

Brian C. Huber  
**Douglas County Superior Court Judge**



**Tony DiTommaso**  
Court Commissioner

**Phil Safar**  
Court Commissioner

**Steve Clem**  
Court Commissioner

**Jo L. Jackson**  
Court Administrator

September 10, 2021

Cameron G. Comfort, AAG  
Revenue and Finance Division  
PO Box 40123  
Olympia, WA 98504-0123  
[cam.comfort@atg.wa.gov](mailto:cam.comfort@atg.wa.gov)

Robert M. McKenna  
Orrick, Herrington & Sutcliffe, LLP  
701 – 5<sup>th</sup> Avenue, Suite 5600  
Seattle, WA 98104  
[mckenna@orrick.com](mailto:mckenna@orrick.com)

Callie A. Castillo  
Lane Powell, PC  
1420 – 5<sup>th</sup> Avenue, Suite 4200  
Seattle, WA 98101-2375  
[CastilloC@lanepowell.com](mailto:CastilloC@lanepowell.com)

Gregory J. Wong  
Pacifica Law Group, LLP  
1191 – 2<sup>nd</sup> Avenue, Suite 2000  
Seattle, WA 98101-3404  
[greg.wong@pacificalawgroup.com](mailto:greg.wong@pacificalawgroup.com)

Eric R. Stahlfeld  
Freedom Foundation  
c/o The Freedom Foundation  
PO Box 552  
Olympia, WA 98507  
[ESTahlfeld@freedomfoundation.com](mailto:ESTahlfeld@freedomfoundation.com)

**Re: *Quinn/Clayton, et. al. v. State of Washington, et. al.***  
***Douglas County Cause Nos. 21-2-0075-09 & 21-2-00087-09***

Dear Counsel,

This letter ruling sets forth the Court's rulings on the State's CR 12(b)(6) Motion Dismiss, or Alternatively, To Change Venue. These matters were argued at the August 18, 2021 court hearing and in the supplemental briefing later submitted at the Court's invitation.

**JUSTICIABILITY**

The State's first argument is based upon Washington's Uniform Declaratory Judgments Act, RCW 7.24 ("UDJA") and applicable caselaw. The State argues that "[b]ecause Plaintiffs cannot possibly meet their burden of proving justiciability under the UDJA, this Court should dismiss Plaintiffs' complaint." State's Brief, at p. 8 lines 20-21.

Cameron G. Comfort, AAG  
Callie A. Castillo  
Eric R. Stahfeld  
Robert M. McKenna  
Gregory J. Wong  
September 10, 2021  
Page 2

The Washington Supreme Court has adopted a four-factor test that a plaintiff must satisfy in order to establish justiciability under the UDJA:

- (1) An actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing arguments, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

Coopernoll v. Reed, 155 Wn.2d 290 (2005). The State's argument is that the first element of the test cannot be satisfied here because of "the speculative nature of Plaintiffs' claim that they may possibly pay the tax at some time years on the future. . ." State's Motion, at p. 6 lines 6-7. The State also argues that "[l]awsuits are supposed to resolve legal disputes, not political ones" and that the Plaintiffs in this case are merely asking this Court "to issue a purely advisory political opinion." *Id.*, at p. 2 lines 7-9.

The fact that the State's Motion to Dismiss has been brought under CR 12 and not CR 56 or another rule turns out to be important. In ruling on a motion for dismissal under CR 12(b)(6), the Court must presume all facts alleged in the plaintiffs' complaint are true and may consider hypothetical facts supporting the plaintiffs' claims. See Kinney v. Cook, 159 Wn.2d 837 (2007). "A motion to dismiss is granted sparingly and with care." *Id.* Only in the "unusual case" where a claim remains legally insufficient under the proffered facts is dismissal under CR 12(b)(6) appropriate. *Id.*

The Plaintiffs in these consolidated cases, including the Washington Farm Bureau, have asserted that they themselves -- or in the case of the Washington Farm Bureau, at least some of its 46,000 members -- own property that is subject to the new tax statute and will be taxed if and when the property is sold. They have also asserted that the mere existence of the new tax statute has already lowered the market value of their property and forced them to make tax planning decisions that impact their financial interests in a way that is concrete and non-speculative. This Court finds no basis to suggest that these allegations are unreasonable, and in the context of this CR 12 motion the Court must assume the Plaintiffs' allegations are true. The Court therefore declines to find that the Plaintiffs' claims are unduly speculative.

As to the State's argument that "[l]awsuits are supposed to resolve legal disputes, not political ones," State's Motion, at p. 2 lines 6-7, Division I of the Washington State Court of Appeals addressed similar issues in Kunath v. City of Seattle, 10 Wn.App.2d 205

Cameron G. Comfort, AAG  
Callie A. Castillo  
Eric R. Stahfeld  
Robert M. McKenna  
Gregory J. Wong  
September 10, 2021  
Page 3

(2019) which involved a challenge to a city ordinance that imposed a graduated income tax on high-income residents. Division I stated:

Before addressing the tax’s statutory and constitutional validity, we must address [plaintiff] Shock’s threshold contention that these issues are nonjusticiable political questions. Shock contends: “The City’s request that this Court reverse nearly a century of case law holding that income is personal property, and therefore subject to the Constitution’s uniformity requirement, is not appropriate for judicial determination.” But it is well settled that Washington courts have the power to hear constitutional challenges to tax laws, which is why we are guided by “nearly a century of case law” on these issues. The issues raised in this case are justiciable. [Emphasis supplied; internal citations omitted.]

Kunath, at 216. See also Wash. Const. art. IV § 6 and RCW 2.08.010 (both of which provide that superior courts have original jurisdiction over “the legality of any tax”).

This Court has reviewed much of the “nearly a century of case law” as referenced by the Kunath court, see list of appellate decisions recited in Kunath at p. 213-16, and is satisfied that the issues presented in this case are justiciable under the UDJA pursuant to longstanding Washington law. This Court finds and concludes that this case presents “[a]n actual, present and existing dispute, or the mature seeds of one” and all of the elements of the test for justiciability as set forth in Coppernell are met here.

For these reasons, this Court declines the State’s request to dismiss this lawsuit on grounds that it is not justiciable under the UDJA.

### **RCW 82.32**

The State next argues that Plaintiffs’ Complaints must be dismissed because RCW 82.32 sets forth the exclusive means by which tax laws may be challenged, and (the State argues) it is undisputed that none of the Plaintiffs have paid the subject tax as required by RCW 82.32.150.

The Court rejects this argument as well. The State has not presented sufficient legal authority to establish to this Court’s satisfaction that RCW 82.32 sets forth the exclusive means by which a litigant may challenge the facial constitutionality of a tax statute. The

Cameron G. Comfort, AAG  
Callie A. Castillo  
Eric R. Stahfeld  
Robert M. McKenna  
Gregory J. Wong  
September 10, 2021  
Page 4

Court therefore denies the State's motion to dismiss this lawsuit based on lack of compliance with RCW 82.32.

### VENUE

The State's final argument is that if this Court does not dismiss the Plaintiffs' Complaints, it should transfer venue to Thurston County pursuant to RCW 4.12.303(3) and CR 12(b)(3). While it is true that the State has presented ample reasons why this Court may choose to transfer venue to Thurston County, the State has not presented any persuasive legal authority that this Court must or even should do so – particularly over the objection of the Plaintiffs. There has been no showing that the convenience of witnesses or the ends of justice would be forwarded by the change of venue, see RCW 4.12.030(3), or that any other basis for changing venue as set forth in RCW 4.12.030 has been established here.

In short, no valid reason has been presented by the State to overcome the presumption that the Plaintiffs in this case are entitled to choose the forum for deciding the case. This Court therefore denies the State's request to transfer venue.

### CONCLUSION

For the reasons set forth above, this Court has denied the State's motions in their entirety. It is hoped that the parties will seek to agree upon the form of a formal, written order that will memorialize the Court's rulings set forth in this letter. If a presentment hearing is needed for some reason, it may be scheduled by emailing the Court Administrator at [jjackson@co.douglas.wa.us](mailto:jjackson@co.douglas.wa.us).

Sincerely,



Brian C. Huber  
Judge of the Superior Court  
BCH/llj