

No. 84483-6

ALEXANDER, J. (concurring)—I agree with the majority that the attorney general has statutory authority to challenge the constitutionality of the recently enacted federal health-care statute on behalf of the State of Washington. I also acquiesce in the majority’s decision to “assume, without deciding, that the city of Seattle has standing to pursue the present action.” Majority at 4.

I write separately simply to express my view that if we had addressed the standing issue, I am doubtful that Seattle could have established standing to maintain this action under any of the four doctrines that could have provided it with authority to bring this suit: traditional, representational, liberalized, or taxpayer. Seattle’s assertion that it has taxpayer standing is a particular stretch. I say that because in order to bring a taxpayer suit, “the complaint must allege both a taxpayer’s cause of action and facts supporting taxpayer status.” *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 299, 937 P.2d 1082 (1997) (Sanders, J., dissenting) (quoting *Dick Enters., Inc. v. King County*, 83 Wn. App. 566, 572-73, 922 P.2d 184 (1996)). Seattle has not pleaded taxpayer status here nor can any support for such standing be found in any submitted

documents. Furthermore, it is questionable if a municipal corporation, like Seattle, can claim taxpayer status.¹ Even if it can claim such status, Seattle concedes that it failed to make a demand on Attorney General McKenna to cease participation in the health-care litigation before it brought suit against him. Such a demand is a condition precedent to the maintenance of a taxpayer's suite. *Reiter v. Wallgren*, 28 Wn.2d 872, 184 P.2d 571 (1947). While Seattle asserts that such a demand would have been a useless gesture, I doubt that we would have indulged a presumption that the attorney general would not give appropriate consideration to such a demand if it had been properly made.

¹Seattle contends that we can take judicial notice that the city is a taxpayer under WAC 458-20-189. This regulation "discusses the business and occupation (B&O), retail sales, use, and public utility tax applications to sales made to and by the state of Washington, counties, cities, towns, school districts, and fire districts." WAC 458-20-189(1).

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AUTHOR:

Justice Gerry L. Alexander

WE CONCUR:

Justice James M. Johnson
