

1 Hearing date: _____
2 Hearing time: _____
3 Judge/Calendar: _____
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6 **STATE OF WASHINGTON**
7 **THURSTON COUNTY SUPERIOR COURT**

8 WASHINGTON STATE
9 LEGISLATURE,

10 Plaintiff,

11 v.

12 THE HONORABLE JAY INSLEE, in
13 his official capacity as Governor of the
14 State of Washington,

15 Defendant.

NO. 19-2-04397-34

ORDER GRANTING
LEGISLATURE'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING GOVERNOR'S MOTION
FOR SUMMARY JUDGMENT
[PROPOSED]

Clerk's Action Required

16 THIS MATTER came on for hearing in open court (counsel appearing telephonically)
17 on June 19, 2020. Deputy Solicitor General Jeffrey T. Even and Assistant Attorneys General
18 Zachery Pekelis Jones and Lauryn K. Fraas appeared on behalf of Plaintiff Washington State
19 Legislature. Deputy Solicitors General Alicia O. Young and Tera Heintz appeared on behalf of
20 Defendant Governor Jay Inslee. Before the Court were the Legislature's Motion for Summary
21 Judgment and the Governor's Cross Motion for Summary Judgment.

22 The Court has considered each of the motions, the arguments of counsel, and the
23 following:

- 24 1. Complaint for Declaratory Judgment;
- 25 2. Answer to Complaint for Declaratory Judgment;
- 26 3. Legislature's Motion for Summary Judgment;
4. Declaration of Jeffrey T. Even in Support of Legislature's Motion for Summary Judgment;

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- 5. Governor’s Cross Motion for Summary Judgment and Response to Legislature’s Motion for Summary Judgment;
- 6. Legislature’s Reply in Support of Motion for Summary Judgment and Response to Cross Motion for Summary Judgment;
- 7. Governor’s Reply in Support of Motion for Summary Judgment; and
- 8. The papers, records, and files of this Court for the above-captioned matter.

NOW, THEREFORE, having considered the motions, the arguments of counsel, and the papers and records filed in this action, IT IS ORDERED:

- 1. The Legislature’s Motion for Summary Judgment is GRANTED;
- 2. The Governor’s Cross Motion for Summary Judgment is DENIED;
- 3. This Court’s oral ruling issued on June 19, 2020, is attached and incorporated into this Order as if recited in full; and
- 4. Each party shall bear its own costs.

DATED this 25th of June, 2020.

*The Clerk may -
strike all hearings
and close this case.*

Carol Murphy
THE HONORABLE CAROL MURPHY
Judge of the Superior Court

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Presented by:

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Attachment

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

WASHINGTON STATE LEGISLATURE,)	
)	
Plaintiff,)	THURSTON COUNTY
)	NO. 19-2-4397-34
vs.)	
)	
GOVERNOR JAY INSLEE,)	
)	
Defendant.)	
)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on June 19, 2020, the
above-entitled matter came on for hearing before the
HONORABLE CAROL MURPHY, Judge of Thurston County Superior
Court.

Reported by: Aurora Shackell, RMR CRR
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APPEARANCES

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1 June 19, 2020, in Olympia, Washington
2 Before the Honorable CAROL MURPHY, Presiding

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5 THE COURT: Thank you, Counsel.

6 The court is prepared to issue an oral ruling at
7 this time on the competing motions for summary
8 judgment. I want to begin by saying that it is a
9 rare day that this court has the privilege of hearing
10 a case concerning each of the three branches of
11 government, which includes the court's role in
12 resolving this dispute and the separation of those
13 powers. In a time of great uncertainty in our
14 country and in our community during this pandemic,
15 this case assures us that disputes regarding the
16 constitutional roles of our three branches of
17 government and the system of checks and balances are
18 quite relevant today.

19 Counsel have advocated well for their respective
20 clients, which, of course, doesn't surprise me, but I
21 was impressed by the briefing and the materials
22 provided to the court in this case involving very
23 important historical and technical legal issues with
24 very real consequences to Washingtonians. I thank
25 counsel for their briefing and materials and argument

1 today.

2 The question before this court is whether the
3 governor exceeded his constitutional authority in his
4 veto of sentences contained within Section 220 of
5 ESHB 1160. Many other questions that arise when
6 analyzing that seemingly simple question need to be
7 addressed, and the governor has brought up
8 affirmative defenses as well. The court starts with
9 Article 3 Section 12 of our state constitution which
10 limits the governor's veto authority to entire bills,
11 sections of bills, and appropriation items. The
12 governor "may not object to less than an entire
13 section, except that if the section contain one or
14 more appropriation items, the governor may object to
15 any such appropriation item or items."

16 Here, the governor's vetoes at issue are less than
17 an entire section, so the court next must address
18 whether to defer to the legislature's designation of
19 sections under the facts of this case. The
20 legislature's designation of a section is conclusive,
21 unless it is obviously designed to circumvent the
22 governor's veto power and is a "palpable attempt at
23 dissimulation." The legislature is entitled to
24 deference, and only if the legislature circumvents
25 the governor's veto by its structure should this

1 court essentially restructure the sections.

2 Here, the court concludes that the structure of
3 the applicable sections of the 2019-21 transportation
4 budget does not show obvious manipulation to
5 circumvent the governor's veto power based on this
6 record. It is the governor's burden to show such
7 manipulation, and, here, that burden has not been
8 met. The veto of sentences contained within a
9 section, therefore, exceeded the governor's veto
10 authority, unless the exception language of Article 3
11 Section 12 regarding appropriation item or items
12 applies to this circumstance. And similar to the
13 court's prior analysis, the court defers to the
14 legislature unless sufficient manipulation has been
15 shown by the legislature to overcome such deference.
16 Again, that burden has not been met.

17 Here, the court concludes that the governor's veto
18 of a particular sentence within appropriation items
19 does not meet this exception. The court concludes
20 that the sentences that were the subject of the
21 governor's vetoes were not separate appropriation
22 items for the purposes of the exception language in
23 Article 3 Section 12 of the constitution.

24 They are not separate non-dollar provisos. The
25 court's role here is limited to determining whether

1 the governor or the legislature exceeded their
2 authority, not to second-guess the actions of those
3 entities.

4 As I hope that counsel and the parties understand,
5 the court views no ill will on the part of any entity
6 involved in this litigation.

7 The court also concludes that the sentence that is
8 the subject of the governor's vetoes is not
9 substantive legislation or law and does not directly
10 conflict with existing statutes, including those
11 statutes cited by the governor, RCW 47.66.030 and
12 .040 and RCW 43.19.648.

13 The court concludes that the vetoes are,
14 therefore, invalid, and the court declines the
15 invitation to invalidate the fuel type restrictions.
16 The court rejects the governor's contention that the
17 appropriation condition violates Article 2 Section 19
18 or Section 37, because the governor has not met his
19 burden to show invalidity.

20 Based upon that, the court, therefore, grants the
21 legislature's motion for summary judgment and denies
22 the governor's motion for summary judgment.

23 Do counsel require further clarification of the
24 court's ruling today?

25 MS. YOUNG: Not from me, Your Honor.

1 MR. EVEN: No, I don't require that either.
2 And if I can, I'd offer to reduce this to a proposed
3 order. I believe I know how I can find Ms. Young to
4 get her approval as to form and submit that to the
5 court.

6 THE COURT: Very well. I am going to suggest
7 to the parties that any proposed order simply be
8 filed in the court file. I anticipate that the
9 parties will be able to agree to the form of an order
10 within about a week or so.

11 Mr. Even, do you think that that is reasonable?

12 MR. EVEN: Yes, I do.

13 THE COURT: In that case, what I propose is
14 that I ask the clerk set this matter on the Court's
15 civil motion calendar a week from today, so that
16 would be Friday, June 26th at 9:00 o'clock for the
17 court to sign an order. I anticipate that probably
18 sometime prior to that time, the parties may submit
19 an agreed order and propose that by filing it in the
20 court file, in which case, I would simply sign that
21 order and strike the hearing on the 26th.

22 If the parties don't agree, then each party may
23 submit a proposed order, and on the 26th, I would
24 sign one of the proposed orders or make appropriate
25 changes.

1 Do the parties agree to that procedure?

2 MS. YOUNG: Yes, Your Honor.

3 MR. EVEN: Yes, Your Honor, that sounds fine.
4 And since the court has just instructed the clerk to
5 note the matter, I assume the court does not need
6 either a note of issue or an e-mail copy to the
7 court's JA?

8 THE COURT: That is correct. As you probably
9 know, the court has modified its procedures
10 significantly with so many folks working from home,
11 so that essentially the way to notify the court of
12 anything that's occurring is really to file it in the
13 court file. So a proposed order accomplishes that
14 and setting it for hearing as I've done, and the
15 court clerk here in the courtroom is, I think, doing
16 it as we speak, will be enough to cause the court to
17 look at the file and sign and issue an appropriate
18 order.

19 MR. EVEN: Thank you, Your Honor.

20 THE COURT: Counsel, once again, thank you
21 very much for your excellent and thorough briefing
22 and argument. We are concluded.

23 MR. EVEN: Thank you.

24 MS. YOUNG: Thank you.

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, AURORA J. SHACKELL, CCR, Official
Reporter of the Superior Court of the State of Washington
in and for the County of Thurston do hereby certify:

1. I reported the proceedings stenographically;
2. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;
3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
4. I have no financial interest in the litigation.

Dated this 23rd day of June, 2020.

AURORA J. SHACKELL, RMR CRR
Official Court Reporter
CCR No. 2439