



Washington State Senate

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Senator Steve O'Ban
28th Legislative District

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September 11, 2019

Robert W. Ferguson
Attorney General of the State of Washington
PO BOX 40100
Olympia, WA 98504-0100

Re: *Black v. Central Puget Sound Transit Authority*
Kunath v. City of Seattle

Dear Attorney General Ferguson:

As you know, I filed an amicus brief in support of plaintiffs and taxpayers in the *Black v. Central Puget Sound Transit Authority* (Sound Transit) case and attended yesterday's oral argument in the state Supreme Court. In that case, your office has taken a firm position in support of the state law authorizing the inflated Sound Transit car tab tax. I find your strong support of the Sound Transit law incongruous with your refusal to make any effort to defend the state and constitutional legal protections against an income tax. The purpose of this letter is to request that you explain your continued refusal to act in the *Kunath v. City of Seattle* appeal, in light of your full-throated support of the Sound Transit tax statute.

On July 17, 2019, I wrote urging you to take action, any action, to defend the interests of the state, following the decision of the Court of Appeals, Div. I, invalidating the 1984 statute prohibiting a local income tax. This request followed a plea made nearly two years earlier at the outset of the case by a group of legislators outlining the importance of the case to the state and seeking your defense of the state law.

You responded on July 25, 2019, that you had no duty to defend the 1984 law, or the constitutional prohibition, against a local government graduated income tax.

I find your refusal to protect the laws against an income tax incompatible with your enthusiastic defense of RCW 81.04.160 (1) enacted in 2015 authorizing Sound Transit to collect the car tab and other taxes. I counted three separate submittals that your office filed in support of the tax and Sound Transit, despite it being one of the most regressive taxes of recent memory.

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In fact, I learned that your office was prepared to argue in support of the car tab tax had the Supreme Court granted Sound Transit's August 23, 2019, motion for additional oral argument time. From the Sound Transit motion arguing for additional time to hear from Attorney General:

Respondent Sound Transit has a particular economic and public interest in preserving the voter-approved tax revenue needed to fund the expansion project. **And Respondent State of Washington has a special interest in the constitutionality of the tax statute at issue.** For these reasons, Sound Transit's motion for additional time should be granted. (Emphasis supplied.)

I can only conclude that when it comes to deciding which constitutional challenges to Washington tax laws you choose to use the power and resources of your office, you defend laws which increase the tax burden on Washington taxpayers, and refuse to defend laws which would protect taxpayers from new taxes, however burdensome and unpopular those taxes may be.

I ask that you explain your policy that governs which constitutional challenges to state law to which your office devotes its resources.

Regards,

A handwritten signature in black ink, appearing to read "Steven O'Ban". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Steven O'Ban
State Senator
28th Legislative District