



Washington State Senate

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Senator Steve O'Ban
28th Legislative District

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November 11, 2019

Robert W. Ferguson
Attorney General
1125 Washington Street SE
Olympia, WA 98504

Dear Attorney General Ferguson:

I think you know that I have been a strong advocate of car tab tax relief following the Senate's 2017 investigation of Sound Transit's deceptive and unconstitutional use of the 1996 valuation schedule, twice rejected by voters. As a result, my constituents (and my county) lacked confidence in the troubled transportation agency and expected it to take steps to try to restore that confidence. Sound Transit did nothing, and continued to collect the tax and reject any attempts to provide accountability or tax relief. I have attempted to take legislative steps to bring accountability and tax relief by requiring direct elections of the Sound Transit board¹, allowing the repeal of Sound Transit taxes by a vote of the people², or reducing the Sound Transit car tab fees.³ Unfortunately, Sound Transit opposed these efforts and risked voter outrage at the ballot box. On November 5, the voters expressed just that and overwhelming (Pierce County 66.5%-33.5) repealed the Sound Transit tax and approved Initiative 976.

Predictably, certain elected officials refuse to accept the will of voters and have publicly threatened to overturn Initiative 976 in court. Interestingly, when ST3 passed over the objection of Pierce County voters (55%-45%), the same officials told them to accept that outcome as the will of all the voters in the RTA.

It falls to your office to defend Initiative 976 against any such legal challenges. I know your office has been reluctant in the past to defend Washington laws that protect taxpayers,⁴ but for

¹ SB 5220, 66th Leg., Reg. Sess. (Wash. 2019).

² SB 5043, 66th Leg., Reg. Sess. (Wash. 2019); SB 5044, 66th Leg., Reg. Sess. (Wash. 2019).

³ SB 5042, 66th Leg., Reg. Sess. (Wash. 2019).

⁴ See my letter of 7/17/2019

purposes of this letter I will assume in this instance that you would reach the unavoidable conclusion that the taxpayers of this state have a direct and significant interest in the defense of I-976.

However, your office must recuse itself from such a defense and hire outside legal counsel to defend the Initiative in any legal proceedings.

You must agree that recusal is your office's only option, based on your office's involvement in two cases related to Initiative 976. Your office is pursuing a campaign finance lawsuit against the Initiative's primary sponsor Tim Eyman.⁵ At a minimum, this raises concerns about your office's ability to approach legal challenges to Initiative 976 free of bias. At the most extreme this puts into question the degree of diligence and effort your office would put into defending the Initiative.

Further, and significantly, your office is in the midst of defending the State in a lawsuit centered on the constitutionality of the same excise tax that Initiative 976 repealed.⁶ In that case, the Attorney General joined with Sound Transit's arguments that the motor vehicle excise tax employed by Sound Transit does not violate Article II, section 37 of the Washington State Constitution. The Attorney General's actions to protect the same tax that Initiative 976 repealed is a clear conflict of interest that goes directly against your office's capacity to defend the Initiative.

Washingtonians deserve to have their laws defended by unbiased legal advocates free of conflicts. The only way to ensure that those interests are protected is for the Attorney General's Office to hire competent outside counsel to handle any lawsuit challenging the Initiative.

We look forward to receiving your response as soon as possible, and certainly prior to the commencement of litigation to attack the Initiative and overturn the will of taxpayers, and the voters of my district and county.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve O'Ban", written in a cursive style.

Senator Steve O'Ban
28th Legislative District

⁵ *State of Washington v. Tim Eyman, et al.*, No. 17-2-01546-34 (Wash. Super. Ct. Mar. 31, 2017).

⁶ *Taylor Black, et al. v. Central Puget Sound Regional Transit Authority, et al.*, No. 97195-1 (Wash. Jan. 18, 2019).