

Joel B. Ard
Direct: (206) 294-5211
E-mail: joel.ard@immixonlaw.com

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Via email

Paul Lawrence
Pacifica Law Group
1191 2nd Avenue, Suite 2000
Seattle, WA 98101-3404

Re: *Black et al. v. CPSRTA et al. Settlement Proposal*
Subject to ER 408

Dear Paul:

I write to propose a settlement of the *Black v. CPSRTA* litigation. As you know, we have challenged the legislation that authorized the MVET portion of ST3 funding, because it did not contain the language required by the constitution, namely identifying the exact amendments of existing law. We propose a compromise with Sound Transit that will benefit all concerned, instead of zero-sum litigation. Our proposal would afford hundreds of millions of dollars in prompt tax relief to Sound Transit's taxpayers, while preserving the constitutionality of the ST3 MVET levy, resulting in over \$6 billion in revenue to Sound Transit during the next 30 years.

The key points we propose are as follows:

- Sound Transit will continue to levy the ST3 MVET, calculated according to the statutory 2006 MVET valuation schedule;
- Sound Transit will issue credits to all taxpayers for the difference between the amount of ST3 MVET actually paid since March 2017 and the amount that should have been paid under the 2006 MVET valuation schedule; and
- The parties will stipulate to a judicial declaration striking the final two sentences of ESSB 5987 § 319(1), leaving in place unquestionably constitutional authorization for the ST3 levy, valued according to the 2006 MVET valuation schedule.

I believe we understand each other's respective positions on the legal question. In answer to our complaint, Sound Transit asserted that the Supreme Court required it to use the 1996 valuation schedule for MVET levies until outstanding ST1 bonds are paid off, as a result of the decision in *Pierce County II*. Sound Transit therefore argues that § 319(1), by enacting that requirement into

the new authorization through its reference to the repealed schedule and dates of older bonds, was constitutional.

We naturally disagree. *Pierce County II* did not (and could not) allow, much less require, that Sound Transit use the repealed valuation schedule in a new MVET, first instituted over a decade after the *Pierce County II* decision. As a result, the MVET collected pursuant to the authority of § 319(1) – had that enactment not contained its last two sentences – would properly have been governed by the existing valuation schedule contained in RCW 82.44.035. If Sound Transit had wanted the ST3 legislation to include permission for it to use the older, repealed schedule, it should have included in ESSB 5987 § 319(1) a clear statement that it was amending RCW 82.44.035 and replacing it with the earlier, repealed valuation schedule. This would easily have complied with the “full disclosure” rule of Art. II § 37, and the failure to do so renders the entire section void. Consequently, we expect a court will order Sound Transit to refund to taxpayers the entire amount of the ST3 MVET levy collected to date, and to cease collecting the levy. According to Sound Transit’s internal projections, provided to the Senate in April 2017, that required refund amount could already exceed \$400,000,000, and would result in Sound Transit losing well over \$8 billion in projected revenue over the next thirty years. Alternatively, Sound Transit could have accepted that its new MVET would be collected by using the existing valuation schedule contained in RCW 82.44.035, just as the drafters of that section anticipated when it passed in 2006.

Had Sound Transit chosen this constitutional route to gain legislative authority to impose a new MVET, it could have simply omitted the last two sentences of ESSB 5987 § 319(1). This would have resulted in Sound Transit receiving legislative authority to ask its voters for approval of a 0.8% MVET levy in which vehicle valuations were based on the existing statutory schedule of RCW 82.44.035.

We believe your client should accept the compromise we offer to avoid the alternative of a judicial resolution that allows for only the extreme result of voiding the ST3 MVET in its entirety. While the parties may agree to resolve the dispute by a joint stipulation that *only* the last two sentences of ESSB 5987 § 319(1) are unconstitutional, absent a compromise the trial court will be compelled to follow Supreme Court precedent which has held that violations of Art. II § 37 result in voiding the entire relevant enactment. Thus, by adopting this compromise position, Sound Transit retains its ST3 MVET authority, and may continue to collect over \$6 billion in MVET revenue over next 30 years.

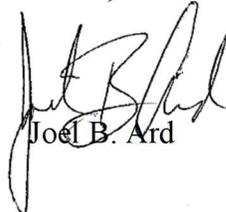
To completely resolve all claims for overcollection from the onset of the ST3 levy, we propose that Sound Transit issue credits against each taxpayer’s next MVET payment to anyone who overpaid since the onset of the ST3 levy. We would measure “overpayment” as the difference between the tax that would have been due pursuant to the 2006 schedule and the tax actually paid, which was calculated pursuant to the 1996 schedule. Here, too, we believe this structure benefits not only the taxpayers but also Sound Transit. Final judicial resolution in favor of the class would require cash refunds. By contrast, the model used to resolve an unconstitutional B&O tax in the

mid-1990s (and approved of in *Digital Equip. Corp. v. Dep't of Revenue*, 129 Wash. 2d 177, 916 P.2d 933 (1996)) permitted a credit applicable against future tax payments as a permissible resolution of past overpayment of taxes paid pursuant to an unconstitutional enactment. I presume that resolving past overpayments by credits against future MVET would also be preferable to Sound Transit, as it would not require a one-time lump sum payment of hundreds of millions dollars, but instead would simply reduce revenue over the course of a year as taxpayers renewed their vehicle registrations.

Sound Transit has statutory authority – and indeed, a statutory mandate in appropriate circumstances – to issue refunds. However, we understand from review of draft legislation proposed to address this issue (such as HB 2001 (2017), for example) that Sound Transit may need legislative authority to issue credits against future taxes. Thus, we believe that full implementation of this settlement proposal may require legislative action. To facilitate your consideration of that potential, I have appended to this letter draft legislation which we believe would implement these settlement terms. I have also copied the House and Senate leaders of the Transportation Committees, who we assume would take lead roles in evaluating and enacting that legislation, if it is required.

We hope that you and Sound Transit agree that this proposal has substantial benefits to both Sound Transit and its taxpayers. We look forward to working with you to implement this agreement.

Yours,



Joel B. Ard

Encl: Draft Act

Cc: David K. DeWolf
Dionne Padilla-Huddleston
Rep. Judy Clibborn
Rep. Mark Harmsworth
Sen. Steve Hobbs
Sen. Curtis King