

FILED
SUPREME COURT
STATE OF WASHINGTON
5/29/2020 4:06 PM
BY SUSAN L. CARLSON
CLERK

No. 98320-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GARFIELD COUNTY TRANSPORTATION AUTHORITY; et al.
Appellants/Plaintiffs,

WASHINGTON ADAPT; TRANSIT RIDERS UNION; and
CLIMATE SOLUTIONS,
Appellants/Intervenor-Plaintiffs,

v.
STATE OF WASHINGTON,
Respondent/Defendant,

CLINT DIDIER; PERMANENT OFFENSE; TIMOTHY D. EYMAN;
MICHAEL FAGAN; JACK FAGAN; and PIERCE COUNTY,
Respondents/Intervenor-Defendants.

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I. INTRODUCTION

Appellants challenge I-976 as violating multiple provisions of the Washington State Constitution. This challenge is based on an undisputed record before the trial court on summary judgment. These constitutional questions are to be decided as a matter of law by the branch of government designated with that responsibility: this Court. Appellants present substantive arguments based on the text of the Constitution and the extensive history of this Court's precedent addressing the types of claims presented in this case. The text of the Constitution and decades of controlling case law compel the conclusion that I-976 is unconstitutional on multiple independent grounds.

The Respondents including the State fail to address the constitutional text and authority at issue, and attempt to avoid rather than apply the case law established over decades by this Court. The State primarily hides behind an overly expansive version of "beyond a reasonable doubt" in an attempt to avoid I-976's deficiencies. It is simply not the law in Washington (nor should it be) that any articulable argument supporting the constitutionality of a law or initiative no matter how speculative or inconsistent with the initiative's text and this Court's precedent supplants a substantive argument based on supportable analysis and research. Nor is it the law that this Court can interpret an initiative

based on technical legal language instead of language as understood by the average informed lay voter. Nor does the law compel the Court to grant deference to an initiative that violates the basic precepts of valid legislation by violating fundamental constitutional protections against logrolling, misleading statements, amending statutes without reference, granting special privileges to corporations, and intruding on powers granted to local governments to tax and spend for local purposes. Research and argument demonstrate that I-976 is unconstitutional by any measure, including a properly articulated beyond a reasonable doubt standard. I-976 should be struck down in its entirety.

II. RESPONSE AND ARGUMENT IN REPLY

A. The State Misapplies and Misapprehends Applicable Standards of Review.

1. The Beyond a Reasonable Doubt Standard Does Not Bar Judicial Review.

Appellants readily accept both the presumption that a statute is constitutional and their burden to demonstrate unconstitutionality beyond a reasonable doubt. However, the State goes too far in suggesting that this burden is insurmountable, or that it applies with even greater force with regard to voter-approved initiatives. *Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142, 151, 171 P.3d 486 (2007) (statutes and initiatives face the same level of scrutiny). First, the State's reductionist view of

constitutional protections is contrary to this Court’s duty to “make the decision, **as a matter of law**, whether a given statute is within the legislature’s power to enact or whether it violates a constitutional mandate.” *Island Cty. v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998) (emphasis added). In this context, “[b]eyond a reasonable doubt” is not an evidentiary standard addressed to the weight or number of arguments. *Id.* Instead, the standard “refers to the fact that one challenging a statute must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution.” *Id.*

Second, while the right of initiative is based in the Constitution, so too are the protections Appellants invoke. Initiatives enjoy no special immunity from these constitutional requirements. When “the people exercise the same power of sovereignty as the Legislature,” they are also “subject to the same constitutional restraints[.]” *City of Burien v. Kiga*, 144 Wn.2d 819, 824, 31 P.3d 659 (2001). “Consequently, even though an initiative passes by the majority of the voters, it will be struck down if it runs afoul of Washington’s constitution.” *Id.*; accord *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 204, 11 P.3d 762 (2000) (“*ATU*”). This Court has, accordingly, regularly invalidated initiatives that run afoul of the Constitution. *See, e.g., Lee v. State*, 185 Wn.2d 608, 629-30, 374 P.3d 157 (2016) (affirming judgment striking

down I-1366); *Kiga*, 144 Wn.2d at 828 (affirming judgment invalidating I-722); *ATU*, 142 Wn.2d at 256-57 (affirming judgment declaring I-695 unconstitutional). I-976 should join this list.

2. The Average Lay Voter Standard Limits Judicial Construction of I-976 and Its Ballot Title.

Appellants point out in their Opening Brief at 14 that initiatives and ballot titles are interpreted under the average informed lay voter test. *See Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 662, 278 P.3d 632 (2012) (“WASAVP”). This rule exists to help the Court “ascertain the collective intent of the voters who, acting in their legislative capacity, enacted the measure.” *Am. Legion Post #149 v. Wash. State Dep't of Health*, 164 Wn.2d 570, 585, 192 P.3d 306 (2008). It serves the underlying “purpose of providing notice to the public of the contents of the measure.” *WASAVP*, 174 Wn.2d at 662.

Rather than disputing this rule, **the State completely ignores it.**¹ Instead, the State proposes a wide-ranging rule—untethered by the average informed lay voter test—where constitutional problems with I-976 are easily resolved by the State or the courts “interpreting” the measure to be constitutional regardless of how an average informed lay voter might

¹ The phrase “average informed lay voter” is absent from the State’s brief.

understand it. *E.g.*, State’s Resp. at 13. The State’s proposed approach differs dramatically from the common rule of statutory construction where a constitutional construction is favored **only when** two alternate constructions are supported following a careful examination of legislative intent and a determination of ambiguity. *See In re Parentage of J.M.K.*, 155 Wn.2d 374, 387, 119 P.3d 840 (2005) (explaining process of statutory interpretation). For initiatives, the average informed lay voter rule of construction does not allow technical or legal interpretations inconsistent with an average lay voter’s understanding, nor does it allow for divergent and contradictory interpretations of the same language to avoid different constitutional violations. By offering contradictory interpretations of I-976 and the ballot title that are outside the average informed lay voter test, the State crosses the line “between adopting a saving construction and rewriting legislation altogether.” *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 69, 109 P.3d 405 (2005) (internal quotations and citations omitted).

3. The Summary Judgment Record Establishes the Facts Before This Court.

All parties agree that this matter comes before the Court on summary judgment under a de novo standard of review. *Sheehan v. Cent. Puget Sound Reg’l Transit Auth.*, 155 Wn.2d 790, 796-97, 123 P.3d 88 (2005). A grant of summary judgment upholding the constitutionality of a

law depends on the record and “is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.” *Id.* at 797. As such, the party opposing summary judgment on a constitutional question “may not rely on speculation [and] argumentative assertions that unresolved factual issues remain,” but is “obliged to provide admissions, affidavits, declarations, or other sworn testimony presenting specific facts which, if believed, would justify” its position. *Seven Gables Corp. v. MGM/UA Entm’t Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

Particularly in the article I, section 12, separation of powers, and article VII, section 5 sections of the State’s response, the State ignores the actual summary judgment record in favor of its own speculations unsupported by declarations. This it cannot do. I-976 must rise or fall based on the extensive summary judgment record before this Court, including the portions of the record that the State chose not to dispute.

B. I-976 Contains Multiple Subjects Not Germane to its Title or to Each Other.

In its efforts to uphold I-976, the State first seeks to rewrite decades of this Court’s single subject jurisprudence, in a manner that would effectively eviscerate single-subject judicial review. The State

would uphold measures where multiple subjects have only the most tenuous relationship to the most broadly construed hypothetical subject of an initiative. It would discount whether the subjects are germane to one another, even in the face of unconstitutional logrolling based on this Court's established objective criteria. Indeed, the State contends, incorrectly, that the specific indicia of logrolling this Court has identified are just "fact-specific descriptions" of prior laws. State's Resp. at 21. But neutral application of the established criteria Appellants identified is fundamental both to the rule of law and to providing guidance to future drafters of legislation and initiatives. These criteria aid in identifying whether logrolling is occurring, and applied to I-976 they confirm that it is. In contrast, the State's touchstone of "categorical unrelatedness"² offers little more than an ad hoc restatement of the ultimate result, rather than a guiding principle of law.

² State's Resp. at 25. This phrase does not appear in any of this Court's single subject cases. Appellants do not dispute that multiple subjects violate article II, section 19 if they are "unrelated" to each other, but that premise simply restates the result of the second prong of the rational unity test, rather than identifying a means to analyze lack of germaneness. *See Kiga*, 144 Wn.2d at 824-25 (critical question is whether an initiative embodies "two unrelated subjects"); *ATU*, 142 Wn.2d at 212 (inquiry focuses on "whether the measure contains unrelated laws").

1. The State’s Construction of the I-976 Title Is Substantially Overbroad.

At the outset, the Court should not allow the use of a general title to facilitate the very type of hodge-podge legislation the single subject rule prohibits. The State’s expansive reading of I-976’s title as encompassing anything remotely related to “motor vehicle taxes and fees” would do just that, rendering the first part of the rational unity test virtually meaningless. Appellants do not seek to “rewrite [I-976’s title] by adding restrictive language to narrow its scope.” State’s Resp. at 17. The general title for single subject purposes is the initiative’s overall topic as construed by the Court, not a quoted excerpt from the ballot title. *See ATU*, 142 Wn.2d at 215 (“[I]t is not necessary for the words limiting taxation to appear in the title or body of the act in order for I-695’s title to be general”); *Kiga*, 144 Wn.2d at 825 (identifying general topic of I-722 as “tax relief,” though that term was not in the ballot title). I-976’s general title is properly construed as “**limiting** the amount of state and local government charges that motor vehicle owners must pay **upon the registration or renewed registration of a vehicle.**” This is the position the State took and the Court recited approvingly with respect to I-776 in *Pierce Cty. v. State*, 150 Wn.2d 422, 427, 432, 78 P.3d 640 (2003) (“*Pierce Cty. I*”), although that language did not appear in I-776’s ballot title. *See* Brief of State of

Washington, *Pierce Cty. I*, 150 Wn.2d 422 (2003) (No. 73607-3), 2003 WL 24118263, at *12 (emphasis added); *see also Pierce Cty. I*, 150 Wn.2d at 427 (quoting I-776’s ballot title).³

The problem with the State’s proposed construction of the title is particularly highlighted by section 12 of I-976. This provision is hardly an “incidental subject” as the State suggests. State’s Br. at 17. Section 12 attempts to compel a specific agency, Sound Transit, to expend money to retire, defease, or refinance a specific set of outstanding bonds used to finance existing transit projects approved by local voters. CP 312, 1263-66; *see also* Appellants’ Br. at 7-8, 18, 23-24. That requires expenditure increases and reallocates taxes rather than limiting them. CP 1263-66. And even assuming for the sake of argument that section 12 “helps implement sections 10 and 11 [of I-976],” State’s Resp. at 19, the State cites no authority upholding an initiative with multiple subjects simply because one of its provisions, no matter how substantial or distinct that provision may be, was purportedly necessary to implement another. At most, the concept of “necessary to implement” is limited to subjects that are truly incidental. *See Citizens for Responsible Wildlife Mgmt. v. State*,

³ Even Intervenor Didier agrees that I-976 is only concerned with **limiting** motor vehicle taxes and fees. *See* Didier’s Resp. at 19 (characterizing I-976’s “single objective” as “limiting state and local taxes, fees, and other charges relating to vehicles”).

149 Wn.2d 622, 637, 71 P.3d 644 (2003). Section 12 does not meet the first part of the rational unity test, and on this basis alone the initiative fails to satisfy article II, section 19.⁴

2. I-976's Subjects Are Not Germane to Each Other.

Several sections of I-976 also fail the second prong of the rational unity test—that each of an initiative's provisions be germane to one another. Appellants identified how multiple provisions of I-976 tie directly to this Court's specific criteria identifying logrolling. *See* Appellants' Br. at 18-33. The State does not dispute that many of these criteria are present in I-976. Instead, the State alleges that there are no specific criteria, and the Court should uphold I-976 because all of its subjects relate, in some fashion, to motor vehicle taxes and fees.⁵ If this Court applies its precedent, however, it should conclude that I-976 contains numerous subjects not germane to each other.

⁴ Similarly, the State does not and cannot dispute that section 7 of I-976, which repeals a vehicle sales tax administered by the Department of Revenue at the point of sale, is not germane to limiting the recurring and universally applicable charges imposed at the time of annual vehicle registration/renewal and administered by the Department of Licensing.

⁵ The State misleadingly cites *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 357 P.3d 1040 (2015) in claiming the Court uses "great liberality" in assessing rational unity. State's Br. at 16. The quoted language pertained only to the relationship between the general title and the subjects (the first prong of the rational unity test), not the relationship between the subjects. *Filo Foods*, 183 Wn.2d at 782.

a.) This Court regularly applies specific criteria to reject rational unity.

The four criteria Appellants identified have formed the underpinnings of this Court’s single subject decisions.

First, contrary to the State’s claim, this Court has consistently and expressly struck legislation on single subject grounds that combines general/continuing and specific/one-time purposes. This rule dates back to *Wash. Toll Bridge Auth. v. State*, 49 Wn.2d 520, 304 P.2d 676 (1956), where the Court repeatedly described (with emphasis) the legislation at issue by reference to its duration and generality.⁶ Later, this Court confirmed that what was “particularly problematic” about the provisions in *Wash. Toll Bridge Auth.* “was the fact the creation of the state agency was long-term and continuing in nature while the funding provision was a onetime event that was narrow in scope.” *Kiga*, 144 Wn.2d at 826.⁷

⁶ *See id.* at 523 (“separating the act into its component parts, it has **two** purposes: (1) To provide legislation, permanent in character, empowering a state agency to establish and operate all toll roads, and (2) to provide for the construction of a specific toll road linking Tacoma, Seattle, and Everett.” (emphasis original)); 524 (“The first purpose grants the power to build toll roads in general and is **continuing** in effect, applicable to every toll road project henceforth to be authorized and constructed....The second purpose is to provide for the construction of a Tacoma-Seattle-Everett toll road, and, although related to the first purpose to the extent that both pertain to toll roads, the second purpose is subject to accomplishment, and is **not continuing in character.**” (emphasis original)).

⁷ Didier also disputes that *Wash. Toll Bridge Auth.* supports a distinction between general/continuing and specific/one-time purposes and instead

Following *Wash. Toll Bridge Auth.*, this Court on multiple occasions invalidated similar initiatives combining general/continuing and specific/one-time purposes. In *ATU*, the Court held that that the “single-subject issue [was] controlled by [*Wash. Toll Bridge Auth.*],” noting I-695 was similar to the act at issue in that case. 142 Wn.2d at 216, 217. The Court held there was no rational unity between the two purposes of I-695: “to **specifically** set license tab fees at \$30 and to provide a **continuing** method of approving all future tax increases.” 142 Wn.2d at 217 (emphasis added). Contrary to the State’s claim, *ATU* did not state that *Power, Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951) was controlling. The Court cited *Power* for its “similar analysis” only on the point that where the title and the body of an act contain two unrelated subjects, the entire act is unconstitutional. *ATU*, 142 Wn.2d at 216.

Then, in *Kiga*, this Court held I-722’s (1) “**nullification and onetime refund** of various 1999 tax increases and monetary charges” and (2) “**permanent, systemic changes** in property tax assessments” were “entirely unrelated” to each other. 144 Wn.2d at 827 (emphasis added).

claims the rational unity analysis hinges on whether provisions are “necessarily related to the efficient administration and accomplishment of an overall objective.” Didier’s Resp. at 24-25. Didier collapses the first and second prongs of the rational unity test. The second prong focuses on germaneness of provisions to each other, not a broad general objective.

The Court's detailed comparison of I-722 to the acts at issue in *Wash. Toll Bridge Auth.* and *ATU*—and its repeated reference to the one-time versus continuing nature of the subjects—is telling. *Id.* at 823, 826-28. The State points to the *Kiga* Court's citation to *Brower v. State*, 137 Wn.2d 44, 969 P.2d 42 (1998), as an example where short-term and long-term funding schemes were found not to violate the single subject rule. *See Kiga*, 144 Wn.2d at 826. The *Kiga* Court's parenthetical describing *Brower* appears to refer to germaneness of provisions to a general overarching purpose, not to each other. *Id.* Regardless, in *Brower* this Court rejected single subject challenges on the grounds that (1) continued reference in the title to a provision removed by the Legislature does not violate article II, section 19, and (2) the act's special election provisions were properly within the Legislature's authority and encompassed in the title. *Brower*, 137 Wn.2d at 70-72.

Most recently, in *Lee*, the Court returned to the specific/one-time and permanent/systemic purposes issue:

We see no substantive difference between the one-time tax reduction coupled with a permanent change to the way all taxes are levied or assessed in [ATU] and *Kiga*, which violated the single-subject rule, and the reduction of the current sales tax rate and a permanent change to the constitution or to the method for approving all future taxes and fees set forth by I-1366. As in [ATU] and *Kiga*, the subjects of a specific reduction in a current sales tax rate, and a constitutional amendment or altering the way the

legislature passes all future taxes, may relate to the general title of fiscal restraint or taxes, **but they are not germane to each other.**

185 Wn.2d at 622-23. The State references the Court's separate holding in *Lee* that I-1366 was not valid "contingent legislation," *see* 185 Wn.2d at 625-27, and claims that I-976 in contrast contains a "valid contingency." State's Resp. at 24. But whether or not portions of I-976 constitute valid contingent legislation is a different question than whether all of its provisions are germane to each other under the single subject rule.

In contrast, the initiative in *WASAVP* did not involve the combination of specific/one-time and continuing/general provisions. The *WASAVP* Court explicitly distinguished this line of authority: "unlike the subjects at issue in [*ATU*] and *Kiga*, I-1183's changes to the regulation of spirits and wine **do not combine a specific impact of a law with a general measure for the future.**" 174 Wn.2d at 659. The Court similarly described these cases in *Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 637: "Of particular relevance, the initiatives in [*ATU*], *Kiga*, and [*Wash. Toll Bridge Auth.*] each contained dual subjects, but one was more broad, long term and continuing than the other, a characteristic that suggests logrolling may be at issue."⁸

⁸ *Fritz v. Gorton*, 83 Wn.2d 275, 517 P.2d 911 (1974), which pre-dated this Court's decisions in *ATU*, *Kiga*, and *Lee*, is similarly distinguishable.

Second, legislation that combines unrelated statewide and local effects in an attempt to achieve a majority vote goes to the origins of article II, section 19, preventing the “engrafting upon measures of great public importance foreign matters for local or selfish purposes[.]” *Lee*, 185 Wn.2d at 620 (internal quotations and citations omitted). The provisions at issue in *Wash. Toll Bridge Auth.*, for example, which combined an increase in a state agency’s statewide powers with the provision of a road linking three highly populated cities, were a prime example of this form of logrolling. 49 Wn.2d at 523-24. Contrary to the State’s claim, Appellants do not contend local and statewide effects can never coexist in the same legislation. But legislation designed to garner votes from particular jurisdictions to obtain a majority vote on an at most loosely related statewide purpose is classic logrolling.

Third, Appellants have not argued that provisions must be “necessary to implement” each other in order to find rational unity. *See* Appellants’ Br. at 22. But the State is simply wrong in claiming this Court has never used the “necessary to implement” factor in invalidating an initiative. To the contrary, the Court has repeatedly ruled that provisions

Fritz addressed only the first prong of the rational unity test and did not evaluate whether the provisions at issue were germane to each other. *See* 83 Wn.2d at 290-91 (concluding all sections of I-276 related to generic subject of the initiative).

were not necessary to implement each other as part of its determination that those provisions lacked germaneness. *See ATU*, 142 Wn.2d at 216-17; *Kiga*, 144 Wn.2d at 827; *Lee*, 185 Wn.2d at 623.

Finally, the State mischaracterizes Appellants' historical treatment discussion. Appellants do not contend that this factor is dispositive. But whether the Legislature has historically treated issues together is an important consideration. In *Lee* this Court noted the absence of any such history as a factor in concluding I-1366's tax reduction and constitutional amendment provisions were not germane to each other. 185 Wn.2d at 623. Conversely, in *WASAVP*, this Court held that I-1183 satisfied the single subject rule because "spirits and wine share[d] the common distinction of being liquor and ha[d] been governed as such by the same act for decades." 174 Wn.2d at 659. This historical treatment justified the combination of what appeared to be disparate topics. *See Filo Foods*, 183 Wn.2d at 784 (discussing *WASAVP* and noting provisions with "arguably tenuous" connection were found germane given historical treatment by Legislature). Importantly, the State admits that the types of charges encompassed by I-976 have always been treated separately. State's Resp. at 5-6.

In sum, the criteria Appellants have identified have guided virtually every one of this Court's single subject decisions. And while it

may be true that the mere presence of one criterion may not, by itself, invalidate an initiative, it is the presence of **all or a substantial portion** of these criteria in I-976 that is dispositive.

b.) Section 12's specific directive to Sound Transit contravenes all of this Court's criteria.

As an initial matter, the State does not dispute that section 12 is a one-time directive to a specific agency. Nor does the State dispute that other provisions of I-976 are general and continuing in nature. The State simply denies (incorrectly) that combining such specific/one-time and continuing/general provisions violates article II, section 19.

But the State cannot avoid that section 12 was included to logroll local votes. The context is the lengthy history of Sound Transit's transportation financing, including the Sound Transit MVET and the bonds to which MVET revenues are pledged. These issues are of substantial local⁹ significance within the Sound Transit district, and have been the subject of 20 years of litigation and multiple decisions from this Court. *See Pierce Cty. I*, 150 Wn.2d at 427-42; *Pierce Cty. v. State*, 159 Wn.2d 16, 23-51, 148 P.3d 1002 (2006) ("*Pierce Cty. IP*"); *Sheehan*, 155

⁹ The State does not dispute that Sound Transit's jurisdiction covers portions of only three of Washington 39 counties. The State's implication that the Sound Transit MVET is not a "local" issue, *see State's Resp.* at 21, is not well taken.

Wn.2d at 793-808; *Black v. Cent. Puget Sound Reg'l Transit Auth.*, 195 Wn.2d 198, 200-14, 457 P.3d 453 (2020).

Despite suggesting at the outset of its brief that *Pierce Cty. I* is dispositive of this case, the State ignores the single subject aspect of that decision, as detailed in Appellants' Opening Brief at 25-26. This Court there held that language regarding retirement of Sound Transit's bonds did not constitute a second subject only because it was precatory. *Pierce Cty. I*, 150 Wn.2d at 433-36. The dissent characterized I-776 as embracing the disparate subjects of (1) "limit[ing] the amount state and local governments may charge for motor vehicle licensing" and (2) "call[ing] for four counties to halt development of a voter-approved light rail transit system until the funding mechanisms are revisited and reapproved" through a "specific, if nonmandatory, direction to public officers to take specific action in the body of a bill." *Id.* at 443, 446 (Chambers, J., dissenting). No justice, or the State, suggested there was rational unity if the bond language was operative. *Pierce Cty. I* further confirms that section 12's specific, local directive to Sound Transit is not germane to I-976's statewide \$30 cap (or other sections of the initiative).

The State also does not dispute that there is no history of the Legislature addressing Sound Transit's bonds together with any other

subject under I-976. This is an additional reason section 12 is not germane to I-976's other provisions. *See Lee*, 185 Wn.2d at 623.

The State's claim that section 12 "helps implement" sections 10 and 11 (in the sense that the Sound Transit MVET will continue to be collected unless Sound Transit retires bonds to which MVET revenues are pledged) does not cure these deficiencies. State's Resp. at 19-20. The State cites *Pierce Cty. II*, asserting section 12 is necessary to overcome the contract impairment issue identified in that case. *See* 159 Wn.2d at 27-39. Even assuming that the Contract Clause may be circumvented in this manner (which it cannot), provisions intended to overcome a constitutional deficiency must still be germane to each of the other provisions in the initiative. *See, e.g., Kunath v. City of Seattle*, 10 Wn. App. 2d 205, 229, 444 P.3d 1235 (2019) (rejecting argument that legislation had rational unity because it was intended to implement a constitutional requirement; this premise "fail[ed] to identify the required rational unity between all five operative sections of the bill."); *see also Kiga*, 144 Wn.2d at 826 (holding the single subject rule is satisfied only where rational unity exists "among all matters included within the measure[.]"). The State does not and cannot argue that section 12 is "necessary to implement" I-976's provisions claiming to cap car tabs at

\$30,¹⁰ repealing local TBD vehicle fee authority, repealing the vehicle sales tax, or requiring Kelley Blue Book (“KBB”) valuation.

Finally, the State claims that it is not section 12 itself, but Sound Transit’s **response** to it, that creates a second subject. Initially, the State mischaracterizes the issue: Sound Transit is directed to expend money by the State; its response is not optional. Indeed, the State itself characterizes section 12 as an affirmative directive to a specific agency to refinance, retire, or defease a specific set of bonds. *See* State’s Resp. at 66-68. The State does not dispute that “refinance,” “retire,” and “defease” have particular meanings in this context,¹¹ nor does it dispute that Sound Transit is not a general purpose government, but a regional transit authority with limited revenue restricted to providing high capacity transportation service. *See* RCW 81.104.140, .160, .170, .175. Nor does the State dispute the uncontroverted record that Sound Transit would have to expend in excess of \$500 million that is pledged to voter approved projects to follow the State’s directive. CP 1264-65. Given the statutory scheme governing Sound Transit and the undisputed summary judgment

¹⁰ Given the State’s claim that I-976’s \$30 car tabs provision refers only to **state** license fees, *see infra*, Section II.C, section 12 of I-976 (which purportedly helps to implement I-976’s repeal of the MVET) is not necessary to limit car tabs to \$30.

¹¹ *See* CP 1264-65.

record, section 12's plain language requires tax increases, reconfiguration of debt, and reallocation of revenues. *See* CP 1261, 1263-66.¹²

In sum, section 12 fails to meet every ground this Court has established for rational unity. It is an unlawful, additional subject.

c. I-976's KBB valuation provisions constitute a significant additional subject.

As to sections 8 and 9 of I-976, requiring KBB violation for purposes of the Sound Transit MVET, the State does not dispute these address a significant local issue affecting only voters within Sound Transit's jurisdiction; that Sound Transit's vehicle valuation schedules have been (and are) the subject of lengthy and extensive litigation and debate at the local level; or that sections 8 and 9 are the only provisions in I-976 that have any relation to vehicle valuation.¹³

¹² In his concurrence in *Kiga* (which the State does not address), Justice Sanders emphasized that the property tax exemption provisions of an initiative purporting to "limit or reduce taxes" would be a "wholly different subject," in they "reallocate[d] taxes" rather than limiting or reducing them. 144 Wn.2d at 829 (Sanders, J., concurring).

¹³ Again, the Court should reach this issue because sections 8 and 9 (which the trial court struck and severed under article I, section 12) are not severable under the single subject rule. *See Kiga*, 144 Wn.2d at 825. The fact that the State argues they can be severed because they are "sufficiently independent" from the rest of the initiative, State's Resp. at 53, while not dispositive as to whether they are an additional unrelated subject, is certainly relevant to that inquiry.

The State's only response to these issues under article II, section 19 is to repeat its assertion that logrolling state and local issues does not result in separate subjects. As discussed *supra*, Section II.B.2.a, however, this joining of subjects frequently goes to the heart of the single subject requirement. Moreover, like section 12, sections 8 and 9 are not incidental or sub-subjects. They raise significant, distinct issues in their own right, and were designed to garner votes in a particular (highly populated) locale in order to conjure enough support to pass I-976's remaining provisions. This further violates the single subject requirement.

d. Section 7's sales tax repeal is not germane to I-976's remaining provisions.

The State fails to explain how section 7's elimination of a specific one-time tax charged at the point of sale relates to I-976's changes to general and ongoing vehicle registration charges, changes in the mechanism for future legislative increases in state vehicle license fees, a directive to Sound Transit to retire specific bonds, or changes to a valuation schedule that applies only to the Sound Transit MVET. The State asserts that similar second subjects in *Lee* and *Kiga* failed because they were "unrelated," but they were unrelated substantially because they combined general and specific provisions, even if those provisions related to an overarching topic. *See Lee*, 185 Wn.2d at 622-23; *Kiga*, 144 Wn.2d

at 826-28. That section 7 purportedly relates to the general topic of “motor vehicle taxes and fees” does not make it germane to each of the other subjects in I-976.

e. However interpreted, I-976’s “voter-approved charges” exception violates article II, section 19.

Finally, the single subject prohibition in article II, section 19 completely undermines the State’s attempt to defend the subject in title violation created by I-976’s “except voter-approved charges” language.

As discussed further in Section II.C, the State claims that this language in the ballot title applies only to the \$30 cap on “motor-vehicle-license-fees,” which in turn refers only to the **state** license fees charged under chapter 46.17 RCW. *See* State’s Resp. at 32-35. But, a statutorily imposed limitation that allows only voters, not the Legislature, to exceed the \$30 cap would be a permanent, systemic change in the legislative mechanism for increasing state vehicle license fees. This, in turn, would create an unlawful additional subject of I-976 as well as an improper attempt to amend the Constitution by initiative. *See* Appellants’ Br. at 28-30.

In an effort to avoid this problem, the State asserts that I-976 does nothing to inhibit the people’s or the Legislature’s authority to increase state vehicle license fees in future. State’s Resp. at 27-28. Instead, the

State claims this language “simply acknowledge[s] reality[.]” *Id.* at 28. But the State’s view that “except voter-approved charges” adds nothing to existing law **cannot be reconciled with the State’s decision to put that language in the ballot title.** The purpose of the ballot title is not to “acknowledge reality,” but to describe the operative content of the measure, i.e. what the measure “would do.” *See Pierce Cty.* I, 150 Wn.2d at 436; *see also ATU*, 142 Wn.2d at 207; RCW 29A.72.050(2).

These conflicting arguments place the State in an unresolvable constitutional quandary. If the “except voter-approved charges” language is operative, its attempt to limit the Legislature’s authority in favor of voters both creates an unconstitutional second subject under *ATU*, *Kiga*, and *Lee* and constitutes an unconstitutional attempt to amend the Constitution. If the ballot title falsely suggests there is a voter-approved “exception” when nothing in the initiative creates one, then including exception language in the ballot title misled voters into believing that this component of I-976 did something, when in fact, it does nothing—thus violating the subject in title rule. Either way, I-976 violates article II, section 19.

C. I-976’s Ballot Title Misleads and Deceives Voters on the Effect of the Measure.

The State fails to offer any plausible or lawful interpretation of I-976 or its ballot title that overcomes its article II, section 19 subject in title violations. The State asserts that the ballot title and the initiative must be interpreted, no matter what, in a manner that renders I-976 constitutional. But this approach ignores the core purpose of article II, section 19, which is to ensure “that no person may be deceived as to what matters are being legislated upon.” *Seymour v. City of Tacoma*, 6 Wash. 138, 148-49, 32 P. 1077 (1893). Here, I-976 is invalid because its ballot title affirmatively misled voters, while omitting major subjects, including the requirement for Sound Transit to defease or retire some \$2.29 billion in outstanding debt obligations.¹⁴ CP 702, 1265.

1. I-976’s Misleading Ballot Title Vitiates the Entire Initiative.

At the outset, the State does not openly dispute the controlling point of law that a misleading or false ballot invalidates an initiative in full. It appropriately conceded this point before the trial court. VRP (Nov. 26, 2019) at 104:17-21. Nevertheless, without any analysis or effort to justify its inconsistent positions, the State now attempts to add a gloss to

¹⁴ The ballot title also fails under article II, section 19 because it promises voters KBB valuations—a provision struck from the initiative as unconstitutional. *See* Section II.E, *infra*.

this rule whereby voters faced with a false and misleading ballot title must inquire into the body of the initiative to somehow uncover those misrepresentations. State’s Resp. at 31-32. There is no case law supporting this position, nor does it make sense to require a lay voter to scour the initiative, other laws, and constitutional provisions in order to somehow discover false representations in the ballot title.¹⁵

A ballot title that misleads voters on what an initiative “would do” represents a “grave” and “palpable” violation of article II, section 19. *WASAVP*, 174 Wn.2d at 660-61; *State v. Mitchell*, 55 Wash. 513, 516, 104 P. 791 (1909) (“It is not within the power of the courts to declare a law which is passed in contravention of [article II, section 19] wholesome[.]”). Thus, consistent with the purposes of article II, section 19, a measure is void *ad initio* when the ballot title is false or misleading. See *Howlett v. Cheetham*, 17 Wash. 626, 635, 50 P. 522 (1897) (“[A] title which is misleading and false is not constitutionally framed, and will vitiate the act.”), *superseded by statute on other grounds as stated in Tacoma Land Co. v. Young*, 18 Wash. 495, 52 P. 244 (1898); *WASAVP*, 174 Wn.2d at 660 (“[T]he material representations in the title must not be misleading or false, which would thwart the underlying purpose of ensuring that no

¹⁵ Because ballot titles carry the objective imprimatur of Washington’s Attorney General, voters are entitled to rely on them.

person may be deceived as to what matters are being legislated upon.”

(internal quotations omitted)).

The State’s position that this Court should liberally interpret any misleading content out of the initiative and ballot title is incorrect. *See* State’s Resp. at 31. As noted *supra*, Section II.A.2, the primary objective in interpreting any legislative enactment is to give effect to the intent of the legislators. *See also ATU*, 142 Wn.2d at 205 (“[I]n determining the meaning of a statute enacted through the initiative process, the court’s purpose is to ascertain the collective intent of the voters who, acting in their legislative capacity, enacted the measure.”). With initiatives, this requires application of the “average informed lay voter” standard, which the State ignores. *WASAVP*, 174 Wn.2d at 662 (internal quotations omitted); *see also ATU*, 142 Wn.2d at 205. A saving construction cannot be invented out of whole cloth, but must reflect available alternative interpretations that are consistent with both the initiative’s language and the average informed lay voter test. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1*, 149 Wn.2d 660, 671, 72 P.3d 151 (2003) (Court will adopt constitutional constructions from among initiative’s susceptible interpretations). The State fails to undertake any of this analysis and this Court should decline its invitation to wander about the constitutional fields

looking for **any** interpretation that might somehow render I-976 constitutional.

Here, the plain language of the ballot title falsely informed voters that the initiative contains a “voter-approved” exception to the alleged \$30 cap. The ballot title unambiguously stated that I-976 “would...limit annual motor-vehicle-license fees to \$30, **except voter-approved charges.**” CP 316 (emphasis added). An average informed lay voter would understand this provision to mean exactly what it says: I-976 imposes a \$30 cap on annual motor vehicle license fees, but creates an exception for voter-approved taxes and fees. Contrary to this affirmative representation of what I-976 would do if enacted, the State admits (as it must) that I-976 actually overrides existing, voter-approved exceptions to the \$30 cap and repeals all statutes that currently allow such a vote. Under the average informed lay voter test, this admission alone is sufficient to decide this case in Appellants’ favor.

The State’s efforts to get around the affirmative misrepresentations of the ballot title fail. Much of the State’s argument relies on the notion that language in the ballot title was sufficient to place a voter on notice of the need to read the entire text of the initiative. State’s Resp. at 32. **But this is the wrong constitutional test for an affirmatively misleading ballot title.** Moreover, no amount of searching the initiative text would

have revealed the exception described in the title, because the initiative contains no such exception.

Faced with this problem, the State shifts ground to assert that the ballot title “accurately reflects the language” of section 2 of I-976, even if it does not reflect the initiative’s actual operation. State’s Resp. at 33. But the proper function of a ballot title is to tell voters what the initiative actually “would do” if enacted, not merely to parrot misleading and inoperative language from the initiative itself. Inoperative language, precatory statements or policy fluff from an initiative have no place in the ballot title and serve only to mislead voters on the measure’s true effect.

In an effort to distract from the lack of any voter-approved exception in the text of I-976, the State makes two enormous leaps. First, it contends that the “voter-approved” portion of the ballot title and section 2 of I-976 refer only to “fees” currently imposed under chapter 46.17 RCW, and exclude the local TBD vehicle fees and regional transit authority (“RTA”) MVET collected under other statutes. Such a statutory interpretation is offered without any reference to the average informed lay voter test and plainly violates it. In order to reach its studied and complicated conclusion that the ballot title refers only to state fees and not to local fees or taxes, the State relies on definitions in RCW 46.04.671 and article II, section 40 of the Constitution that are nowhere mentioned in I-

976, as well as language removed from RCW 46.17.365, RCW 46.68.415, RCW 82.80.130 and RCW 82.80.140 that is not fully set out in the initiative’s text. Based on these unreferenced sources, the State claims that a voter would somehow understand that the ballot title’s reference to “motor-vehicle-license fees” includes only State “vehicle license fees,” but not TBD “vehicle fees,” and certainly not taxes related to motor vehicles.¹⁶

Of course, no average informed lay voter is reasonably expected to discover and consult unreferenced statutes and constitutional clauses in order to parse out the meaning of a defective and misleading ballot title.¹⁷ Even if an average informed lay voter were required to review the initiative text, such a voter would rely on the plain language of section 2 of I-976, which makes the \$30 cap applicable to “[s]tate **and** local motor

¹⁶ The “vehicle fees” collected by TBDs are also commonly called “vehicle license fees” or VLF. *See, e.g.*, <http://mrsc.org/Home/Explore-Topics/Governance/Forms-of-Government-and-Organization/Special-Purpose-Districts-in-Washington/Transportation-Benefit-Districts.aspx> (last visited May 27, 2020) (“The most common TBD funding source is a vehicle license fee.”).

¹⁷ Tellingly, even the “explanatory statement” prepared by the Attorney General and included in the Voter’s Pamphlet makes no mention of article II, section 40 or RCW 46.04.671. CP 1455-56. Rather than limiting motor vehicle fees to the state fee covered by these definitions, the explanatory statement unambiguously represents that “[t]he measure would limit annual **state and local license fees for motor vehicles**...to \$30, unless the fee is approved by voters.” CP 1456 (emphasis added).

vehicle license fees[.]” CP 298 (emphasis added). These fees are defined broadly as the “general license tab fees paid annually for licensing motor vehicles” except for “charges approved by voters after the effective date of this section.” *Id.* This definition is “liberally construed” under I-976 sections 1 and 14 to include all annual payments that a vehicle owner makes to register a motor vehicle and obtain renewed car tabs. CP 297-98, 314. Contrary to the State’s construction, there is no reason for the average informed lay voter to make a distinction between state and local fees, because the initiative’s \$30 cap and its promise of a voter-approved exception plainly apply to both state and local annual registration charges under the broad section 2 definition. Indeed, the State admits that “taxpayers may not have distinguished between these taxes and fees because they were paid at the same time and some had similar names,” State Resp. at 5, which by itself illustrates the understanding of an average informed lay voter.¹⁸

The State’s second leap to render the ballot title truthful is its effort to transform the ballot title from a “concise description” of I-976 into a general statement noting the possibility of future laws. It claims that I-976

¹⁸ Even if the State were correct on this overly complicated analysis, which it is not, it still would not create a mechanism within I-976 to fulfill the ballot title’s promise of a voter approved exception to those \$30 fees.

does not preclude subsequent corrective legislation that might one day create a mechanism for voter approval, or a subsequent statewide initiative to exceed \$30 car tabs. But this claim is irrelevant because the function of a ballot title is to truthfully tell voters what I-976 “would do” if enacted, not how some future initiative or legislative enactment might one day fulfill the false representations in I-976’s ballot title. The “wait and see” approach advocated by the State would render the subject in title protections of article II, section 19 meaningless. There can be no **current** constitutional compliance based on the future **possibility** that subsequent legislation or initiatives might fulfill the misleading promises of I-976’s ballot title.

The initiative also violates the subject in title clause because it fails to deliver the promised \$30 hard cap on “state and local” motor vehicle registration fees. The State claims that the ballot title makes no affirmative representation of a \$30 cap on registration fees by repeating its untenable contention that the definition of “vehicle license fee” in RCW 46.04.671 only includes some annual registration fees and excludes the local portion of the fee. State’s Resp. at 36. But for the reasons noted above, no average informed lay voter would rely on the unreferenced definition in RCW 46.04.671 or an unreferenced constitutional provision

to the exclusion of the broad and liberally construed definition of “state and local motor vehicle license fees” contained in I-976 itself.

There is no support for the State’s picking and choosing which annual license fees count toward the \$30 cap, because the plain text of the initiative’s broad definition includes all of them. Indeed, when considering I-976, all the official materials before voters supported a reasonable belief in the ballot title’s representation of \$30 car tabs. The “Argument For” statement in the voter’s pamphlet advocated for “\$30 tabs now!” CP 1458. Consistent with the ballot title, it informed voters that “I-976 limits license tabs to a flat, fair, and reasonable \$30 per year” for your vehicle. *Id.* The average informed lay voter reading the ballot title, the initiative text, and the voter’s pamphlet would be easily and readily misled into believing that a vote for I-976 meant a flat cap of \$30 for annual vehicle registrations.

As the State concedes, however, under its interpretation it is absolutely certain that no one will pay just \$30. The minimum annual registration fee paid under I-976 is at least \$43.25. CP 657, 664. This is substantially more than the promised \$30 cap for state and local fees.

The State claims that leniency is appropriate because it only had 30 words for the ballot title, but this excuse rings hollow. *See State’s Resp.* at 32. A title may satisfy the statutory word length but be otherwise

unconstitutional. Here, the title is false and misleading precisely because it used some of its statutory allotment to misrepresent I-976's impact. Any voter reviewing I-976 would see only references to voter approval that mask the repeals and amendments of statutes that previously authorized such votes, while precluding future votes, as well as a false affirmative claim of \$30 car tabs. In this instance, it took fewer words—removal of the false representations—to be accurate and to comply with article II, section 19.¹⁹

Overall, an average lay voter would understand that all annual state and local registration fees were included in the representation that I-976 “would . . . limit annual motor-vehicle-license fees to \$30, except voter-approved charges[.]” CP 316. But such a voter was deceived by the I-976 ballot title because neither the representation of a voter-approved exception, nor a \$30 cap is true—regardless of how the initiative is construed. This violates article II, section 19 and invalidates the entire initiative.

¹⁹ By omitting the misrepresentations in the ballot title, the State would have had sufficient words to include the additional subjects that were omitted in violation of article II, section 19. *See infra*.

2. Crucial Initiative Subjects Were Omitted from the Ballot Title.

The State does not dispute Appellants' key points that (1) a bond is not a vehicle tax or fee, (2) a sales tax is not a vehicle tax or fee, or (3) a road mitigation fund is a road use fee, not a vehicle tax or fee. *See* Appellants' Br. at 44-45. Nonetheless, the State points to no general language in the ballot title that would inform voters that I-976 legislates on these important subjects, and none exists.²⁰ Although it is true that a ballot title need not index the complete contents of a measure, at the very least, the title still must include non-misleading language that puts voters on notice of what the measure would do in order to allow further inquiry into the details of the initiative. Rather than point to this language, which does not exist, the State again falls back on the premise that this Court should somehow "construe" I-976 "in favor of constitutionality" no matter what. State's Resp. at 37. But here, even if it were appropriate to impose such an unconditional duty on this Court to uphold initiatives, the State

²⁰ The State suggests that these subjects are trifles, but the bond issue alone implicates \$2.29 billion in outstanding debt obligations and transportation options for about half of Washington's population. CP 702-03, 1260-66. Moreover, as discussed *supra*, Section II.B, the issues raised in section 12 of I-976 are substantial and independent from the other subjects of the initiative. Omitting reference to the Sound Transit bonds in the ballot title further compounds this constitutional problem.

leaves the Court without any language to construe or interpret.²¹ Because I-976's ballot title fails to inform voters, in any fashion, of important subjects impacted by the initiative, it again violates the subject in title requirements of article II, section 19.

D. I-976 Improperly Amends Existing Law in Violation of Article II, Section 37 of the Constitution.

In the effort to rescue I-976 from its improper amendment of existing law, the State attempts to reformulate the test for an article II, section 37 violation in a manner inconsistent with the purposes of the provision. In essence, the State argues that because I-976 discloses some of its effects, it should be excused from its failure to set forth its amendments to existing law. As this Court has recognized, however, article II, section 37 has two purposes: it “is intended **both** to ensure disclosure of the general effect of the new legislation **and** to show its specific impact on existing laws in order to avoid fraud or deception.” *Wash. Citizens Action of Wash*, 162 Wn.2d at 152 (emphasis in original).

²¹ The State also claims a new “debatable language” rule, where a court is “**required** to construe any debatable language in favor of the Initiative’s constitutionality.” State’s Resp. at 37 (emphasis added). It cites *Wash. Fed’n of State Emps. v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995) for this remarkable proposition, but that case nowhere adopts the State’s claimed approach. This appears to be yet another new rule that the State proffers in this case to avoid consideration of obvious constitutional problems and limit this Court’s power of judicial review.

I-976 fails to disclose its amendments to the TBD authorizing statutes in chapter 36.73 RCW and the other vehicle fees in chapter 46.17 RCW and thus violates article II, section 37.

I-976's silent amendment of sections of the TBD authorizing legislation, chapter 36.73 RCW, constitutes a textbook violation of article II, section 37. In the effort to avoid this clear constitutional violation, the State proffers a tortured version of the complete act prong of the article II, section 37 test. Specifically, the State argues that the determination of whether an act is complete does not depend on whether it amends existing law. State's Resp. at 40. To the contrary, the "complete act" inquiry is designed to determine whether an act is amendatory of prior acts. *Wash. Citizens Action of Wash.*, 162 Wn.2d at 159. Where this Court has held that an act amendatory of prior acts is complete, it is because the new act "stand[s] alone" on the particular subject it treats. *ATU*, 142 Wn.2d at 246;²² *see also Black*, 195 Wn.2d at 207 (act was complete because it "clearly laid out when each schedule will apply"). I-976 is not a complete

²² The State also contends that rather than undertaking a "complete act" inquiry, the Court should undertake a subject-by-subject inquiry. *See* State's Resp. at 40. The State bases this argument on language cherry-picked from *ATU* regarding whether a particular section of I-695 was complete as to the specific repeal of the MVET. *ATU*, 142 Wn.2d at 255. *ATU* does not, however, support the conclusion that whether an act is complete is determined on a subject-by-subject basis. *See id.* at 246 (inquiry consists of whether "the act is complete in itself").

act because it does not stand alone on a particular subject, but rather primarily amends existing vehicle taxes and fees.²³ *See* Appellants' Br. at 47-49.

Regardless, the complete act inquiry is not dispositive, as a complete act also may violate article II, section 37. *See El Centro De La Raza v. State*, 192 Wn.2d 103, 129-32, 428 P.3d 1143 (2018). Thus, the key inquiry is whether the act renders erroneous a straightforward determination of the scope of rights or duties under existing law.

Without question, I-976 renders erroneous a straightforward interpretation of RCW 36.73.040 and 065. I-976 nowhere mentions any section of chapter 36.73 RCW, but as the State concedes, I-976 silently amends portions of RCW 36.73.040 and .065. *See* State's Resp. at 43-44 (arguing that I-976 eliminates authority to impose vehicle fees under ch. 36.73 RCW); *see also* CP 469, 1184, 2221; VRP (Feb. 7, 2020) at 308:13-314:2. Importantly, I-976 does not repeal these provisions as it does with RCW 82.80.140. To the contrary, I-976's elimination of TBDs' authority to impose vehicle fees affects is accomplished by amending certain

²³ The State argues that I-976 is not amendatory in character, citing the policy and purpose, severed KBB, bond retirement, and construction, severability, and effective date provisions of the initiative. State's Resp. at 40 n.8. This argument is inconsistent with the State's previous contention that the primary subject of I-976 is limitations on existing vehicle taxes and fees (which it achieves by amendment). *See id.* at 17.

provisions of these statutes. *See* Appendix A (illustrating the provisions of RCW 36.73.040 and .065 implicitly amended by, but not set forth in, I-976). While the State is correct that an initiative may repeal a statute by reference, as I-976 does with RCW 82.80.140, article II, section 37 requires that amendments or revisions to existing statutes be set forth in full. *See, e.g., ATU*, 142 Wn.2d at 253-54.

The State incorrectly asserts that I-976's repeal by reference of RCW 82.80.140 is sufficient to show I-976's effect on RCW 36.73.040 and .065 because "TBDs' authority to impose vehicle fees comes from RCW 82.80.140(1)[.]" State's Resp. at 43. The State cites no authority for this assertion, which is contrary to the plain language of the TBD authorizing legislation. *See id.* RCW 36.73.040(3) provides that a TBD "**is authorized** to impose" certain taxes, fees, charges, and tolls, including a vehicle fee. (Emphasis added.) *See also* RCW 36.73.065(4)(a) (providing that TBDs "may impose" a vehicle fee). Nor is the State's assertion consistent with legislative history. The relevant language in RCW 36.73.040 and in RCW 82.80.140 was adopted in the same enactment. *See* Laws of 2005, ch. 336. While the language codified in RCW 36.73.040 occurs in a section granting TBDs various powers, the language codified in RCW 82.80.140 occurs in a section that primarily concerns how DOL will administer and collect the fee. *Compare* Laws of

2005, ch. 336, § 4 *with id.*, § 16. Thus, there is no support for the State’s claim that TBD vehicle fee authority originates in RCW 82.80.140.

Accordingly, given the language in RCW 36.73.040 and .065 separately authorizing TBDs to collect vehicles fees, it is not “obvious” that I-976’s repeal of RCW 82.80.140 eliminates this authority, as the State contends. Nor does the note, added after the fact by the Code Reviser, impact whether legislation satisfies article II, section 37. Moreover, the note merely states that RCW 82.80.140 was repealed. *See State’s Resp.* at 43 n.10. Even after determining that RCW 82.80.140 had been repealed, a reader of RCW 36.73.040 and .065 would not necessarily understand that the vehicle fee authority granted to TBDs by those provisions also had been eliminated. This is especially true for the provisions regarding voter-approved fees in RCW 36.73.065(1) and (6),²⁴ in light of the confusing language in I-976’s ballot title purporting to except “voter-approved charges.” This is the very sort of ambiguity and confusion article II, section 37 prohibits.

In short, there is no authority to support the State’s contention that I-976’s repeal by reference of RCW 82.80.140 excuses the initiative’s

²⁴ The State’s attempt to characterize these provisions as mere procedural requirements is unavailing, given that the procedure specified is voter approval. *See State’s Resp.* at 44.

silent amendment of separate statutory provisions in chapter 36.73 RCW that reference RCW 82.80.140. To the contrary, recognizing such an exception would vitiate the article II, section 37 requirement to set forth amendments in full and the rule's purpose of ensuring that the effect on existing law is clear. *Wash. Citizens Action of Wash.*, 162 Wn.2d at 152. I-976's improper amendment of RCW 36.73.040 and .065 violates article II, section 37.

Finally, in order to avoid yet another article II, section 37 violation, the State asserts that I-976 does not eliminate or reduce any fees in chapter 46.17 RCW other than the amendments stated in the initiative. State's Resp. at 44. If that is the case, then I-976 violates article II, section 19's subject in title requirement, because I-976's ballot title promises to limit annual motor vehicle license fees to \$30, but I-976 does not in fact limit those fees to \$30.²⁵ *See supra*, Section II.C. If, however, I-976 actually implements the \$30 cap promised in the title and text of the initiative, then I-976 must amend other fees imposed under chapter 46.17 RCW to meet the mandate in section 2 of the initiative for a \$30 cap on **“state and local motor vehicle license fees.”** *See* Appellants' Br. at 54-57. These

²⁵ As the State concedes, without further amendments to chapter 46.17 RCW fees, the lowest possible bill for motor vehicle license fees after I-976 is \$43.25. *See* CP 657.

additional amendments which flow directly from section 2 are not set forth in I-976, in violation of article II, section 37. Either way, I-976 violates the Constitution and must be invalidated.

E. I-976's Mandate that a Specific, Named Corporation Provide State Services Violates the Privileges and Immunities Clause.

The trial court correctly determined that sections 8 and 9 of I-976 violate the Constitution, but incorrectly determined those sections were severable. Section 8 of I-976 requires the use of the KBB valuation product: “a taxing district imposing a vehicle tax must set a vehicle’s taxable value at the vehicle’s base model [KBB] value.” CP 308. Section 9 establishes an appeal and refund right for disputed KBB vehicle valuations. *Id.* Although the State tries to ignore the undisputed summary judgment record, it establishes that the KBB valuation method is a proprietary product owned by a multi-million-dollar private corporation, which is in turn a subsidiary of a multi-billion-dollar international conglomerate. CP 1460-73, 2148-58. The initiative does not promise a new **KBB-like** valuation method; it requires that the State use KBB values specifically. This legislative mandate to give a special legislated privilege to KBB over all its competitors in the vehicle valuation business violates long-held principles of when legislative distinctions by the State are appropriate and constitutional.

Equality of rights, privileges, and capacities unquestionably should be the aim of the law....[T]his [is a] fundamental maxim of government. **The state, it is to be presumed, has no favors to bestow**, and designs to inflict no arbitrary deprivation of rights. **Special privileges are always obnoxious[.]**

Dennis v. Moses, 18 Wash. 537, 573-74, 52 P. 333 (1898) (emphasis added). Specifically designating KBB as the state source of car valuations is a constitutional violation based on its mere presence in the legislation and the status that alone gives to KBB; it becomes a further-reaching constitutional violation once the undisputed factual record is added into the analysis. I-976 violates the privileges and immunities clause, the record is sufficiently developed, Appellants have standing, and Sections 8 and 9 are not severable.

1. The Privileges and Immunities Clause Prohibits Corporate Favoritism.

The KBB mandate is a textbook example of the undue favoritism that article I, section 12 was enacted to prevent. The section provides that “[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.” A legislative classification is deemed a privilege under article 1, section 12 when it is “in its very nature, such a fundamental right of a citizen that it may be said to come within the prohibition of the constitution, **or** to have

been had in mind by the framers of that organic law.” *Ockletree v Franciscan Health Sys.*, 179 Wn.2d 769, 778, 317 P.3d 1009 (2014) (internal quotations omitted; emphasis added). Avoiding corporate favoritism is at the core of what the framers of article I, section 12 sought to achieve and is a fundamental right of citizenship, one which the Special Legislation and Anti-Monopoly provisions also were intended to protect.

Corporate favoritism was not only in “the minds of the framers” but was the motivation for including corporations within article 1, section 12. Our Constitution was “[p]assed during a period of distrust towards laws that served special interests, . . . to limit the sort of favoritism that ran rampant during the territorial period . . . [and] was intended to prevent favoritism and special treatment for a few, to the disadvantage of others” including corporations. *Ockletree*, 179 Wn.2d at 775-776 (internal citations omitted). The State’s arguments appear fixated on how to describe this fundamental violation of article I, section 12, rather than acknowledging that I-976’s KBB provisions violate the crux of what the privileges and immunities clause was intended to prohibit without reasonable grounds for a distinction.

The legislative mandate that KBB, and only KBB, can provide to the State vehicle valuation services is plainly a privilege within the scope of article I, section 12. Unlike *Ockletree*, where the Court found no

privilege existed because the claimed fundamental right was based in a statute (Washington Law Against Discrimination), here, the Constitution directly and expressly prohibits this favoritism in two ways. First, section 8 of I-976 is the embodiment of special legislation on behalf of a specific corporation, which is expressly prohibited by article II, section 28(6).

This provision states that the legislature is “prohibited from enacting any private or special laws . . . [f]or granting corporate powers or privileges.”²⁶

Second, establishing an exclusive right in KBB and denying, by statute, that same state business opportunity to all other vehicle valuation businesses conflicts with article XII, section 22 (“Monopolies and trusts shall never be allowed in this state[.]”). The record is undisputed that there are numerous other businesses fully capable of serving the State’s valuation need with methods similar to the KBB model. CP 2148-2158.

The State argues that it can enter into business arrangements as it chooses and then cites *Ventenbergs v. City of Seattle*, 163 Wn.2d 92, 98-99, 178 P.3d 960 (2008), a case about a Seattle ordinance that named no specific entity but had the practical effect that only two garbage collection

²⁶ The State is incorrect that article II, section 28(6) and article XII, section 22 were not raised below. *See* CP 2143, 2335. Appellants have consistently asserted that I-976’s plain violations of these provisions are two of several reasons it also violates the privileges and immunities clause.

companies with existing valid licenses and city contracts would be authorized to haul solid waste in Seattle. But there is a crucial difference between a regulation that allows a public health-related governmental function to be performed by a limited class of even just two businesses and legislation mandating by name a specific single company; the State has offered not a single example of a case approving the latter action.²⁷ This line of argument also ignores the endless examples of legislation clearly targeting a specific city or municipal project like a stadium or tax relief for major manufacturers (e.g. Boeing), which are referred to by general classifications such as city size in order to avoid violation of the Special Legislation provision. *See, e.g.*, RCW 82.14.0485 (allowing a sales and use tax for counties with a population of one million or more); RCW 82.08.980(1) (tax relief for “manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes”). In short, *Ventenbergs* provides no support for legislation choosing KBB and KBB alone to value vehicles.²⁸

²⁷ Where a party fails to cite authority to support a proposition, “the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

²⁸ Importantly, *Ventenbergs* relied in part on the special status of garbage collection as an exercise of police power, which is a robust constitutional power enjoyed by charter cities like Seattle. 163 Wn.2d at 104-05, 108-09. Valuing vehicles for tax purposes is not a police power.

There is also no case law holding that the Anti-Monopoly provision of the Constitution never applies to the State itself, which is to be expected because the legislature is strictly forbidden from passing such laws. Nonetheless, to support its erroneous contention that the State is immune from the Anti-Monopoly clause, the State rather disingenuously quotes only the first half of what the Court wrote in *Charles Uhden, Inc. v. Greenough*, 181 Wash. 412, 43 P.2d 983 (1935). State’s Resp. at 50. The full holding of the Court was that the Anti-Monopoly provision “does not apply to the state itself **if it should determine to establish or foster a monopoly for the production of any agricultural product, for the advantage of its people.**” *Charles Uhden, Inc.*, 181 Wash. at 422 (section in bold **omitted in State’s brief** at 50). This 1935 case involved federal and state legislation intended to rescue from an “emergency” situation the agricultural commodities market during the Depression, which is easily distinguishable from choosing a valuation method for vehicles.²⁹ The KBB mandate is a specific violation of prohibitions repeatedly “expressed

²⁹ The Washington Agricultural Adjustment Act contained “an emergency clause declaring it to be necessary for the immediate preservation of public peace, health, and safety, for the preservation of the financial structure of the state, for the preservation of agriculture, to prevent a financial crisis, and for the support of the state government and its existing institutions.” *Charles Uhden, Inc.*, 181 Wash. at 413. Moreover, the Act did not anticipate a monopoly but rather authorized agreements between the states and many participants. *Id.* at 414-17.

in words” in these three sections of the Constitution, thereby crossing the long-standing threshold for declaring a statute unconstitutional under the privileges and immunities provision. *See, e.g., State v. Vance*, 29 Wash. 435, 459, 70 P. 34 (1902) (citing *Smith v. City of Seattle*, 25 Wash. 300, 65 P. 612 (1901)).

In addition to express constitutional prohibitions, courts also look to whether the privilege is a fundamental right that had “been had in mind by the framers of that organic law.” *Ockletree*, 178 Wn.2d at 778. There can be no question that barring corporate favoritism was exactly what the framers intended for the privileges and immunities provision: its principal purpose was (and is) “to prohibit government from granting exclusive privileges or immunities in the field of commercial affairs—that is, to prevent government from conferring special favors on certain business interests to the exclusion of others.” Michael Bindas et. al., *The Washington Supreme Court and the State Constitution: A 2010 Assessment*, 46 GONZ. L. REV. 1, 23 (2011). In fact, Washington’s clause goes even further than the Oregon or Indiana constitutions (from which it was originally drawn) by explicitly including “corporations,” thereby reflecting “the delegates’ twin distrust of corporate strength and legislative weakness.” *Id.* at 24. The importance of this inclusion cannot be overemphasized; Washingtonians had eagerly awaited their chance to

determine the scope of a state privileges and immunities provision. *See, e.g., Bloomer v. Todd*, 3 Wash. Terr. 599, 622-23, 19 P. 135 (1888) (in a holding regarding the scope of the federal Privileges and Immunities found in the Fourteenth Amendment, the territorial court stated, “we cherish the hope that in the near future our own citizens will have an opportunity to determine this question for themselves in the formation of a constitution for the state of Washington.”). Given this long history, legislation without corporate favoritism is a fundamental right in this state.

2. There Is No Reasonable Ground to Mandate KBB Favoritism.

After recognizing that the KBB mandate violates a fundamental right by granting a privilege within the scope of article I, section 12, the analysis turns to the basis for the classification. The State also incorrectly asserts that there is a reasonable ground for mandating use of KBB’s specific valuation product. State’s Resp. at 50-51. **It is doubtful, however, that any legislative grant of an exclusive right to a named, for-profit corporation to conduct the State’s business could ever satisfy article I, section 12.** Such naked corporate favoritism is an anathema to our Constitution.

Nevertheless, *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 731, 42 P.3d 394 (2002) (“*Grant I*”), *vacated in*

part on reh'g, 150 Wn.2d 791, 83 P.3d 419 (2004), evaluates: (1) whether the law is applied uniformly within the classification; and (2) whether the class lines are drawn upon reasonable grounds. The naming of KBB in I-976 fails both these tests. The State completely ignores that this is a class of just one member, identified by name. And the State's only justification for I-976's specific identification of KBB is that KBB is well-known and trustworthy. But the summary judgment record demonstrates that there are many vendors in the car valuation business with capabilities and expertise similar to KBB. CP 2150. The State accepted this record below and cannot dispute it now through mere speculation.³⁰

This Court rejected this precise justification in a case with directly analogous facts. While examples of legislation naming and favoring a

³⁰ The State affirmatively abandoned the opportunity to conduct additional discovery or submit controverting declarations on the KBB issues. When the State moved for reconsideration from the trial court's order on summary judgment, the record related to the article I, section 12 KBB issue included the Declaration of Hackett, the Declaration of Merkel, and other declarations regarding the State's plan to implement I-976. Nevertheless, the State asked the trial court to rule on the article I, section 12 argument because no further discovery was necessary. CP 2284. Indeed, the State disavowed that it had ever argued "that discovery was needed, that any additional development of facts was necessary to decide the article I, section 12 claim, or that there was any material factual dispute that should delay or prevent summary judgment on that claim." CP 2285; *see also* CP 2232 (Intervenor Didier agreeing that no material issues of fact precluded summary judgment on the article I, section 12 issue).

specific entity are few and far between for obvious reasons, over 80 years ago, the City of Seattle passed a regulation of charity campaigns, and exempted a single charity, by name, from the regulation. *City of Seattle v Rogers*, 6 Wn.2d 31, 32-33, 106 P.2d 598 (1940). In rejecting this special treatment, this Court held that: (1) it was not a proper classification but rather an impermissible decision to favor a specific entity and (2) simply trusting the specific entity did not alter the analysis. *Id.* at 36-37. In holding the City ordinance violated article I, section 12, this Court based its decision on the point that singling just one entity out was not actually a legitimate classification:

[The ordinance] does not purport to exempt any class from the payment of the license fee, but designates by name one specific ‘campaign’ to which the ordinance shall not apply. . . . Apparently the ordinance provides for an arbitrary exemption of one particular activity, doubtless because the city council was convinced that the exempted campaign was worthily and honestly conducted, and resulted in benefit to the public, while many others should be classified as no better than frauds. It should be noted, however, that a perfectly worthy campaign, whose operation could be subject to no adverse criticism, would be practically barred by the ordinance, as well as less righteous campaigns and those which are fraudulent and entirely unworthy of consideration.

Id. (emphasis added). While I-976 granted an affirmative benefit rather than an exemption, the reasoning holds true that a legislative choice of a single entity because the legislators believed in the honesty and worthiness

of that entity remains a privileges and immunities clause violation, not a distinction based on reasonable grounds.³¹

The record contains no facts showing there are any reasonable grounds for a distinction in favor of KBB, and there is no way for the State at this juncture to establish that the choice of KBB and KBB alone serves the legislation's stated goal. Instead, the record demonstrates other qualified providers of similar valuation services are available. A court will not hypothesize facts to justify a legislative distinction when applying the "reasonable grounds for distinction" test. *Schroeder v. Weighall*, 179 Wn.2d 566, 574, 316 P.3d 482 (2014).

3. Appellants' Privileges and Immunities Claim Is Justiciable.

The State argues that it is possible that the KBB sections will never be implemented, as they only currently impact Sound Transit MVETs, which may no longer be collected if Sound Transit defeases, refinances, or retires its bonds with contracts requiring MVET collection to continue. But the State's own declaration about the Department of Licensing preparations for Day One of I-976 enactment made clear that MVET

³¹ Moreover, the Court specifically distinguished this type of special favoritism towards an entity from classifications related to garbage collection, as those were necessary to the public health under the police power, yet another reason the State's reliance on *Ventenbergs* is misplaced. *Rogers*, 6 Wn.2d at 37.

collection and KBB valuation will be present when the Initiative is implemented. Any defeasement, refinancing or retirement of Sound Transit's bonds would not occur immediately. *See infra*, Sections II.G, II.H (discussing implementation of section 12). Referring to KBB as the State's "business partner," the Johnson Declaration's Exhibit B confirms that the State "will" need to alter technology to add a table for KBB as "value source for MVET determination" and "[m]odify pricing logic to use KBB data." CP 682.

There will necessarily be substantial time between implementation of I-976 and defeasement or retirement of the RTA's bonds—even if such actions are possible. The March 31, 2020 deadline for Sound Transit to meet this goal already has passed, meaning that the KBB mandate will take effect immediately if I-976 is implemented.

Even if the record is ignored, and depending upon which shifting explanation for the meaning "except voter-approved" taxes is applied, the I-976 amendments mean that potential newly enacted MVETs in the future would be required per the statute to apply KBB values to vehicles. The State's suggestion that a statutory provision which may one day be unconstitutionally applied should section 8 not be given immediate effect, should be simply ignored in the interim can be given short shrift. This is

particularly true here, where I-976's naming of KBB and KBB alone is unconstitutional based on its very existence.

The record establishes other problems with the provision's special legislation for KBB. Whether the format is a contract or a monthly bill, the undisputed testimony shows that the State must pay for using KBB products. While limited individual personal use of the KBB valuations is allowed for free, commercial use of this valuation method by other entities, including the State, is allowed only if KBB is paid for that use. CP 1465; CP 2149-50. Even if the State were somehow able to negotiate an exemption from the payment requirement, the Constitution does not allow for KBB to get the exclusive, highly favorable benefit of being appointed, by state law, the sole provider of vehicle valuations to the state of Washington. A bragging right benefit is just as unconstitutional as a monetary payment, given the intentions of, and express prohibitions drafted by, the framers.

4. Appellants Have Standing to Bring Their Privileges and Immunities Claim.

The State incorrectly suggests that Appellants must be competitors of KBB in order to have standing to bring a privileges and immunities claim. To the contrary, Appellants consist of taxpayers, who have standing to challenge unlawful government actions. *Lee*, 185 Wn.2d at

614-15. At a minimum, Appellants have an interest specifically under article I, section 12 in avoiding the unconstitutional cost to the State from requiring the use of KBB. Moreover, as this Court recently recognized, standing requirements are relaxed in cases involving a matter of substantial public interest as is the case here:

Standing is determined by a two part test: (1) whether the interest sought to be protected is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question and (2) whether the petitioners have asserted injury in fact. When we are faced with an issue of significant public interest, standing is analyzed in terms of the public interests presented, and we engage in a more liberal and less rigid analysis.

Rocha v. King Cty., --Wn.2d --, 460 P.3d 624, 629 (2020) (internal quotations and emphasis omitted). Appellants' interest is not, as the State claims, in "secur[ing] a tax base," State's Resp. at 52, but rather in avoiding enacting legislation that violates a central tenet of the Constitution, its prohibition on corporate favoritism. Injury resulting from enactment of an unconstitutional initiative is by no means a speculative injury.

Additionally, in *City of Seattle v. State*, 103 Wn.2d 663, 668-69, 694 P.2d 641 (1985), this Court recognized that municipal governments are afforded liberal standing to raise constitutional questions. In particular, a municipal corporation "has standing to challenge a state

statute as special legislation.” *Id.* at 668. When governmental revenues are impacted by legislation, a municipal corporation has standing under these liberal standing requirements even if it does not otherwise fall squarely within a statute’s “zone of interests.” *City of Snoqualmie v. King Cty. Exec. Dow Constantine*, 187 Wn.2d 289, 296, 386 P.3d 279 (2016). When a case raises important constitutional questions that will impact available government revenues, “our case law directs us” to “apply standing requirements more liberally.”³² *Id.* at 297. The interests of all Washington residents in a fair and equal political system result in standing for any and all of the Appellants, including residents of the areas served by Garfield County Transportation Authority, Seattle, and King County.³³

³² The State challenges Seattle and King County’s standing under *Locke v. City of Seattle*, 162 Wn.2d 474, 483, 172 P.3d 705 (2007), which addresses standing only under the unique circumstances of that case. Further, *Locke* has no applicability to the other Appellants, who include associations, transit agencies, and two individual citizens. Moreover, *Locke* specifically recognizes that “standing requirements are sometimes relaxed where a municipal corporation seeks to challenge on equal protection grounds the constitutionality of a legislative act, provided that the controversy is of sufficiently serious importance.” 162 Wn.2d at 483 n.2.

³³ A municipal government also exercises representational standing and may bring claims on behalf of its citizens. *City of Snoqualmie*, 187 Wn.2d at 295-96.

5. I-976's KBB Provisions Are Not Severable.

The State's claim that the trial court properly severed sections 8 and 9 of I-976 fails for the reasons set forth in Appellants' Brief at 57-64. The State improperly relies on *League of Educ. Voters v. State*, 176 Wn.2d 808, 827-828, 295 P.3d 743 (2013), which does not specifically address the relevance of the inclusion of a provision in the ballot title for a severability analysis. Moreover, in that case, the Court severed one of two alternative methods intended to "hinder[] the legislature's ability to pass tax increases" because both methods attempted to achieve the same goal and one method "serve[d] the voters' intent even absent" the other. By contrast, sections 8 and 9 of I-976 are the only provisions that seek to establish a different vehicle valuation method for the MVET. Unlike in *League of Educ. Voters*, there is a clear difference between the goal of the I-976 provisions that seek to cap taxes and fees and the goal of the provisions mandating use of the KBB valuation system, which is intended to bar abuse of a valuation methodology alleged to be dishonest and fraudulent. These are different and distinct goals. Without the KBB provisions, nothing remains of the initiative's proclaimed goal to force Sound Transit to replace the current vehicle valuation methodology with the KBB methodology.

The State also ignores Appellants' argument and evidence that KBB was a key selling feature of the initiative, crucial to its passage. Appellants' Br. at 60-64. Not only is the KBB provision prominently placed in the ballot title, it was promoted as a critical provision of the initiative itself. The State's failure to address this key component of the severability analysis alone necessitates reversal of the trial court.

Finally, the State expresses a baseless concern that the "logical consequence" of the Appellants' argument is that the Attorney General's Office would have to prejudge the constitutionality of initiative provisions before including them in the ballot title. State's Resp. at 55. To the contrary, the real logical consequence for initiatives that contain unconstitutional aspects as a major component of the ballot title and accompanying argument in the voter pamphlet is that those initiatives, if they pass, are in fact unconstitutional. The cure for this ailment is for initiative sponsors to avoid drafting blatantly unconstitutional initiatives.

F. The Vesting Clause of Article XI, Section 12 Precludes I-976 from Rescinding or Interfering with Vested Local Taxing Authority That Is Being Actively Exercised for a Local Purpose.

In claiming broad legislative powers to withdraw vested municipal taxing authority, the State fails directly to address the language of article XI, section 12. Despite *State v. Redd*, 166 Wash. 132, 6 P.2d 619 (1932),

the State ignores how our Constitution limits legislative prerogative to divest local taxing authority that was duly granted and exercised for a local purpose. The State provides no serious discussion on what our founders intended with the article XI, section 12 vesting clause, including what is meant by “vest” when describing the effect of a legislative grant of local taxing authority. Apart from *Redd*, the State is correct that local governments have had few opportunities and little need to assert the vesting clause. But this does not mean that the clause somehow fell out of our Constitution. In an age where initiative sponsors see the political advantage of using statewide votes to overturn popular local taxing measures, the vesting clause of article XI, section 12 should be enforced in accord with its plain meaning.³⁴

1. *Pierce County I Did Not Address the Vesting Clause.*

The State’s claim that *Pierce Cty. I* is “dispositive” of Appellants’ vesting argument is wrong. Indeed, an important member of its own camp, Respondent Pierce County, agrees with Appellants that *Pierce Cty. I* “did not address the Art. 11 § 12 vesting issue raised here[.]” *Pierce Cty.’s Resp.* at 7.

³⁴ The State claims instances where the Legislature rescinded municipal taxing authority despite its active exercise by a municipality, but it nowhere explains how violations of article XI, section 12 might operate to amend our constitution *sub silentio*.

The State asserts that *Pierce Cty. I* addressed an “indistinguishable” issue, but fails to cite any briefing from that case where the vesting clause of article XI, section 12 was argued. State’s Resp. at 57. Contrary to its own claim, the State appears to acknowledge that there may have been a deficiency “with the specific legal arguments made in [*Pierce Cty. I*],” including no emphasis on the term “vest.” *Id.* at 58. In any event, Appellants’ Opening Brief at 80-81 recounts the exact arguments made in *Pierce Cty. I*, which did not address the article XI, section 12 vesting clause.³⁵ Apart from innuendo, the State does not dispute Appellants’ analysis that *Pierce Cty. I* addressed only an argument under the first clause of article XI, section 12, not an argument under the vesting clause.

Nonetheless, the State posits the remarkable proposition that *Pierce Cty. I* is controlling authority not only on the issues it actually decided, but also on issues it could have decided if only the parties had made other arguments. But the doctrine of *stare decisis* counsels a court to stand by its decisions, not to be bound by decisions not made. It has long been the rule that “where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory

³⁵ The *Pierce Cty. I* briefing on this issue is in the record. CP 1448-53.

is properly raised.” *Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1*, 124 Wn.2d 816, 824, 881 P.2d 986 (1994); accord *Webster v. Fall*, 266 U.S. 507, 511, 45 S. Ct. 148, 69 L. Ed. 411 (1925) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.”). Thus, at most, the *Pierce Cty.* I language is nonbinding dicta uninformed by the important considerations of the vesting clause; it has no precedential value to the vesting clause issue raised in this case.³⁶

2. The *Redd* Case Correctly Interprets the Vesting Clause to Prevent State Interference with Vested Local Taxing Authority.

The State’s claim that “[a]lmost 130 years of judicial understanding” has “consistently understood article XI, section 12’s use of the term ‘vest in’ to mean ‘delegate to,’ ‘authorize,’ or ‘grant’” completely ignores the controlling *Redd* precedent.³⁷ State’s Resp. at 61-62. The

³⁶ The State supports its proposed doctrine of *stare non decisis* through citation to *Piel v. City of Federal Way*, 177 Wn.2d 604, 306 P.3d 879 (2013), but that case nowhere adopts such a novel and unprecedented rule. To the contrary, *Piel* rejected the argument that prior cases did not directly address the question that was before the court. *Id.* at 611-616.

³⁷ The State’s long footnote 16 that purports to cite cases transforming a vested right into a revocable delegation is disingenuous. None of the cited cases in the footnote contain this holding, and the *Redd* decision squarely refutes it. Indeed, although the State fails to disclose it, nearly every case cited in the footnote also uses vesting language. *E.g.*, *Watson v. City of*

State tries to dismiss *Redd* with the claim that its holding rests on the first clause of article XI, section 12, but this is incorrect. To the contrary, Attorney General Dunbar’s own 1932 briefing in *Redd* addresses the vesting clause—that the challenged state law “**takes away from** counties, cities and other municipal corporations power to assess and collect taxes for their own purposes” and that “it deprives counties, cities and other municipal corporations of the right of local self-government guaranteed by the constitution.” Brief of State of Washington at 11-12, *State v. Redd*, 166 Wash. 132 (1932) (Nos. 23478, 23479) (emphasis added).³⁸

Apart from its misreading of the issues in *Redd* and this Court’s holding, the State makes no effort to distinguish that seminal case. As Respondent Pierce County correctly acknowledges, *Redd* directly addressed

the question at issue here: “Would it not follow that the Legislature could withhold, grant, or **discontinue** the [local taxation] power at its pleasure?” 166 Wash. at 138 (emphasis added). By *Redd*’s subsequent holding, it follows that the answer to that question would have been that the Legislature does **not have that power**.

Seattle, 189 Wn.2d 149, 166, 401 P.3d 1 (2017) (“vest”); *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 756-57, 131 P.3d 892 (2006) (“vest”); *State ex rel. King Cty. v. Tax Comm’n of Wash.*, 174 Wash. 668, 671, 26 P.2d 80 (1933) (“vest”). Regardless, the words used to describe the Legislature’s decision to authorize municipal taxing authority are of no moment. The real question, answered in *Redd*, is what it means to “vest” that delegated, authorized or granted taxing authority in the local government.

³⁸ The State’s 119-page *Redd* brief is on file in the state law library.

Pierce Cty.’s Resp. at 6-7 (emphasis in original). Pierce County’s analysis of the *Redd* holding matches Appellants’ Opening Brief. Once made by the Legislature, “[t]hat **delegation of the sovereign power of taxation for local purposes is absolute and complete**, subject only to the constitutional restrictions that taxes shall be imposed for public purposes only, levied and collected by local officers only, limited to a certain rate or amount, levied and collected only under general laws, etc.” *Redd*, 166 Wash. at 144-45 (emphasis added). In other words, *Redd* recognizes that the effect of the article XI, section 12 vesting clause is to prevent further state interference with authorized local taxing authority that is being exercised for a local purpose.

The State does not dispute Appellants’ structural analysis that article XI, section 12 limits state exercise of legislative power over local entities following a grant and exercise of local taxing authority. As *Redd* points out, our Constitution deprives the Legislature of any power to impose local taxes for local purposes. *See* Appellants’ Br. at 72-73. Instead, article XI, section 12 only grants the Legislature power to delegate taxing authority to local governments for those local purposes. *Id.* But once it does so, such authority is vested—meaning that it operates as an “absolute and complete” delegation of “the sovereign power of

taxation” subject only to general constitutional restrictions. *Id.* at 73 (quoting *Redd*, 166 Wash. at 144-45). Although the State asserts that the legislative branch has the authority to withdraw its taxing authorization without cause, the carefully delineated and limited legislative powers established in article XI, section 12 preclude this conclusion.

The holding of *Redd* is further supported by the common meaning of “vest” at the time our Constitution was adopted. The State does not dispute that the term vest must be given its 1889 meaning.³⁹ The State also does not dispute that vest “**could** mean” a “fixed and indefeasible right,” State’s Resp. at 65 (emphasis original), but quibbles with Appellants’ dictionary definitions from sources contemporaneous with our constitutional convention while failing to offer any definitions of its own. All of these dictionaries ascribe a common locus of meaning where vest

³⁹ When our constitutional delegates convened on July 4, 1889, twenty-four of these delegates were lawyers, including J.B. Hoyt and George Turner, who had served as Supreme Court judges in Washington Territory. THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION 1889 465-67, 469-71, 473-77, 480-81, 483-89 (Beverly Paulik Rosenow ed., 1962). These delegates came to their task with their own drafts and model constitutions from other states. CHARLES M. GATES, FOREWORD TO THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION 1889 v (Beverly Paulik Rosenow ed., 1962). They were also familiar with interpretive decisions from other courts and the leading treatise of the day, THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION (5th ed. 1883).

refers to an “indefeasible right,” an entitlement, or an immediate and fixed right of possession. *See* Appellants’ Br. at 76-77. Moreover, the State ignores the meaning of “vest” in contemporaneous 1889 case law, namely “an immediate, fixed right of present or future enjoyment” and “an immediate right of present enjoyment, or a present, fixed right of future enjoyment.” *Pearsall v. Great N. Ry. Co.*, 161 U.S. 646, 673, 16 S. Ct. 705, 40 L. Ed. 838 (1896) (internal quotations omitted). Decisions from other state courts further demonstrate the understanding, common at the time, that “[v]ested rights are placed under constitutional protection, and cannot be destroyed by legislation.” *Templeton v. Linn Cty.*, 22 Or. 313, 318, 29 P. 795 (1892). Thus, consistent with all these sources,⁴⁰ the vesting clause of article XI, section 12 precludes the Legislature from taking away taxing authority that has vested in local government and that is being exercised for a local purpose.⁴¹

⁴⁰ As pointed out in Appellants’ Opening Brief at 78, additional sources of meaning for “vest” include other provisions of the Constitution that “vest” functions in the courts and the Legislature. The State questions the strength of the power “vested in” the judicial branch because the Legislature has periodically reconstituted inferior courts. *See* State’s Resp. at 64. But article IV, section 1 specifically reserves for the Legislature the power to provide for inferior courts. No similar provision exists in article XI, section 12 to override a vested delegation of local taxing authority.

⁴¹ The State’s claim that the vesting clause “is a limitation on home rule” is directly contrary to *Redd* and makes no sense. *See* State’s Resp. at 61. The Legislature’s ability to condition a grant of authority for local taxes

The State’s primary objection to giving the vesting clause of article XI, section 12 its intended effect boils down to policy concerns that local governments will have too much taxing power for local purposes. The State claims a “general rule” that taxing authority is vested in the Legislature, but this has never been the case for local taxes for local purposes where article XI, section 12 represents a recognized **limitation** on the Legislature’s normal taxing authority. Regardless of the State’s musings about policy, our founders already answered this question by creating the vested local taxing authority in article XI, section 12.⁴²

Nor is there any realistic concern that a local government could “usurp the Legislature’s role by enacting taxes with no expiration date, rendering the State powerless to ever constrict the scope of the municipalities’ taxing authority.” State’s Resp. at 59. Appellants have fully acknowledged the Legislature’s plenary power to condition and limit its initial grant of taxing authority, as well as the Legislature’s ability to withdraw unexercised taxing authority that is not being used for any local

implies no continuing control or right to interfere once that authority has vested in the local government.

⁴² The State’s claim that article XI, section 12 has no application to special purpose districts is contrary to both *Redd* and the language of the provision. Article XI, section 12 is not limited to cities and counties, but applies to “other municipal corporations.”

purpose.⁴³ But once the Legislature has set those conditions, a local community is free under article XI, section 12 to accept the taxing authority and vest it by actively imposing local taxes for a local purpose.⁴⁴

In summary, *Redd*, the structure of legislative power in article XI, section 12, and the use of the word “vest” leave the Legislature without authority to “take away” or interfere with a municipality’s active exercise of local taxes for local purposes. Because I-976 violates the vesting clause by attempting to divest exercised local municipal taxing authority during the pendency of local projects, it is unconstitutional.⁴⁵

⁴³ The State incorrectly reads “may” in article XI, section 12 to mean that the Legislature can choose to vest local taxing authority or not as part of its general legislation authorizing local taxation. Such a reading is foreclosed by *Redd*, which clarifies that the Legislature’s only power with regard to local taxation is delegating authority with established taxing conditions. Once a local municipality accepts that authority and exercises local taxes for local purposes, the delegation is “absolute and complete.” In short, article XI, section 12 allows no further interference with the municipality’s active exercise of local taxes for local purposes.

⁴⁴ The State claims an injunction that prohibits one legislature from binding future legislatures. State’s Resp. Br. at 65-66. But the vesting of local taxing authority for local purposes arises from article XI, section 12 itself, and therefore violates no such injunction. Article XI, section 12 is a foundational limitation on legislative power.

⁴⁵ Appellants’ argument would preclude operation of I-976 against vested local taxes that are actively being imposed by TBDs and the RTA for local purposes. Transit is an area of primarily local concern. See *Municipality of Metro. Seattle v. O’Brien*, 86 Wn.2d 339, 345, 544 P.2d 729 (1976) (“Whether to levy or not to levy the tax is a local decision, the amount of the tax levied is a local concern subject to the statutory ceiling, the investment of the tax proceeds and their application to either capital or operating transit purposes is a local matter and, finally, whether to pledge

G. I-976 Violates Separation of Powers.

The State's arguments regarding the separation of powers claim improperly attempt to raise a new argument, ignore the undisputed factual record, and fail to address the relevant legal analysis. The State now claims that Appellants' separation of powers and article VII, section 5 claims are not justiciable, acknowledging it never raised this issue below. The Court should decline to consider the State's conclusory justiciability argument presented for the first time on appeal. *See ATU*, 142 Wn.2d at 203 (declining to address justiciability given "inadequacy of briefing"). If the Court does consider justiciability, it should reject the State's arguments.

Although the State correctly notes that Sound Transit is not a party to this case, Appellants have taxpayer standing on behalf of Justin Camarata, who resides within Sound Transit's service area and uses its transit services. CP 1016-17. Appellants King County and the City of Seattle also represent the interests of their citizens in this lawsuit, many of whom are taxpayers within Sound Transit's jurisdiction. CP 1012-13, 1017-18. This certainly gives rise to a concrete dispute over the

the tax to secure bonds is a matter for local determination.""). As pointed out in Appellants' opening brief, TBDs that have not yet enacted vehicle licensing fees are not vested and would be bound by I-976's withdrawal of that authority.

constitutionality of section 12 of I-976, which substantially impacts all those within the Sound Transit district. *See also supra*, Section II.E.4.

The State also inexplicably asserts that the record fails to show that section 12 constitutes an administrative directive to Sound Transit. The language of section 12, however, is non-legislative on its face. It states that Sound Transit (as the State acknowledges, the only RTA in the state), “must” retire, defease or refinance a specific set of bonds, should the bond contracts allow this. CP 312, 1263. The specific terms of the bond contracts would not convert this directive into a proper legislative provision. Moreover, the undisputed summary judgment record⁴⁶ details exactly what section 12 would require of Sound Transit: “Sound Transit would be required to defease and refinance the existing debt by borrowing additional funds and pay additional financing costs to obtain the funds necessary to implement section 12 of I-976.” CP 1265; *see also* CP 1264.

⁴⁶ This record consists of the summary judgment declaration of Sound Transit’s Chief Financial Officer, Tracy Butler. CP 1259-66. In its summary judgment opposition below, the State purported to “object” to this declaration “on the grounds that there has been no discovery on this issue.” CP 2014. But the State did not move to strike the declaration, did not rebut it, did not seek additional discovery by request or motion, and did not raise this issue in its reconsideration briefing in which it otherwise disclaimed the need for additional discovery to resolve all issues in the case. *See* CP 2284-85. Nor does the State assign error on this issue. The testimony in the Butler declaration is undisputed.

These facts contained in this declaration, which were not challenged by the State below, constitute the record in this appeal.

The State's other separation of powers arguments similarly miss the mark. It essentially argues that the ends justify the means, but one cannot satisfy a constitutional goal by taking unconstitutional actions. Because I-976 violates separation of powers, it does not matter if it does so to further allegedly new state policy against the MVET. It is the interference in administrative action, not the state policy motivating the interference, that violates the Constitution, because it exceeds the scope of the initiative power.⁴⁷

Regarding the scope of initiative powers, **neither** a state level initiative authorized by article II, section 1, nor a local one under RCW 35A.11.080, may violate the constitutional requirement of separation of power by legislating how the executive branch is to perform its administrative actions:

[N]either article II, section 1 nor RCW 35A.11.080 encompasses the power to administer the law, and administrative matters, particularly local administrative matters, are not subject to initiative or referendum.

City of Port Angeles v. Our Water-Our Choice!, 170 Wn.2d 1, 8, 239 P.3d 589 (2010) (citing *Ruano v. Spellman*, 81 Wn.2d 820, 823, 505 P.2d 447

⁴⁷ The State concedes this in its brief. State's Resp. at 69 n.18.

(citing *Ford v. Logan*, 79 Wn.2d 147, 154, 483 P.2d 1247 (1971))). The State provides no authority or reasoning behind its effort to distinguish these cases. The fact that this is “particularly” true for local initiatives like in *Ruano* makes it no less true for a state initiative: one cannot legislate the administration of bonds. And the question of what the bonds themselves do or do not allow is not the issue—the issue is the interference with the voter-approved transit projects, for which only administrative aspects remain. See *Ruano*, 81 Wn.2d at 825 (noting the issue was that “only administrative decisions remained in connection with the stadium project”).

With the summary judgment record in mind, there is no doubt that I-976 directs an administrative agency (Sound Transit) on how it is to pay back its bonds that were issued in support of a specific, ongoing series of voter-approved transit plans, and where only administrative decisions remain. *City of Port Angeles*, 170 Wn.2d at 10 (confirming an action is administrative “if it furthers (or hinders) a plan the local government or some power superior to it has previously adopted”); CP 1259-66 (describing projects, plans, and funding at issue). The undisputed factual record shows that there are no material differences distinguishing *Ruano* (and its progeny) from the present case. Because section 12 of I-976

contains no new law or policy but simply directs choices from existing options, I-976 contravenes separation of powers.

H. I-976 Violates Article VII, Section 5.

Section 12 of I-976 also improperly diverts local tax revenue in violation of article VII, section 5. This claim is justiciable for the same reasons the separation of powers claim is justiciable, as discussed *supra*, Section II.G.

On the merits, the State’s arguments similarly fail. Contrary to the State’s suggestion, article VII, section 5 is not limited to measures that levy taxes. *See* State’s Resp. at 70. Rather, the provision renders unconstitutional measures that divert taxes assessed from an approved purpose to some other purpose. *Sheldon v. Purdy*, 17 Wash. 135, 141, 49 P. 228 (1897). That is exactly what I-976 does in taking tax revenue approved by voters for specified capital improvements and requiring its reallocation to accelerated debt retirement.

The State contends without any factual or legal basis that use of Sound Transit taxes “to pay back the bonds they were pledged to secure is far from wholly unrelated” to Sound Transit’s voter-approved transportation projects. State’s Resp. at 72 (internal quotations omitted). This argument distorts the undisputed summary judgment record demonstrating that section 12 requires a diversion of tax revenue from

constructing light rail to the purpose of incurring and servicing **additional and unnecessary debt** with the result that Sound Transit's voter-approved projects will not be completed as approved by local voters. CP 1263-66. In essence, the State contends voter-approved tax revenues may be used to **undermine** the project they were levied to support. That premise is directly contrary to article VII section 5's anti-diversionary purpose.

This argument also ignores the statutory limits on the use of Sound Transit's revenues. *See* RCW 81.104.175(2) (authorizing property tax levy that "must be used for the purpose of providing high capacity transportation service, as set forth in a proposition that is approved by a majority of the registered voters that vote on the proposition"); RCW 81.104.160(1) (authorizing MVET "solely for the purpose of providing high capacity transportation service"); RCW 81.104.170(1) (same for sales and use tax); RCW 81.104.140(10)(a) (Sound Transit "must retain responsibility for revenue encumbrance, disbursement, and bonding" and "[f]unds may be used for any purpose relating to planning, construction, and operation of high capacity transportation systems and commuter rail systems, personal rapid transit, busways, bus sets, and entrained and linked buses"). Section 12 seeks to divert these funds from their specific statutory purposes to incur additional, unnecessary borrowing expenses.

The State also mischaracterizes section 12 as merely the voters' choice to "repeal or reduce taxes previously imposed" or their "policy decision to wind down a project," as to which article VII, section 5 does not apply. State's Resp. at 71, 72. But that is not the situation here. The voters who approved Sound Transit's taxes (those residing within Sound Transit's jurisdiction) are not the same as the voters who approved I-976 (the statewide electorate). To the contrary, I-976 failed within Sound Transit's jurisdiction. CP 1263. Moreover, there has been no vote or decision to "wind down" any of Sound Transit's projects and the expenditure required under section 12 is not a "wind down" expense. Nor did this Court in *Pierce Cty. II* "foreshadow[]" that a statewide vote could require Sound Transit to retire its bonds early. State's Resp. at 72. The Court simply acknowledged Sound Transit's ability to retire its bonds **if it so chose**: "We note, however, that nothing in our decision today forecloses **Sound Transit** from **electing** to retire the bonds early. We also note that **this court lacks the authority to compel that result.**" *Pierce Cty. II*, 159 Wn.2d at 52 (emphasis added).

Contrary to the State's claim, *Sheldon* is not limited to legislation that "command[s] the payment of money from one fund to pay for obligations on another, unrelated fund." State's Resp. at 73. Rather, *Sheldon* broadly holds that money raised specifically to carry on and meet

the current expenses of the common schools could not be diverted to the purpose of constructing new school buildings. 17 Wash. at 141.

Additional authorities focus on the different purposes at issue, not the technical distinction between two separate funds. *See State ex rel. Latimer v. Henry*, 28 Wash. 38, 45-46, 68 P. 368 (1902); *Sheehan*, 155 Wn.2d at 804.⁴⁸ The State’s attempt to limit *Latimer*’s holding to the county fund context similarly fails. As this Court repeatedly has recognized, article VII, section 5 broadly prohibits the diversion of taxes raised for one purpose to a different purpose. *Sheehan*, 155 Wn.2d at 804.⁴⁹ That is exactly what section 12 of I-976 attempts to accomplish.⁵⁰

Finally, the State suggests that additional “foundational facts” must be established before an article VII, section 5 violation can be shown. The State again speculates that Sound Transit’s bond contracts may not allow early retirement, refinancing, or defeasement, or that Sound Transit may

⁴⁸ *See also* 1991 Op. Att’y Gen. No. 7, 1991 WL 521702, at *5 (“Article 7, section 5 requires that taxes levied for a purpose must be applied to that purpose”); 1961 Op. Att’y Gen. No. 59, 1961 WL 62893, at *1 (same).

⁴⁹ Additionally, while *Thompson v. Pierce Cty.*, 113 Wash. 237, 193 P. 706 (1920), does not directly address article VII, section 5, it stands for the same principle, i.e., “when funds are raised by the issuing of bonds or by taxation for a designated purpose they cannot be diverted to some other purpose.” *Id.* at 241.

⁵⁰ The “absurd consequences” the State claims would result from applying article VII, section 5 here simply illustrate how the constitutional prohibition operates. State’s Resp. at 73. Regardless, the issue here is not repeal of a tax or cancellation of a project, but rather diversion of funds.

have non-tax resources on hand to accomplish that task. But whether the legislative objective ultimately proves successful is irrelevant here. The constitutional violation inheres in the text of section 12, which directs Sound Transit to redirect tax revenues and expend it on unrelated purposes. That is sufficient to establish an article VII, section 5 violation.

Regardless, the undisputed summary judgment record establishes that section 12 will require Sound Transit to collect additional taxes and expend a significant portion of taxpayer funds that are committed to delivering, operating, and maintaining the regional transit system. CP 1260-66. And to the extent this Court concludes that further evidence (such as the bond contracts themselves) is nevertheless necessary for relief to be granted on this claim, then it should remand to complete the record.

I. Intervenor Didier’s Cross-Appeal Lacks Merit.

Didier’s cross-appeal raises meritless claims that should be rejected. Didier first claims that the “appearance of bias” required recusal of all King County judges in this matter, apparently on the grounds that King County was a party in this case. Didier’s Resp. at 4-7. But no party moved in the trial court to recuse or to change venue on grounds of bias. Nor has Didier pointed to any evidence indicating appearance of or actual bias. This claim fails. *See State v. Chamberlin*, 161 Wn.2d 30, 37, 162

P.3d 389 (2007) (“Evidence of a judge’s actual or potential bias must be shown before an appearance of fairness claim will succeed.”).

Didier next invokes the “unclean hands” doctrine, arguing that the government entity Appellants violated RCW 42.17A.555 in litigating I-976’s constitutionality. *See* Didier’s Resp. at 7-9. He cites no relevant authority on this point and is nevertheless wrong. RCW 42.17A.555 prohibits the use of public facilities “for the . . . promotion of or opposition to any **ballot proposition.**” (Emphasis added.) In turn, a “ballot proposition” is defined as a measure “proposed to be submitted to the voters” at an election. RCW 42.17A.005(4). In contrast, Appellants’ post-election lawsuit challenging a voter-approved initiative is not campaign activity, did not influence the outcome of the election, and is thus permitted. *See, e.g., Pierce Cty. I*, 150 Wn.2d at 427-28; *Kiga*, 144 Wn.2d at 822-23.

Finally, Didier challenges justiciability as to Burien’s impairment of contract claim. But that claim remains before the trial court and is not a part of this appeal. Regardless, there is no issue as to justiciability or ripeness of Burien’s impairment claim, as this Court has evaluated such claims even where the initiative in question had been enjoined or otherwise had not taken effect. *See, e.g., Pierce Cty. I*, 150 Wn.2d at 427; *Wash. Fed’n*, 127 Wn.2d at 550.

III. CONCLUSION

The text of the Constitution and this Court’s controlling authority compel the conclusion that I-976 violates multiple constitutional provisions that ensure honesty and transparency in legislation and protect local home rule. This Court should affirm the trial court’s ruling that I-976 violates article I, section 12, and otherwise reverse and conclude that I-976 is unconstitutional and invalid on multiple grounds.

RESPECTFULLY SUBMITTED this 29th day of May, 2020.

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PROOF OF SERVICE

I am a citizen of the United States, over the age of 21 years, and not a party to this action. On the 29th day of May, 2020, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the foregoing document upon the parties listed below:

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APPENDIX A

RCWA 36.73.040

General powers of district

(1) A transportation benefit district is a quasi-municipal corporation, an independent taxing “authority” within the meaning of Article VII, section 1 of the state Constitution, and a “taxing district” within the meaning of Article VII, section 2 of the state Constitution.

(2) A transportation benefit district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. Public works contract limits applicable to the jurisdiction that established the district apply to the district.

(3) To carry out the purposes of this chapter, and subject to the provisions of RCW 36.73.065, a district is authorized to impose the following taxes, fees, charges, and tolls:

(a) A sales and use tax in accordance with RCW 82.14.0455;

~~((b) A vehicle fee in accordance with RCW 82.80.140;)~~

~~((e))~~ (b) A fee or charge in accordance with RCW 36.73.120. However, if a county or city within the district area is levying a fee or charge for a transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district. Developments consisting of less than twenty residences are exempt from the fee or charge under RCW 36.73.120; and

~~((d))~~ (c) Vehicle tolls on state routes, city streets, or county roads, within the boundaries of the district, unless otherwise prohibited by law. However, consistent with RCW 47.56.820, the vehicle toll must first be authorized by the legislature if the toll is imposed on a state route. The department of transportation shall administer the collection of vehicle tolls authorized on state routes, unless otherwise specified in law or by contract, and the state transportation commission, or its successor, may approve, set, and impose the tolls in amounts sufficient to implement the district’s transportation improvement finance plan. The district shall administer the collection of vehicle tolls authorized on city streets or county roads, and shall set and impose the tolls in amounts sufficient to implement the district’s transportation improvement plan. However, consistent with RCW 47.56.850, the vehicle toll, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in RCW 47.56.850 if the toll, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility.

RCWA 36.73.065
Taxes, fees, charges, tolls, rebate program

(1) Except as provided in subsection (4) of this section, taxes, fees, charges, and tolls may not be imposed by a district without approval of a majority of the voters in the district voting on a proposition at a general or special election. The proposition must include a specific description of: (a) The transportation improvement or improvements proposed by the district; (b) any rebate program proposed to be established under RCW 36.73.067; and (c) the proposed taxes, fees, charges, and the range of tolls imposed by the district to raise revenue to fund the improvement or improvements or rebate program, as applicable.

(2) Voter approval under this section must be accorded substantial weight regarding the validity of a transportation improvement as defined in RCW 36.73.015.

(3) A district may not increase any taxes, fees, charges, or range of tolls imposed or change a rebate program under this chapter once the taxes, fees, charges, tolls, or rebate program takes effect, except:

(a) If authorized by the district voters pursuant to RCW 36.73.160; or

(b) With respect to a change in a rebate program, a material change policy adopted pursuant to RCW 36.73.160 is followed and the change does not reduce the percentage level or rebate amount((;)).

~~((c) For up to forty dollars of the vehicle fee authorized in RCW 82.80.140 by the governing board of the district if a vehicle fee of twenty dollars has been imposed for at least twenty-four months; or))~~

~~((d) For up to fifty dollars of the vehicle fee authorized in RCW 82.80.140 by the governing board of the district if a vehicle fee of forty dollars has been imposed for at least twenty-four months and a district has met the requirements of subsection (6) of this section.))~~

(4)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district may impose by a majority vote of the governing board of the district the following fees and charges:

~~((i) Up to twenty dollars of the vehicle fee authorized in RCW 82.80.140;))~~

~~((ii) Up to forty dollars of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of twenty dollars has been imposed for at least twenty-four months;))~~

~~((iii) Up to fifty dollars of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of forty dollars has been imposed for at least twenty-four months and a district has met the requirements of subsection (6) of this section; or))~~

~~((iv))~~ (i) A fee or charge in accordance with RCW 36.73.120.

~~((b) The vehicle fee authorized in (a) of this subsection may only be imposed for a passenger-only ferry transportation improvement if the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district.))~~

~~((c))~~ (b)(i) A district solely comprised of a city or cities may not impose the fees or charges identified in (a) of this subsection within one hundred eighty days after July 22, 2007, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection within the one hundred eighty-day period; or

(ii) A district solely comprised of a city or cities identified in RCW 36.73.020(6)(b) may not impose the fees or charges until after May 22, 2008, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection through May 22, 2008.

~~((5) If the interlocal agreement in RCW 82.80.140(2)(a) cannot be reached, a district that includes only the unincorporated territory of a county may impose by a majority vote of the governing body of the district up to: (a) Twenty dollars of the vehicle fee authorized in RCW 82.80.140, (b) forty dollars of the vehicle fee authorized in RCW 82.80.140 if a fee of twenty dollars has been imposed for at least twenty-four months, or (c) fifty dollars of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of forty dollars has been imposed for at least twenty-four months and a district has met the requirements of subsection (6) of this section.))~~

~~((6) If a district intends to impose a vehicle fee of more than forty dollars by a majority vote of the governing body of the district, the governing body must publish notice of this intention, in one or more newspapers of general circulation within the district, by April 1st of the year in which the vehicle fee is to be imposed. If within ninety days of the date of publication a petition is filed with the county auditor containing the signatures of eight percent of the number of voters registered and voting in the district for the office of the governor at the last preceding gubernatorial election, the county auditor must canvass the signatures in the same manner as prescribed in RCW 29A.72.230 and certify their sufficiency to the governing body within two weeks. The proposition to impose the vehicle fee must then be submitted to the voters of the district at a special election, called for this purpose, no later than the date on which a primary election would be held under RCW 29A.04.311. The vehicle fee may then be imposed only if approved by a majority of the voters of the district voting on the proposition.))~~

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