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SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON RULE OF LAW PROJECT, a voluntary associational
endeavor of Stephen K. Eugster,

Appellant,

v.

ROB MCKENNA, Attorney General of the State of Washington;
SAM REED, Secretary of State of the State of Washington; CENTRAL
PUGET SOUND REGIONAL TRANSIT AUTHORITY, a Washington
regional transit authority; and REGIONAL TRANSPORTATION
INVESTMENT DISTRICT PLANNING COMMITTEE, a Washington
regional transportation investment district planning committee,

Respondents.

BRIEF OF RESPONDENTS ROB MCKENNA AND SAM REED

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I. INTRODUCTION

This is a challenge to the constitutionality of Laws of 2007, ch. 509 (SHB 1396), a bill enacted by the 2007 Session of the Legislature. SHB 1396 seeks to coordinate the activities of regional transportation agencies in the central Puget Sound area by requiring them to submit a single ballot proposition to their voters in November 2007. The full text of SHB 1396 is in Appendix A to this brief. SHB 1396 was signed by the governor May 15, 2007, and went into effect immediately, because it contained an emergency clause. SHB 1396, § 7.

In this action, the Washington Rule Of Law Project¹ seeks to have SHB 1396 declared unconstitutional, on several grounds, and also challenges the constitutionality of certain closely related pre-2007 legislation.

II. STATEMENT CONCERNING ACCELERATED REVIEW

SHB 1396, Section 5 contains provisions directing the courts to accelerate review on any case challenging the constitutionality of the bill, which obviously includes this case. The effect of these provisions is one of the issues in the case and is discussed below in the argument section of

¹ The Washington Rule Of Law Project was described in the complaint as a “voluntary associational endeavor” of Stephen K. Eugster, the attorney who filed the pleadings. CP at 4–5. Mr. Eugster has not identified any principals of the Rule Of Law Project other than himself. In effect, Mr. Eugster brings this action pro se.

the brief. Quite aside from questions about the effect of Section 5 on these proceedings, the following information is provided to inform the Court as to the statutory and practical deadlines faced by election officials, if there are to be any changes to the November 2007 ballot.

The Secretary of State anticipates that county auditors will begin printing general election ballots as early as September 11, 2007. By statute, the results of the August 21, 2007, primary will be certified no later than September 11, 2007. RCW 29A.60.240. County auditors are required to mail ballots to all overseas and military service voters at least thirty days before any primary or election. RCW 29A.40.070(2). In 2007, this translates to an October 7, 2007, mailing deadline. Before ballots can be mailed, time is required for design, printing, checking for accuracy, and preparation for mailing, all of which begins promptly after certification of the primary results.

III. ISSUES PRESENTED

1. Does Stephen K. Eugster have standing to challenge SHB 1396 and the other statutes at issue in this case?
2. Was SHB 1396 enacted in violation of article II, section 19 of the Washington Constitution?
3. Were RCW 36.120.070 and RCW 81.112.030 enacted in violation of article II, section 19 of the Washington Constitution?
4. Do the provisions of SHB 1396 unconstitutionally deny citizens equal protection of the laws?

5. Is there a justiciable question about the validity of Section 5 of SHB 1396, which requires constitutional challenges to the bill to be brought within 20 days of its enactment and directs the courts to expedite consideration of such challenges?

IV. STATEMENT OF PROCEEDINGS

This case was filed May 18, 2007, in Thurston County Superior Court, by Mr. Eugster on behalf of the Washington Rule Of Law Project (Mr. Eugster or WRLP). CP at 4-25. The named defendants include the Attorney General, the Secretary of State, the Central Puget Sound Regional Transit Authority (Sound Transit), and the Regional Transportation Investment District Planning Committee (RTID). Sound Transit is a regional transit authority organized under the provisions of RCW 81.112. The RTID is a regional transportation investment district organized under the provisions of RCW 36.120. Both Sound Transit and the RTID include territory within King, Pierce, and Snohomish Counties, but the RTID includes some territory that is outside the boundaries of Sound Transit's jurisdiction.²

² The state respondents have only indirect knowledge about the organizational details of Sound Transit and the RTID. Those parties are also respondents and may provide the Court with additional relevant information.

In the superior court, WRLP challenged the constitutionality of SHB 1396 and also of certain related pre-existing legislation. CP at 4–25. Ruling on cross-motions for summary judgment, the superior court (the Honorable Richard Hicks) granted summary judgment in favor of the defendants/respondents in a written order issued July 6, 2007. CP at 64–86. WRLP appealed the superior court ruling to this Court July 11, 2007. CP at 87–111.

V. SUMMARY OF ARGUMENT

Because he has no substantial legal or economic stake in the constitutionality of the challenged statutes, Mr. Eugster lacks standing to prosecute this litigation. If the Court reaches the merits of the case, the superior court should be affirmed. Both SHB 1396 and the pre-existing legislation were enacted in full compliance with article II, section 19 of the Washington Constitution because, in each case, the bill embraced a single subject (coordinating regional transportation planning) and that subject was properly reflected in the bill’s title. SHB 1396 does not deny equal protection of the laws to any citizen by requiring a “dual majority” in a ballot proposition jointly submitted to the voters by Sound Transit and the RTID. On the contrary, SHB 1396 is designed to protect the Sound Transit and RTID voters from the adverse consequences of uncertain or potentially contradictory election results.

Because this case was filed, and subsequently appealed, within the time limitations set forth in SHB 1396, Section 5, there is no justiciable controversy as to the constitutionality of those limits. There is also no justiciable controversy as to the time limits within, which SHB 1396 directs the courts to act, as no party contends that failure to meet the statutory deadlines would deprive the courts of jurisdiction, or affect the validity of the decisions issued by the superior court or by this Court.

VI. ARGUMENT

A. **The Appellant Lacks Standing To Litigate The Constitutionality Of The Legislation Challenged Here**

The nominal plaintiff/appellant in this case is the Washington Rule Of Law Project. As the appellant observes, WRLP is an alter ego for Stephen K. Eugster, the attorney who filed the action in superior court. Appeal Br. at 13–15. Mr. Eugster does not allege to be representing any person or organization other than himself. Thus, the initial issue is whether Mr. Eugster has standing to challenge the constitutionality of SHB 1396 or the other legislation at issue here. *Save a Valuable Env't v. City of Bothell*, 89 Wn.2d 862, 866, 576 P.2d 401 (1978) (standing of an unincorporated association to sue depends, in part, upon whether its members are specifically and perceptibly harmed by the action at issue).

The facts appear to be undisputed. Mr. Eugster is a resident of Spokane, Washington, and he maintains a law practice in that city. Spokane is well outside the boundaries of Sound Transit or the RTID referenced in SHB 1396. Mr. Eugster does not assert that he pays property tax on property located within the boundaries of Sound Transit or the RTID. More importantly, given that the legislation at issue addresses the manner in which particular questions will be presented to the voters of Sound Transit and the RTID, Mr. Eugster is not one of those voters and is not eligible to participate in the election which is the subject of the challenged bill. Mr. Eugster does assert that he travels through the area from time to time and has paid gasoline tax and sales tax on various items purchased in the central Puget Sound region. Finally, Mr. Eugster correctly asserts that he made a written demand that the attorney general bring an action challenging the validity of SHB 1396, and that the attorney general declined to do so. Mr. Eugster has identified no additional personal stake in the outcome of the case.

The issue is whether Mr. Eugster's occasional payment of gasoline tax and sales tax, together with his receipt of a letter from the attorney general declining to bring this case, confers standing on him to challenge state statutes whose validity will not affect him personally in any conceivable way. Mr. Eugster's argument is essentially that any person

may gain standing to challenge any law by the simple expedient of showing that the attorney general was asked to bring the challenge and declined to do so. In effect, he argues that a letter from the attorney general is a magic wand opening the courthouse doors to anyone who wishes to question any law or official act.

The case law suggests otherwise. The origin of the “demand on the general” doctrine is the case of *Reiter v. Wallgren*, 28 Wn.2d 872, 184 P.2d 571 (1947), in which a taxpayer sought to restrain the state capitol committee from selling certain timber, on the theory that such a sale would be unlawful and irregular for several possible reasons. The taxpayer alleged no direct, special, or pecuniary interest in the sale other than as shared with all other taxpayers. *Reiter*, 28 Wn.2d at 873–74. The taxpayer had not made demand on the attorney general to challenge the sale, and the Court held that such a demand was a necessary prerequisite to bringing a taxpayer suit. *Id.* at 881–82. The Court did not have occasion to consider, of course, whether the taxpayer in *Reiter* would have had standing if he had made the proper demand on the attorney general; that question was left for later cases.

Although the appellate courts have found taxpayer standing to be sufficient in a variety of cases since *Reiter*, they have not explicitly concluded that the mere allegation of taxpayer status is sufficient to confer

standing to challenge the constitutionality of a state statute, where there is no showing that the plaintiff has any substantial stake in the outcome of the case. This Court's most recent discussion of the principles involved was in *Walker v. Munro*, 124 Wn.2d 402, 879 P.2d 920 (1994), in which a group of legislators and other citizens challenged the constitutionality of portions of Initiative Measure 601 and sought both declaratory and injunctive relief.

In *Walker*, this Court denied relief for several interrelated reasons. As the Court noted, "[t]he standing doctrine prohibits a litigant from raising another's legal rights. The kernel of the standing doctrine is that one who is not adversely affected by a statute may not question its validity." *Walker*, 124 Wn.2d at 419. The Court went on to note that the petitioners in *Walker* had not shown any interest in the litigation beyond taxpayer status. *Id.* At that point, without clearly deciding whether the *Walker* petitioners had taxpayer standing, the Court questioned "whether taxpayer standing is appropriate to protest legislation which, by the Petitioners' own claims, will decrease state expenditures and make the raising of taxes more difficult." *Id.* at 420. The Court was able to resolve the case on the basis of justiciability and, thus, did not directly decide whether taxpayer status is sufficient to permit any citizen to challenge any law.

The justiciability analysis in *Walker* is also relevant here, because WRLP (Mr. Eugster) is, like the petitioners in the earlier case, seeking to challenge the constitutionality of a statute without showing that the legislation in question would have any significant effect on the plaintiff.

The *Walker* Court noted that a justiciable controversy is:

- (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 interests,
- (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.

Walker, 124 Wn.2d at 411. In *Walker*, the petitioners failed to meet the four-part test for justiciability. *Id.* at 412.

This case presents many of the same issues as to standing and justiciability. Although Mr. Eugster appears to have a passionate belief that the laws he is challenging are unconstitutional, he has shown no stake in the outcome of the litigation that is not essentially theoretical or academic. If Sound Transit and the RTID submit a revenue measure for approval in November along the lines established by SHB 1396, Mr. Eugster will not be entitled to vote, because he is not an elector of either of those jurisdictions. RCW 29A.04.061 (defining elector). If the voters reject the ballot proposition, the constitutionality of SHB 1396 will

be moot. If the voters approve the ballot proposition, Mr. Eugster has not shown that he will be called upon to pay any increased taxes as a result, or that his legal rights will be affected in any way. Essentially, he seeks to litigate the rights of taxpayers or voters who have not stepped forward themselves to assert any claim. As a result, the present appeal does not present a case or controversy between parties with actual adverse interests justifying the exercise of judicial powers.³

B. SHB 1396 Embraces A Single Subject, Which Is Reflected In The Bill's Title

Article II, section 19 of the Washington Constitution provides: “No bill shall embrace more than one subject, and that shall be expressed in the title.” This Court has found two distinct prohibitions in this section: (1) that no bill shall embrace more than one subject (the “single-subject” rule) and (2) that no bill shall have a subject which is not expressed in its title (the “subject in title” rule). *State ex rel. Citizens Against Tolls v. Murphy (CAT)*, 151 Wn.2d 226, 249, 88 P.3d 375 (2004) (citing *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762, 27 P.3d 608 (2000); *Fed’n of State Employees v. State*, 127 Wn.2d 544, 901 P.2d 1028 (1995)).

³ The Memorandum Opinion of the superior court includes a thoughtful discussion of taxpayer standing as related to this case. CP at 68–71.

“Single Subject” Issue

A determination of whether a bill contains a single subject under article II, section 19 does not depend on the complexity of the measure or the number of components discernable within the act. The single subject rule does not “contemplate a metaphysical singleness of idea or thing, but rather that there must be some rational unity between the matters embraced in the act, the unity being found in the general purpose of the act and the practical problems of efficient administration.” *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 209, 11 P.3d 762, 27 P.3d 608 (2000) (quoting *State ex rel. Washington Toll Bridge Auth. v. Yelle*, 61 Wn.2d 28, 33, 377 P.2d 466 (1962)). The Court has “consistently held that a bill may properly contain one broad subject embracing many sub-subjects or subdivisions.” *State v. Waggoner*, 80 Wn.2d 7, 9, 490 P.2d 1308 (1971).

SHB 1396 is a measure with a single subject and a relatively narrow scope. It seeks to coordinate and rationalize the planning and funding for two separate local transportation agencies operating within the central Puget Sound region of the state, by providing for a single ballot proposition for both entities at the 2007 general election. The bill contains seven sections, all directly pertinent to the subject of a “single ballot proposition”:

- Section 1 is a series of legislative findings concerning the detrimental effects of traffic congestion, the need for an effective transportation solution in the central Puget Sound area, and the relationship between the transportation improvements proposed by Sound Transit and the RTID and a single regional transportation system. Therefore, the Legislature requires that a single ballot proposition be submitted to the voters of both jurisdictions to promote “a comprehensive, systemic, and interrelated approach to regional transportation”.
- Section 2 amends the RTID statute, RCW 36.120.070, to direct that a single ballot proposition be drafted for the 2007 election in conjunction with Sound Transit’s parallel proposition.
- Section 3 amends the Sound Transit statute, RCW 81.112.030, to provide, again, for a single ballot proposition to be submitted together with the RTID proposition.
- Section 4 sets procedures for the single ballot proposition required by Sections 2 and 3, and includes the language of the proposed joint ballot proposition.
- Section 5 sets special time limits on any legal challenges to the constitutionality of the bill and on any resulting appeals.

- Section 6 is a standard severability clause.
- Section 7 declares an emergency and provides that the act will take effect immediately.

The single subject addressed in a bill may be the need to coordinate the activities of two or more state or local government bodies. That does not mean the legislation has two or more subjects. It simply means that the need to coordinate regional transportation planning and funding requires joint action by the voters of two separate local jurisdictions, rather than the risk of separate and possibly inconsistent decisions by the two agencies. The evident purpose of SHB 1396 is to require a single vote on a single investment plan developed jointly by Sound Transit and the RTID. SHB 1396, § 3(10). “The authority’s plan shall not be considered approved unless both a majority of the persons voting on the proposition residing within the authority vote in favor of the proposition and a majority of the persons voting on the proposition residing within the proposed regional transportation investment district vote in favor of the proposition.” SHB 1396, § 3(10).

There is a remarkable rational unity among the provisions of SHB 1396, in which the Legislature instructs the officers and the voters of the central Puget Sound region to work together to develop a single regional transportation plan. Every part of SHB 1396 concerns that

subject, and no other topics are introduced anywhere in the bill. This is in contrast to the legislation struck down by the courts in such cases as *Amalgamated Transit* (combining immediate reductions in certain taxes and fees with a requirement for a popular vote on all future increases in state or local taxes and fees) and *Washington Toll Bridge Authority v. State*, 49 Wn.2d 520, 304 P.2d 676 (1956) (setting up a new agency to operate toll roads and bridges and also directing the construction of a specific new toll road).

Indeed, SHB 1396 seems to present an easier case than some of the legislation upheld in recent cases, such as *CAT* (combining provisions relating to public financing for specific projects with an exemption for all state-issued project contracts from bidding laws) (*CAT*, 151 Wn.2d at 249–50) or *Citizens for Responsible Wildlife Management v. State*, 149 Wn.2d 622, 71 P.3d 644 (2003) (combining provisions banning the use of certain body-gripping traps with provisions banning the use of certain poisons). In the *Citizens for Responsible Wildlife Management* case, the court found a clear rational unity between the anti-trapping and the anti-poison provisions: regulating methods for trapping and killing animals. The fact that trapping and poisoning animals are two separate activities did not destroy the rational unity in the legislation under examination, nor did the fact that many animal species were covered by the legislation.

WRLP in this case argues that SHB 1396 has not two, but several subjects: RTID planning, regional transit authority (Sound Transit) planning, the idea of setting special procedural requirements on litigation challenging the validity of the bill, and requiring a “dual” approval by the voters of both jurisdictions. Appeal Br. at 18–30. The unstated assumption behind this argument appears to be that the Regional Transit Authority’s and the RTID’s are in some absolute platonic sense “separate subjects” and, therefore, the Legislature could never enact a bill dealing with the affairs of both of these local governments. This argument is inconsistent with the case law and would severely restrict the Legislature’s ability to enact creative and comprehensive legislation on subjects such as regional transportation planning.

The WRLP’s circular arguments disprove themselves. For instance, the appellant finds fault with the fact that Sections 2 and 3 of SHB 1396 add the same language to the RTID statute (RCW 36.120.070(2)) and to the Sound Transit statute (RCW 81.112.030(10))— “mirror image” language to assure that both local bodies will be subject to the same rules. Appeal Br. at 23–24. Yet, the fact that the language is identical proves that there is a rational unity between Sections 2 and 3—coordinating the regional transportation funding of two local government entities. Enacting identical provisions to govern the

activities of Sound Transit and the RTID demonstrates the Legislature's strong interest in a unified, coordinated approach to regional transportation planning. It proves that the bill contains one subject, not the contrary.

It is immaterial that Sound Transit and the RTID have different boundaries and include overlapping but distinct groups of voters. In coordinating the affairs of public agencies, the Legislature may perceive the need to require joint action by any combination of local governments. Some may have identical jurisdictional boundaries, some may have different but overlapping boundaries, and others may be entirely separate. Appellant offers no reasons why legislation covering multiple jurisdictions is somehow improper, let alone unconstitutional.

WRLP also argues (Appeal Br. at 25–27) that the idea of coordinating the activities of two local jurisdictions by requiring a single ballot proposition is somehow yet another new subject in SHB 1396. The appellant complains because the Legislature, reflecting obvious concern that no set of voters should be taxed without its own consent, requires that the single proposition be approved by the voters within both the jurisdictional boundaries of Sound Transit and those within the boundaries of the RTID. SHB 1396, § 3(10). But this is the heart of what the Legislature hopes to achieve with SHB 1396—coordinating the regional transportation plan by

requiring that funding be approved by both sets of voters before it can be implemented. WRLP suggests that this very coordination is an evil of constitutional proportions, apparently believing that each set of voters has a constitutional right to make a separate (and possibly inconsistent) decision about transportation funding.⁴

The implication of appellant's arguments is not merely that SHB 1396 violates the single subject rule because it attempts to coordinate the activities of two local jurisdictions, but that the Legislature could not ever do so, because each local government body is (in some absolute, eternal sense) a separate subject for purposes of article II, section 19. This principle is simply incorrect, and neither the language of the Washington Constitution nor the case law supports such an extremely narrow interpretation of the legislative power.

⁴ As noted earlier, the RTID includes some territory which is not included in Sound Transit's jurisdiction. SHB 1396 requires submission of a single, coordinated proposition to the voters of both jurisdictions. Suppose the proposition gained a majority of the votes within the Sound Transit area but less than a majority of the votes in the RTID area. In such a case, SHB 1396, Section 3(10) would prevent the financing plan from taking effect at all, carefully preserving the separate majority rights of the voters in each jurisdiction. WRLP suggests this would be unconstitutional, and would apparently insist that in the example given, the proposition should be valid for Sound Transit but not for the RTID. But in that case, the Sound Transit voters would shoulder the tax burden for a financing package that would be missing some of its coordinated elements, a result for which none of them voted, and an anomalous and possibly unfair result that the Legislature chose to foreclose.

WRLP also finds another subject in SHB 1396: The provision in Section 5 of the bill directing expedited review. Appeal Br. at 18–19. Although WRLP states, without analysis, that this provision has no rational unity with the remainder of SHB 1396, it clearly does. In connection with provisions governing a single ballot proposition anticipated to be placed on the November 2007 election ballot, the Legislature sought an orderly resolution of any legal doubts about the measure by providing for expedited handling of any litigation challenging the measure’s constitutionality. Section 5 would have no meaning outside its context in SHB 1396; it directly arises out of the single purpose for which the bill was enacted.

“Subject In Title” Issue

As noted above, the second prong of article II, section 19 requires that the subject of a bill be expressed in its title. The purpose of this prohibition is to notify members of the Legislature and the public of the subject matter of the measure. *CAT*, 151 Wn.2d at 249. WRLP offers a cursory argument (Appeal Br. at 25) that SHB 1396 violates this requirement. It does not.

The bill title for SHB 1396 is: “AN ACT Relating to a single ballot proposition for regional transportation investment districts and regional transit authorities at the 2007 general election” The single subject of SHB 1396 is crisply and precisely reflected in this title. The subject is

“single ballot proposition” and the remainder of the title explains the context. The entire and only subject of SHB 1396 is the “single ballot proposition” in question, and the bill contains no subjects not reflected in that title. Furthermore, members of the Legislature and the general public were informed precisely what SHB 1396 was about, easily satisfying the “subject in title” requirements of the Washington Constitution.

C. The 2006 Statutes Challenged By WRLP Also Satisfy “Single Subject” And “Subject In Title” Requirements

WRLP attacks the constitutionality not only of SHB 1396 but also of two statutes previously enacted by the Legislature. Appeal Br. at 28–30. In effect, WRLP seeks to invalidate not only the single ballot proposition set forth in SHB 1396 but the coordinated separate ballots contemplated by previous law as well. RCW 36.120.070(2) and RCW 81.112.030(10) were both enacted by the 2006 Session of the Legislature as portions of a bill whose title was: “AN ACT Relating to regional transportation governance” Laws of 2006, ch. 311, §§ 8 (RCW 36.120.070), 12 (RCW 81.112.030). The 2006 law, like SHB 1396 itself, enacted mirror image or coordinating amendments to the Sound Transit law and the RTID law. In their 2006 versions, this language would have required the Sound Transit and RTID plans to appear on the same

ballot but as separate propositions, and would have made approval of either proposition dependent upon approval of the other.

WRLP suggests that this very interdependence is an unconstitutional defect. The appellant's brief argues, with little explanation, that the 2006 legislation "calls for the presentation of more than one subject to the voters for their approval" (Appeal Br. at 29) and that "[b]ecause it makes each proposition dependent upon the passage of the other proposition, each proposition consists of two subjects rather than one" (Appeal Br. at 30). The underlying theory appears to be, again, that Sound Transit and the RTID are inherently separate subjects for constitutional purposes, and legislation covering both could therefore never be properly enacted.

The 2006 law is constitutional for the same reasons as the 2007 amendments to the same laws in SHB 1396. In each case, the Legislature enacted a bill with a single subject reflected in the bill's title. In each case, the single overriding purpose of the legislation was to coordinate and rationalize local transportation planning and spending. Therefore, both the 2006 and the 2007 versions of the statutes are constitutionally sound.

D. SHB 1396 Does Not Violate Constitutional Equal Protection Standards

WRLP asserts (Appeal Br. at 31–32) that SHB 1396, Section 4 also violates the Equal Protection Clause of the Fourteenth Amendment to the

United States Constitution and the provision of article I, section 19 of the Washington Constitution that “all elections shall be free and equal”. The appellant fails to articulate exactly how these constitutional provisions are implicated by the voting requirements in SHB 1396.

SHB 1396 provides for a single ballot proposition to be submitted to the voters of two different (though largely overlapping) local jurisdictions: Sound Transit and the RTID operating in the three central Puget Sound counties. The single proposition will be seeking voter approval of the funding for a series of regional transportation projects or programs, to be funded partially by Sound Transit and partially by the RTID.

As SHB 1396, Section 4 specifically provides, the proposition will not be deemed approved unless it gains a majority within both jurisdictions—that is, it must be approved by a majority of the voters within Sound Transit and also those within the RTID. Most of the residents of King, Pierce, and Snohomish counties live within both areas. Some live within the RTID, but outside the boundaries of Sound Transit.

The evident legislative purpose of SHB 1396 is to assure that (1) the transportation planning and funding of Sound Transit and the RTID are coordinated and (2) the voters within each jurisdiction will be taxed only if

the voters of both jurisdictions agree to the joint proposition. Within either jurisdiction, one voter will have one vote. Thus, there will be no inequality as among the voters of Sound Transit and none as among the voters of the RTID. If, say, the single proposition gains a majority of the votes within Sound Transit but fails to gain a majority within the RTID, the proposition (more specifically the local tax levies to pay for it) will be rejected. Otherwise, the result of this situation would be either that the smaller group of Sound Transit voters would shoulder the full financial burden for the joint proposition, or that the projects to be funded by Sound Transit would go forward, while those to be funded by the RTID would not.⁵ Neither result would be consistent with fairness and with the obvious legislative intent. The purpose of SHB 1396 is to promote fairness and equality among voters, not to impede it.

The cases cited by appellant provide no support for his equal protection arguments. *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964), involved legislative districts with unequal populations

⁵ As a hypothetical example, suppose Sound Transit and the RTID agreed to coordinate funding in such a way that the RTID would build a new road, while Sound Transit would build a bridge to carry the road over a river. If the Legislature did not require dual majorities, the result could be funding of the bridge but not the road, or the reverse.

(not an issue here). *Brower v. State*, 137 Wn.2d 44, 969 P.2d 42 (1998), upheld the Legislature's authority to submit a statewide referendum to the people on a bill concerning financing of new stadium facilities. To the extent that *Brower* upheld the Legislature's authority to condition the effectiveness of legislation on some contingent event (in that case, a private organization's agreement to provide certain funding), *Brower* suggests that the Legislature in this case can also enact contingent legislation (such as the dual majority requirement).

City of Seattle v. State, 103 Wn.2d 663, 694 P.2d 641 (1985), was a challenge to a state statute amending the laws concerning annexation of territory by large cities. The statute was struck down on several grounds, including the fact that the questioned statute permitted property owners to deny resident voters the opportunity to vote on an annexation.

No such issue is presented here. In the Seattle case, the issue was whether property owners could prevent voters from deciding whether territory should be annexed to a city. Here, the voters of both Sound Transit and the RTID will vote, and their vote will determine whether the proposition will be approved. WRLP has made no showing how SHB 1396 would dilute or devalue the votes of any group of voters.

E. SHB 1396's Short Limitation Period And Accelerated Judicial Review Provisions Are Not Properly Before The Court

As noted earlier, SHB 1396, Section 5 contains a series of special provisions concerning challenges to the constitutionality of the bill. In addition to the issues raised above, WRLP also seeks a ruling from this court on the Legislature's constitutional authority to enact language of the type contained in Section 5 of the bill. Appeal Br. at 33–34. The argument is that Section 5 purports to abridge the constitutional power of review by superior courts as set forth in the Washington Constitution, article IV, sections 1 and 6. These issues are not properly before the Court in this case.

Section 5 of SHB 1396 contains several deadlines, applying in various ways to those who would challenge the constitutionality of the bill, those who would respond, and the courts. For analytical purposes, these deadlines can be divided into two categories: (1) limitations on the filing of legal challenges to SHB 1396, including both original actions and appeals; and (2) directions to the responding parties and to the courts relating to the timing of events triggered by the filing of a constitutional challenge.

WRLP appears to challenge only the first sentence of Section 5, providing that “[a]ny legal challenges as to the constitutionality of this act must be filed in superior court along with any supporting legal and factual authority within twenty calendar days of the effective date of this act.” Yet, it is undisputed that WRLP filed this challenge in the superior court well within the twenty-day limitation period set forth in Section 5. In effect, WRLP seeks an advisory ruling as to whether WRLP or another plaintiff *could have* commenced a constitutional challenge more than twenty days after SHB 1396 became effective. A person who is not affected by a statutory provision lacks standing to challenge it. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 27 P.3d 1149 (2001); *Galvin v. State Tax Commission*, 56 Wn.2d 738, 355 P.2d 362 (1960). For the same reasons, WRLP has no standing to challenge the provision of SHB 1396, Section 5, requiring that “any appeal must be filed in the supreme court within ten calendar days after the date of the superior court decision.” WRLP filed this appeal within the ten-day period. Thus, there is no case or controversy as to whether an appeal filed outside that period could be considered by the appellate courts.

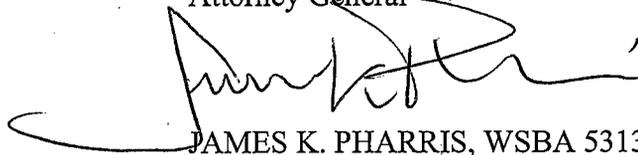
The remainder of the deadlines set forth in SHB 1396, Section 5 apply either to those responding to a constitutional challenge or to the courts adjudicating the challenge. Time limits on the performance of acts by public officers are generally considered directory and not mandatory, at least in the absence of a clear contrary legislative intent. *See, e.g., Niichel v. Lancaster*, 97 Wn.2d 620, 647 P.2d 1021 (1982); *State v. Miller*, 32 Wn.2d 149, 201 P.2d 136 (1948). Here, the deadlines set forth can be best interpreted as a statement from the Legislature to the courts indicating that prompt consideration of any constitutional challenges to SHB 1396 would be important, because any doubts as to the validity of the propositions submitted to the voters under the bill ideally would need to be cleared up before the 2007 election. Such a construction also properly avoids any need to reach a constitutional issue. *See, e.g., Tunstall v. Bergeson*, 141 Wn.2d 201, 5 P.3d 691 (2002); *Grant v. Spellman*, 99 Wn.2d 815, 664 P.2d 1227 (1983). Significantly, SHB 1396 does not specify any consequences which would follow if the courts do not meet the deadlines set forth in Section 5, and certainly does not suggest that the courts would thereby lose jurisdiction or that the validity of the resulting judicial decisions would somehow be questionable.

VII. CONCLUSION

For the reasons stated above, respondent Attorney General and respondent Secretary of State respectfully request that this Court affirm the summary judgment order entered by the superior court in favor of respondents and dismissing the complaint filed by appellant in this case, and that the Court grant respondents their reasonable costs and fees to the extent permitted by law.

RESPECTFULLY SUBMITTED this 10th day of August 2007.

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Appendix A

CHAPTER 509

[Substitute House Bill 1396]

TRANSPORTATION PLANS—SINGLE BALLOT

AN ACT Relating to a single ballot proposition for regional transportation investment districts and regional transit authorities at the 2007 general election; amending RCW 36.120.070 and 81.112.030; adding a new section to chapter 29A.36 RCW; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that traffic congestion reduces personal and freight mobility and is detrimental to the economy, air quality, and the quality of life throughout the central Puget Sound area. Effective transportation solutions are essential for the future growth and development of the central Puget Sound area and the welfare of its citizens.

The legislature further finds that investments in both transit and road improvements are necessary to relieve traffic congestion and to improve mobility. The transportation improvements proposed by regional transportation investment districts and regional transit authorities within the central Puget Sound region form integral parts of, and are naturally and necessarily related to, a single regional transportation system. The construction of road and transit projects in a comprehensive and interrelated manner will help reduce transportation congestion, increase road capacity, promote safety, facilitate mobility, and improve the health, welfare, and safety of the citizens of Washington.

The legislature further finds that under RCW 81.112.030 and 36.120.170 regional transportation investment districts and regional transit authorities are required to submit to the voters propositions for their respective transportation plans on the same ballot at the 2007 general election and that the opportunity to propose a single ballot reflecting a comprehensive, systemic, and interrelated approach to regional transportation would further the legislative intent and provide voters with an easier and more efficient method of expressing their will.

It is therefore the policy and intent of the state of Washington that transportation plans required to be submitted for voter approval at the 2007 general election by a regional transportation investment district and a regional transit authority must be submitted to voters in single ballot question seeking approval of both plans.

Sec. 2. RCW 36.120.070 and 2006 c 311 s 8 are each amended to read as follows:

(1) Beginning no sooner than the 2007 general election, two or more contiguous county legislative authorities, or a single county legislative authority as provided under RCW 36.120.030(8), upon receipt of the regional transportation investment plan under RCW 36.120.040, may submit to the voters of the proposed district a single ballot (~~measure~~) proposition that approves formation of the district, approves the regional transportation investment plan, and approves the revenue sources necessary to finance the plan. For a county to participate in the plan, the county legislative authority shall, within ninety days after receiving the plan, adopt an ordinance indicating the county's participation. The planning committee may draft the ballot (~~measure~~) proposition on behalf of the county legislative authorities, and the county legislative authorities may

give notice as required by law for ballot (~~((measures))~~) propositions, and perform other duties as required to submit the (~~((measure))~~) proposition to the voters of the proposed district for their approval or rejection. Counties may negotiate interlocal agreements necessary to implement the plan. The electorate will be the voters voting within the boundaries of the proposed district. A simple majority of the total persons voting on the single ballot (~~((measure))~~) proposition is required for approval.

(2) (~~((In conjunction with RCW 81.112.030(10), at the 2007 general election))~~) The participating counties shall submit a regional transportation investment plan ((on the same ballot along with a proposition to support additional implementation phases of the authority's system and financing plan developed under chapter 81.112 RCW. The plan shall not be considered approved unless voters also approve the proposition to support additional implementation phases of the authority's system and financing plan)) at the 2007 general election as part of a single ballot proposition that includes, in conjunction with RCW 81.112.030(10), a plan to support an authority's system and financing plan, or additional implementation phases of the system and financing plan, developed under chapter 81.112 RCW. The regional transportation investment plan shall not be considered approved unless both a majority of the persons voting on the proposition residing in the proposed district vote in favor of the proposition and a majority of the persons voting on the proposition residing within the regional transit authority vote in favor of the proposition.

Sec. 3. RCW 81.112.030 and 2006 c 311 s 12 are each amended to read as follows:

Two or more contiguous counties each having a population of four hundred thousand persons or more may establish a regional transit authority to develop and operate a high capacity transportation system as defined in chapter 81.104 RCW.

The authority shall be formed in the following manner:

(1) The joint regional policy committee created pursuant to RCW 81.104.040 shall adopt a system and financing plan, including the definition of the service area. This action shall be completed by September 1, 1992, contingent upon satisfactory completion of the planning process defined in RCW 81.104.100. The final system plan shall be adopted no later than June 30, 1993. In addition to the requirements of RCW 81.104.100, the plan for the proposed system shall provide explicitly for a minimum portion of new tax revenues to be allocated to local transit agencies for interim express services. Upon adoption the joint regional policy committee shall immediately transmit the plan to the county legislative authorities within the adopted service area.

(2) The legislative authorities of the counties within the service area shall decide by resolution whether to participate in the authority. This action shall be completed within forty-five days following receipt of the adopted plan or by August 13, 1993, whichever comes first.

(3) Each county that chooses to participate in the authority shall appoint its board members as set forth in RCW 81.112.040 and shall submit its list of members to the secretary of the Washington state department of transportation. These actions must be completed within thirty days following each county's decision to participate in the authority.

(4) The secretary shall call the first meeting of the authority, to be held within thirty days following receipt of the appointments. At its first meeting, the authority shall elect officers and provide for the adoption of rules and other operating procedures.

(5) The authority is formally constituted at its first meeting and the board shall begin taking steps toward implementation of the system and financing plan adopted by the joint regional policy committee. If the joint regional policy committee fails to adopt a plan by June 30, 1993, the authority shall proceed to do so based on the work completed by that date by the joint regional policy committee. Upon formation of the authority, the joint regional policy committee shall cease to exist. The authority may make minor modifications to the plan as deemed necessary and shall at a minimum review local transit agencies' plans to ensure feeder service/high capacity transit service integration, ensure fare integration, and ensure avoidance of parallel competitive services. The authority shall also conduct a minimum thirty-day public comment period.

(6) If the authority determines that major modifications to the plan are necessary before the initial ballot proposition is submitted to the voters, the authority may make those modifications with a favorable vote of two-thirds of the entire membership. Any such modification shall be subject to the review process set forth in RCW 81.104.110. The modified plan shall be transmitted to the legislative authorities of the participating counties. The legislative authorities shall have forty-five days following receipt to act by motion or ordinance to confirm or rescind their continued participation in the authority.

(7) If any county opts to not participate in the authority, but two or more contiguous counties do choose to continue to participate, the authority's board shall be revised accordingly. The authority shall, within forty-five days, redefine the system and financing plan to reflect elimination of one or more counties, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to participate. This action shall be completed within forty-five days following receipt of the redefined plan.

(8) The authority shall place on the ballot within two years of the authority's formation, a single ballot proposition to authorize the imposition of taxes to support the implementation of an appropriate phase of the plan within its service area. In addition to the system plan requirements contained in RCW 81.104.100(2)(d), the system plan approved by the authority's board before the submittal of a proposition to the voters shall contain an equity element which:

(a) Identifies revenues anticipated to be generated by corridor and by county within the authority's boundaries;

(b) Identifies the phasing of construction and operation of high capacity system facilities, services, and benefits in each corridor. Phasing decisions should give priority to jurisdictions which have adopted transit-supportive land use plans; and

(c) Identifies the degree to which revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue.

A simple majority of those voting within the boundaries of the authority is required for approval. If the vote is affirmative, the authority shall begin implementation of the projects identified in the proposition. However, the authority may not submit any authorizing proposition for voter-approved taxes

prior to July 1, 1993; nor may the authority issue bonds or form any local improvement district prior to July 1, 1993.

(9) If the vote on a proposition fails, the board may redefine the proposition, make changes to the authority boundaries, and make corresponding changes to the composition of the board. If the composition of the board is changed, the participating counties shall revise the membership of the board accordingly. The board may then submit the revised proposition or a different proposition to the voters. No single proposition may be submitted to the voters more than twice. Beginning no sooner than the 2007 general election, the authority may place additional propositions on the ballot to impose taxes to support additional phases of plan implementation.

(10) ~~((In conjunction with RCW 36.120.070,))~~ At the 2007 general election, the authority shall submit a proposition to support a system and financing plan or additional implementation phases of the authority's system and financing plan ((on the same ballot along with a regional transportation investment plan developed under chapter 36.120 RCW. The proposition shall not be considered approved unless voters also approve the regional transportation investment plan)) as part of a single ballot proposition that includes a plan to support a regional transportation investment plan developed under chapter 36.120 RCW. The authority's plan shall not be considered approved unless both a majority of the persons voting on the proposition residing within the authority vote in favor of the proposition and a majority of the persons voting on the proposition residing within the proposed regional transportation investment district vote in favor of the proposition.

(11) Additional phases of plan implementation may include a transportation subarea equity element which (a) identifies the combined authority and regional transportation investment district revenues anticipated to be generated by corridor and by county within the authority's boundaries, and (b) identifies the degree to which the combined authority and regional transportation investment district revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue. For purposes of the transportation subarea equity principle established under this subsection, the authority may use the five subareas within the authority's boundaries as identified in the authority's system plan adopted in May 1996.

(12) If the authority is unable to achieve a positive vote on a proposition within two years from the date of the first election on a proposition, the board may, by resolution, reconstitute the authority as a single-county body. With a two-thirds vote of the entire membership of the voting members, the board may also dissolve the authority.

NEW SECTION. Sec. 4. A new section is added to chapter 29A.36 RCW to read as follows:

The election on the single ballot proposition described in RCW 36.120.070 and 81.112.030(10) must be conducted by the auditor of each component county in accordance with the general election laws of the state, except as provided in this section. Notice of the election must be published in one or more newspapers of general circulation in each component county in the manner provided in the general election laws. The single joint ballot proposition required under RCW 36.120.070 and 81.112.030(10) must be in substantially the following form:

"REGIONAL TRANSPORTATION INVESTMENT DISTRICT (RTID) AND REGIONAL TRANSIT AUTHORITY (RTA) PROPOSITION #1 REGIONAL ROADS AND TRANSIT SYSTEM

To reduce transportation congestion, increase road capacity, promote safety, facilitate mobility, provide for an integrated regional transportation system, and improve the health, welfare, and safety of the citizens of Washington, shall a regional transit authority (RTA) implement a regional rail and transit system to link [insert geographic references] as described in [insert plan name], financed by [insert taxes] imposed by RTA, all as provided in Resolution No. [insert number]; and shall a regional transportation investment district (RTID) be formed and authorized to implement and invest in improving the regional transportation system by replacing vulnerable bridges, improving safety, and increasing capacity on state and local roads to further link major education, employment, and retail centers described in [insert plan name] financed by [insert taxes] imposed by RTID, all as provided in Resolution No. [insert number]; further provided that the RTA taxes shall be imposed only within the boundaries of the RTA, and the RTID taxes shall be imposed only within the boundaries of the RTID?

Yes
No

NEW SECTION. Sec. 5. Any legal challenges as to the constitutionality of this act must be filed in superior court along with any supporting legal and factual authority within twenty calendar days of the effective date of this act. Notice of a challenge along with any supporting legal and factual authority must be served upon the secretary of state, the attorney general, the district, and the authority. Upon the filing of a challenge, the state, district, and authority have ten calendar days to file any response to the challenge along with any supporting legal and factual authority. The court shall accord priority to hearing the matter and shall, within five calendar days of the filing of the response to the challenge, render its decision and file with the secretary of state a copy of its decision. The decision of the superior court constitutes a final judgment. Any appeal must be filed in the supreme court within ten calendar days after the date of the superior court decision. The supreme court shall issue its ruling on the appeal within thirty days of receipt by the court.

NEW SECTION. Sec. 6. 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.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 28, 2007.

Passed by the Senate April 17, 2007.

Approved by the Governor May 15, 2007.

Filed in Office of Secretary of State May 16, 2007.