necessary to meet "the paramount duty of the state" – albeit then misrepresented as just $15 billion through grossly dishonest lobbying – **nor** have colossal revenue diversions been reported to the Supreme Court as is required.

6. The ST3 tax ballot is so enormous that approval would effectively render "ample" school funding impossible statewide, **politically**, and thus further a state constitutional crisis now in sight.

7. Taken together with all violations of the United States Constitution in multiple regards, the federal Enabling Act of 1889, the Washington State Constitution in numerous respects and multiple federal-and-state statutes, wrongdoing thereby made out yields a rare legal instance wherein tallies and certification may be enjoined under *Philadelphia II v. Gregoire*, 128 Wn.2d 707 (1996).

PARTIES AND INTERESTED PARTIES

8. Plaintiff WILL KNEDLIK is a United States and state citizen residing within Kirkland and a voter registered in King County; he is a taxpayer domiciled in the East King County subarea of Interested Party Sound Transit's junior taxing district; he was appointed by said Interested Party's Board of Directors, in mid 2007, to write formal opposition statements for three county Voters' Pamphlets (together with Phil Talmadge and with Kemper Freeman, Jr.), but he has been excluded from that service, in 2008 and in 2016, due to his expertise in state-and-local finance as a past chair of the Revenue Resources Subcommittee in and for the Washington State House of Representatives and as the first Executive Secretary of National Conference of State Tax Judges, and due to his Board-appointed role in defeating Sound Transit 2 in 2007; he was prevented from testifying with respect to Sound Transit 3's lack of compliance with direct statutory requirements for lawful voting, under RCW 81.104.110, through its unconstitutional **prior restraint** to exclude his testimony on June 23, 2016; and he challenged said Interested Party's devious Sound Transit 3 ballot title (revised by the King County Superior Court in the form attached hereto as Exhibit A).

9. Defendant STATE OF WASHINGTON is a state possessed of equal footing in its limited sovereignty as authorized under and subject to the United States Constitution, the Enabling Act of 1889 and the Washington State Constitution, but operating under a formal Order for contempt of court since the Washington State Supreme Court's entry thereof against it on September 11, 2014.

10. Defendant KIM WYMAN is chief elections officer for Defendant STATE possessed of authority over tallying and certifying votes cast at the General Election, on November 8, 2016, respecting an ST3 tax-ballot proposal for at least $308-to-$345 billion in finite state tax authority.

11. Interested Party 64th State Legislature is the 64th legislative body of Defendant STATE; is authorized to enact legislation from January 12, 2015 until January 8, 2017; did thereby nominally

pass Second Engrossed Substitute Senate Bill 5987, on July 1, 2015, while under a contempt order; and shall be replaced by a 65th State Legislature comprised of 98 state citizens elected on November 8, 2016 to serve in its House of Representatives and of 49 others elected as senators then and before.

12. Interested Party Randy Dorn is the elected Superintendent of Public Instruction and thus constitutionally possessed of major obligations in regard to "the paramount duty of the state to make ample provision for the education of all children residing within its borders" (Article IX, sec. 1), and to explicitly assigned responsibilities *cum* prerogatives with respect to "supervision over all matters pertaining to public schools" (Article III, sec. 22); he has, in that capacity, presented *amicus* briefing in *McCleary v. State* litigation and filed an action against Defendant STATE and seven of its school districts currently pending; and he has opposed the ST3 tax ballot, publicly, due to his stated concern about its crowding-out effects on finite state tax authority and on thus limited state revenue capacity.

13. Interested Party American Federation of Teachers is the affiliate in Washington state of American Federation of Teachers, a national AFL-CIO union, and is a plaintiff in civil litigation at present challenging the constitutionality of tax financing for charter schools in this state due to, in part, crowding-out effects on finite state tax authority and on thereby limited state revenue capacity.

14. Interested Party Eastside Transportation Association is a nonprofit organization legally established for research-and-educational purposes with principal *foci* on the 18th Amendment to the Washington State Constitution and on associated transportation finance and cost-effectiveness issues and was the lead petitioner in litigation that recently challenged legal adequacy of a proposed ballot title for the ST3 tax ballot, including failure therein to identify tax-burden dimensions thereof; and plaintiff is an officer of the organization and chair of its James W. MacIsaac Research Committee.

15. Interested Party El Centro de la Raza is a nonprofit organization and is now a plaintiff in civil litigation presently challenging the constitutionality of tax financing for charter schools in this

state due to, in part, crowding-out effects on finite state tax authority, and on thereby limited state revenue capacity, from the resulting diversions thereof for education other than common schools.

16. Interested Party League of Education Voters is a nonprofit organization and was lead plaintiff in civil litigation previously challenging, successfully, constitutionality of Initiative 1053 for its two-thirds requirements for fiscal legislation and hence adverse effects on finite state tax authority, and on so limited state revenue capacity, due to fiscal constraints negative for school funds.

17. Interested Party League of Women Voters is a nonprofit organization; was a plaintiff in civil litigation previously challenging, successfully, constitutionality of state tax funding for charter schools; and is lead plaintiff in follow-on litigation presently, with other interested parties herein, in part based on concerns respecting crowding-out effects on finite state revenue authority, and on thus already limited state tax capacity, from diversions thereof for education other than common schools.

18. Interested Party Network for Excellence in Washington Schools is a nonprofit organization and was and remains a party in *McCleary v. State* due to its interest in the "paramount duty."

19. Interested Party Paramount Duty is a nonprofit organization focused on the "paramount duty" and has recently submitted *amicus* briefing in the state Supreme Court's current processes for *McCleary v. State* litigation *via* the latest follow-on contempt hearing conducted September 7, 2016.

20. Interested Party Central Puget Sound Regional Transit Authority, also known as "Sound Transit" presently and as the "RTA" previously, is a junior taxing district charged in two statutes, *i.e.* RCW 81.104 and to RCW 81.112, with certain legally mandatory responsibilities owed, thereunder, as conditions precedent, absolute, which are preliminary to any legally valid tax election, and which the ST3 tax ballot, at issue herein, has failed to meet in multiple central fiscal respects, including the primary requirement for fulfillment of core obligations imposed on the state's Expert Review Panel, so as to prevent this Honorable Court from approving a lawful ballot title or any unlawful tax ballot,

pursuant to mandatory requirements of RCW 81.104.110, together with its disqualifying violations of Article IX, sec. 1, Article VII, sec. 5 and Article II, sec. 19, *inter alia*, as well as of provisions of the federal constitution, of sec. 4 of the Enabling Act of 1889 and of other federal-and-state statutes.

21. Interested Party Washington School Administrators Association is a nonprofit organization and was and is a plaintiff in litigation challenging constitutionality of tax financing for charter schools based in part on crowding-out effects on finite state revenue available for common schools.

22. Interested Party Washington Education Association is a nonprofit organization and was and is a plaintiff in civil litigation challenging constitutionality of tax funding for charter schools in part based on crowding-out effects on constricted state revenue thus available for common schools.

23. Interested Party Washington State School Directors' Association is a formal agency of state government established through RCW 28A.345 for several functions useful for persons elected to local school boards (who all become members of said association during board terms statutorily).

JURISDICTION, VENUE AND STANDING

24. This Honorable Court has valid jurisdiction over this litigation pursuant to the Uniform Declaratory Judgments Act (codified as RCW 7.24), RCW 2.08 and RCW 7.40, together with those broad inherent judicial powers of every trial court of general jurisdiction to determine, and to enjoin, Defendant STATE's numerous violations of Article IX, sec. 1, Article VII, sec. 5 and Article II, sec. 19, *inter alia*, as well as of the federal constitution, sec. 4 of the Enabling Act of 1889 and other federal-and-state laws; and venue is proper in this court based on residency of plaintiff in King County.

25. Plaintiff has standing on multiple bases *qua* a citizen and taxpayer; has requested the Attorney General to undertake this litigation to prevent diversions of at least $308-to-$345 billion from Defendant STATE's "paramount duty"; and, as identified in paragraph 8 *supra*, is informed as to constitutional-and-statutory matters of vital public import at issue, which also yield standing.

FACTUAL BACKGROUND

26. The Sound Transit 3 tax ballot's gigantic diversions of at least $308-to-$345 billion from judicially constricted state tax authority and thus from legally finite state revenue capacity necessary to fulfill, belatedly, "the paramount duty of the state to make ample provision for the education of all children residing within its borders" – and more likely over-half-a-trillion dollars and most probably trillions more – is readily documentable from the junior taxing district's present-and-planned taxes through nothing more complex than simple fifth-grade arithmetic and standard financial heuristics.

27. Simplicity of the basic mathematics necessary and straightforwardness of fiscal rules-of-thumb customarily employed by governmental agencies to project future tax-receipts stand in stark contrast with Interested Party Sound Transit's able chief financial officer, Brian McCartan, having sworn on his oath previously that such crucial financial calculations of the full dimensions of a prior multibillion-dollar Sound Transit 2 tax ballot were never undertaken for the junior taxing district while preparing that proposal in 2008, with such important fiscal information having never been generated by any Fiscal Note analysis for Interested Party 64th Legislature's Second Engrossed Substitute Senate Bill 5987 in 2015, with such pivotal monetary data having never been disclosed either to the state Supreme Court or to citizens regarding its gargantuan ST3 tax ballot, with that transit agency's highly capable attorney, Paul Lawrence, having squarely declared to the King County Superior Court that "Mr. Knedlik, I'm sorry, I don't understand where he gets his numbers," on September 1, 2016, and with Hon. Bill Bowman having thus been seemingly misled by that open-court averment, then, in erroneously concluding that "ultimately how much would it cost and for how long that [tax] cost is going to be incurred, I think, is an impossible question to answer" in deciding the ballot-title challenge identified in his Order attached as Exhibit A hereto (with further matters identified above documented below, respectively, in Exhibits B, C and D).

28. In fact, as clearly demonstrated in paragraphs hereinafter, the amount of local-option tax authority to be requested by the ST3 tax ballot for no-less-than 65 years, by means both *sub rosa* and also *sub silentio*, can be projected with **substantial accuracy** using very simple elementary-school arithmetic and wholly standard public-finance heuristics, but has **not** been provided for taxpayers, in the ballot title, due to the junior taxing district's failure, or refusal, to do uncomplicated calculations required, along with its above-quoted fiscal pretenses in order to confuse the King County Superior Court on September 1, 2016 (and, by a strategic misrepresentation to the judiciary, to mislead voters on November 8, 2016), and due to its tactical bait-and-switch insertion of a $53.8 billion figure into the ballot title that is not only **non**germane to a tax ballot but in fact constructed with numbers based on **quite unreliable estimates** for construction-and-other unstable costs and on **totally speculative hopes** for federal grants (neither of which is a valid part of a tax ballot, but both of which have been substituted for reliable-and-**non**speculative fiscal data, squarely germane to the sole purpose of a tax vote, so as to make out major elements of intentional deception evident on a *res ipsa loquitur* basis).

29. In particular, given Interested Party Sound Transit's tax-take of more-than-$778 million by its own accounting, in 2015, for huge combined sales, motor vehicle excise and car-rental taxes (as nominally authorized by its Sound Move tax ballot in 1996 and by its Sound Transit 2 tax ballot in 2008), given that the proposed ST3 tax ballot would nominally authorize **both** extending all thus-existing taxes from 2017 to 2082 (through ST3 plans to issue debt in its 25th year by using statutory authority for that junior taxing district to float 40-year debt) and **also** piling on still greater burdens from new sales, property and motor vehicle excise taxes (for six-and-one-half decades) and given its estimated rate for future tax growth under ST3 (at 3.8 percent), grade-school arithmetic yields $77.1 billion as the indicated level of combined Sound Move, ST2 and ST3 taxes in the first 25 years (*q.v.* Appendix 1), with the basic Rule of 72 heuristic thus affording $308 billion projected over 65 years.

30. In further particular, given that Interested Party Sound Transit's finance department has reported a 10 percent growth in tax receipts, in 2016, from $778 million, in 2015, so as to indicate a need to factor up Sound Move and ST2 revenues from a base of *circa* $855 million, and given that a Rule of 69.3 heuristic can be applied to that higher starting point for greater precision, with all other fiscal-and-mathematical parameters unchanged, $345 billion in combined 2017-81 taxes thus result.

31. In either case, near-certitude exists that Interested Party Sound Transit would reap a very substantial windfall in sales-tax revenue to add $135-to-$195 billion, if not more, to ST3 tax receipts of at least $308-to-$345 billion in combined Sound Move, ST2 and ST3 tax receipts – as indicated by rather simple arithmetic and by ordinary fiscal heuristics – from largely guaranteed extensions of sales taxes **both** to more types of service-business operations in this state in order to obtain, thereby, some part of those myriad billions of dollars in added state revenue capacity necessary, immediately, to fund basic education, **amply**, as is Defendant STATE's "paramount duty" under Article IX, sec. 1 (probably early on in the ST3 plan's 65-year term and despite such a 13th-or-14th-best approach thus rendering the state tax system yet more regressive than its current status among the very most unfair revenue structures of all 50 states extant today) and **also** to sales made over the internet as all states reliant upon sales taxes, and as most bricks-and-mortar enterprises located therein, cooperate to press the United States Congress to level the playing field as to sales taxes, which are essential to state taxation here, but which create a truly gigantic 10 percent advantage for any internet merchants able to skirt them now (likely somewhat later in the ST3 plan's 65 years), with combined tax receipts from Sound Move, ST2 and ST3 taxes thus in the $443-to-$540 billion range (and trillions beyond if such combined taxes prove to be **perpetual** due to huge permanent costs for replacing rail facilities).

32. Hence, basic arithmetic documenting colossal diversions of judicially constrained state tax authority from "all children," **statewide**, to benefit a single junior taxing district, operating in but

parts of three of 39 counties, is as patently obvious as are clearly destructive consequences for basic education through common schools already financed inadequately, **statewide**, even before $443-to-$540 billion, in judicially restricted state revenue capacity, is thus yanked away from public schools, *sui generis,* and becomes crystalline with vital context essential for judicial declarations prayed *infra*.

33. A *proto*constitutional crisis has been percolating within Washington state government for more-than-eight decades over state tax authority and hence over all state-and-local finances – in fits and starts but inexorably nonetheless – largely, but not exclusively, between 147 state legislators and more-than-4 million registered voters entrusted with **all** legislative power and inherent responsibility associated therewith (pursuant to Article II of the Washington State Constitution) and nine Supreme Court justices empowered with **all** judicial power and resultant prerogatives (under Article IV thereof).

34. Outsize legal origins of such often-halting but long-devolving constitutional peril derive from an actually irresolute but deeply riven outcome for *Culliton v. Chase*, 174 Wash. 363 (1933), 83 years ago, whereby a then wavering 5-to-4 majority spurned clear legislative determinations made in 1932 that then-"[e]xisting methods of taxation, primarily based on property holdings, are inadequate, inequitable and economically unsound," because **not** reliably "based on the ability to pay," in voiding income taxes drafted by state citizens to pay for public-school costs through Initiative 69, four score and four years ago, and overwhelmingly approved by more-than-70 percent of state voters, then, so as thereby to restrict the state tax system's stability, sufficiency and sustainability, **judicially**, as state revenue structures, based on 19th century property foundations, proved inadequate to fund common schools in the early 1930s and ever-more lacking to finance basic education from then until this day.

35. The unusual *Culliton v. Chase* decision to void a state graduated net income tax, in 1933, followed and preceded several other likewise conflicted state Supreme Court opinions that stifled **all** repeated legislative efforts between 1929 and 1935 to adjust state tax methodologies devised initially

for a largely agricultural-and-extractive economy with wealth concentrated in property owners, then receding in dominance in the early 20th century, to substantially different circumstances applicable for manufacturing, milling and other wage-based employment, then rapidly evolving (and ongoing, still, albeit with a so-called "gig economy" altering decades of employer-employee constructs, today, as smart phones facilitate access to peer-to-peer networks shifting and shattering earlier paradigms).

36. Along with economic adversities from the Great Depression, those judicial negations left the 24th Legislature **un**able to finance public schools with general fund monies available from thus-restricted state revenue, and $10 million was therefore simply **expropriated** to pay for education, in 1935, from taxes on state drivers then held in the state Motor Vehicle Fund as a state **statutory** trust.

37. Said $10 million diversion of taxes paid by motorists to finance bridges, highways, roads and streets, in good faith, to rescue common schools, in thus urgent fiscal circumstances, was viewed as an outright theft by many licensed drivers – especially when said $10 million was **never** repaid to the Motor Vehicle Fund – and that initial diversion and such continuing failures to restore monies to the MVF resulted in nearly a full decade of efforts, then spearheaded by the Washington State Good Roads Association and by the Washington State Grange, to amend the state constitution to protect all MVF monies and "all other state revenue intended to be used for highway purposes" (18th Amendment as codified at Article II, sec. 40) through far stronger legal protections of a state **constitutional** trust "to be used exclusively for highway purposes" (*i.e.* in order to guarantee that **no** assets dedicated "exclusively for highway purposes" can **again** be expropriated from beneficiaries of said trust **ever**).

38. Following the Great Depression and World War II, judicial decisions from 1929 to 1935 have continued to leave one state legislature after another with insufficient state tax authority to meet, entirely, "the paramount duty of the state to make ample provision for the education of all children residing within its borders," **fiscally**, and with inadequate state revenue flexibility to do so, **politically**,

such that intermittent-but-inescapable devolutionary percolation, always gurgling in the background, has risen to higher decibel levels when pushed into the forefront legally, from time to time, including litigation that documented, four decades ago, then-already-long-standing state governmental failures to develop reliable state tax authority to underwrite basic education fully, in *Seattle School District v. State*, 90 Wn.2d 476 (1978), albeit with judicial deference to considerations of comity weakening its legal potency over several decades that followed, and major follow-on litigation that **re**documented, nearly five years ago, such continuing abject failures to develop some adequate state revenue capacity to pay the high costs of a statewide public education program through a system of common schools, in *McCleary v. State*, 173 Wn.2d 477 (2012), again with certain-but-less deference to normal comity practices among legislative, executive and judicial branches, whereby the majority decided to "defer to the legislature's chosen means of discharging its article IX, section 1 duty," as was done in 1978, but held, without the Chief Justice initially, that "the judiciary will retain jurisdiction over the case to help ensure progress in the State's plan to fully implement education reforms by 2018" (at 547), so as to maximize justices' leverage over the legislative branch (albeit subject to risks, well known, as a brief submitted for the House of Representatives' Speaker, John Bagnariol, and for its Revenue Committee's chair, Helen Sommers, had brought to the court's attention, as *amici curiae*, in *Seattle School District v. State*, regarding considerations yielding comity and respecting hazards attendant).

39. Through a series of formal orders, the state Supreme Court has held, *inter alia*, that "the state is in contempt of court for violating the court's order dated January 9, 2014," due to its failure to submit "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year" (Order dated September 11, 2014 and signed for a court majority by the Chief Justice at its page 4); "[e]ffective immediately, the State of Washington is assessed a remedial penalty of one-hundred thousand dollars ($100,000) per day until it adopts a

complete plan for complying with article IX, section 1 by the 2018 school year" (Order dated August 13, 2015 and signed by all nine justices at its page 9); and "[t]the monetary sanction of $100,000 per day shall remain in place" (Order dated October 6, 2016 and signed by seven justices at its page 13).

40 Neither the formal determination that Defendant STATE is in contempt of court, entered more-than-two years ago, nor remedial fines imposed in 2015 and extended in 2016, can fix a state tax system's patent inability to generate stable, sufficient and sustainable revenue capacity essential to pay for huge costs of providing basic education, statewide, through a system of common schools, given that decisional jurisprudence from 1929 to 1935 arrested repeated legislative efforts to change tax structures based on a 19th century economy (then receding in utility), and to replace their major property-tax emphases with revenue foundations relevant for wage-based "income" (then evolving rapidly), and given that judicially arrested development of state fiscal policymaking has not merely yielded, but has effectively driven, a highly regressive sales-tax-reliant hodgepodge therefore cobbled together since (which has proven inadequate both to fund public schools **fiscally**, and also to resolve deep-seated problems of state revenue capacity that can only achieve a genuine solution **politically**).

41. Hence, core foundational dilemmas yielding state revenue capacity inadequate to pay for public schools necessary and sufficient for the 21st century – and, thus, increasing constitutional peril devolving over almost five years now, on periodic installment bases, as the state Supreme Court has followed its retention of jurisdiction with order after order, entered serially, with the previous 63rd Legislature and Interested Party 64th Legislature being chided, repeatedly, but acting without actual compliance in major regards, with Defendant STATE being subsequently held in contempt of court, in 2014, and being thereafter sanctioned unanimously with a daily penalty of $100,000, in 2015, but with the most recent judicial response to legislative truculence, clearly in view, lacking in unanimity when issued on October 6, 2016 – derive from immense constraints imposed, **judicially**, on essential

legislative power over *sine qua non* state tax authority by repeatedly nullifying multiple variants on 20th century state income taxes, including but not limited to one tax fashioned by state citizens *via* Initiative 69, in 1932, and approved overwhelming by more-than-70 percent of state voters, then, so as thereby to thwart design of a state tax system with stability, sufficiency and sustainability, for over eight decades, through decisions reliant on 18th-and-19th century jurisprudential constructs for state taxation applicable to agriculture and extraction (then receding), instead of earned "income" obtained from wage-based jobs rapidly developing before the Great Depression (and largely, thereafter, set in place for decades, following World War II's end and after transition back to a peace-time economy, albeit now being adjusted at the margins as various proxies replace wage-income as some employer-employee structures now wane, *qua* norms, and as various consulting-and-contracting methods wax).

42. Thus, the state Supreme Court has shaped a "Catch 22" revenue quandary for Defendant STATE, across eight decades, with its judicial preclusions of development of ordinary state income-taxing modalities, and it has likely exacerbated that morass, over the last half decade, in its effective slide down a slippery judicial slope with its Article IV-branch seizures of ever more Article II-fiscal power without any evident competency in state-and-local public finance, presently, and without the considerable array of analytic tools developed by and available to Article II and Article III elements of state government (albeit largely abandoned by most members of those branches *vis-à-vis* sec. 318 *et sequens* of 2nd ESSB 5987, in 2015, as is identified more fully two paragraphs hereinbelow), but similarly available to justices (by use of a special master along lines suggested in *McCleary* at 547).

43. This long-debilitating state fiscal predicament is a consequence of multiple factors, but is due to, in large part, judicial denials of standard plenary state taxing powers to the legislative branch, and to decisions to hold Defendant STATE in contempt of court, **for over two years**, since both **all** legislatures and also **the** people have been denied, for 83 years, access to a revenue stream necessary

and sufficient to allow **full** obedience as to "the paramount duty of the state to make ample provision for the education of all children residing within its borders"; to inflict a fine of $100,000 each day on state taxpayers, last year, and to extend it, this month, chiefly because normal state income-tax power requisite for **true** compliance with Article IX has been denied; and to foster a dangerous constitutional crisis, which is becoming still more perilous, with each order issued, as demands are so escalated for levels of expenditures currently impossible, **politically**, without access to all three ordinary state tax resources available in substantial degree, for nearly every state legislature, nationwide: **except here**.

44. While the judicial branch of state government has shaped a highly contradictory revenue snare as a foundation – which has simultaneously functioned for eight-plus decades, to date, **both** as a trap preventing ample funding for public schools and for basic education through orderly design of a state tax system able to deliver stable, sufficient and sustainable revenue capacity reliably and **also** as an impetus effectively driving ever-more regressivity and ever-less fairness for those state citizens often least able to pay sales taxes due to inescapable needs to consume and motor vehicle taxes on unavoidable necessity for private transportation in order to work two, three, four or even more part-time jobs impossible using public transit – the legislative branch of state government has engineered unconstitutional and otherwise-unlawful structures for Interested Party Sound Transit so as, thereby, to allow it to bleed at least $443-to-$540 billion in **judicially** restricted state revenue capacity away from Defendant STATE's "paramount duty" (owed to every child statewide), and so as, thus, to drain finite state revenue capacity quintessential to fund Article IX (*via* a colossal tax ballot for one junior taxing district on November 8, 2016); to do so based on explicit-and-repeated coercions of the 64th Legislature, *via* deceitful lobbying in 2015, for $15 billion in new taxes (rather than $11 billion then on offer); to do so with **no** Fiscal Note analysis of, **nor** reports on, highly adverse effects on state tax authority (despite all lobbying and all legislation actions being undertaken while Defendant STATE

was operating under a formal Order for contempt of court for extended failure to devise "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year" [Order dated September 11, 2014]); and, yet, to be legally **un**answerable to the citizens of this state because a special-purpose district has been devised, singularly, to preclude one-person, one-vote rights of every citizen under state-and-federal constitutions (as well as several other core state constitutional guarantees since, *inter alia*, **no** eligible voter can vote for or against anyone on Interested Party Sound Transit's Board *qua* a Board member, **nor** exercise the state constitutional right of recall for two-of-three Board officers from counties other than that of a citizen's residence).

45. Among several legislative irregularities underlying Interested Party 64th Legislature's colossal diversions of finite state tax authority to one junior taxing district in 2015 – including crucial property-tax and sales-tax revenues, long crucial for the financing of common schools, while under an Order for contempt of court entered due to Defendant STATE's repeatedly adjudicated violations of its directly noticed "paramount duty" – were parliamentary reviews by transportation committees with genuine revenue expertise in car-and-truck license charges, gasoline-and-other-fuel taxes, tolls and weight fees, but without jurisdiction ordinarily involving enormous sums of property-and-sales taxes, without any Fiscal Note examining Sound Transit 3 impacts over 15 years, then nominally at issue, much less the minimum of 65 years, then legally applicable, and without any referral of those *sine qua non* state-finance issues either to fiscal committees with property-and-sales tax expertise or to education committees having substantive responsibilities for fulfillment of that "paramount duty" (**none** of which appears **ever** to have been reported to the state Supreme Court as its orders require).

46. After spending virtually the entirety of Interested Party 64th Legislature's regular-and-special sessions during the first half of 2015 **opposing** $11 billion in finite state revenue capacity on offer then, from that body, as additional tax authority for the ST3 tax ballot (while also covering up

at least $226-to-$253 billion of judicially constricted state tax capacity in fact on offer to it, thereby, while Defendant STATE was under an Order for contempt of court for its failures to finance **every** child's education statewide, **amply**, with severely limited state tax receipts available), and **holding** over 5.6 million licensed drivers hostage to increasingly ill-maintained and thus ever-more-unsafe bridges, highways, roads and streets to coerce its nominal $15 billion ransom in added tax authority (while concealing at least $226-to-$253 billion in judicially limited state revenue), Interested Party Sound Transit immediately began to disregard its urgings for nominally $15 billion in new taxes, as improvidently granted on July 1, 2015, in devising ST3 plans such that its proposed ballot title for a ST3 tax ballot *cum* related materials notice $36.3 billion ($27.7 billion in new taxes and $8.6 billion in extended Sound Move and ST2 taxes), but without identifying, in a comprehensible form, at least $308-to-$345 billion in tax authority sought by the ST3 tax ballot, *sub rosa and sub silentio*, or the fact that a partial "tax rollback" promised to voters, both in 1996 and also in 2008, is to be extended yet again to no-earlier-than-2082, so that **no** person voting in 1996, based on that **key** promise, could hope to see a penny of tax relief, without reaching his or her 103rd birthday, due to a public-sector ponzi scheme utilized by Interested Party Sound Transit (which relies on greatly over-hyping Sound Move transit benefits, with inadequate funds to develop them, then continuing its ponzi by repeating the same albeit-ever-more-deceptive process to mislead citizens into voting for ST2 taxes in 2008 to cover Sound Move's huge shortfall by in turn over-promising ST2 benefits, again without sufficient monies to deliver them, and then extending its second ponzi through a like albeit-still-more-devious scam by beguiling voters to approve ST3 taxes in 2016 to cover ST2's shortfall by over-stating ST3 benefits, while therein laying groundwork for its next, already-planned-ST4 ponzi for its future, and which is possible, in turn, **only** through still further invasions of finite state tax authority long used to fund public schools, busting the **state constitutional trust** created by the 18th Amendment or **both**).

47. Consistent with a central-and-continuous *modus operandi* utilized for Sound Move, ST2 and ST3, Interested Party Sound Transit has repeatedly misrepresented **both** the enormous tranche of finite state tax authority being pursued through its ST3 tax ballot for itself and **also** the long duration thereof, *sub rosa* and *sub silentio*, beginning with frauds in 2014 against persons who now comprise Interested Party 64th Legislature (even before any member thereof was, thereafter, officially sworn), continuing with subsequent misconduct toward persons who now constitute a state-appointed Expert Review Panel for the ST3 planning process (despite a membership substantially resultant from overt recommendations made by the junior taxing district legally to be afforded "Independent system plan oversight," pursuant to terms of RCW 81.104.110, by a body effectively selected by its own officers, and senior managers, in a fashion that compromises the entity's independence, including the panelist employed by a public agency fiscally reliant in part on funds received **directly** from Interested Party Sound Transit, who at least twice urged his fellow panelists to help in his bad-faith shifting of blame to Interested Party 64th Legislature for major financial shortcomings in the ST3 plan) and extending now to persons residing within the district (who, as voters and as taxpayers, are being exploited with falsified monetary information as to the actual size of total combined taxing authority under Sound Move, ST2 and ST3 being sought *via* the ST3 tax ballot, anew and by extensions, and as to at-least-65-year-and-likely-**perpetual** duration of said thereby veiled local-option tax proposition, *inter alia*, **both** through omissions of constitutionally required ballot-title information and **also** through failure to complete, timely, Expert Review Panel oversight functions statutorily mandated before its Board of Directors voted nominally, but **unlawfully**, to approve its *ultra vires* Resolution No. R2016-17).

48. Interested Party Sound Transit's numerous misrepresentations to Interested Party 64th Legislature include, but are not limited to, bad faith sleights-of-hand that both its officers and also its lobbyists utilized in order to mislead legislators into believing that **only** $15 billion in additional tax

authority to fund an ST3 plan was being demanded in 2015, ahead of public schools for the 2017-18 school year, rather than at least $308-to-$345 billion to over half a trillion dollars being thus stalked, ahead of basic education from the start of 2017 throughout all of 2081, and probably many trillions of dollars ahead of every child statewide, **forever**, since ST3 tax authority would likely be perpetual, while prior-and-present verbiage as to a partial "tax rollback" is on if-and-when bases that would be entirely "at will" in the sole discretion of an **un**elected Board of Directors (which sham warranty of a partial "tax rollback" has proven to be entirely illusory, to this date, and is likely to become legally impossible, hereafter, due to genuinely enormous costs of replacing rail infrastructure in perpetuity).

49. Said wrongful acts by Interested Party Sound Transit were funded with taxpayer dollars, in patent violation of state election statutes, so as to afford reballoting pursuant to RCW 42.17A.750.

50. Interested Party Sound Transit's conduct toward members of a formally state-appointed, but effectively self-selected Expert Review Panel has been at least as deceptive, given that the junior taxing district's senior managers squarely refused to provide vital financial data requested by out-of-state panelists on March 9, 2016 (because of those real experts' recognition that the Panel's required statutory oversight functions could **not** be completed in time for the General Election, on November 8, 2016, without receipt of then-and-thereby directly asked-for information), and given its Board of Directors' complete defiance for the *sine qua non* directive within the Panel's letter to it, on June 20, 2016 – stating therein explicitly that, given certain financial materials necessary to allow panelists to finish demanding statutory duties still incompletable then, factually and legally, a vital ST3 "analysis should be updated and shared prior to board action" (at least in part because agency staff had earlier refused to supply vital fiscal realities, requested over three months earlier, and had not yet produced key assessments required for "sound industry practice" – in voting to adopt Resolution No. R2016-17 on June 23, 2016 (even though legislatively required "Independent system plan oversight" under

RCW 81.104.110 **had not been**, and **could NOT be**, completed before that thus-unlawful Board act rushed forward before the Expert Review Panel could fulfill its statutorily required fiscal "review").

51. Hence, Resolution No. R2016-17 was and is *ultra vires*, and thus null and void *ab initio*, as a matter of law, such that the *Philadelphia II v. Gregoire* holding affords a valid legal basis for enjoining Defendant WYMAN from tallying or certifying nominal results as to an ST3 tax ballot, in 2016, due to remarkably specific and very substantive determinations of state policy made fully certain by decisions taken by the Article II legislative branch that each statutorily mandated planning function requires, before any so validated tax plan, a rather detailed "process [that] cannot guarantee appropriate decisions unless key study assumptions are reasonable" (RCW 81.104.110[1]), and that "[t]o assure appropriate system plan assumptions and to provide for review of system plan results, an expert review panel shall be appointed to provide independent technical review" thereof (RCW 81.104.110[2]), which "expert panel shall review **all** reports required in RCW 81.104.100(2) and shall concentrate on service modes and concepts, costs, patronage and financing evaluations" (RCW 81.104.110[8], emphasis added), and "shall provide timely reviews and comments on individual reports and study conclusions" (RCW 81.104.110[9]), and which central obligations of the Panel remained **incomplete**, both because Interested Party Sound Transit's staff refused to supply core fiscal data sought out squarely by out-of-state Panel members, on March 9, 2016, and also because, on June 23, 2016, not only was the state Panel's explicit finding of **inadequacy**, in financial materials provided to panelists for their statutorily mandated "review" as of the date of its June 20, 2016 letter, totally disregarded by the junior taxing district's Board, unanimously, but that Panel's quintessential follow-on directive was willfully defied (*i.e.* that said junior taxing district's Board of Directors take **no** official action until the fiscal reliability of that agency's overly hasty assembly of an ST3 Finance Plan could be established, reliably, **after** being "shared" with members of the state-appointed panel).

52. Specifics of the state panel's critical fiscal determination and crucial follow-on directive that the junior taxing district **withhold** action, *via* its letter of June 20, 2016, were stated as follows:

> *Sensitivity Analysis*: At our June 6 meeting Sound Transit staff reviewed the analysis they had done to test the sensitivity of several key assumptions embedded in the Finance Plan: potential capital cost increases, lower than anticipated sales tax revenues, a recession early in the ST3 program, higher than anticipated interest rates, and increased inflation. This analysis represents sound industry practice. However, the sensitivity analysis and Monte Carlo runs presented to the panel did **not** include all of the most recent project delivery schedules. **The analysis should be updated and shared prior to board action** (emphases added).

53. On information and belief – from questions put by plaintiff to Interested Party Sound Transit's chief financial officer, Brian McCartan, on August 8, 2016 – the junior taxing district had still **not** finished a core "sensitivity analysis," essential for "sound industry practice," 45 days **after** Board action on June 23, 2016, in clear disregard for and in utter defiance toward detailed statutory requirements for an "Independent system plan oversight" (RCW 81.104.110), as rather long ignored (before recent flouting to push apparently the largest public-sector ponzi scam in American history).

54. Said wrongful acts by Interested Party Sound Transit were funded with taxpayer dollars, in patent violation of state election statutes, so as to afford reballoting pursuant to RCW 42.17A.750.

55. In addition to Interested Party Sound Transit's enormous misrepresentations to mislead Interested Party 64th Legislature in key part through willful omission of paramount fiscal parameters in 2015 (in order, thereby, financially to crowd in front of Defendant STATE's "paramount duty" as constitutionally owed to "all children" statewide and, thus, to crowd out basic education by tying up truly huge sums of finite state tax authority in 2016 through misfeasant-or-malfeasant means before school financing is to be addressed in 2017 under a formal Order for contempt of court), and in addition to its defiance for a state-appointed but largely self-selected Expert Review Panel in violation of that Panel's prime directive plainly set out in writing on June 20, 2016 (so as, thereby, to undermine chief purposes for and core terms of RCW 81.104.110 and, thus, to disqualify the ST3 tax ballot under

the central holding of *Philadelphia II v. Gregoire*), it has since employed and is currently exploiting further misfeasant acts necessarily intended to mislead citizens, courts, elected officials, journalists and representatives of various electronic media as to the gigantic diversions of limited state revenue, and, thus, immense amounts of tax revenue, that would be grabbed through the ST3 tax ballot from judicially retrained state revenue capacity and thus from limited state tax dollars legally available to finance basic education **amply**, along with further strategic omissions about duration therefore, and very adverse effects thereof, including in a now judicially approved ballot title for the ST3 tax ballot that fails to identify pivotal constitutionally required elements pursuant to Article II, sec. 19 and to Article VII, sec. 5, *inter alia* (which, if complied with constitutionally, would evidence, as a matter of law, multiple subjects in seeking authority **both** to impose new taxes, for at least another 65 years, and **also** to delay, yet again, the partial "tax rollback" first guaranteed to state citizens, as voters and as taxpayers, in1996, and repeatedly **re**guaranteed, in serial-deceiver fashion, in 2008 and in 2016).

56. For example, during September, 2016, Interested Party Sound Transit directly acted to mislead the King County Superior Court into accepting its false claim that the amount of finite state tax authority to be diverted to that junior taxing district, through its ST3 tax ballot, **cannot** be made comprehensible, even though simple fifth-grade arithmetic and standard fiscal heuristics can, and do, readily yield at least $308-to-$345 billion for anyone who can read and solve a quite basic arithmetic word-problem set forth in paragraphs 26-to-30 (which requires no higher mathematics whatsoever), even though state-and-local governments all across our state project future revenues every business day (which include many small jurisdictions lacking that junior taxing district's cash-flow from well over $2 million dollars each day) and even though Interested Party Sound Transit has done so, itself, for its ST3 Finance Plan (albeit **suppressing** reliable-and-straightforward calculations of its gigantic tax-take in all matters for the ST3 tax ballot required to obtain enormous taxing power and, instead,

substituting often **unreliable cost estimates** and wholly **speculative hopes** for federal grants, each **non**germane for a tax ballot only confused by its obviously misleading $53.8 billion sleight-of-hand).

57. For further example, also during the last month, Interested Party Sound Transit placed a "Conformity Report," as legally required by RCW 81.104.040(2), before the Puget Sound Regional Council's Transportation Policy Board based on bogus ST3 numbers, which purports to document a benefit-to-cost ratio above 1.1-to-1, but which was publicly challenged by Hon. Ron Lucas based on his review of the ST3 tax ballot's actual taxation, his initial calculations that ST3 tax receipts would be approximately $150 billion (and therefore greatly beyond $36.3 billion thereby misrepresented by the junior taxing district to the TPB) and his conclusion that said benefit-cost ratio is thus **over**stated.

58. While Interested Party Sound Transit's Executive Director Ric Ilgenfritz acknowledged, on September 8, 2016, to TPB members, other participants at that meeting and all persons viewing a live webcast, then, that ST3 tax collections would be **much** greater than the $36.3 billion repeatedly misrepresented to Hon. Bill Bowman, citizens, elected officials, print journalists and media reporters – before and since Mayor Lucas' basic math thus compelled that admission, then, apparently for the first and only time – the junior taxing district did **not** withdraw its questionable "Conformity Report" for review based on a far larger tax-take requiring analysis of whether its asserted **positive** benefit-to-cost ratio is likely **negative** in fact; the TPB voted to approve it notwithstanding clear inadequacy (with just Mayor Lucas opposed); and said Interested Party continues promoting $36.3 billion as the ST3 plan's tax-cost element (despite Mr. Ilgenfritz's public concession of a **huge** fiscal inaccuracy), including but not limited to such **mis**representations in the ballot title and within related materials in order thus to chump state citizens, as voters and as taxpayers, as well as to deceive press and media.

59. Said wrongful acts by Interested Party Sound Transit were funded with taxpayer dollars, in patent violation of state election statutes, so as to afford reballoting pursuant to RCW 42.17A.750.

60. For still further example, two weeks thereafter on September 22, 2016, the "Conformity Report" was presented to the Puget Sound Regional Council's Executive Committee, which like the TPB is chaired by an officer of Interested Party Sound Transit, for action based on the previous TPB approval (with only Mayor Lucas opposed), following a brief discussion, wherein Hon. Don Gerend noted that the 1.1-to-1 benefit-to-cost ratio being stated for the ST3 plan, now, is **far** lower than the 2.7-to-1 ratio proffered for the earlier ST2 plan, in 2008, and wherein Mayor Lucas raised his initial projection of a $150 billion tax-take, two weeks earlier, to $200 billion, based on further analysis, so as to implicate further doubts as to the claimed 1.1-to-1 benefit-to-cost ratio (after Mr. Ilgenfritz had squarely admitted to **much** greater tax collections), before unanimous approval but for Mayor Lucas (with Mayor Gerend appearing as an Alternate and therefore with no right to vote either yea or nay).

61. Said wrongful acts by Interested Party Sound Transit were funded with taxpayer dollars, in patent violation of state election statutes, so as to afford reballoting pursuant to RCW 42.17A.750.

62. In addition to apparent irregularities that result from such PSRC Executive Committee's perfunctory rubber stamping of a "Conformity Report" presented by Interested Party Sound Transit, at a meeting chaired by an officer of said Interested Party and reliant on multiple votes cast in favor thereof by other members of that Interested Party's Board of Directors, and from a cursory approval notwithstanding major questions about the reliability of a statutorily mandatory benefit-to-cost study, Hon. Pat McCarthy then indisputably misused public facilities and other taxpayer-funded resources to urge her fellow Executive Committee members and alternates, other meeting participants, persons in the audience and those citizens viewing the proceedings by webcast, as well as everyone who has since viewed that rump session over the internet, to support the ST3 tax ballot in every way feasible.

63. Such highly dubious acts by Interested Party Sound Transit's officers and directors were financed with taxpayer dollars, in seeming violation of state law, and said patently misfeasant action

by County Executive McCarthy was financed by taxpayer funds, in patent violation of state election statutes, so as to afford rights in citizens to obtain reballoting, pursuant to RCW 42.17A.750, and to recall her from public office, pursuant to Article I, sec. 33 and pursuant to RCW 29A.56, *inter alia* (albeit leaving plaintiff and all other residents of the junior taxing district living in King County and in Snohomish County without legal ability to exercise that constitutionally guaranteed right of recall for her said misfeasance, as a member of Interested Party Sound Transit's Board, since the Office of the Pierce County Prosecutor rejects petitions seeking recall by anyone not living within that county).

64. Further, also during the last month, Interested Party Sound Transit's fiscal staff directly misrepresented, in writing, the amount of ST3 taxes to be collected during the 65-year period to be authorized by the ST3 tax ballot, *sub rosa and sub silentio*, by falsely claiming that the oft-promised partial "tax rollback" would be in effect by or before 2060 despite, under **standard** terms of its bond covenants, the total amount of taxes collected pursuant to the ST3 election, if lawful and if approved by voters, being required to be collected in full, **constitutionally**, until the last ha'penny of debt to be issued subject thereto is fully repaid (which high-replacement costs for rail likely render impossible), in reply to Mayor Gerend's requests for clarifications of the tax-take acknowledged by Mr. Ilgenfritz (which exchange of written correspondence referenced hereinabove is attached as Exhibit E hereto).

65. Said wrongful acts by Interested Party Sound Transit were funded with taxpayer dollars, in patent violation of state election statutes, so as to afford reballoting pursuant to RCW 42.17A.750.

66. On information and belief, Interested Party Sound Transit is **not** limiting its use of such financial frauds regarding the ST3 tax ballot merely to elected public officials, but it is utilizing said and related fiscal misrepresentations against ordinary citizens, as voters and as taxpayers, through its **dis**information about ST3 taxation; against members of the working press who seek tax information; and against representatives for various electronic media companies which are likewise covering ST3.

67. Said wrongful acts by Interested Party Sound Transit were funded with taxpayer dollars, in patent violation of state election statutes, so as to afford reballoting pursuant to RCW 42.17A.750.

68. Yet further, even ignoring huge subarea inequities, Interested Party Sound Transit's 1.1-to-1 benefit-to-cost ratio is grossly inaccurate and intentionally fraudulent, as issued, due to willful exclusions of gargantuan expenses required by the **state constitutional trust** created pursuant to the 18th Amendment's requirements that highway facilities thereby financed must be **forever** dedicated "exclusively for highway purposes," such that operations of rail transit funded by the ST3 tax ballot bear legal responsibility for payment of full-and-fair market value for **all** Interstate 90 floating bridge infrastructure, including at least $2-to-$4 billion in such full-and-fair market rental charges for plans for rail uses of the bridge's center roadway (which was omitted entirely from that bogus benefit-cost study), and at least $4-to-$8 billion for premature shortening of useful lives of costly floating bridge structures in their entireties, including but not limited to such center lanes, due to microfracturing of internal rebar from constant flexions caused by massive weight transfers as each loaded 81-ton rail car drops onto and rebounds from floating bridge units, and due to separations of internal steel from concrete aggregate also from huge transfers of weight as 162,000-pound "light rail" cars pound and flex pontoons and bridge decks (which was also omitted totally from that sham benefit-cost analysis), whereby billions of dollars in transit costs are to be expropriated, from a **state constitutional trust**, pursuant to the ST3 plan and through the ST3 tax election, in order by such means to shift $6-to-$12 billion in **rail** expenses for **non**-"highway purposes" of supplying **rail** service, in parts of three of 39 counties, to be subsidized, *sub rosa and sub silentio*, by over 5.6 million licensed drivers **statewide** (as legal beneficiaries of a **state constitutional trust** dedicated "exclusively for highway purposes").

69. Said wrongful acts by Interested Party Sound Transit were funded with taxpayer dollars, in patent violation of state election statutes, so as to afford reballoting pursuant to RCW 42.17A.750.

70. In addition, Interested Party Sound Transit has failed to conform its Sound Move, ST2 and ST3 planning and other expensive junior taxing district actions with multiple cost-effectiveness measures – established as pivotal state policies by the legislative branch through a variety of statutes intended to cause and to ensure that good value is received for tax dollars – and, on information and belief, such misfeasance occurs in major part because genuine compliance with demanding terms of those state statutes would preclude substantial rail elements of Sound Move, ST2 and ST3 plans, and would result, instead, in a less expensive and more cost-effective transit system than said three plans (and one quite similar to what was promoted for medium-sized metropolitan areas by Peter Rogoff, in his main statement thereof attached as Exhibit F hereto, as Administrator for the United States Department of Transportation's Federal Transit Administration appointed by Hon. Barack Obama, who then strongly opposed expensive rail-centric models of the type which he now pursues for Interested Party Sound Transit, as its chief executive officer, since exiting the federal government's revolving door in order to undermine his own position by evading **state policies likewise focused on costs**).

71. Among four statutory cost-effectiveness obligations to ensure good value for tax dollars violated by Interested Party Sound Transit, repeatedly, are its failures, or refusals, to make factually adequate and legally sufficient "least cost planning methodology" analysis required before **any** valid tax election (RCW 47.80.030); factually adequate and legally sufficient "benefit-cost" analysis also required before **any** lawful tax ballot (RCW 81.104.040); factually adequate and legally sufficient "Independent system plan oversight" analysis further required before **any** valid tax election (RCW 81.104.110); and factually adequate and legally sufficient "reasonable alternative transit mode" analysis based on a statutory definition of "reasonable alternative" wherein all "passenger costs per mile" must be "equal to or less than comparable bus, entrained bus, trolley, or personal rapid transit systems," as similarly required before to **any** lawful tax ballot (RCW 81.104.120), *inter alia*.

72. On information and belief, each such failure, or refusal, to comply with these important statutory cost-effectiveness measures – which establish crucial state policies adopted by the legislative branch of government, over and over, so as to apply squarely to Interested Party Sound Transit – is because adopted Sound Move, ST2 and ST3 plans cannot legally comply with said key statutes, and so must rely on rubber-stamp approvals despite patent defects as granted by the PSRC, recently, in a game wherein **nominal review came from advocates voting to approve their own ST3 plan** (as Executive McCarthy's spotlighted in then misusing public assets to promote the ST3 tax ballot).

73. Said wrongful acts by Interested Party Sound Transit were funded with taxpayer dollars, in patent violation of state election statutes, so as to afford reballoting pursuant to RCW 42.17A.750.

74. Beyond multiple violations of federal-and-state constitutions above noticed, Interested Party Sound Transit's legislated structure, including junior taxing district powers, and its *ultra vires* ST3 tax ballot, as well as related matters, violate sec. 4 of the federal Enabling Act of 1889 as to its mandate that **all** state-and-local governance thereunder established, through a state constitution, "shall be republican in form" and shall "not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence," inclusive of a core one-person, one-vote mandate, pursuant to the former, and of obligatory equality prerequisites in law, pursuant to the later, so nominal state legislative authority for **unequal** representation of citizens by members of the junior taxing district's Board of Directors is thus null and void *ab initio* as a matter of law.

75. Interested Party Sound Transit is the antithesis of a democracy, "republican in form," through a device suggesting representation superficially but preventing it in every major specific.

76. Beyond Interested Party Sound Transit's numerous violations of central provisions of federal-and-state constitutions, of the applicable federal enabling act and of state election laws (identified by a limited sampling of relevant examples largely drawn from agency wrongdoing just since

its Board's *ultra vires* vote to adopt Resolution No. R2016-17, on June 23, 2016, in patent disregard for and in utter defiance toward mandatory obligations under statutory law authorizing its existence as a junior taxing district), and beyond its debasing influence on the selection of experts to serve on a nominally state-appointed Expert Review Panel nominally to afford very demanding "Independent system plan oversight" pursuant to terms of RCW 81.104.110 (such that a state employee reliant on funding directly received by his University of Washington program, from the agency which he was nominally appointed to oversee, has in at least two public sessions of the panel urged other panelists to join him in scape-goating Interested Party 64th Legislature for what he identifies as shortcomings in the ST3 Finance Plan), the junior taxing district has further corrupted innumerable aspects of core statutorily required planning processes mandatory for a legally valid ST3 tax-ballot proposal, which include misuses of public facilities, public monies and related public resources to aid and to abet it in gaining voter approval for said tax election, including repeated coaching of agency mangers by multiple in-state appointees to the Expert Review Panel as to how best to **couch** its ST3 plan to make it more appealing to citizens, as voters and taxpayers, instead of fulfilling its oversight role (at all or most of its publicly funded meetings over the last two years), and repeated coaching of agency staff by several members of the district's Citizen Oversight Panel as to how best to **frame** its ST3 plan to make it more appealing to citizens, as voters and taxpayers, instead of fulfilling its oversight role (at virtually every meeting since the immediate past chair of COP, Josh Benaloh, initially asked Mr. Rogoff, as then-new chief executive officer, precisely "how far do you want us [COP] to stray into politics," on February 18, 2016, and was squarely informed by him just "to be a little bit careful," then, up to and including its most recent meeting, on October 6, 2016, when a COP member, Don Monroe, yet again advised agency staff as to how best to **support** the ST3 tax ballot rather than undertaking proper oversight functions drastically needed by district residents).

77. Such egregious incidents of misfeasance in public office by persons nominally acting in positions of public trust wherein each is responsible for oversight activities for a junior taxing district – but whereby abandonment thereof has occurred, **repeatedly**, in order to aid and to abet its political misuses of public assets to **advance** the ST3 tax ballot contrary to state elections law – derive from Interested Party Sound Transit's intentional acts to corrupt both purposes for and also functions of legally required oversight by ensuring appointment of individuals so lacking in objectivity as to make oversight impossible given pro-agency bias required of in-state appointees nominally overseeing the agency, as necessarily intended by its officers and Board members, who will themselves be cashiered from that Board, or from any position yielding appointment thereto, if any probing question is ever asked (as were Hon. Rob McKenna and Hon. Doug MacDonald).

78. Nor is gross misfeasance in public office by Interested Party Sound Transit's officers, directors and senior managers to further the ST3 tax ballot, through their improper uses of public facilities, public monies and related public resources, limited merely to improper influence as to choices of in-state persons appointed to the Expert Review Panel by the junior taxing district, or to packing the COP with rail advocates incapable of objectivity necessary to fulfill legal duties under the Sound Move ballot title through the agency's Resolution No. 75, because the district has repeatedly engaged in far more egregious wrongdoing to advance ST3, through misuses of tax dollars, including **both** authorizing through Motion No. M2015-74, on August 18, 2015, "public involvement consultant services supporting the Sound Transit 3 ballot measure in the amount of $560,000 for a new total authorized amount not to exceed $1,360,000" (which patently unlawful "consultant services" in order to support the ST3 tax ballot have resulted, exactly as is intended, in push-polling and other misuses of public monies repeatedly identified to the Washington State Public Disclosure Commission by *The Seattle Times* during 2016), and **also** authorizing hiring of

a chief executive officer who lacks experience in day-to-day operations of a junior taxing district functioning under state law, and who has been either unable or else unwilling to end repeated violations of state election laws put into place by that agency's Board with its approval of its Motion No. M2015-74 (who was obviously hired in order to exploit, immediately following a revolving-door exit from the Obama Administration, his ongoing relations and thus-hoped-for continuation of influence over his former staff in the United States Department of Transportation as he seels, thereby, federal funds both for the current ST3 ponzi and also for the already-planned ST4 ponzi).

79. Not only is Interested Party Sound Transit's promotion of its ST3 tax ballot unlawful in willful misuses of public facilities, public monies and related public resources to aid and to abet it in obtaining voter approval for said tax ballot, not only is its suppression of half-a-trillion dollars in tax costs for its ST3 plan also fraudulent as a matter of law, and not only does it violate the spirit and the letter of the federal Truth in Lending Act of 1968, but its falsified **dis**information makes it legally impossible for any business located in the junior taxing district to disclose full tax costs, as required under federal law to comply with core truth-in-lending obligations, due to its frauds in withholding a disclosure of hundreds of billions of dollars in combined Sound Move, ST2 and ST3 taxes based on its contrary-to-fact and oblivious-to-logic fiscal position that **no** Sound Transit taxes, if initially paid by **any** business, is passed on to individuals and to families in the Puget Sound area (despite much, if not nearly all, such Sound Transit taxes imposed on commerce being paid, **ultimately**, by those who live within the region through higher prices for goods and for services resulting from such tax grab).

CONCLUSION

80. Sound Transit 3 is a clear-and-present financial danger, statewide, both to **every** child as a legal beneficiary of the Enabling Act of 1889 and of its unfunded federal mandate thereby **forever** imposed on all state taxpayers as a condition precedent, absolute, for statehood and for entry into the

Union, and also to **every** licensed driver as a legal beneficiary of the major **state constitutional trust** created by the 18th Amendment and **forever** thereby dedicated "exclusively for highway purposes."

81. Notwithstanding egregious misconduct outlined hereinabove – which, for each elected official involved, constitutes both the tort of misfeasance in public office at common law and also a basis necessary and sufficient for recall from public office, and which, for each senior manager involved, affords grounds for termination for cause – losses only begin with diversions of finite state tax authority and thus limited state revenue capacity, and do not end with even corrupted state-and-local governance, since resulting wrongdoing imposes its greatest costs through major opportunities **forever** thereby laid waste, and thus lost for every child, for every motorist and for every other state citizen, especially when the state Supreme Court determined, after formally having found Defendant STATE to be in contempt on September 11, 2014 based on lack of required fiscal action by the 63rd Legislature over most of the term for its lawful policymaking authority, "held sanctions in abeyance because the State pledged to reach the 'grand agreement' in 2015" (Order dated October 6, 2016 at 10), whereafter Interested Party 64th Legislature entire "failed to do so" in 2015 and, in reality, "did not address funding sources at all" (*ibidem*), while it diverted at least $308-to-$345 billion from all public schools to a single junior taxing district, over-half-a-trillion dollars more likely and trillions beyond most probably, and while it failed to report these gargantuan redirections of finite state tax authority and thus limited state revenue capacity to that high court, both after its regular-and-special sessions in 2015 and also after such sessions in 2016, even though the ST3 tax ballot nominally thus authorized by a contemner is so enormous that its approval would effectively render "ample" school funding impossible statewide, **politically**, and thus further a state constitutional crisis now in sight.

82. Inherent in colossal opportunity costs from massive potentials lost through misfeasance, or worse, is the high price for our state and for all of the people residing in every part of 39 counties.

RESERVATION OF CONSTITUTIONAL, STATUTORY AND OTHER LEGAL RIGHTS

83. All of plaintiff's constitutional, statutory and other legal rights regarding Interested Party Sound Transit and respecting its Sound Transit 3 tax ballot are reserved, hereby, including but not limited to unconstitutionality of same in denying rights of a United States and state citizen to one-person, one-vote guarantees (under federal and state constitutions); rights to recall granted by Article I, sec. 33 (including for Ms. McCarthy now and *in futuro*); rights to initiatives granted by Article II, sec. 1 (including Initiative 69 as to certain irregular circumstances regarding judicial wavering as to unconstitutionality in 1933); rights to a single-subject and to expression-thereof in the title of every legislative act, at all levels of state-and-local governance, granted by Article II, sec. 19 (including not-less-than-**two** subjects in Interested Party Sound Transit's Resolution No. R2016-17 *cum* lack of identification of delay for a partial "tax rollback" under the ballot title for its ST3 tax ballot); rights to all protections inherent in a **state constitutional trust** dedicated "exclusively for highway purposes" in Article II, sec. 40 (including as a licensed driver and a lawful beneficiary of that **state constitutional trust**); rights to greater specificity in tax-and-revenue acts than in non-fiscal legislation guaranteed by Article VII, sec. 5 (including violations thereof *vis-à-vis* the ST3 tax election); and rights in "the paramount duty of the state to make ample provision for the education of all children residing within its borders" referenced by Article IX, sec. 1's Preamble in acknowledging, for implementation, the last particular in sec. 4 of the Enabling Act of 1889 (which irrevocably requires that "provision shall be made for establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control," in constitutions for Montana, the two Dakotas and Washington, as a huge unfunded federal mandate imposed as a legal condition precedent absolute), *inter alia*, along with other rights as to Interested Party Sound Transit's myriad violations of its cost-effectiveness duties.

PRAYERS FOR DECLARATORY-AND-INJUNCTIVE RELIEF

Plaintiff prays this Honorable Court to state, and to enter, as formal judicial declarations that:

A.

Defendant STATE OF WASHINGTON – acting principally but not exclusively through Interested Party 64th State Legislature, since January 12, 2015, when oaths of office were sworn or affirmed by state legislators – has undertaken a series of irregular actions that, if allowed to stand by this Honorable Court, purport through a Second Engrossed Substitute Senate Bill 5987, pursuant to section 318 *et sequens* thereof, to authorize at least $308-to-$345 billion in finite state tax authority, and of thereby limited state revenue capacity, to be devolved to a single junior taxing district, located in only parts of three of 39 counties, for its exclusive usage, from 2017 to 2082, more likely over-half-a-trillion dollars, in those 65 years, and most probably trillions of dollars beyond, *in perpetuo*, so as thereby to prevent any other uses of such judicially constrained funds indispensable to fulfill, belatedly, "the paramount duty of the state to make ample provision for the education of all children residing within its borders" (Washington State Constitution, Article IX, sec. 1, Preamble);

B.

Defendant STATE OF WASHINGTON's irregular actions underlying its thereby colossal diversions of finite state tax authority. and of thus limited state revenue capacity, to a single junior taxing district – inclusive of property-tax and sales-tax revenues long foundational for the financing of common schools – patently include, but may not be necessarily limited to, certain matters undertaken on its behalf through Interested Party 64th Legislature as follows:

1.

Interested Party 64th Legislature's exclusive parliamentary reviews of gigantic diversions of finite state tax authority, and of thus limited state revenue capacity, by the transportation committees of said legislature possessed of genuine revenue expertise in car, truck and other vehicle license fees, gasoline, diesel and other-fuel taxes, bridge-and-road tolls and weight charges, but without jurisdiction normally involving immense sums of property-and-sales taxes, and without jurisdiction involving Article IX, sec. 1, core elements of basic education or legislative responses directed *via* jurisdiction retained by the Washington State Supreme Court in *McCleary v. State*, 173 Wn.2d 477 (2012) and *via* multiple follow-on court orders;

2.

Interested Party 64th Legislature's failures to request or to obtain any Fiscal Note analysis of potentially adverse effects of massive diversions of finite state tax authority, and of thus limited state revenue capacity, with respect to the *McCleary v. State* decision or otherwise;

3.

Interested Party 64th Legislature's failures to refer any aspect of enormous diversions of finite state tax authority and of thus limited state revenue capacity, respecting the *McCleary v. State* decision or otherwise, to fiscal committees having property-and-sales tax expertise;

4.

Interested Party 64th Legislature's failures to refer any aspect of immense diversions of finite state tax authority and of thus limited state revenue capacity, respecting the *McCleary v. State* decision or otherwise, to legislative committees having jurisdiction over functions that involve substantive responsibilities for fulfillment of that "paramount duty" separate from fiscal committee having jurisdiction over financing to pay for basic education costs;

5.
Interested Party 64th Legislature's failures to refer any aspect of massive diversions of finite state tax authority and of thus limited state revenue capacity, respecting the *McCleary v. State* decision, to any special legislative committees tasked with annual reporting duties to the state Supreme Court on progress being made for meeting Article IX, sec. 1 obligations;
6.
Interested Party 64th Legislature's simple, negligent or gross failures to inform the state Supreme Court regarding such outsize diversions of finite state tax authority, and of thus limited state revenue capacity, under court orders respecting the *McCleary v. State* decision;
C.
The Sound Transit 3 tax-ballot proposal to be presented to state citizens in parts of just three counties at the General Election to be held on November 8, 2016 – pursuant to Interested Party Sound Transit's Resolution No. R2016-17 as nominally authorized pursuant sec. 318 *et sequens* of the Second Engrossed Substitute Senate Bill 5987 – violates the formal Order for contempt of court entered against Defendant STATE OF WASHINGTON on September 11, 2014 and is null and void *ab initio* upon that basis; is unconstitutional for violations of Article IX, sec. 1, Article VII, sec. 5 and Article II, sec. 19, *inter alia,* and is further null and void *ab initio* on those bases; and is *ultra vires* for failures to comply with core duties of an Expert Review Panel imposed as conditions precedent, absolute, upon the agency by RCW 81.104.110, and with multiple other statutory cost-effectiveness obligations also imposed as further conditions precedent, absolute, pursuant to RCW 47.80.030, RCW 81.104.040 and RCW 81.104.120, *inter alia*, and is still further null and void *ab initio* on those added bases;
D.
The Sound Transit 3 tax-ballot proposal to be presented through a ballot title in the form approved by the King County Superior Court on September 1, 2016 and attached hereto as Exhibit A and incorporated herein for all purposes, if lawful for citizens to approve on November 8, 2016 and if approved then, would legally authorize the junior taxing district to collect certain sales, property and motor vehicle excise taxes in perpetuity (and in no case for less than 65 years based upon statutory authority to bond against those revenues for four decades), and to extend certain other previously approved sales, motor vehicle excise and car-rental taxes perpetually (and in no case for less than said 65 years), each based on the ST3 tax ballot (including *sub rosa* and *sub silentio* deferrals of key partial "tax rollback" guarantees earlier made to district residents, in 1996, pursuant to a Sound Move tax ballot in that year, and, in 2008, pursuant to a Sound Transit 2 tax ballot then); and thus to receive at least $308-to-$345 billion in combined Sound Move, ST 2 and ST3 taxes, in the first 65 years after ballot-box assent, more likely to collect $443-to-$540 billion, over those initial six-and-one-half decades, and most probably to collect multiple trillions of dollars, through perpetual taxing authority, since replacement costs for expensive rail-system elements render its serial guarantees of a partial "tax rollback" illusory legally (as the junior taxing district claimed in 1996, also in 2008 and again in 2016);
E.
The Sound Transit 3 tax-ballot proposal, if legitimate and if approved on November 8, 2016, would divert, **to a single junior taxing district**, at least $308-to-$345 billion in finite state revenue capacity, within the first 65 years thereafter, more likely $443-to-$540 billion, during that period, and most probably trillions of dollars, beyond, through

perpetual taxing authority, so as thereby to remove those enormous sums from finite state tax authority and thus to preclude Defendant STATE OF WASHINGTON's use of those tax dollars for no-less-than-65 years, and likely forever, for any other usage, including but not limited to fulfillment, belatedly, of "the paramount duty of the state to make ample provision for the education of all children residing within its borders";

F.

The Sound Transit 3 tax-ballot proposal thus violates both the formal Order for contempt of court entered against Defendant STATE OF WASHINGTON by the state Supreme Court, on September 11, 2014, and also follow-on orders requiring ongoing reporting on progress made fiscally each year, through legislation actions, so as necessarily to include enormous diversions of finite state tax authority, and of thereby limited state revenue capacity, which of a necessity hamper, or undercut, forward progress toward full funding no later than 2018;

G.

The Sound Transit 3 tax-ballot proposal thus falls within the Washington State Supreme Court's holding in *Philadelphia II v. Gregoire*, 128 Wn.2d 707 (1996), whereby Defendant KIM WYMAN may be enjoined, and whereunder she is hereinafter enjoined, from tallying or certifying ST3 election figures (unless that high court directly so orders her);

H.

Interested Party Sound Transit's myriad thefts and numerous misuses of public facilities, public monies and related public resources, in order and so as thus to advance its Sound Transit 3 tax-ballot proposal with numerous violations of state election statutes, thereby afford a statutory right to reballoting pursuant to RCW 42.17A750, and therefore yield a still-further legal basis for application of the core *Philadelphia II v. Gregoire* holding to its multiple instances of willfully interrelated wrongdoing by its officers, its directors and its other agents, inclusive of its senior managers, who withheld and allowed withholding of pivotal financial information requested by the state-appointed Expert Review Panel on March 9, 2016, who cannot and thus did not fulfill multiple statutory cost-effectiveness responsibilities and who submitted a benefit-to-cost study to the Puget Sound Regional Council falsely claiming a positive 1.1.-to-1 benefit-to-cost ratio (based on suppression of literally billions of dollars in rail costs for Interstate 90 use owed to a state constitutional trust), *inter alia*, which wrongdoing indicates the tort if misfeasance in public office at common law, criminal malfeasance in public office, both or other gross wrongdoing; and

I.

When the purpose of a tax ballot is to pursue voter approval for local-option taxes so as to use at least $308-to-$345 billion in judicially restricted state tax authority, and in thus legally limited state revenue capacity, to be so made unavailable for other governmental uses, including but not limited to "the paramount duty of the state to make ample provision for the education of all children residing within its borders," and far more likely over-half-a-trillion dollars and most probably trillions more beyond; when statutory authority for that tax ballot is limited solely either to approval or else to rejection of such local-option taxes because prior state policies have been legislatively modified to remove every other power from state citizens as voters and as taxpayers; when the amount of such taxes to be either approved or rejected, as the sole legal purpose for an immense tax ballot, can be projected with substantial accuracy by means of very simple fifth-grade arithmetic and of wholly standard financial heuristics, but is not provided for state citizens in the ballot

title; and when a figure based on quite unreliable cost estimates and on totally speculative hopes for federal grants, not germane to a tax ballot, is set forth within that ballot title in place of reliable nonspeculative financial information germane to the sole purpose of the tax ballot, then this Honorable Court can, and does, declare that the necessarily intended purposes for omission of germane-and-reliable tax-cost information, and for substitution of nongermane-and-untrustworthy data, include intentional deception of state citizens as voters through willful concealment of quintessential facts constituting either the tort of misfeasance in public office at common law, criminal malfeasance in public office, both or other gross wrongdoing, and that the Sound Transit 3 tax ballot and its ballot title in the judicially approved form attached as Exhibit A hereto have been thereby constructed by such wrongful means, and for said bad-faith purposes, by the junior taxing district's present-and-previous officers, directors, senior managers and other legal agents;

Plaintiff hereby prays this Honorable Court to issue and to enter each judicial injunction that is or may be required to halt all such formally declared wrongdoing, and every consequence thereof, including but not necessarily limited to an injunction substantially in form indicated in Prayer G; and

Plaintiff hereby prays this Honorable Court for other and further relief as deemed just and equitable by the court hereafter, in every premise to be proven up, due to any and all fiscal-and-other information obtained through depositions taken on oath and through other formal discovery, including but not necessarily limited to sequencing elements of this litigation to facilitate orderly development of all constitutional, legal and other issues noticed, including within rights reserved.

DATED this 14th day of October, 2016.

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