

NO. 78844-8

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SUPREME COURT OF THE STATE OF WASHINGTON
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THE STATE OF WASHINGTON, and
WILLIAM RICE, Director of the State Department of Revenue,

Appellants,

v.

WASHINGTON CITIZENS ACTION OF WASHINGTON, a
Washington Non-Profit Corporation; WELFARE RIGHTS
ORGANIZATION COALITION, a Washington Non-Profit Corporation;
1000 FRIENDS OF WASHINGTON, a Washington Non-Profit
Organization; and WHITMAN COUNTY,

Respondents.

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I. STATEMENT OF ISSUES

- A. **Does Initiative Measure 747 (I-747) Violate Article II, Section 37 Of The State Constitution Because It Was Drafted In The Form Of An Amendment To An Earlier Initiative Measure, Initiative 722, And I-722 Was Declared Invalid After I-747 Was Filed And In The Process Of Gathering Signatures To Qualify For The Ballot?**
- B. **Does Initiative Measure 747 Violate Article II, Section 19 Of The State Constitution Because Its Ballot Title Did Not Include An Explanation That The Measure Neither Authorized Nor Limited Statewide Votes On Proposed Increases To The State Property Tax Levy?**

II. STATEMENT OF THE CASE

This case is a challenge to the constitutionality of Initiative Measure 747, a statute enacted by the people at the general election on November 6, 2001. The plaintiffs in the superior court were Washington Citizens Action (WCA), a nonprofit organization, two other nonprofit organizations, and Whitman County. In this brief, the plaintiffs/respondents will be referred to as WCA. The named defendants (appellants here) are the State of Washington and the director of the Department of Revenue.¹ In the superior court, WCA contended that I-747 is unconstitutional because of procedural defects in its enactment, based on article II, sections 19 and 37 of the state Constitution.

¹ William Rice was the director when this case was originally filed. Cindi Holmstrom is now the director of the Department of Revenue.

Initiative 747 sets new limits on property tax levy increases. The measure contains six sections, but only two are substantive amendments to codified law.² Section 2 amends RCW 84.55.005 to reduce the maximum rate of increase in property tax levies to one percent for certain local governments and to the lesser of one percent or the inflation rate for the remainder of local governments and for the state. Section 3 amends RCW 84.55.0101 to permit certain taxing districts to increase property tax levies at a rate larger than set forth in RCW 84.55.005, if approved by the voters at an election as provided in RCW 84.55.050.

WCA filed this action in King County Superior Court on January 10, 2005. CP at 1-11. The parties agreed that there were no issues of fact requiring a trial. The parties filed cross-motions for judgment on the pleadings. CP at 23-34; CP at 35-58; CP at 59-199. Judge Mary Roberts of the King County Superior Court issued an order on June 13, 2006, granting WCA's motion and denying the State's cross-motion.³ CP at 200-08. The State and the director of Revenue appeal this order and

² Initiative 747 appears in the Session Laws as Laws of 2002, ch. 1. The substantive portions of I-747 amend RCW 84.55.005 and RCW 84.55.0101. Section 1 of the measure is a statement of policy and purpose, Section 4 is a "liberal construction" provision, Section 5 is a severability clause, and Section 6 is a statement of legislative intent. The full text of I-747 is Appendix A to this brief.

³ Judge Roberts' order is attached as Appendix B. As noted elsewhere, Judge Roberts ruled solely on the basis of article II, section 37, and did not reach the other claims asserted by WCA.

request this Court to reverse the ruling below and uphold the constitutionality of I-747 on all of the grounds at issue.

III. SUMMARY OF ARGUMENT

Initiative 747 complies fully with article II, section 37 of the state Constitution, because it was drafted to set forth in full the enactments it sought to amend and reflected the state of the existing law as it was known at the time I-747 was drafted and filed. The ballot title for I-747 was sufficient to meet the requirements of article II, section 19 of the state Constitution, because it accurately reflected the essential features of the measure.

IV. ARGUMENT

A. Article II, Section 37: Initiative Measure 747 Set Forth In Full The Laws It Was Amending, Exactly As The State Constitution Prescribes

1. For Purposes Of Compliance With Article II, Section 37, An Initiative Measure Should Be Examined As Of The Date It Is Filed With The Secretary Of State

The superior court concluded that I-747 violated article II, section 37 of the state Constitution because I-747 misled voters by citing the “wrong” statutes in identifying which law it was amending. In fact, I-747 properly set forth the statutory language that existed at the time of its filing, which would be amended. The measure amended RCW 84.55.005 and RCW 84.55.0101, setting them forth in full and showing the changes

the measure proposed to make in those two sections. Consistent with legislative practice, I-747 also showed a reference to the enactment most recently amending those same sections: Laws of 2001, ch. 1 (Initiative Measure 722). The text of I-747 fully satisfies the requirements of the constitution in setting forth the precise language being changed. Furthermore, the adoption of the hypertechnical standard advocated by WCA would unduly frustrate the exercise of the power of initiative granted by the state Constitution and perhaps jeopardize acts of the state legislature.

Article II, section 37 of the state Constitution provides: “No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.” The most obvious purpose of this provision is to require the legislature, when amending existing legislation, to set forth in full the text of the legislation being amended, rather than enacting bills reading, for instance, “substitute the number six hundred for the number four hundred in the first line and insert the word ‘not’ before ‘be unlawful.’ ” Bills in this style (used in territorial days, in other legislatures, and in federal legislation) are incomprehensible to anyone who cannot obtain and read the original legislation alongside the new bill. *Yelle v. Bishop*, 55 Wn.2d 286, 299-

300, 347 P.2d 1081 (1959). *See also State v. Thorne*, 129 Wn.2d 736, 753, 921 P.2d 514 (1996) (citing *Yelle v. Bishop*).⁴

The purpose of setting forth the amended text in full is to “avoid confusion, ambiguity, and uncertainty in the statutory law . . .” *Amalgamated Transit Union Local 587 (ATU) v. State*, 142 Wn.2d 183, 245, 11 P.3d 762 (2000). The first test for compliance with article II, section 37 is whether the new act is complete and “the scope of the rights or duties created or affected by the legislation action can be determined without referring to any other statute or enactment . . .”. *Amalgamated*, 142 Wn.2d at 246. The second test for compliance is whether a “straightforward determination of the scope of rights or duties under the existing statutes be rendered erroneous by the new enactment . . .”. *Id.* Initiative 747, which clearly and unambiguously expressed the statutory language that the voters adopted, satisfies both these tests.

WCA has not identified any other statutes which I-747 amends without setting them forth in full. Indeed, Sections 2 and 3 of I-747

⁴ The courts have seldom invalidated statutes as violating article II, section 37. The rare examples include *Fray v. Spokane Cy.*, 85 Wn. App. 150, 931 P.2d 918 (1997), *aff'd*, 134 Wn.2d 637, 952 P.2d 601 (1998) (statute purported to change substantive rights simply by moving a phrase from one section of the Revised Code to another), or *Flanders v. Morris*, 88 Wn.2d 183, 558 P.2d 769 (1977) (attempt to amend substantive law through uncodified language in an appropriation bill), or *Amalgamated Transit Union Local 587 (ATU) v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000) (initiative sought to impose general requirement of requiring popular vote for tax increases without amending several existing statutes on the same subject).

specifically identify RCW 84.55.005 and RCW 84.55.0101 as the sections being amended and show exactly how I-747 would change them. Section 2 amends RCW 84.55.005 by substituting the word “one” for the word “two” in three different places. Section 3 amends RCW 84.55.0101 by substituting the word “one” for the word “two” and adding the phrase “unless an increase greater than this limit is approved by the voters at an election as provided in RCW 84.55.050” to the first sentence of the section. Anyone reading this language could see exactly how each section would read if the initiative were approved. The meaning is hardly unclear, let alone unintelligible. Application of the first and second tests shows that I-747 complies with article II, section 37 in that the rights or duties created can be determined from I-747 without referring to any other existing statute and without error. To satisfy article II, section 37, the analysis should go no further.

WCA, however, attacks I-747 not by arguing that it failed to show in full the amendments it was making; instead, WCA argues that I-747 failed to accurately identify the *pre-existing* version of the statutes being amended. This argument relies on the fact that the immediate pre-existing version of the statutes amended by I-747 (language enacted by I-722 in 2000) was invalidated by the Supreme Court in September 2001, eight months after I-747 was filed, but one and a half months before the voters

approved I-747. The price for filing an initiative that failed to correctly predict that this Court subsequently would invalidate I-722, WCA contends, is that I-747 must also be invalidated.

The Court should reject WCA's argument, first because the plain language of article II, section 37 contemplates the amendment of an *existing* act, and not pre-existing acts. I-722 was the existing law at the time I-747 was filed. To hedge against intervening judicial decisions that might affect the existing law, WCA's argument would force an initiative sponsor to set forth all previous versions of the statutes being amended to guard against the possibility that the courts might find the current version of the statute unconstitutional. The state Constitution should not be interpreted to require a cure that is worse than the alleged harm. Here, the voters could see in I-747 exactly what law was to be adopted. In contrast, setting forth in the alternative various versions of the same statutes in an initiative would cause greater voter confusion. If WCA is correct, the drafters and voters who signed petitions to support a vote on I-747 had no choice but to abandon their efforts in 2001 and start over with a new

measure another year (with no guarantee that case law developments or legislation would not again frustrate their efforts).⁵

At this point, it would be well to review the chronology of I-722. This measure amended, among other statutes, RCW 84.55.005 and RCW 84.55.0101, the same statutes later amended by I-747. Initiative 722 established a 102% limit on the increase of property taxes, replacing the 106% limit contained in earlier law. The voters approved I-722 at the November 2000 general election and it was printed in the session laws as Laws of 2001, ch. 1. Shortly after the 2000 election, a coalition of local governments and individuals challenged the constitutionality of I-722 in an action filed in Thurston County Superior Court. To preserve the status quo, the superior court issued a preliminary injunction against implementation of I-722 on November 30, 2000.⁶ After hearing cross-motions for summary judgment, the superior court entered an order ruling I-722 unconstitutional on February 23, 2001. The Supreme Court granted review, heard argument on June 12, 2001, and affirmed the superior court

⁵ The difficulty with this result is further complicated by the fact that a superior court ruling that invalidates an existing law might be reversed or modified on appeal. Supporters faced with the WCA interpretation of the constitution might logically start over after a superior court ruled, but risk finding that their new initiative is precluded when an appellate court resurrects the pre-existing laws. The WCA argument thus stalls the constitutionally created initiative process while litigation is pending.

⁶ As is often true of preliminary injunctions, the superior court entered a preliminary order primarily to preserve the status quo while the litigation was pending. As of January 2001, when I-747 was filed, no court had yet ruled on the merits of the constitutionality of I-722.

in an opinion issued on September 20, 2001.⁷ *City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001).

The history of I-722 had, of course, a direct impact on I-747, the act challenged in the present case. Initiative 747 was filed with the Secretary of State on January 11, 2001, more than six weeks *before* the superior court held I-722 unconstitutional. From the date of its filing onward, the text of I-747 was “fixed”; neither the constitution nor any statute provides a way of amending an initiative measure once it has been filed. *See* Const. art. II, § 1; RCW 29A.72.010; RCW 29A.72.030.⁸ As of January 11, 2001, I-722 had been challenged, but the issue of its constitutionality was still pending before the Thurston County Superior Court. Therefore, as of that date, the most recent amendments to RCW 84.55.005 and 84.55.0101 were those made in I-722 and, like any other statute, these amendments were entitled to a presumption of

⁷ The Supreme Court invalidated I-722 solely on “double subject” grounds under article II, section 19 of the state Constitution. The Court declined to reach several other issues. *City of Burien v. Kiga*, 144 Wn.2d 819, 828, 31 P.3d 659 (2001).

⁸ By statute, proposed initiative measures must be filed within ten months prior to the election at which they are to be submitted. RCW 29A.72.030. To qualify for the ballot, the requisite petition signatures must be filed with the secretary of state at least four months before the election. Const. art. II, § 1. Thus, I-747 could be filed no sooner than January 6, 2001, and the signatures had to be submitted by July 6 of the same year. For the entire period during which signatures were gathered on I-747, the I-722 litigation was pending either in the trial court or on appeal. The litigation was resolved only with the Supreme Court decision on September 20, 2001, six weeks before the November 2001 general election and long after the deadline for qualifying a measure for the 2001 election ballot. WCA apparently believes the only option for I-747’s sponsors would have been to start the whole process over in 2002.

constitutionality. Their status remained unclear for eight more months, and was not resolved until the Supreme Court decision on September 20, 2001, approximately six weeks before the election when I-747 appeared on the ballot.

The Court should not interpret the state Constitution to require, as WCA argues, that the drafters of I-747 had a duty to “guess correctly” whether I-722 would or would not be upheld by the courts and that having guessed “wrong,” I-747 must also fail, because it amends I-722, rather than the pre-existing versions of the statutes. That result frustrates the constitutional power of initiative and, indeed, WCA offers no suggestion how an initiative measure could avoid the pitfalls where existing language is affected by case law developments during the time the initiative measure is gathering signatures.⁹ Certainly, it would have made less sense for the drafters of I-747 to assume the invalidity of I-722 and draft the measure with reference to the law immediately preceding the enactment of I-722. Then they would have run the opposite risk: that the appellate courts would eventually uphold I-722, thus rendering the later measure

⁹ A similar dilemma would have been presented, if say, the 2001 legislature had enacted amendments to RCW 84.55.0101 or RCW 84.55.005 after the filing of I-747 but before the election. The action of the legislature would, under WCA’s logic, invalidate the initiative. If this standard were adopted, the legislature could invalidate any pending initiative measure (inadvertently or by design) simply by amending one or more of the sections referenced in the measure, making the measure “outdated.”

invalid before it could be voted on.¹⁰ Finally, as noted above, there is no practical way to show multiple prior versions of legislation without sacrificing clarity and readability, nor would it be reasonable to expect citizens to circulate and sign two different versions of a proposed measure, one drafted in anticipation that I-722 would be upheld and the other drafted in case I-722 was struck down.

WCA would place initiative drafters in an impossible box whenever they seek to amend a law which might be changed (either by legislation or by litigation) after the proposed initiative is drafted and filed but before the election. But the constitution does not create the box. Article II, section 37 does not require that any bill or ballot measure specifically identify the most recent version of the legislation being amended, only that the language must be “set forth at full length.”¹¹ Initiative 747 did precisely that, setting forth at full length the sections of law being amended and showing exactly what language would be changed. That is precisely what the state Constitution requires.

¹⁰ The legislature could be presented with the same dilemma WCA seeks to foist on the initiative drafters here. Suppose, for instance, the 2001 session of the legislature had wished to amend RCW 84.55.005. Should the bill have contained a reference to I-722 (which had just been enacted and was then before the courts) or not? Would a “wrong guess” have invalidated any bill passed by the legislature? The principles are identical.

¹¹ RCW 1.08.050 provides that the legislature, when amending or repealing laws, will “include in such act references to the code numbers of the law affected.” The statute does not expressly require references to the most recent act enacted, nor does it expressly apply to initiative measures.

Penalizing the voters because the drafters failed to predict whether I-722 would be upheld would be unsound public policy and would severely frustrate the exercise of the initiative power.

Article II, section 37 should be reserved for serious cases in which the meaning or intent of new legislation cannot be discerned without referring to other material. In this case, voters knew exactly what language I-747 would adopt and how it would affect them. The drafters set forth the language of the measure exactly as the legislature would have done so, and exactly as any reasonable person would expect: showing how the new language would amend the codified law compared with the most recently enacted version of that language. The state Constitution exists to protect important rights, not to trap citizens on fine technical points. Initiative 747 should be upheld as to any argument that its enactment was inconsistent with article II, section 37.

2. A Judicial Holding That A Statute Is Unconstitutional Is Subject To No Set Principle Of Absolute Retroactive Invalidity

The superior court incorrectly applied the principle “Once a law has been found to be invalid, it becomes as inoperative as if it had never been passed.” *The Boeing Company v. State*, 74 Wn.2d 82, 88, 442 P.2d 970 (1968). When this Court held I-722 unconstitutional, it did not necessarily render that law an absolute nullity, nonexistent for purposes of

all future proceedings. *City of Burien v. Kiga*, 144 Wn.2d 819, 828, 31 P.3d 659 (2001). Although the general rule as expressed in *Boeing* is that an invalid statute is a nullity, which is also known as the “void ab initio” doctrine, this Court has declined to apply the doctrine in other instances, and specifically noted that the doctrine “has been abandoned by the Supreme Court.” *W.R. Grace & Co. v. Dep’t of Rev.*, 137 Wn.2d 580, 594 n.10, 973 P.2d 1011 (1999) (citing *Lemon v. Kurtzman*, 411 U.S. 192, 197-199, 93 S. Ct. 1463, 36 L. Ed. 2d 151 (1973)).

While *W.R. Grace* is dissimilar from this case in that *W.R. Grace* dealt with curative retroactive legislation, this Court should apply the rule in *Lemon* that “courts must recognize that statutes and judge-made rules of law are facts upon which people rely when making decisions.” *W.R. Grace*, 137 Wn.2d at 611 n.21 (citing *Lemon*, 411 U.S. at 198-99). “Therefore a judicial holding that a statute is unconstitutional is subject to no set principle of absolute retroactive invalidity.” *Id.* This is particularly true where, as here, no one is suggesting that I-722 should be regarded as enforceable at any point, but rather that its enactment merely should be recognized for the limited purpose of evaluating the constitutionality of other laws making reference to it.

In this case, the drafters of I-747 and those who signed petitions to qualify I-747 for the ballot plainly relied on the fact that I-722 was in fact

enacted into law and was presumptively the law when the drafters filed and circulated I-747. These reliance interests would justify a ruling that, despite its constitutional infirmities, I-722 was not “void ab initio” in the sense that its very enactment cannot be recognized for the purpose of evaluating the constitutionality of subsequent legislation.

Moreover, the reliance interest at play is twofold. The first reliance interest is that of the sponsor of I-747 based on the constitutional right to initiate laws amending existing laws. Const. art. II, § 1(a) (amend. 72). The second reliance interest is of the citizens who involve themselves in the initiative process by circulating petitions and gathering signatures, or by voting to approve I-747. The superior court’s ruling undermines this important constitutional right. The superior court mechanically applied the “void ab initio” doctrine without any distinction as to when the amended law was declared unconstitutional.¹² Under the superior court’s hypertechnical approach, any future initiative purporting to amend a law and approved by the voters, could be invalidated by a constitutional challenge to the law being amended. The resulting consequence would be harsh for the constitutional rights of initiative sponsors and citizens who

¹² Under the superior court’s misguided logic, even if I-722 had not been declared unconstitutional until several years after I-747 was approved, the invalidity of the earlier law would inevitably also result in the invalidity of any later law cross-referencing it.

rely on existing laws as constitutional and may spend hundreds of thousands of dollars and countless time and labor to pass an initiative.

Voters should be entitled to rely on existing laws being amended by initiative as if they are constitutional, even when those laws are being challenged as unconstitutional during the initiative process. Indeed, there is a great body of jurisprudence that “laws are presumed constitutional.” *See, e.g., Brower v. State*, 137 Wn.2d 44, 52, 969 P.2d 42 (1998) (a statute enacted through the initiative process to be treated to the same presumption of constitutionality as one passed by the legislature).¹³

3. The Voters In 2001 Were Not Misled As To The Expected Impact Of Enacting I-747

The constitutional interest protected by article II, section 37 is to “avoid confusion, ambiguity, and uncertainty in the statutory law . . .” *Amalgamated Transit Union Local 587 (ATU) v. State*, 142 Wn.2d 183, 245, 11 P.3d 762 (2000) (citing *Flanders v. Morris*, 88 Wn.2d 183, 189, 558 P.2d 769 (1977)). Stated more succinctly, “[T]he purpose of article II, section 37 is to disclose the effect of the new legislation.” *State v. Thorne*, 129 Wn.2d 736, 753, 921 P.2d 514 (1996). The superior court concluded that the voters supporting I-747 were “incorrectly led to believe they were voting on a change in the tax increase cap from two percent to one

¹³ The superior court’s order at page 5 cites to *Brower* as such authority.

percent. Instead they were voting on a change from six percent to one percent.” Order at 4. But this legal conclusion is based on a mechanical application of article II, section 37. The order itself cites to no facts in the record, such as affidavits, studies, or exhibits to support the conclusion that voters were misled.

When voters enacted I-747 in 2001, they had ample information available as to its effect on the laws concerning property tax levies. The Voter’s Pamphlet thoroughly explained that I-722 had been enacted and that it was subject to constitutional challenge and made it clear that the practical effect of I-747 would be to reduce the limiting factor from 106% to 101%, since I-722 had never been enforced. Voters reading the Voter’s Pamphlet would not have been confused as to whether the law being purportedly amended (I-722) is in effect.

Exhibit O, CP 163-66, is a copy of the Voter’s Pamphlet for the general election of 2001, including I-747. The Voter’s Pamphlet included a statement prepared by the Attorney General concerning “the law as it presently exists” which stated:

After Initiative 722 was approved, lawsuits were brought challenging its constitutionality on several different grounds. The Superior Court declared Initiative 722 unconstitutional and enjoined its implementation. This decision has been appealed, and is awaiting the decision of the State Supreme Court. Because of the court orders, Initiative measure 722 is not currently in force.

The explanatory statement also explained that the current limit factor was the lower of 6% or inflation:

Second, existing law also limits the amount each taxing district may increase its regular tax levy over the overall amount levied and collected in previous years. Under this “limitation factor,” regular property taxes levied by a taxing district generally may not exceed the lower of 106% or 100% plus inflation, multiplied by the amount collected in the highest of the three most recent years. In other words, a taxing district may increase its levy by no more than the lower of (a) the previous year’s inflation rate or (b) 6%, over the highest levy of the three previous years.

CP at 165.¹⁴ Thus, voters reading the Voter’s Pamphlet would know that the actual limit was up to 6% and that the new limit would be 1%.

Furthermore, the argument in favor of I-747 contained in the Voter’s Pamphlet stated that “1% ought to be enough for *any* taxing district.” CP at 165. This argument for I-747 is made without any reference to the challenged limit of 2%. Voters reading this language were not likely to be confused as to state of the law either before or after the approval of I-747.

Exhibit F, CP at 114-18, is a summary of I-747 prepared by the Washington State Senate Committee Services. On page 3, CP at 116, it

¹⁴ Respondent WCA’s exhibit of the Voter’s Pamphlet is in extremely small print. The 2001 general election Voter’s Pamphlet can also be found online at http://www.secstate.wa.gov/elections/pdf/pamphlets/2001_general_election_voters_pamphlet.pdf.

states that “Initiative 747 reduces the annual property tax growth limit . . . from six percent to one percent.” The summary, issued in September 2001 before the vote on I-747, likewise provides no support for the conclusion that voters were misled.

Exhibit G, CP at 119-22, is a special comment by Moody’s Investor Service dated October 2001, again before the vote on I-747. On page 1, CP at 119, the comment states: “Current tax law limits the growth in the total dollar amount of property taxes levied to an increase of the lesser of 6% or the inflation rate (the “limit factor”) over the highest levy amount of the three preceding years.” The comment does not support the conclusion that voters were misled.

Exhibit N, CP at 160-62, is a printout of a website by the sponsor of I-747. The website printout acknowledged, Lesson #2, CP 160, that I-722 is being defended in the courts and would have put voters on notice of the legal challenges to I-722.

Finally, additional exhibits showed taxing districts’ projections of the impact of I-747, all of which were based on a 6% annual levy increase. CP at 126-59. WCA’s contention that voters were misled as to the nature and content of the law to be amended is unsupported by the estimates, studies, and other exhibits in the record. Any voter who may have read these estimates, studies, and other exhibits would have understood that I-

722 was being challenged in court and that the actual existing levy cap was 6%.

B. Article II, Section 19: The Ballot Title For Initiative Measure 747 Properly Reflected The Single Subject Of The Measure

1. Introductory Note

In the superior court, WCA sought to have I-747 declared unconstitutional on two different grounds: (1) alleged inconsistency with the “set forth in full” language of article II, section 37 of the state Constitution (see discussion above) and (2) alleged inconsistency with the “subject in title” requirements of article II, section 19 of the state Constitution. The superior court ruled only on the first of these two issues. In anticipation that the respondents will assert article II, section 19 as an alternate basis for invalidating I-747, the state offers the following discussion.

2. I-747’s Ballot Title Reflects Its Single Subject

WCA’s primary contention with respect to article II, section 19 is that the ballot title for I-747 was constitutionally inadequate because it failed to notify voters that I-747’s cap on state property taxes could not be overcome by a statewide vote.¹⁵ As discussed more fully below, this

¹⁵ WCA also argued in its superior court briefing that the term “local government” as used in I-747’s ballot title was inaccurate and misleading. If this argument is renewed in the respondents’ brief, the State will address it in the reply brief.

contention is mistaken for three reasons: (1) the availability of a statewide vote on increasing the state property tax was not one of the essential features of I-747 and did not merit mention in the ballot title; (2) the standards for seeking a vote on property taxes do not derive from the language of I-747 but from pre-existing law; and (3) a statewide vote on increasing the state property tax is in fact available at any time, if the legislature chooses to request one.

Article II, section 19 provides: “No bill shall embrace more than one subject, and that shall be expressed in the title.” There are two distinct prohibitions in this language. The first, referred to as the “single subject” rule, is that a bill may not embrace more than one subject, and the second, the “subject in title” rule, is that a bill’s title must reflect that subject. *State ex rel. Citizens v. Murphy*, 151 Wn.2d 226, 249, 88 P.3d 375 (2004). In this case, WCA does not assert that I-747 embraces more than one subject; the only issue is whether the initiative’s title reflects the subject.

This Court has held that article II, section 19 applies to initiative measures and that the ballot title for the measure is the “title” for purposes of constitutional analysis. *Amalgamated Transit Union Local 587 (ATU) v. State*, 142 Wn.2d 183, 206, 217, 27 P.3d 608 (2000). The question here

is whether the ballot title for I-747 meets constitutional standards.¹⁶ This

Court has set forth the standard for the “subject in title” rule as follows:

To be constitutionally adequate, “the title need not be an index to the contents, nor must it provide details of the measure.” *Amalgamated*, 142 Wn.2d at 217, 11 P.3d 762. It satisfies the constitutional requirement “if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law.” *YMCA v. State*, 62 Wn.2d 504, 506, 383 P.2d 497 (1963). As with the single-subject requirement, the subject-in-title requirement of article II, section 19 “is to be liberally construed in favor of the legislation.” *Wash. Fed’n*, 127 Wn.2d at 555, 091 P. 1028.

Pierce Cy. v. State, 150 Wn.2d 422, 436, 78 P.3d 640 (2003).

Initiative 747 notified voters of the measure’s subject matter, and it was sufficiently detailed to lead them into an inquiry into the measure’s text and its scope and purpose. The title informed voters that the initiative measure “concerns limiting property tax increases” and then mentioned the one percent levy increase limitation with its voter approval exception:

Initiative Measure No. 747 concerns limiting property tax increases. This measure would require state and local governments to limit property tax levy increase to 1% per year, unless an increase greater than this limit is approved by the voters at an election.

CP at 113.

¹⁶ The ballot title for I-747 was challenged in two separate ballot title appeals brought in Thurston County Superior Court. These were resolved by an order dismissing the appeals and upholding the ballot title drafted by the Attorney General’s Office. Thurston County No. 01-2-00125-3.

WCA contended in the superior court that this title was defective because it failed to explain to voters that they could not vote for an increase exceeding the one percent limitation with respect to the statewide property tax levy. In other words, WCA contended that it was constitutionally imperative for the ballot title on I-747, which consisted of a statement of subject limited by statute to 10 words and a concise description limited to 30 words (RCW 29A.72.050) to include language explaining the somewhat intricate distinctions between the way the law treats increases in the state property tax levy and the way it treats levy increases by local governments. As this Court has stated on several occasions, a ballot title “need not be an index to the contents, nor must it provide details of the measure.” *Pierce Cy. v. State*, 150 Wn.2d 422, 436, 78 P.3d 640 (2003) (quoting *ATU*, 142 Wn.2d at 217). Initiative 747’s ballot title informed voters of the measure’s scope and purpose and provided notice leading inquiring voters to read the initiative’s text to learn the details of the measure.

Furthermore, I-747 did not change the law with respect to the availability of public votes authorizing increased property tax levies. The text of I-747 is short and to the point. Of its six sections, only two are substantive. Section 2 changes the “limit factor” for increases in property taxes by changing the previous limit to “one” percent each time it occurs

in RCW 84.55.005. Laws of 2002, ch. 1, § 2. Section 3 amends RCW 84.55.0101, which permits taxing districts “other than the state” (pre-existing language) to increase their levy limits under certain circumstances. Laws of 2002, ch. 1, § 3. The state was already excluded from this statute before I-747 was enacted, and I-747 did not affect the state’s ability to seek voter approval for an increase in the state property tax levy greater than the applicable limit factor. Initiative 747 neither expressly authorizes nor precludes a statewide vote.

In any case, there is no doubt that the legislature could submit to the voters a proposition for an increase in the state property tax if it chose to do so. RCW 84.55.050 arguably already authorizes “a taxing district” to submit a tax increase proposal to the voters. The state is expressly included in the definition of “taxing district.” RCW 84.04.120. To the extent there is any doubt about the legislature’s authority, it could be resolved by amending a current statute such as RCW 84.55.050, or by enacting new laws authorizing an increase in the state property tax levy, with or even without a public vote. It would have been inaccurate to suggest, in the ballot title for I-747, that voter-approved tax increases were a possibility only for local government and not for the state. Likewise, any argument by WCA that I-747 permanently capped the statewide levy at 1% would be mistaken.

For all the foregoing reasons, WCA's "subject in title" concerns about I-747 are unfounded. Accordingly, this Court should conclude that I-747 does not violate article II, section 19.¹⁷

V. CONCLUSION

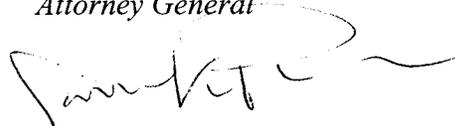
For the reasons stated above, the Appellants State of Washington and Cindi Holmstrom, director of Revenue, request that this Court reverse the superior court and declare Initiative Measure 747 consistent with the

¹⁷ On October 5, 2006, this Court issued a decision in *City of Fircrest v. Jensen*, No. 76738-6, 2006 WL 2852699 (Wash. Oct. 5, 2006) in which article II, section 19 was a basis for attacking the constitutionality of a legislative act. The members of the Court were closely divided as to whether the relevant title to examine was (1) the title of the amendatory act in question or (2) the title of the original act being amended, in light of a line of cases beginning with *St. Paul & Tacoma Lumber Co. v. State*, 40 Wn.2d 347, 243 P.2d 474 (1952). The applicability of the *City of Fircrest* case here is unclear, because this Court has not had occasion to consider whether or how the *St. Paul* doctrine applies to initiative measures. Since the present litigation is based on the assumption that I-747's ballot title is the relevant title for purposes of article II, section 19 (*Washington Fed'n of Employees v. State*, 127 Wn.2d 544, 901 P.2d 1028 (1995)), this discussion is limited to that issue. If the Court were to determine that the relevant title is not I-747's ballot title, but the title to the act it amends, WCA's "subject in title" claim would fail because it would be based on a false premise.

state Constitution as to each of the issues raised in this case.

RESPECTFULLY SUBMITTED this 17th day of October, 2006.

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APPENDIX A

FORMATTING NOTE:

In initiatives, legislative bills and other proposed measures, language that is to be deleted from current statutes is represented by a "strikethrough" character and language that is to be added is underlined. Because these special characters cannot be formatted in all Internet browsers, a different set of symbols is used for presenting these proposals on-line. The symbols are as follows:

- Text that is surrounded by {{{- text here -}}} is text that will be DELETED FROM the existing statute if the proposed measure is approved.
- Text that is surrounded by {+ text here +} is text that will be ADDED TO the existing statute if the proposed measure is approved.
- {+ NEW SECTION+} (found at the beginning of a section or paragraph) indicates that ALL of the text in that section will become law if the proposed measure is approved.

* * *

INITIATIVE 747

AN ACT Relating to limiting property tax increases; amending RCW 84.55.005 and 84.55.0101; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

POLICIES AND PURPOSES

{+ NEW SECTION. +} Sec. 1. This measure would limit property tax increases to 1% per year unless approved by the voters. Politicians have repeatedly failed to limit skyrocketing property taxes either by reducing property taxes or by limiting property tax increases in any meaningful way. Throughout Washington every year, taxing authorities regularly increase property taxes to the maximum limit factor of 106% while also receiving additional property tax revenue from new construction, improvements, increases in the value of state-assessed property, excess levies approved by the voters, and tax revenues generated from real estate excise taxes when property is sold. Property taxes are increasing so rapidly that working class families and senior citizens are being taxed out of their homes and making it nearly impossible for first-time home buyers to afford a home. The Washington state Constitution limits property taxes to 1% per year; this measure matches this principle by limiting property tax increases to 1% per year.

**LIMITING PROPERTY TAX INCREASES TO 1% PER YEAR
UNLESS APPROVED BY THE VOTERS**

Sec. 2. RCW 84.55.005 and 2001 c 2 s 5 (Initiative Measure No. 722) are each amended to read as follows:

As used in this chapter:

(1) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce in September of the year before the taxes are payable;

(2) "Limit factor" means:

(a) For taxing districts with a population of less than ten thousand in the calendar year prior to the assessment year, one hundred

{{{- two -}}) {+ one +} percent;

(b) For taxing districts for which a limit factor is authorized under RCW 84.55.0101, the lesser of the limit factor under that section or one hundred {{{- two -}}} {+ one +} percent;

(c) For all other districts, the lesser of one hundred {{{- two -}}} {+ one +} percent or one hundred percent plus inflation; and

(3) "Regular property taxes" has the meaning given it in RCW 84.04.140.

Sec. 3. RCW 84.55.0101 and 2001 c 2 s 6 (Initiative Measure No. 722) are each amended to read as follows:

Upon a finding of substantial need, the legislative authority of a taxing district other than the state may provide for the use of a limit factor under this chapter of one hundred {{{- two -}}} {+ one +} percent or less (+ unless an increase greater than this limit is approved by the voters at an election as provided in RCW 84.55.050 +). In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution under this section. In districts with more than four members, a majority plus one vote must approve an ordinance or resolution under this section. The new limit factor shall be effective for taxes collected in the following year only.

CONSTRUCTION CLAUSE

{+ NEW SECTION. +} Sec. 4. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act.

SEVERABILITY CLAUSE

{+ NEW SECTION. +} Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

LEGISLATIVE INTENT

{+ NEW SECTION. +} Sec. 6. The people have clearly expressed their desire to limit taxes through the overwhelming passage of numerous initiatives and referendums. However, politicians throughout the state of Washington continue to ignore the mandate of these measures.

Politicians are reminded:

(1) All political power is vested in the people, as stated in Article I, section 1 of the Washington state Constitution.

(2) The first power reserved by the people is the initiative, as stated in Article II, section 1 of the Washington state Constitution.

(3) Politicians are an employee of the people, not their boss.

(4) Any property tax increase which violates the clear intent of this measure undermines the trust of the people in their government and will increase the likelihood of future tax limitation measures.

--- END ---

APPENDIX B

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ATTORNEY GENERAL
OF WASHINGTON

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

WASHINGTON CITIZENS ACTION
OF WASHINGTON, a Washington Non-
Profit Corporation; WELFARE RIGHTS
ORGANIZATION COALITION, a
Washington Non-Profit Corporation;
1000 FRIENDS OF WASHINGTON, a
Washington Non-Profit Organization;
and WHITMAN COUNTY,

Plaintiffs,

v.

THE STATE OF WASHINGTON, and
WILLIAM RICE, Director of the State
Department of Revenue,

Defendants.

NO. 05-2-02052-1 SEA

ORDER ON CROSS-MOTIONS FOR
JUDGMENT ON THE PLEADINGS

In 1912, the citizens of this state amended our constitution to give the people the right to initiate laws. Const. art. 2, § 1(a) (amend. 72). They passed the amendment "because they had become impressed with a profound conviction that the legislature had ceased to be responsive to the popular will." *State ex rel. Mullen*, 107 Wash. 167, 172 (1919).

COPY
ORIGINAL

1 This case involves a challenge to the constitutionality of Initiative Measure 747 (I-
2 747)¹, passed by the voters on November 6, 2001. Initiative 747 purported to impose a one
3 percent cap on property tax increases unless a greater increase is approved by the voters. The
4 plaintiffs, Washington Citizens Action of Washington, Welfare Rights Organization Coalition,
5 Futurewise², and Whitman County, claim the initiative is unconstitutional under article II,
6 section 19, and article II, section 37 of the Washington State Constitution.
7

8 “[I]t is not the prerogative nor the function of the judiciary to substitute what they may
9 deem to be their better judgment for that of the electorate in enacting initiatives ... unless the
10 errors in judgment clearly contravene state or federal constitutional provisions.” *Amalgamated*
11 *Transit Union Local 587 v. State*, 142 Wn. 2d 183, 206 (2000) (quoting *Fritz v. Gorton*, 83
12 Wn.2d 275, 287 (1974)). But nor may this court validate otherwise unconstitutional laws
13 based upon public policy. *Id.*; *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 24-
14 25 (1948). It is this court’s conclusion that I-747 was passed in violation of the constitution.
15

16 In order to understand the unusual circumstances in place when I-747 was passed in
17 November of 2001, we must look back before the 2000 general election, when an earlier
18 initiative was passed.

19 Prior to November of 2000, local property tax increases were generally capped at six
20 percent. On November 7, 2006, the people of Washington State passed Initiative Measure 722
21 (I-722), which purported to grant tax relief by, among other things, imposing a two percent cap
22

23 ¹ Initiative 747 appears in the Sessions Laws as Laws of 2001, Chapter 1. The substantive portions of I-
24 747 amend RCW 84.55.005 and RCW 84.55.010. The full text of I-747 is attached as Appendix A to this Order.
25

1 on property tax increases. I-722 was immediately challenged as unconstitutional and on
2 November 30, 2000, a superior court judge in Thurston County entered an order granting a
3 preliminary injunction against the implementation or enforcement of I-722.

4 On January 11, 2001, after I-722's implementation was halted, I-747 was filed with the
5 secretary of state. By its language, I-747 sought to amend I-722, by decreasing the cap on
6 property taxes from two percent to one percent, unless the voters approved a higher cap.
7

8 Amendatory legislation such as I-747 is subject to article II, section 37 of the state
9 constitution, which requires that,

10 No act shall ever be revised or amended by mere reference to its title, but the act
11 revised or the section amended shall be set forth at full length.

12 Wash. Const. art. 2, § 37. The purpose of article II, section 37 is to disclose the effect of the
13 new legislation and its impact on existing laws. *State v. Thorne*, 129 Wn.2d 736,753 (1996)
14 (citations omitted). Only by setting forth in an initiative the full language of the statute to be
15 amended will voters be made aware of the nature and content of the law that is being amended,
16 and the effect of the amendment upon it. *See, Flanders v. Morris*, 88 Wn.2d 183,189 (1977).
17

18 In compliance with the above constitutional requirement, the drafters of I-747 set forth
19 in full I-722's language placing a two percent limit on property tax increases and showed how
20 I-747 would change the two percent cap to one percent unless approved by the voters. For
21 example, in section 3 of I-747, the change was shown as follows:

22 Upon a finding of substantial need, the legislative authority of a taxing district
23 other than the state may provide for the use of a limit factor under this chapter of

24 ² 1000 Friends of Washington has changed its name to Futurewise since the commencement of this
25 lawsuit.

1 one hundred ({{- two -}}) {+ one +} percent or less {+ unless an increase greater
2 than this limit is approved by the voters....+}.

3 However, on February 23, 2001, nearly nine months before I-747 would be presented to
4 the voters, the Pierce County Superior Court struck down I-722 as unconstitutional. On
5 September 20, 2001, our State Supreme Court affirmed that ruling. *City of Burien v. Kiga*, 144
6 Wn.2d 819 (2001)³.

7 Once a law has been found to be invalid, it becomes as inoperative as if it had never
8 been passed. *The Boeing Company v. State*, 74 Wn.2d 82, 88 (1968) (citations omitted). Upon
9 the invalidation of I-722, the cap on property tax increases was once again six percent, not two
10 percent.
11

12 When I-747 went to the voters on November 6, 2001, the voters were incorrectly led to
13 believe they were voting to amend I-722. They were incorrectly led to believe they were
14 voting on a change in the tax increase cap from two percent to one percent. Instead, they were
15 voting on a change from six percent to one percent. The voters were misled as to the nature
16 and content of the law to be amended, and the effect of the amendment upon it. The
17 constitution forbids this.
18

19 When the voters approve an initiative measure, they exercise their power just as the
20 Legislature does when enacting a statute. *Amalgamated Transit Union*, 142 Wn.2d at 204
21 (citations omitted). Both the legislature and the people acting in their legislative capacity must
22 act consistent with the constitution. *Id.* Any law is presumed constitutional unless its
23

24 ³ The Supreme Court invalidated I-722 solely on "double subject" grounds under article II, section 19 of
25 the state constitution, an issue not present here.

1 unconstitutionality appears "beyond a reasonable doubt." *Tunstall v. Bergeson*, 141 Wn.2d
2 201, 220 (2000); *City of Bellevue v. Miller*, 85 Wn.2d 539, 543-44 (1975); *Brower v. State*, 137
3 Wn.2d 44 (1998) (a statute enacted through the initiative process to be treated to the same
4 presumption of constitutionality as one passed by the legislature). There can be no doubt that
5 in this case, I-747 violates the constitution.
6

7 The plaintiffs also challenge I-747 on the ground that its title is constitutionally
8 insufficient to meet the "subject in title," requirements of article II, section 19 of the state
9 constitution. Given I-747's clear constitutional infirmity under article II, section 37, the court
10 need not address this issue.

11 This matter came before the court upon the parties' cross motions for judgment on the
12 pleadings. The court considered the arguments of counsel and the following:

- 13 • Complaint for Injunctive and Declaratory Relief for Violations of the Washington State
14 Constitution;
- 15 • Answer of Defendants State of Washington and William N. Rice;
- 16 • Plaintiffs' Motion for Judgment on the Pleadings;
- 17 • Motion of Defendants for Judgment on the Pleadings and Memorandum in Support of
18 Defendants' Motion and in Opposition to Plaintiffs' Motion for Judgment on the
19 Pleadings;
- 20 • Plaintiffs' Combined Reply in Support of Plaintiffs' Motion for Judgment on the
21 Pleadings and Response to Defendants' Motion for Judgment on the Pleadings; and
- 22 • Declaration of Knoll Lowney in Support of Plaintiffs' Motion for Judgment on the
23 Pleadings and Response to Defendants' Motion for Judgment on the Pleadings.

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* * *

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{{(- two -)}} {+ one +} percent;

(b) For taxing districts for which a limit factor is authorized under RCW 84.55.0101, the lesser of the limit factor under that section or one hundred {{(- two -)}} {+ one +} percent;

(c) For all other districts, the lesser of one hundred {{(- two -)}} {+ one +} percent or one hundred percent plus inflation; and

(3) "Regular property taxes" has the meaning given it in RCW 84.04.140.

Sec. 3. RCW 84.55.0101 and 2001 c 2 s 6 (Initiative Measure No. 722) are each amended to read as follows:

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{+ NEW SECTION. +} Sec. 4. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act.

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(3) Politicians are an employee of the people, not their boss.

(4) Any property tax increase which violates the clear intent of this measure undermines the trust of the people in their government and will increase the likelihood of future tax limitation measures.

--- END ---

NO. 78844-8

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SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

THE STATE OF WASHINGTON, and
WILLIAM RICE, Director of the State Department of Revenue,

Appellants,

v.

WASHINGTON CITIZENS ACTION OF WASHINGTON, a
Washington Non-Profit Corporation; WELFARE RIGHTS
ORGANIZATION COALITION, a Washington Non-Profit Corporation;
1000 FRIENDS OF WASHINGTON, a Washington Non-Profit
Organization; and WHITMAN COUNTY,

Respondents.

ERRATA TO BRIEF OF APPELLANTS

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Appellants, the State of Washington, and William Rice, Director of the State Department of Revenue, respectfully request to make the following corrections in the Brief of Appellants. In one instance the brief incorrectly references I-747 when it should have referenced I-722. Accompanying this errata is a Corrected Brief of Appellants, which incorporates the correction.

1. Page 13, line 21: "I-747" should be "I-722"

RESPECTFULLY SUBMITTED this 16th day of October, 2006.

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