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No. 98320-8

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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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**

The Washington Constitution is a fundamental restraint on the otherwise broad exercise of state legislative power by the Legislature or the people. The Constitution requires that all bills and initiatives clearly, truthfully, and transparently adhere to a single subject and disclose their content and effect on existing law, particularly in the ballot title, so that legislators and voters cast a fully informed vote. The Constitution further limits the power of the state to dictate local government taxation, thereby protecting the concept of home rule and preserving the right of local voters to tax themselves for necessary local projects. Initiative 976 (“I-976”) fundamentally violates constitutional limitations on state legislative power. Accordingly, I-976 should be struck down as unconstitutional.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in granting in part the State and Pierce County’s motion for summary judgment requesting summary dismissal of Appellants’ constitutional challenges to I-976.

2. The trial court erred in granting in part Clint Didier’s motion for summary judgment requesting summary dismissal of Appellants’ constitutional challenges to I-976.

3. The trial court erred in denying in part Appellants’ motion for summary judgment and refusing to rule that I-976 is unconstitutional

and invalid under article II, sections 19 and 37; article XI, section 12; article VII, section 5; and Washington's separation of powers doctrine.

4. The trial court erred in entering judgment in favor of the State, Pierce County, and Didier on and dismissing Appellants' claims under article II, sections 19 and 37; article XI, section 12; article VII, section 5; and Washington's separation of powers doctrine.

5. The trial court erred in severing two unconstitutional provisions of I-976 that were included in the ballot title.

### **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

A. Does I-976 violate article II, section 19 single subject requirements because it combines multiple subjects that are not germane to each other?

B. Does I-976 violate article II, section 19 subject in title requirements because its ballot title affirmatively misrepresents what the measure "would do" and does not include necessary subjects?

C. Does I-976 violate article II, section 37 by amending existing statutes without setting the amendments forth in full, thereby resulting in confusion as to the effect of the new law?

D. May unconstitutional provisions of an initiative be severed from the measure when they were included in the ballot title?

E. Does I-976 violate article XI, section 12 by depriving municipal governments of vested local taxing authority for local purposes prior to expiration of the local tax?

F. Does I-976 violate Washington's separation of powers doctrine through legislative intrusion on the executive function of administering bond repayment?

G. Does I-976 violate article VII, section 5 by diverting tax dollars from the purposes approved by local voters?

#### IV. STATEMENT OF THE CASE

**A. I-976 Is the Latest Attempt by Its Sponsors to Enact \$30 Car Tabs in Washington.**

I-976's drafters and sponsors, including Respondent-Intervenor Tim Eyman, have long led efforts to limit car tab fees to \$30 in Washington, but have done so through initiatives that attempt to incorporate other subjects or raise other constitutional concerns. I-976 is the third initiative submitted to voters since 1999 with a purported "\$30 tabs" provision (although as discussed below, it does not actually create \$30 tabs). This Court invalidated the first such initiative (I-695) in its entirety on multiple constitutional grounds, including article II, section 19's single subject requirement. *See Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 216-17, 11 P.3d 762 (2000) ("ATU"). And this Court limited the scope of the second attempt (I-776) on article I,

section 23 impairment of contract grounds. *See Pierce Cty. v. State*, 159 Wn.2d 16, 27-39, 148 P.3d 1002 (2006) (“*Pierce Cty. II*”).

**B. I-976 Purports to Cap Car Tab Fees at \$30, But Neither Achieves that Result Nor Limits Its Reach to that Subject.**

The self-proclaimed title of I-976 is “Bring Back Our \$30 Car Tabs,” with a stated purpose to “limit state and local taxes, fees, and other charges relating to motor vehicles.” CP 297, 298. The following ballot title was placed before the voters:

Initiative Measure No. 976 concerns motor vehicle taxes and fees.

This measure would repeal, reduce, or remove authority to impose certain vehicle taxes and fees; limit annual motor-vehicle-license fees to \$30, except voter-approved charges; and base vehicle taxes on Kelley Blue Book value.

CP 316. The scope of I-976 ranges well beyond its ballot title.

**1. I-976 Limits or Repeals Multiple Fees and Taxes.**

First, I-976 reduces or repeals multiple fees and taxes, but the net result is not a \$30 car tab. I-976 adds a new section to chapter 46.17 RCW that claims to impose a hard \$30 cap on “[s]tate and local motor vehicle license fees,” defined as “the general license tab fees paid annually for licensing motor vehicles,” but excluding “charges approved by voters after the effective date of this section.” CP 298. The purported \$30 cap applies to “initial” registration and each annual “renewal vehicle registration.” *Id.*

Sections 3 and 4 of I-976 amend RCW 46.17.350 and .355 to set the initial and annual “vehicle license fee by vehicle type” and “license fee by weight” set forth in those statutes<sup>1</sup> at \$30 for certain non-commercial vehicles.<sup>2</sup> CP 298-304. In addition, sections 5 and 6 of I-976 eliminate the electric vehicle mitigation fee established by RCW 46.17.323, as well as the vehicle weight fee and related statutes that authorized rulemaking for vehicle weight determination. CP 304-06. But I-976 leaves in place other fees paid at the time of vehicle registration, which results in a minimum car tab payment of \$43.25. CP 298-306, 652-53, 664.

In addition to limiting fees paid at the time of vehicle registration, section 7 of I-976 eliminates a sales tax on vehicle sales that is unrelated to the cost of registration or renewal and administered by an entirely different state agency (the Department of Revenue, not the Department of Licensing). CP 306-07. Sections 8 and 9 of the initiative attempt to change a vehicle valuation schedule used only in calculating Sound

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<sup>1</sup> These statutes, along with more than a dozen others imposing a variety of fees, are grouped under the heading “vehicle license fees” in chapter 46.17 RCW.

<sup>2</sup> As the trial court recognized, RCW 46.17.350 **already** set the annual “vehicle license fee by type” for passenger cars, sport utility vehicles, motorcycles, and many other types of motorized vehicles at \$30 even before I-976 was enacted. *See* CP 299, 2201-02. I-976 **reduces** such fees only with respect to snowmobiles, commercial trailers, and light trucks weighing 10,000 pounds or less. CP 299, 302, 2202.

Transit’s motor vehicle excise tax (“MVET”) to require use of the Kelley Blue Book (“KBB”) valuation product. CP 307-08. The trial court struck these sections because they violated article I, section 12 of the Constitution. CP 2371; *see also infra*. Finally, sections 10, 11, and 13 of I-976 purport to eliminate and/or limit Sound Transit’s authority to impose future MVETs. CP 308-13.

Many of the above vehicle-related fees reduced or eliminated by I-976 were used to fund the State Multimodal Account, which provides support for a variety of local transportation projects and programs that would otherwise go unfunded. *See* RCW 47.66.070; CP 141-44, 331-44. In addition, I-976 eliminates vehicle fee funding for Transportation Benefit Districts (“TBDs”). More than sixty TBDs throughout Washington currently impose and collect local vehicle fees ranging from \$20 to \$80 per vehicle registration, providing these localities with millions of dollars in revenues used to fund vital local transportation improvement projects. *See* CP 123, 240, 1742, 1781-82, 1810-11.

## **2. I-976 Eliminates Voters’ Ability to Approve Charges.**

Despite a ballot title representing that the initiative preserves “voter-approved charges,” CP 316, I-976 eliminates all current authority for voter-approved vehicle-related charges. Section 6 of the initiative repeals RCW 82.80.130, which authorized a voter-approved MVET for

passenger ferry service. CP 306. It also repeals RCW 82.80.140, which authorized TBDs to impose local vehicle fees. *Id.* Prior to I-976, TBD governing bodies had authority under both RCW 82.80.140 and the TBD authorizing legislation (RCW 36.73.040, .065) to enact vehicle fees up to \$50, while local voters could approve fees up to \$100.

I-976 thus invalidates prior local votes authorizing vehicle fees for local projects. Seattle voters in 2014 overwhelmingly approved a \$60 increase in TBD vehicle fees, with much of the voter-approved portion used to “fund Metro Transit service.” CP 240, 245. With almost \$24 million per year of this revenue, Seattle contracted with King County’s Metro Transit Department (“Metro”) to provide 350,000 additional service hours in the greater Seattle area. CP 53, 62-118, 240-41. I-976 repeals authority for TBD vehicle fees, voter-approved or otherwise, and does not leave voters with a means to impose these fees in the future. *See* CP 306.

### **3. I-976 Purports to Require Sound Transit to Raise New Revenues and Substantially Increase Spending.**

Section 12 of I-976 addresses future actions regarding Sound Transit’s bonds to which MVET revenues are pledged.<sup>3</sup> CP 312. This

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<sup>3</sup> Section 12 of I-976 applies to regional transit authorities (“RTAs”) collecting the MVET authorized under RCW 81.104.160. CP 312. Sound Transit is the only RTA in Washington and, thus, this section is and can only be specifically directed at Sound Transit.

Court has previously recognized that the Sound Transit MVET acts as bond security and held that I-776's attempted repeal of that MVET unconstitutionally impaired Sound Transit's bonds to which MVET revenues were pledged. *Pierce Cty. II*, 159 Wn.2d at 27-39. Although repeal of the MVET is barred under *Pierce Cty. II*, section 12 of I-976 attempts to achieve the same result by forcing Sound Transit to "fully retire, defease, or refinance any outstanding bonds" if MVET revenues are pledged to repay the bonds and defeasement or retirement is possible under the bond terms. CP 312. To comply with this directive, Sound Transit would need to raise significant new taxes and incur substantial new debt, at a cost of at least \$521 million. CP 1263-66.

Section 16 of I-976 sets forth effective dates that depend on Sound Transit's actions taken under section 12. CP 314. Specifically, sections 10 and 11 of I-976 (regarding the Sound Transit MVET) take effect on the date that Sound Transit complies with section 12. *Id.* But section 13 of I-976 (limiting the allowable rate of the Sound Transit MVET) takes effect April 1, 2020, if sections 10 and 11 have not taken effect by March 31, 2020. *Id.* Section 16 directs Sound Transit to inform authorities on effective dates. *See id.*

**C. The Trial Court Upholds All But Two of I-976's Provisions and Severs the Invalid Sections.**

I-976 was approved by Washington voters, 52.99 percent to 47.01 percent, in the November 2019 general election. CP 1201. Despite receiving a majority of the statewide vote, large majorities of voters rejected I-976 in several jurisdictions, including the City of Seattle (76 percent rejecting) and King County (59.5 percent rejecting).<sup>4</sup> Voters also rejected I-976 in Whatcom, Thurston, Jefferson, Island and San Juan Counties by majorities ranging from 50.6 percent to over 70 percent. CP 1204-05, 1207-09. A majority of voters also rejected I-976 in the Sound Transit district (covering portions of King, Pierce, and Snohomish Counties). *See* CP 1263.<sup>5</sup>

Appellants filed a complaint for declaratory and injunctive relief on November 14, 2019, challenging I-976's constitutionality on multiple grounds. CP 1-23. Appellants moved for a preliminary injunction on November 18 to enjoin implementation of I-976. CP 380-423. On

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<sup>4</sup> CP 1205; *see also* [https://results.vote.wa.gov/results/20191105/State-Measures-Initiative-Measure-No-976\\_ByCounty.html](https://results.vote.wa.gov/results/20191105/State-Measures-Initiative-Measure-No-976_ByCounty.html) (last visited April 22, 2020); <https://data.kingcounty.gov/Voting-Elections/2019-General-Election-Final-Precinct-Level-Results/xmnh-jvdp/data> (searching by precincts SEA) (last visited April 22, 2020).

<sup>5</sup> *See also* <https://www.seattletimes.com/seattle-news/politics/majority-of-voters-paying-sound-transits-car-tab-taxes-opposed-i-976/> (last visited April 22, 2020)

November 27, the trial court granted Appellants' motion and stayed implementation of I-976 until further order of the court. CP 831-38. The court concluded that Appellants had demonstrated they were likely to prevail on at least their constitutional challenge based on article II, section 19's subject in title requirement, and that implementation of I-976 would result in actual and substantial injury to Appellants.<sup>6</sup> CP 832-37.

The parties agreed to an expedited summary judgment proceeding. In early January 2020, the parties filed cross-motions for summary judgment as to I-976's constitutionality. CP 1106-25, 1161-92, 1837-1903. Appellants requested a permanent injunction precluding I-976 from taking effect. CP 1839.

On February 12, 2020, the trial court denied Appellants' summary judgment motion in part and declined to enter a permanent injunction. CP 2196-2230. The court determined that implementation of I-976 would result in "actual and substantial injury" to Appellants, CP 2203-04, but denied the majority of Appellants' constitutional challenges on the merits. CP 2207-26. The court retained for future resolution (1) Appellants' claim that I-976's requirement for KBB valuation violates article I, section 12 of

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<sup>6</sup> The State attempted an interlocutory review of this ruling that was later withdrawn. *See Garfield Cty. Transp. Auth., et al. v. State*, No. 97914-6 (Wash. 2019).

the Constitution and (2) the City of Burien's claim that I-976's repeal of TBD vehicle fee authority violates article I, section 23 of the Constitution.<sup>7</sup> CP 2198, 2226-29. The court concluded that the preliminary injunction would remain in effect. CP 2198, 2229-30.

The State, Appellants, and Respondent-Intervenor Clint Didier moved for reconsideration of multiple aspects of the trial court's ruling. CP 2231-37, 2255-82, 2283-94. Appellants focused reconsideration on their article II, section 37 claim given recent dispositive authority from this Court in *Black v. Cent. Puget Sound Reg'l Transit Auth.*, -- Wn.2d --, 457 P.3d 453 (2020), issued the day after the trial court's summary judgment ruling. CP 2256, 2258-60, 2361-63. Appellants also requested reconsideration of the trial court's denial of their article II, section 19 single subject claim. CP 2256-57, 2260-63, 2363-66. The State and Didier requested reconsideration of the trial court's ruling regarding Appellants' article I, section 12 claim, abandoning and/or disavowing their request for discovery and arguing the claim failed as a matter of law. CP 2233-37, 2284-90. The State also requested that the court lift the preliminary injunction. CP 2290-91.

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<sup>7</sup> The City of Burien's claim that I-976 is unconstitutional under article I, section 23 remains before the trial court and is not a part of this appeal.

On March 12, 2020, the trial court disposed of all parties' reconsideration motions. CP 2368-73. The court denied Appellants' motion without analysis. CP 2368-69. As to the State's and Didier's motions, the court first vacated its refusal to enter summary judgment as to Appellants' claim under article I, section 12 of the Constitution. CP 2371. It then granted in part Appellants' motion for summary judgment, ruling that sections 8 and 9 of I-976 (requiring KBB valuation) violated article I, section 12. *Id.* The court then ruled without explanation that sections 8 and 9 of I-976 "are severable and are hereby severed from the initiative as enacted," despite inclusion of those subjects in the ballot title. *Id.* The court indicated it would lift the injunction except as to the City of Burien and the severed portions. CP 2371-72.

Following the trial court's entry of a stipulated CR 54(b) certification and associated judgment on March 24, 2020, Appellants timely filed a notice of appeal directly to this Court. CP 2442-46, 2456-60. The State and Respondent-Intervenors cross appealed. CP 2557-2606.

## **V. ARGUMENT**

### **A. Standard of Review.**

An appellate court reviews a grant or denial of summary judgment under the *de novo* standard. *Mohr v. Grantham*, 172 Wn.2d 844, 859, 262

P.3d 490 (2011). It is “[u]ltimately” the duty of this Court 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) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176-80, 2 L. Ed. 60 (1803)).

Throughout these proceedings, the State has talismanically invoked the “beyond a reasonable doubt” standard for constitutional review, but this standard cannot save I-976. In the context of constitutional review, the beyond a reasonable doubt 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.” *Island Cty.*, 135 Wn.2d at 147. It is not an evidentiary standard addressed to the weight or number of arguments. *Id.* Although this approach shows comity to decisions of the legislative branch, it is always the courts’ duty to decide the constitutionality of a statute. *See Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 508, 585 P.2d 71 (1978) (“While the judiciary occasionally may find it necessary to interpret the State Constitution in a manner at variance with a construction given it by another branch, the cry of alleged ‘conflict’ cannot justify courts avoiding their constitutional responsibility.”).

Finally, it is important that this Court interpret both I-976 and its ballot title under the average informed lay voter test.<sup>8</sup> Unlike regular enactments, initiatives are “to be read as the average informed lay voter would read it.” *Wash. Ass’n for Substance Abuse & Violence Prevention v. State* (“*WASAVP*”), 174 Wn.2d 642, 662, 278 P.3d 632 (2012) (internal quotations omitted). Overly technical readings of initiatives fail the constitutional “purpose of providing notice to the public of the contents of the measure[.]” *Id.* Constructions of an initiative that stray from the average lay voter test mean that the Court is potentially imposing a statute that was never passed by voters. *See In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 69, 109 P.3d 405 (2005) (“[T]here is a difference between adopting a saving construction and rewriting legislation altogether.”) (quoting LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 12-30, at 1032 (2d ed. 1988)).

**B. I-976 Violates Article II, Section 19’s Single Subject Rule Because It Contains Multiple Unrelated Subjects That Are Not Germane to Each Other.**

The single subject clause provides, “[n]o bill shall embrace more than one subject[.]”<sup>9</sup> Const. art. II, § 19. This clause prevents “hodge-

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<sup>8</sup> Nowhere in its opinion did the trial court apply the average lay voter test despite being fully briefed on it.

<sup>9</sup> Article II, section 19 applies to initiatives. *City of Burien v. Kiga*, 144 Wn.2d 819, 824-25, 31 P.3d 659 (2001).

podge or log-rolling legislation,” in which multiple unrelated subjects are attached to each other in a single piece of legislation or unpopular legislation is pushed through by attaching it to popular or necessary legislation. *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 24, 200 P.2d 467 (1948); *see also ATU*, 142 Wn.2d at 207; *City of Burien v. Kiga*, 144 Wn.2d 819, 825, 31 P.3d 659 (2001).

Where legislation has multiple subjects, a reviewing court cannot “assess whether either subject would have received majority support if voted on separately.” *Kiga*, 144 Wn.2d at 825. An initiative that violates the single subject rule is thus void in its entirety. *Lee v. State*, 185 Wn.2d 608, 620, 374 P.3d 157 (2016).

Although billed as a \$30 car tab initiative, I-976 joins together numerous disparate subjects in an attempt to “logroll” statewide passage of the initiative. Many of these subjects repeat legal infirmities this Court has previously identified in other similar initiatives, but on a grander scale. Put another way, I-976 violates virtually every rule this Court has ever laid down with respect to the logrolling of multiple subjects.

**1. The Single Subject Rule Prohibits Enactment of Unrelated Provisions in a Single Initiative.**

For purposes of this appeal, Appellants assume that I-976 has a “general” ballot title. *See Kiga*, 144 Wn.2d at 825 (discussing general vs.

restrictive ballot titles). When an initiative has a general title, this Court “look[s] to the body of the initiative to determine whether a rational unity among the matters addressed in the initiative exists.” *Id.* at 826.

“[R]ational unity must exist among all matters included within the measure and the general topic expressed in the title.” *Id.* Consequently, “the existence of rational unity or not is determined by whether the matters within the body of the initiative are germane to the general title **and** whether they are germane to one another.” *Id.* (emphasis added). I-976 violates article II, section 19 because it fails both prongs of the rational unity test.

## **2. Multiple Subjects of I-976 Are Not Germane to Its Title.**

The trial court erred in concluding that all substantive sections of I-976 were germane to its title. CP 2208-12. This error is grounded in the court’s overbroad characterization of I-976’s title as “motor vehicle taxes and fees” (language simply lifted from I-976’s statement of subject). *See* CP 316, 2208. In reviewing a similar challenge to I-776 (another Eyman \$30 car tab initiative), this Court accepted the trial court’s determination (and the State’s position) that the subject of that initiative was “**limiting ...charges that motor vehicle owners must pay upon the registration or renewed registration of a vehicle**” even though I-776’s broadly worded statement of subject stated that it “concern[ed] state and local government

charges on motor vehicles.” *Pierce Cty. v. State*, 150 Wn.2d 422, 427, 432, 435-436, 78 P.3d 640 (2003) (“*Pierce Cty. I*”) (internal quotations omitted; emphasis added); Brief of State of Washington, *Pierce Cty. I*, 150 Wn.2d 422 (2003) (No. 73607-3), 2003 WL 24118263, at \*12. Indeed, I-976’s sponsors titled the initiative “AN ACT Relating to **limiting** state and local taxes, fees, and other charges relating to vehicles . . .” CP 297 (emphasis added). I-976’s general title should similarly be qualified as “limiting” vehicle taxes and fees paid at vehicle registration.

Moreover, a law cannot have a subject matter that is “excessively general” under the single subject rule. *See Wash. Fed’n of State Emps. v. State*, 127 Wn.2d 544, 576, 901 P.2d 1028 (1995) (Talmadge, J., concurring in part); *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 636, 71 P.3d 644 (2003) (Court adopted a “moderate interpretation” of ballot title between the two extremes offered by the parties).<sup>10</sup> In this case, the trial court’s construction is too broad and would essentially render the first part of the rational unity test a nullity.

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<sup>10</sup> *See also Kunath v. City of Seattle*, 10 Wn. App. 2d 205, 230, 444 P.3d 1235 (2019) (general subject of “local government” was “so expansive that literally any set of legislative enactments affecting any aspect of towns, cities, or city-counties would purport to satisfy the rational unity test, thus undermining the purpose of the single subject rule”).

Particularly glaring here is section 12 (purporting to require early retirement, refinancing or defeasance of Sound Transit's bonds). Section 12 is only connected to vehicle taxes in the loosest sense. And it increases rather than reduces or limits taxes. *See* CP 1263-66. Similarly, section 7 pertains to a separate vehicle **sales** tax, which has nothing to do with vehicle license tabs or fees, much less limiting vehicle charges at annual **registration**. Even if this Court were to indulge these subjects as germane to the ballot title (which it should not do), I-976 fails because numerous sections are not germane to one another.

### **3. I-976's Subjects Are Not Germane to Each Other.**

Under the second part of the rational unity test, **all** sections of an initiative must be germane to each other. This Court has applied four criteria in making that determination. I-976 fails in each instance.

First, this Court has repeatedly invalidated legislation that combined **unrelated general/continuing and specific/one-time purposes**. In *ATU*, this Court struck down I-695, which (1) required voter approval for any state-imposed tax increase and (2) set license tab fees at \$30 per year for motor vehicles through repeal of various statutes including the state MVET. 142 Wn.2d at 193. The Court held I-695 had "two purposes: to specifically set license tab fees at \$30 and to provide a continuing method of approving all future tax increases." *Id.* at 217.

There was no rational unity between those subjects, and I-695 thus violated the single subject requirement. *ATU* relied on *Wash. Toll Bridge Auth. v. State*, 49 Wn.2d 520, 304 P.2d 676 (1956), where this Court struck legislation that (1) provided procedures for establishing and financing toll roads and (2) provided specifically for a toll road linking Seattle, Tacoma, and Everett. *Id.* at 521. The Court noted that the act’s first purpose granted the power to build toll roads in general and was “continuing in effect, applicable to every toll road project henceforth to be authorized and constructed.” *Id.* at 524 (emphasis omitted). In contrast, the act’s second purpose was to provide for the construction of a specific toll road—a purpose that was “subject to accomplishment, and . . . not continuing in character,” and thus not germane to the purpose of creating an authority for the establishment of toll roads generally. *Id.* (emphasis omitted).

Following *ATU*, in *Kiga*, this Court invalidated I-722, which combined a repeal and one-time refund of tax increases with systemic changes to future property tax assessments: “The retroactive refund of those charges is unrelated to the systematic, ongoing changes in property tax assessments contemplated in the remainder of the initiative.” 144 Wn.2d at 827.

Most recently, in *Lee*, this Court invalidated I-1366, which set the sales tax and established new mechanisms for adopting future tax and fee increases:

I-1366 mirrors I-695 and I-722. Section 2 of I-1366 specifically sets the sales tax rate at 5.5 percent, just as I-695 specifically set license tab fees at \$30 and I-722 provided for a one-time nullification and refund of a specific tax. Section 3 of I-1366 proposes a constitutional amendment requiring a supermajority vote or voter approval to raise all taxes and legislative approval to increase any fees. In other words, section 3 requires the creation of a permanent, systemic change in approving all future tax increases, which is similar to the voter approval for tax increases provision of I-695 and the property tax assessment provision of I-722.

185 Wn.2d at 622. The Court concluded: “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.” *Id.* at 623.

Second, initiative provisions are not germane to each other if they **combine unrelated local and statewide effects**. Indeed, the single subject rule was adopted because

there had crept into our system of legislation a practice of **engrafting upon measures of great public importance foreign matters for local or selfish purposes**, and the members of the Legislature were often **constrained to vote for such foreign provisions to avoid jeopardizing the main subject or to secure new strength for it, whereas if**

**these provisions had been offered as independent measures they would not have received such support.**

*Lee*, 185 Wn.2d at 620 (emphasis added; internal quotations and citations omitted). In *Wash. Toll Bridge Auth.*, the legislation that violated the single subject rule combined a dramatic increase in a state agency's statewide powers with the provision of a road serving three cities within the highest-population area of the state. 49 Wn.2d at 523-24. This type of legislation, in which lawmakers attempt to patch together different constituencies to achieve a majority vote on multiple measures that could not pass separately, is classic logrolling.<sup>11</sup> See *ATU*, 142 Wn.2d at 207; *Lee*, 185 Wn.2d at 627; see also *Kunath*, 10 Wn. App. 2d at 225, 229-30 (where some of initiative's provisions were limited to city-counties and other provisions applied to state government or broadly to all municipalities, the provisions were not adequately germane to each other).

Third, this Court may consider **whether multiple subjects are “necessary to implement” each other.** See *Lee*, 185 Wn.2d at 623. If not, a single subject violation is more readily found. See *id.* (“a reduction in the current sales tax rate is not necessary to implement a constitutional

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<sup>11</sup> I-976 evidences a particularly pernicious form of geographic logrolling where the entire state is voting to invalidate TBD taxes that were approved by Seattle voters and RTA taxes that were approved by Sound Transit voters.

amendment or a change to the method for approving all future taxes and fees”); *ATU*, 142 Wn.2d at 216-17 (provisions specifically setting license tab fees at \$30 and providing a continuing method of approving all future tax increases were not necessary to implement each other); *Kiga*, 144 Wn.2d at 827 (repeal and onetime refund of taxes was “unnecessary and entirely unrelated to permanent, systemic changes in property tax assessments”). But the “necessary to implement” criterion has been applied only in conjunction with the others discussed herein, and this Court has cautioned against placing undue emphasis on this factor. *See Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 638-39 (declining to narrow the test of rational unity solely to “necessarily to implement” analysis); *see also Am. Hotel & Lodging Ass’n v. City of Seattle*, 6 Wn. App. 2d 928, 944, 432 P.3d 434 (2018), *review granted*, 193 Wn.2d 1008, 439 P.3d 1069 (2019), *dismissed* (Oct. 21, 2019).

Finally, **whether the Legislature has historically treated issues together** is relevant to the rational unity analysis. In *WASAVP*, this Court upheld a comprehensive liquor initiative where (among other factors) liquor was historically governed by a single comprehensive regulatory regime. 174 Wn.2d at 657-59. But in *Lee*, this Court supported its invalidation of I-1366 in part on the ground that “Sponsors point[ed] to no history that the legislature has treated sales tax reductions and

constitutional amendments or supermajority requirements together.” 185 Wn.2d at 623. The Court of Appeals recently invalidated an initiative on the same grounds. *See Am. Hotel*, 6 Wn. App. 2d at 946-47.

Applying the above criteria based on this Court’s precedent, at least five sections of I-976 fail because they are not germane to each other or the rest of the initiative.

***a.) Section 12 addresses Sound Transit’s bonds, a subject entirely separate from the remainder of I-976.***

Section 12 of I-976, requiring Sound Transit to retire, defease, or refinance existing bonds, is a blatant example of logrolling implicating all of the above criteria.

First, the State incorrectly insists that all sections of I-976 are continuing in nature. Verbatim Report of Proceedings (VRP) (Feb. 7, 2020) at 283:7-25 (characterizing I-976 as a “legislative change that continues indefinitely into the future”), 290:3-21 (stating I-976 is “all continuing”). Section 12, however, is a one-time directive to a specific RTA (Sound Transit is the only one) to refinance, retire, or defease a specific set of bonds. The terms “refinance,” “retire,” and “defease” have particular meanings and require reconfiguration of debt and reallocation of revenues. *See* CP 1264-65. This mandated expenditure or reallocation of Sound Transit’s revenue is a “wholly different subject” from other

provisions of I-976 that purport to “limit or reduce taxes [and fees].” *Kiga*, 144 Wn.2d at 829 (Sanders, J., concurring); *see also ATU*, 142 Wn.2d at 216-17. I-976’s combination of general, continuing purposes with an unrelated, one-time, and highly specific purpose results in multiple subjects in violation of article II, section 19. *See ATU*, 142 Wn.2d at 216-17; *Kiga*, 144 Wn.2d at 827; *Lee*, 185 Wn.2d at 622-23.

Second, while I-976’s subjects generally have statewide applicability,<sup>12</sup> but section 12 is uniquely local in nature. Only voters within Sound Transit’s district pay the Sound Transit MVET whose revenues are pledged to repay Sound Transit’s bonds. Section 12 accordingly impacts only those voters. Further underscoring the local and independent significance of this issue, Sound Transit’s transportation financing and construction activities are the subject of 20 years of litigation including multiple trips to this Court. *See Pierce Cty. I*, 150 Wn.2d at 427-42; *Pierce Cty. II*, 159 Wn.2d at 23-51; *Black*, 457 P.3d at 456-62. In combining subjects with statewide effect (such as the purported \$30 cap on car tab fees) with purely local matters (retirement of Sound Transit’s bonds), I-976 highlights a core concern of the single subject rule dating back to its origins: the “practice of engrafting upon

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<sup>12</sup> The other exception is sections 8 and 9, discussed *infra*.

measures of great public importance foreign matters **for local or selfish purposes**[.]” *Lee*, 185 Wn.2d at 620 (internal quotations omitted; emphasis added). Like the measure in *Wash. Toll Bridge Auth.*, 49 Wn.2d at 523-25, I-976 uses a standalone local issue and a general statewide proposition to improperly “logroll” votes together.

That section 12 is a separate subject not germane to I-976’s purported \$30 cap on car tab fees is further supported by this Court’s analysis in *Pierce Cty. I*. There, plaintiffs challenged I-776 under the single subject rule because it combined a \$30 limit on car tab fees with policy expressions indicating the people “expect” transit agencies to retire bonds to which the Sound Transit MVET were pledged. 150 Wn.2d at 427-29, 448. The State in *Pierce Cty. I* never even suggested that rational unity existed in the event the Sound Transit bond provision was legally operative. Instead, the State argued only that the language was precatory and lacked legal effect. Brief of Appellant State of Washington, *Pierce Cty. I*, No. 73607-3, 2003 WL 24118263, at \*12-20 (2003); Reply Brief of State of Washington, *Pierce Cty. I*, No. 73607-3, 2003 WL 24118267, at \*3-4 (2003).<sup>13</sup> This Court accepted that argument and held the Sound Transit bond provision was not a second subject because it was merely

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<sup>13</sup> Copies of these briefs are available in the Washington State Law Library.

“precatory” language. *Pierce Cty.* I, 150 Wn.2d at 431-36. Tellingly, no justice opined there was rational unity between the provisions at issue. *Id.* at 431-36 (majority), 442-44 (dissent). In fact, the dissent opined there was **no rational unity** between the \$30 cap on license fees and the Sound Transit bond provision and would have invalidated I-776 notwithstanding the precatory nature of the bond provision. *Id.* at 442-44 (Chambers, J., dissenting); *see also* CP 1486-89.

Third, the trial court erroneously adopted the State’s argument that section 12 is “necessary to implement” sections 10 and 11 (which repeal the Sound Transit MVET). CP 1178-79, 2004-05, 2209. As noted above, the “necessary to implement” factor does not on its own cure a single subject defect. *See Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 638-39. Rather, the single subject rule is satisfied only where rational unity exists “**among all matters** included within the measure[.]” *Kiga*, 144 Wn.2d at 826 (emphasis added). Thus, even if section 12 is necessary to 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,<sup>14</sup> that does not result in rational unity

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<sup>14</sup> This is a highly dubious proposition, as this Court ruled in *Pierce County II* that I-776 did not apply to Sound Transit’s MVET because the Contract Clause protected that bonded revenue stream. Allowing a mandatory legislative directive to retire those same bonds would simply be

among all the initiative’s subjects. *See Am. Hotel*, 6 Wn. App. 2d at 945 (even if one provision of an initiative was necessary to implement another, that did not establish rational unity); *Kunath*, 10 Wn. App. 2d at 229 (similar). For example, compelling early retirement of Sound Transit’s bonds, even were such a thing legally possible, is not necessary to “repeal, reduce, or remove authority” to impose vehicle taxes and fees that are unrelated to the Sound Transit MVET, such as the sales tax in section 7. Nor is it necessary to limit car tabs to \$30 given the State’s claim that \$30 car tabs refers only to **state** license fees, not local charges. *See infra*, Section V(B)(3)(b).

Finally, neither the State nor I-976’s sponsors have pointed to any history of the Legislature addressing Sound Transit’s bonds together with any other subject under I-976. Nor can they, as I-976’s bond provision appears to be the first of its kind. Regardless, the types of charges encompassed by I-976 have been treated separately from Sound Transit taxes and fees. *See* chapter 46.17 RCW (state vehicle fees); chapters 82.80 and 36.73 RCW (local TBD taxes and fees); title 81 RCW (Sound Transit MVET). There is no support for addressing all of these subjects together with Sound Transit’s bonds as was done in I-976.

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an indirect end run around that constitutional protection. *See Pierce Cty.* II, 159 Wn.2d at 27-39; Const. art. I, § 23.

In sum, I-976 is a classic example of pairing an end that will attract certain votes (a \$30 car tab fee) with another end that will attract potentially different votes (requiring Sound Transit to raise funds to retire or defease bonds) in order to reach what turned out to be a slim majority of the total votes. The single subject rule is intended to prevent exactly this kind of logrolling.

***b.) Under the State’s interpretation, I-976’s “voter-approved charges” exception is an unconstitutional second subject and an invalid attempt to amend the Constitution.***

I-976’s ballot title affirmatively deceives voters by misrepresenting that the \$30 cap on car tab fees does not apply to “voter-approved charges” because the initiative actually removes all authority for such voter-approved charges. *See infra*, Section V(C). To defend against this subject in title violation below, the State in its summary judgment briefing and at oral argument advanced an alternative interpretation of I-976 that **future** voter approval was required before the Legislature could act to increase vehicle license fees and taxes. *See* CP 1180-82, 1999-2001, 2100-2101; VRP (Feb. 7, 2020) at 278:20-279:11, 299:4-301:11, 305:8-307:16.<sup>15</sup> Appellants disagree with the State’s interpretation of I-976’s

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<sup>15</sup> After Appellants pointed this out, the State attempted to walk back its argument, claiming the “except voter-approved charges” language in I-976’s ballot title is essentially meaningless. *See* CP 2326-27. But the purpose of the ballot title is to describe the operative content of the

“except voter-approved charges” language as discussed *infra*, Section V(C). But assuming the State is correct, any effect of I-976 to limit the Legislature’s authority to increase state vehicle license fees in the future (by requiring voter approval for the same) constitutes an unconstitutional second subject. This is a significant, permanent, systemic change in the legislative mechanism for increasing such fees in future. As in *ATU*, *Kiga*, and *Lee*, I-976’s alteration of the method for passing future motor vehicle tax and fee increases is unrelated to multiple one-time and specific subjects in the initiative, including its requirement that Sound Transit retire its bonds (section 12) and its elimination of a current sales tax (section 7). I-976’s combination of unrelated general/continuing and specific/one-time purposes violates the single subject rule.

In addition to constituting an unconstitutional second subject, I-976’s “voter-approved charges” exception as interpreted by the State amounts to illegal amendment of the Constitution in violation of article XXIII because it attempts to “change[] the way in which a piece of legislation is enacted.” *ATU*, 142 Wn.2d at 244. A constitutional amendment cannot be proposed or enacted by initiative. *Lee*, 185 Wn.2d

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measure, i.e., what the measure “would do.” See *Pierce Cty. I*, 150 Wn.2d at 436. By including “except voter-approved charges” in the ballot title, the State was acknowledging that the phrase was substantive and operative.

at 628. If the State's contingent reading of I-976 is true, conditioning legislative action on higher vehicle fees and taxes on a public vote plainly violates the constitution. *ATU*, 142 Wn.2d at 231-44; *see also League of Educ. Voters v. State*, 176 Wn.2d 808, 823-26, 295 P.3d 743 (2013) (provision requiring supermajority vote of the Legislature for ordinary legislation unconstitutionally amended the constitution); *Lee*, 185 Wn.2d at 627-29 (initiative imposing immediate tax reduction unless Legislature proposed constitutional amendment altered process for amending Constitution in violation of article XXIII).

***c.) I-976's repeal of the additional motor vehicle sales tax is not germane to its other provisions.***

Section 7 of I-976's amendment of RCW 82.08.020 to eliminate an additional 0.3% sales tax on vehicle sales is yet another example of the initiative's lack of rational unity. Unlike the recurring and universally applicable charges imposed and collected at the time of annual vehicle registration and administered by the Department of Licensing (addressed in other provisions of I-976), a sales tax is a one-time tax, administered by the Department of Revenue, that is charged and paid only at the point of sale and affects only a limited subset of vehicle owners in any given period of time (those who purchase vehicles). *See* RCW 82.08.050, .060. It is unrelated to vehicle registration fees and taxes.

Accordingly, section 7's repeal of the one-time tax imposed on **sale** of a vehicle is unrelated to the long-term changes to annual vehicle **licensing** charges contemplated in other provisions of the initiative. *See Kiga*, 144 Wn.2d at 827 (I-722's "nullification and onetime refund of various 1999 tax increases and monetary charges" was not germane to the "permanent, systemic changes in property tax assessments" proposed in the remainder of the initiative). It is also unrelated to I-976's change in the mechanism for enacting future increases in state motor vehicle license fees, discussed *supra*. *See Lee*, 185 Wn.2d at 622 ("[A] reduction to the sales tax rate is **unrelated** to both a constitutional amendment, which would impact future legislatures, and to the way that future taxes and fees are approved." (emphasis in original)). It is similarly unrelated to section 12's bond provision, or sections 8 and 9 on valuation schedules.

***d.) Requiring KBB valuation for Sound Transit's MVET is a separate subject altogether.***

Finally, sections 8 and 9 of I-976 attempted to establish KBB as the basis for valuing vehicles for purposes of MVETs based on valuation. The trial court properly invalidated these sections under article I, section 12 of the Constitution. CP 2371. Regardless, they also constitute an unconstitutional additional subject. And this Court should reach that question because although the Court found the sections to be severable

under article I, section 12, they would not be severable under the single subject clause.<sup>16</sup>

The only MVET in the state based on valuation is the Sound Transit MVET. *See* RCW 81.104.160. Accordingly, sections 8 and 9 of I-976 apply only to Sound Transit. Like section 12 addressed above, these provisions address a significant local issue affecting voters within Sound Transit’s jurisdiction. Sound Transit’s vehicle valuation methodology has itself been part of years of separate litigation and multiple legislative proposals. *See, e.g., Black*, 457 P.3d at 456-57; S.S.B. 6606, 66th Leg., Reg. Sess. (Wash. 2020); 2.E.S.B. 5893, 65th Leg., Reg. Sess. (Wash. 2017). Similar to the legislation that combined broad statewide purposes with specific local purposes in *Wash. Toll Bridge Auth.*, I-976’s combination of an MVET valuation “fix” for local Sound Transit voters with provisions having broad statewide effect (\$30 car tabs, etc.) is classic logrolling in violation of article II, section 19. *See* 49 Wn.2d at 523-25. Further underscoring sections 8 and 9’s lack of germaneness, no other provisions in I-976 address vehicle valuation. Indeed, under the State’s own interpretation of I-976’s cap (i.e., that “\$30 car tabs” refers only to

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<sup>16</sup> The trial court separately erred in concluding these sections were severable under article I, section 12. *See infra*, Section V(E).

the state motor vehicle license fees under RCW 46.17.350 and .355), valuation is entirely irrelevant to I-976's stated purpose.<sup>17</sup>

The trial court's severance of sections 8 and 9 despite their being referenced in the ballot title raises an additional germaneness issue. The trial court apparently determined these KBB provisions were so insignificant that their presence in the ballot title **despite being invalid** was not of constitutional concern. Appellants dispute that conclusion as addressed *infra*, Section V(E). But the trial court's ruling nevertheless implies sections 8 and 9 lack germaneness to I-976's title and its other provisions. In other words, if these sections were germane, their elimination would raise a serious question "whether the [voters] would have enacted the remainder of [I-976]" without them, rendering severance improper. *League of Women Voters of Wash. v. State*, 184 Wn.2d 393, 412, 355 P.3d 1131 (2015).

Finally, any single subject violation voids an initiative in its entirety. That result is necessary because "it is impossible for the court to assess whether either subject would have received majority support if voted on separately." *Kiga*, 144 Wn.2d at 825. In this case, it is

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<sup>17</sup> To the contrary, I-976 removes any need for valuing cars for registration or renewal. An old jalopy pays the same \$30 fee as a new Maserati.

impossible to determine whether any subject of I-976 standing alone would have received majority support if voted on separately. Because the title and the body of I-976 include multiple unrelated subjects, the initiative is unconstitutional and invalid under article II, section 19. The trial court should be reversed on this basis, which would also dispose of this case in its entirety.

**C. I-976 Violates Article II, Section 19’s “Subject in Title” Requirement.**

The “purpose” of the subject in title requirement is to “notify members of the Legislature and the public of the subject matter of the measure.” *ATU*, 142 Wn.2d at 207. It exists so “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). As “the most salutary provision in our state Constitution,” it “makes the title speak the object of the law,” serving as a “herald of the true intent and purpose of the law.” *State v. Mitchell*, 55 Wash. 513, 516, 104 P. 791 (1909).

Nowhere is the requirement of truth and transparency in ballot titles more important than with initiative measures. The “particular importance of this requirement in the context of an initiative” is that voters often do not read the “text of a measure or the explanatory statement,” but “instead cast their votes based upon the ballot title.” *ATU*, 142 Wn.2d. at

217. A ballot title performs the crucial function of telling voters “what the measure would do” if passed. *Pierce Cty.* I, 150 Wn.2d at 436.

Here, the I-976 ballot title represents that “[t]his measure would repeal, reduce, or remove authority to impose certain vehicle taxes and fees; limit annual motor-vehicle-license fees to \$30, except voter-approved charges; and base vehicle taxes on Kelley Blue Book value.” CP 316. This ballot title is false and misleading because the measure (1) allows no “voter-approved” exception to the supposed \$30 cap and (2) the fees allowed by the measure exceed the promised \$30 cap. Moreover, the ballot title fails to give notice of several significant clauses and sections of I-976. In short, I-976 is unconstitutional because its ballot title affirmatively deceives and misleads voters on some subjects, while entirely omitting other significant subjects covered by the initiative.<sup>18</sup>

**1. I-976’s Ballot Title Affirmatively Misleads Voters.**

The I-976 ballot title presents the unusual circumstance where an affirmative representation in the ballot title directly misleads and deceives voters. In that circumstance, a strict rule applies under article II, section 19 requiring invalidation of the entire measure. *Howlett v. Cheetham*, 17 Wash. 626, 635, 50 P. 522 (1897) (“[A] title which is misleading and false

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<sup>18</sup> As noted in Section V(E), *infra*, the initiative sponsor handpicked this particular title, which echoes many of his campaign slogans.

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). A misleading or false ballot title completely fails the constitutional requirements of article II, section 19. *See 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 person may be deceived as to what matters are being legislated upon.” (internal quotations omitted)).

Faced with the above authority, the State acknowledged during proceedings below that “material representations in the title must not be misleading or false.” CP 465 (quoting *WASAVP*, 174 Wn.2d at 660-61). It conceded that a materially misleading ballot title automatically invalidates the entire measure:

THE COURT: Does the state agree that if the court were to conclude that the ballot title were materially misleading that that would vitiate the initiative?

MR. COPSEY: Yes, under the cases that have been cited.

VRP (Nov. 26, 2019) at 104:17-21.

There are good reasons to invalidate an initiative where a ballot title contains affirmative misleading representations, rather than applying the notice inquiry approach designed for vague ballot titles. *See ATU*, 142

Wn.2d at 217 (under normal circumstances, a ballot title passes constitutional muster merely by giving voters “notice which would lead to an inquiry into the body of the act” or indicates “the scope and purpose of the law to an inquiring mind”). An inquiry notice standard does not apply because a misleading ballot title affirmatively misrepresents what the initiative “would do” if enacted. As this Court has recognized, voters are entitled to rely on affirmative representations made in the official ballot title to determine the effect of the initiative and cast their votes. *See ATU*, 142 Wn.2d at 217 (noting reasonable voter practice of casting ballot based on the ballot title alone). The title is drafted by the Attorney General and subject to court review. A voter would have no reason to question affirmative representations in the official ballot title, or to dig through initiative text to verify those representations.

The invalidation rule for misleading ballot titles serves an important purpose. When a ballot title misleads voters as to what the initiative “would do,” it becomes impossible to gauge the will of voters who cast their vote based on the faulty ballot title. There can be no confidence that the initiative would have passed if an accurate ballot title had disclosed the measure’s true effect.

***a.) The ballot title's affirmative statement that voter-approved fees can exceed the \$30 cap is false and misleading.***

Based on the plain language of the ballot title, a voter would have readily understood that I-976 capped annual car tab fees at \$30 unless voters had approved an exception to the cap. *See* CP 316. Presented with this affirmative representation of possible voter intervention to ameliorate the consequences of I-976, a voter likely would either believe that local vehicle fees previously approved by voters would remain, or that a “yes” vote retained a mechanism where a subsequent vote of the people could exceed the \$30 cap for important local projects.

Because the ballot title purports to tell voters what I-976 “would do,” the truth of a “voter-approved” exception to the \$30 cap must be tested against the text of the initiative itself. *See Wash. Fed’n*, 127 Wn.2d at 556 (“[A] court examines the body of the act to determine whether the title reflects the subject matter of the act.”). The question is not whether further inquiry into the initiative’s text would have uncovered the falsity of the ballot title. As noted above, such a standard places too high a burden on voters, who are allowed to rely on affirmative representations made in the official ballot title.

Here, the State conceded below that I-976 does not protect prior voter approved local vehicle fees or allow any mechanism for future votes

to exceed the \$30 cap. CP 469, 1180-82, 1184, 1999-2000, 2006, 2326; VRP (Feb. 7, 2020) at 279:24-280:4, 303:15-306:13, 313:8-314:2. To the contrary, I-976 invalidates existing local votes to exceed \$30 vehicle fees and eliminates all existing statutory mechanisms for future votes to exceed the \$30 cap. *See* CP 306 (section 6 repeals RCW 82.80.130, which allowed ferry districts to submit a 0.4 percent MVET for voter approval, and RCW 82.80.140, which allowed TBDs to impose local vehicle fees in excess of \$30, including the option to submit higher amounts to voters). Nothing in the initiative establishes a new mechanism for voter approval. Thus, when the “voter-approved charges” exception in the ballot title is compared to the actual text of the initiative, the ballot title is false and misleading to the voters as to what the initiative “would do.”<sup>19</sup>

The trial court recognized that I-976 “eliminates statutory procedures for voter approval of two kinds of vehicle-related taxes and

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<sup>19</sup> Even the initiative’s sponsor, Tim Eyman, freely acknowledged this deceit and the fatal problem with the I-976 ballot title. In an interview after the election, Eyman said the clear intent of his measure was to get rid of all car taxes and fees above \$30, including voter-approved ones. He confirmed, for example, that it cancels Seattle’s \$60 voter-approved car tab that pays for increased bus service, that it also bars the city from asking voters to approve any car fees in the future, and also (attempts) to repeal Sound Transit’s authority to collect voter-approved vehicle taxes. CP 320. Eyman’s excuse: “I didn’t write the ballot title,” he said. “The attorney general’s office did. The attorney general chose to describe it that way.” *Id.*

fees: TBD [vehicle fees] and the RTA MVET.” CP 2216. It further observed that I-976 contains no provisions that “specify how, absent those repealed statutes, voters could approve future charges above the \$30 limit on vehicle license fees.” *Id.* This comparison of the ballot title’s claims of what the measure “would do” against the actual text of the initiative should have resolved this case. But the trial court departed from the required *Washington Federation* analysis to impute truthfulness to the ballot title’s affirmative misrepresentations because it was “possible” that voters might one day “approve future vehicle license fees . . . through the [statewide] initiative process,” or the Legislature might one day “create[] future authority for local imposition of vehicle license fees.” CP 2216. This was constitutional error.

The ballot title tells voters what I-976 itself “would do,” not how some future statewide initiative or legislative enactment might amend I-976 to fulfill the false representations in the I-976 ballot title. What the general statewide initiative process allows, or what laws the Legislature might enact in the future, are irrelevant to the comparison of the ballot title’s representations against the initiative’s text. In essence, the trial court ruled that the I-976 ballot title satisfied article II, section 19 because it was “possible” that some future law might one day make the ballot title accurate. But ballot titles are judged by what the voter sees when casting

a ballot, not based on some future “possible” event unrelated to adoption of I-976.

***b.) The ballot title’s affirmative representation of a \$30 cap on annual vehicle license fees is false and misleading.***

The ballot title also affirmatively represents a \$30 cap on “annual motor-vehicle-license fees”: I-976 “would . . . limit annual motor-vehicle-license fees to \$30[.]” CP 316. An average lay voter reading this ballot title would understand he or she was voting to impose an annual tab fee of no more than \$30 for vehicle registration.<sup>20</sup>

So does the text of the initiative fulfill the \$30 promise of the ballot title? No. A comparison of the \$30 representation in the ballot title to the actual text of the initiative, per *Washington Federation*, demonstrates that the ballot title was again both false and misleading. No one pays only \$30 under I-976.

The State concedes that the “the measure leaves in place a variety of fees charged under RCW 46.17...which will make total State charges for car tabs exceed \$30.” CP 2001. The State’s own evidence shows that “in order to obtain an original or renewal registration certificate for a non-

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<sup>20</sup> Consistent with the ballot title, the “Argument For” statement in the voter’s pamphlet advocated for “\$30 tabs now!” CP 1458. It informs voters that “I-976 limits license tabs to a flat, fair, and reasonable \$30 per year” for your vehicle. *Id.*

exempt vehicle, the vehicle owner must pay the standard fees, any applicable vehicle weight fee, local taxes and fees, and any applicable motor vehicle excise tax (MVET) imposed by a regional transit authority.” CP 652; *see also* CP 655, 657-61, 664. As a result, the State admits that the minimum registration payment due for any vehicle license transaction is \$43.25. CP 657 (“Everyone starts with the basic fees of \$43.25[.]”), 664. On top of the basic \$43.25 renewal fee, the State further admits that “I-976 does not currently affect MVET/RTA taxes due,” which can amount to hundreds of dollars more in annual registration fees. CP 664. Thus, the State admits that the ballot title of I-976 is misleading and false because it represents \$30 car tab fees, which the initiative does not deliver.

The trial court missed this necessary conclusion by imputing to the ballot title a distinction between what the trial court called “vehicle license fees” and “other vehicle-related fees” due at registration. CP 2497-98. As such, the trial court asserted that “[n]owhere does I-976’s ballot title imply that vehicle owners will receive \$30 invoices for their annual vehicle tabs.” CP 2497. But the trial court’s invention of new categories of license fees in order to save the ballot title fails the average lay voter test. Such a distinction is absent from the ballot title, and the initiative itself makes no effort to distinguish between the myriad of fees that are due annually at vehicle registration.

The trial court also ignored the initiative’s broad definition of “state and local motor vehicle license fees.” CP 298. Under section 2 of I-976, “state and local motor vehicle license fees” broadly include “the general license tab fees paid annually for licensing motor vehicles[.]” *Id.* It refers to the “annual fee [that] must be paid and collected annually and is due at the time of initial and renewal vehicle registration.” *Id.* When interpreting this definition, I-976 specifically directs that the provisions of the measure “are to be liberally construed to effectuate the intent, policies, and purposes of this act.” CP 314. The intent, policies, and purposes are apparent from its name: “Bring Back Our \$30 Car Tabs.” *Id.* In short, I-976’s definition of state and local motor vehicle license fees is properly and liberally interpreted under the average lay voter test to include all annual payments that a vehicle owner must make to register a vehicle.

As a result of this broad definition and the State’s own evidence pointing out that vehicle registration requires the payment of all taxes and fees, there is no basis for the trial court’s distinction (or its ultimate ruling). The ballot title promises annual car tab fees will be capped at \$30, but the State’s own evidence demonstrates that under I-976 “[e]veryone starts with the basic fees of \$43.25” plus applicable MVETs. CP 657; *see also* CP 655. Because, once again, the affirmative misrepresentations in

the ballot title cannot be squared with the text of the initiative itself, I-976 must be declared unconstitutional on this additional ground.

**2. I-976 Must Be Declared Unconstitutional Because Its Ballot Title Fails to Disclose Substantial Subjects in the Initiative.**

Even if I-976's ballot title did not contain false and misleading representations, it separately violates the disclosure subject in title requirements of article II, section 19. A vague ballot title satisfies article II, section 19 only if it gives voters "notice which would lead to an inquiry into the body of the act" or indicates "the scope and purpose of the law to an inquiring mind." *ATU*, 142 Wn.2d at 217. The subject of the bill must be expressed in the title in order "to notify the members of the legislature and the public of the subject matter of the proposed legislation." *Power, Inc. v. Huntley*, 39 Wn.2d 191, 198, 235 P.2d 173 (1951). Here, however, the I-976 ballot title is completely silent on several significant subjects covered by the initiative.

Importantly, there is no reference whatsoever to the retirement or defeasement of Sound Transit's bonds. The ballot title informs voters that I-976 "would repeal, reduce, or remove authority to impose certain vehicle taxes and fees[.]" CP 316. Nothing about this sentence would place voters on notice of inquiry with regard to early bond defeasement or retirement. Quite simply, a bond is not a vehicle tax or fee. The bond

retirement provision in I-976 raises taxes, rather than reducing them. CP 1263-66. Based on the language of the ballot title, there would be no reason for a voter to anticipate that I-976 would require voters to incur the significant cost of premature retirement or defeasement of bonds. Indeed, the word “bond” appears nowhere in the ballot title.<sup>21</sup>

Similarly, the ballot title omits any reference to other aspects of I-976 that are neither vehicle taxes or fees. For example, a sales tax on vehicle sales is not a “vehicle tax or fee.”<sup>22</sup> *See* CP 306-07; RCW 82.08.020. The electric vehicle road mitigation fund is not a vehicle tax or fee, but a road use fee. *See* CP 304-05; RCW 46.17.323.

Because the title does not mention key subjects covered by the initiative, nor does it prompt inquiry into those topics by including words like “bond” or “vehicle sales” or “mitigation fund,” the ballot title violates the subject in title requirement of article II, section 19 on this additional

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<sup>21</sup> There is no doubt that Sound Transit’s bonds were a substantial subject of I-976. Sponsor Eyman testified that I-976 was designed to “give” voters the chance to “re-do” their decision on ST3 because he disagreed with the original election result. Testimony of Tim Eyman, Senate Transportation Committee at 27:30 – 29:05 (Feb. 26, 2019), *available at* <https://www.tvw.org/watch/?eventID=2019021568> (last accessed Apr. 24, 2020).

<sup>22</sup> For the average lay voter, a sales tax is just a sales tax. Otherwise sales taxes paid during a shopping trip would be comprised of shirt taxes, book taxes, office chair taxes, etc. A sales tax stands in contrast to targeted taxes like the gas tax or the liquor tax.

ground. *See ATU*, 142 Wn.2d at 220-29 (subject in title rule violated even where title referenced the word “tax” because that term did not carry its ordinary meaning); *see also Yelle*, 32 Wn.2d at 27-28 (term “ferry connections” in title of the act was “not sufficient to put a reasonably intelligent person on notice” that the act empowered the state toll bridge authority to “acquire and operate a general water transportation system”).

**D. I-976 Violates Article II, Section 37.**

Wholly independent of its violations of both parts of article II, section 19, I-976 amends existing statutes without setting out the amendments in full, in violation of article II, section 37. Article II, section 37 mandates that “[n]o act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.” Const. art. II, § 37. The provision ensures transparency in legislation and “that legislators and voters are apprised of the impact that an amendatory law will have on existing law.” *Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142, 160, 171 P.3d 486 (2007).

This Court recently reaffirmed the two-prong test for determining whether legislation violates article II, section 37. *See Black*, 457 P.3d at 458. The Court first considers “whether the statute is a complete act, such that the rights or duties under the statute can be understood without

referring to another statute[.]” *Id.* (internal quotations omitted). Second, the Court asks whether “a straightforward determination of the scope of rights or duties under the existing statutes [would] be rendered erroneous by the new enactment.” *Id.* (internal quotations omitted).<sup>23</sup>

As discussed below, I-976 fails both prongs of the test. It is not a complete act, and it renders erroneous a straightforward interpretation of existing law.

### **1. I-976 Is Not a Complete Act.**

The purpose of the complete act test is “to make sure the effect of new legislation is clear and to avoid[ ] confusion, ambiguity, and uncertainty in the statutory law through the existence of separate and disconnected legislative provisions, original and amendatory, scattered through different volumes or different portions of the same volume.” *Black*, 457 P.3d at 458 (internal quotations omitted); *see also El Centro De La Raza v. State*, 192 Wn.2d 103, 129, 428 P.3d 1143 (2018). I-976 sows confusion in violation of article II, section 37, because it amends existing laws without setting out those amendments. It is not the type of self-contained legislation that this Court has recognized as “complete.”

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<sup>23</sup> Both prongs of the article II, section 37 test “were developed to determine whether proposed legislation is amendatory in character.” *Wash. Citizens Action of Wash.*, 162 Wn.2d at 159.

The trial court incorrectly determined that I-976 is a “complete act” because the “rights and duties of government subdivisions that charge, levy, or collect vehicle fees and taxes are ‘readily ascertainable’ from the words of the initiative alone.” CP 2219. While a complete act should have these characteristics, I-976 does not. The trial court ignored the amendatory nature of I-976, which renders it incomplete. *See Wash. Citizens Action of Wash.*, 162 Wn.2d at 159 (an act “amendatory of prior acts” is not complete); *ATU*, 142 Wn.2d at 246 (act is complete where it is “independent of prior acts, and stand[s] alone as the law on the particular subject of which it treats”). Rather than standing alone on the subject of governmental authority to collect vehicle taxes and fees as the trial court identified, I-976 consists entirely of provisions that amend or repeal **other** existing laws on subjects ranging from vehicle sales taxes to fees and taxes collected at vehicle licensing to the retirement or defeasement of bonds to which the Sound Transit MVET is pledged.<sup>24</sup> *See* CP 297-314.

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<sup>24</sup> That I-976 is amendatory in nature is evident from the text of the initiative, because **some** but not all sections of the initiative attempt to disclose its effect on other statutes. *See* CP 309-11 at § 11 (repealing RCW 81.104.160’s grant of authority to RTAs to charge the MVET), §§ 10(4)(a)(ii), 10(10)(b) (amending 81.104.140 to clarify that RTAs are no longer authorized to charge the MVET); *see also* VRP (Feb. 7, 2020) at 281:23-282:1 (State’s counsel stated that section 11 of I-976 repeals RCW 81.104.160 and section 10 “amends RCW 81.104.140 to remove a cross reference” to the repealed statute); *Naccarato v. Sullivan*, 46 Wn.2d 67, 76, 278 P.2d 641 (1955) (fact that Legislature previously complied with

I-976 is, therefore, substantially different from acts this Court previously has held were complete. *See, e.g., State v. Thorne*, 129 Wn.2d 736, 754-55, 921 P.2d 514 (1996) (I-593 was a complete act where penalties could be determined without referring to any other statute), *abrogated in part on other grounds by In re Eastmond*, 173 Wn.2d 632, 272 P.3d 188 (2012). Nor does I-976 contain the type of language this Court has determined is sufficient to put readers on notice that an act stands alone on a particular subject. *See, e.g., id.; State v. Manussier*, 129 Wn.2d 652, 664, 921 P.2d 473 (1996) (use of the term “notwithstanding . . . completely address[ed] the scope of the rights affected”); *Black*, 457 P.3d at 459 (MVET statute was complete because it specifically stated in which circumstance each of two depreciation schedules would apply). In sum, I-976 amends numerous other statutes (some identified, some not), and for this reason is incomplete and fails the first prong of the article II, section 37 test.

I-976 also fails the second prong of the article II, section 37 test, notwithstanding whether it is complete or not. A complete act may also violate article II, section 37. *See El Centro*, 192 Wn.2d at 129-32. Even if

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article II, section 37 in adding to investment provisions in employees’ retirement act supported conclusion that new statute changing character of allowed investments was amendatory, not complete).

I-976 were somehow considered complete, it still amends provisions in chapter 36.73 RCW and chapter 46.17 RCW without setting out these amendments, unlawfully causing confusion about the initiative's effect.

**2. I-976 Fails to Disclose Its Amendments to Existing Law and Renders Erroneous a Straightforward Determination of Rights and Duties Thereunder.**

A complete act may still violate article II, section 37 if it renders “a straightforward determination of the scope of rights and duties created by other existing statutes” erroneous. *Black*, 457 P.3d at 460. Statutes must “apprise those who are affected by an existing law of any important changes” made by the newly enacted statute. *Wash. Educ. Ass’n v. State*, 93 Wn.2d 37, 41, 604 P.2d 950 (1980). “Citizens or legislators must not be required to search out amended statutes to know the law on the subject treated in a new statute”; rather, a new statute “must explicitly show how it relates to statutes it amends.” *Wash. Citizens Action of Wash.*, 162 Wn.2d at 152 (internal quotations and emphasis omitted).

Here, I-976 fails to disclose its amendments to chapter 36.73 RCW, creating confusion about the remaining authority of TBDs to collect local vehicle fees, and to chapter 46.17 RCW, creating confusion about the fees that may be imposed at the time of vehicle licensing.

***a.) I-976 renders unclear TBDs' vehicle fee authority.***

TBDs are authorized to impose and collect local vehicle fees under both RCW 82.80.140 and chapter 36.73 RCW. I-976 expressly repeals RCW 82.80.140, but nowhere mentions chapter 36.73 RCW. Thus, the effect of I-976 on the authority of TBDs to collect vehicle fees is unclear and violates article II, section 37.

RCW 82.80.140, which is codified in a chapter on Local Option Transportation Taxes, provides that “[s]ubject to the provisions of RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose an annual vehicle fee, not to exceed one hundred dollars per vehicle registered in the district, for each vehicle subject to” vehicle fees under RCW 46.17.350 and .355. RCW 82.80.140(1). Separately, chapter 36.73 RCW authorizes TBDs. RCW 36.73.040 establishes the general powers of a TBD, including providing that “a district is authorized to impose” a vehicle fee “in accordance with RCW 82.80.140.” RCW 36.73.040(3)(b). Additionally, RCW 36.73.065 establishes the “taxes, fees, charges, and tolls” TBDs may charge, including local vehicle fees. RCW 36.73.065(1), (3)-(6).

Section 6 of I-976 repeals RCW 82.80.140 by name. CP 306. But the initiative nowhere mentions the provisions in chapter 36.73 RCW that separately authorize TBD vehicle fees. *See* RCW 36.73.040, .065.

Although the language of I-976 is silent on chapter 36.73 RCW, the State argued below, and the trial court ruled, that I-976's repeal of RCW 82.80.140 renders portions of chapter 36.73 RCW inoperative. *See* CP 469, 1184, 2221; VRP (Feb. 7, 2020) at 308:13-314:2. By failing to set out or otherwise disclose these amendments to chapter 36.73 RCW, I-976 renders erroneous a straightforward determination of rights and duties thereunder in violation of article II, section 37. *See ATU*, 142 Wn.2d at 253-54; *El Centro*, 192 Wn.2d at 131-32.

Despite this textbook article II, section 37 violation, the trial court incorrectly concluded that the effect of I-976 on chapter 36.73 RCW was “manifestly straightforward” because TBDs are no longer allowed to impose vehicle fees “authorized by RCW 82.80.140.” CP 2221. But this merely begs the question. Clear statutory language in chapter 36.73 RCW separately authorizes TBDs to impose local vehicle fees. While the State argued below that chapter 36.73 RCW refers to vehicle fees as “authorized in RCW 82.80.140,” *see* CP 470-71, it ignored that RCW 82.80.140 likewise references TBD vehicle fees as “subject to” and “under” provisions of chapter 36.73 RCW. Moreover, only RCW 36.73.065 provides for voter-approved local vehicle fees, which are set out in sections that do not reference RCW 82.80.140. *See* RCW 36.73.065(1) (providing that except for the vehicle fee amounts set out in .065(4)(a),

vehicle fees “may not be imposed by a district without approval of a majority of the voters”), .065(6) (voter approval process for local vehicle fees exceeding \$40 imposed by TBD governing board).

This is all the more confusing in light of the misleading language in I-976’s ballot title suggesting that “voter-approved charges” are still allowed after I-976. *See* Section V(C), *supra*. In fact, the trial court’s decision leaves unresolved the issue of whether TBDs could still impose voter-approved local vehicle fees pursuant to RCW 36.73.065(1) and (6). *See* CP 2221 (holding that sections of chapter 36.73 RCW referencing RCW 82.80.140 “are no longer effective,” but that RCW 36.73.065(6) now applies to vehicle fees other than those authorized in RCW 82.80.140).

In short, I-976 was required to set forth the amendments to chapter 36.73 RCW in full as it did with sections related to repeal of the MVET. *See* n.24, *supra*. Moreover, I-976 did not use statutory language like the term “notwithstanding” to make clear that TBD vehicle fees were repealed regardless of any other provision authorizing such fees.<sup>25</sup> *See, e.g., Manussier*, 129 Wn.2d at 665 & n.39 (I-593’s modification of existing

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<sup>25</sup> Given that chapter 36.73 RCW separately authorizes TBD vehicle fees, however, it is not clear that even use of the term “notwithstanding” would have been sufficient to make clear I-976’s effect on that chapter.

sentencing laws was readily apparent from “notwithstanding the maximum sentence under any other law” language); *Thorne*, 129 Wn.2d at 756 (same); *Black*, 457 P.3d at 461 (“notwithstanding” clause in MVET statute explained its impact on other laws). Here, I-976 does not contain such language or any other language clarifying its impact on existing TBD vehicle fee authority under chapter 36.73 RCW. Thus, it violates article II, section 37.

***b.) I-976’s effect on chapter 46.17 RCW is not disclosed.***

The trial court also erred in concluding that I-976’s impact on fees collected under chapter 46.17 RCW was clear. Chapter 46.17 RCW is the general statutory scheme governing “vehicle fees,” many of which are collected at the time of annual vehicle registration renewal. This chapter is divided into several categories, including “vehicle license fees” (RCW 46.17.305-.380), “filing and service fees” (RCW 46.17.005-.060), and “license plate fees” (RCW 46.17.200-.250).

As discussed above, Section 2 of I-976 adds a new section to chapter 46.17 RCW that purports to cap “[s]tate and local motor vehicle license fees” at \$30. CP 298. The initiative’s broad definition of “state and local motor vehicle license fees” encompasses baseline “vehicle license fee by type” and “license fee by weight” set forth in in RCW 46.17.350 and .355, as well as the other chapter 46.17 RCW fees and other

charges that are collected at the time of annual registration renewal.<sup>26</sup> With the exception of the motor vehicle weight fee (RCW 46.17.365, which is repealed in section 6 of I-976) and the filing fee (RCW 46.17.005, which is purportedly retained in sections 3(2) and 4(4) of I-976), I-976 does not reference any of these additional fees. To effectuate the \$30 cap, I-976 must eliminate the additional fees in chapter 46.17 RCW’s “vehicle license fees,” “filing and service fees,” and “license plate fees”—categories that are also charged and collected as part of the annual license tab fee. But I-976 does not disclose this effect and creates further confusion and ambiguity, thus, the initiative again violates article II, section 37.<sup>27</sup>

In the attempt to construe I-976 as constitutional, the trial court improperly ignored I-976’s plain language and its effect on chapter 46.17

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<sup>26</sup> See, e.g., RCW 46.17.365 (motor vehicle weight fee); RCW 46.17.324 (transportation electrification fee); and RCW 46.17.375-.380 (recreational vehicle disposal fees). Charges in the filing and service fees and license plate fees categories are then added, as applicable. See, e.g., RCW 46.17.005 (\$4.50 filing fee); RCW 46.17.040 (\$8.00 service fee); RCW 46.17.015, .025, .210, .220 (various license plate fees and/or license service fees). Finally, any authorized local taxes and fees (such as TBD fees or MVETs) are added to and comprise part of the final car tab fee. See CP 1965, 1967.

<sup>27</sup> Indeed, the State admitted before and after passage of I-976 that it could not discern which fees were amended, repealed or remained. CP 1974-75, 1988-89. Nor do the State and Intervenors agree on this point. See CP 320, 871, 880, 1116-17, 1989-90. This further emphasizes that I-976 precludes a “straightforward” determination of rights and duties.

RCW. Although the court correctly noted that the chapter 46.17 RCW fees “are collected annually, are due at the time of initial or renewal vehicle registration, and would show up on a ‘general license tab’ invoice,” it nevertheless interpreted I-976’s \$30 cap to refer only to the baseline fees imposed under RCW 46.17.350 and .355. CP 2220. In doing so, the court ignored that I-976’s plain text limits “[s]tate and local motor vehicle license fees” to \$30, which as defined by section 2 of I-976 clearly extends beyond the baseline state fees. CP 298 (emphasis added).<sup>28</sup> I-976’s specific definition of “state and local motor vehicle license fees” controls, and the trial court erred in adopting its own definition contrary to I-976’s plain text. *See Am. Cont’l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004) (“Legislative definitions included in the statute are controlling.”).

Moreover, the trial court’s interpretation of I-976’s \$30 cap to avoid an article II, section 37 simply creates an article II, section 19 violation. The trial court ruled that the non-baseline fees in chapter 46.17 RCW will continue to apply in excess of the \$30 cap. *See* CP 2220-21. But so construed, I-976 violates subject in title requirements by materially

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<sup>28</sup> The State DOL itself has recognized that “tab fees” include not only the state fees in chapter 46.17 RCW, but also local TBD fees, Sound Transit MVETs, and other fees and charges collected at annual vehicle registration. CP 1965, 1967.

misrepresenting what voters will pay upon initial or renewal vehicle registration. *See supra*, Section V(C). Either way, I-976 violates the Constitution and should be invalidated.

**E. I-976's Unconstitutional KBB Requirement Cannot Be Severed.**

Although the I-976 ballot title affirmatively represented that I-976 “would . . . base vehicle taxes on Kelley Blue Book value,” CP 316, the trial court severed the KBB sections to preserve the remainder of I-976. This was an additional constitutional error. Although the trial court correctly determined that it was a direct violation of article I, section 12 for I-976 to grant the KBB corporation exclusive rights to the State’s vehicle valuation business, it failed to take the necessary step of invalidating the entire initiative for this violation. Article II, section 19’s subject in title requirements dictate that unconstitutional provisions referenced in the ballot title cannot be severed from an initiative post-enactment. Moreover, the KBB provision was critical to the passage of I-976 and thus fails the severability test. *See, e.g., Hall by Hall v. Niemer*, 97 Wn.2d 574, 582, 649 P.2d 98 (1982) (severability is impermissible if provision was necessary for legislative support to pass bill or if elimination of provision renders the act’s purpose useless).

**1. Under Article II, Section 19, Unconstitutional Provisions of an Initiative Contained in the Ballot Title Cannot Be Severed.**

I-976's ballot title affirmatively represented that KBB valuation must be used. CP 316. Despite this, the trial court incorrectly determined that sections 8 and 9 of I-976, which contained the KBB provisions, could be severed from the initiative. CP 2371. As discussed in Section V(C), *supra*, article II, section 19's subject in title requirements ensure transparency and honesty in legislation. This is especially important for initiatives where "voters will often make their decision based on the title of the act alone, without ever reading the body of it." *Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 639.

Article II, section 19 would be meaningless if it allowed initiatives to entice voters with unconstitutional promises in the ballot title, only to have them severed prior to implementation. The Court of Appeals has recognized the problem inherent in severing parts of an initiative contained in the ballot title, when voters rely primarily on the ballot title in casting their votes. *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 394, 93 P.3d 176 (2004). Although it did not identify article II, section 19 as the basis for its decision, the Court of Appeals held that "[g]iven the nature of the initiative **and the ballot title**, the valid portions of the initiative are not severable from the invalid portions." *Id.* at 395

(emphasis added); *see also Fla. Dep't of State v. Mangat*, 43 So. 3d 642, 648, 650 (Fla. 2010) (misleading statements in ballot summary violate the “implicit accuracy requirement” of the Florida constitution).

Severance of an initiative provision contained in the ballot title, especially one that makes an affirmative representation on what the measure “would do,” necessarily violates article II, section 19. With the unconstitutional provisions severed, the ballot title no longer accurately describes the measure. *See Power, Inc.*, 39 Wn.2d at 203 (holding that the court could not choose between two separate, unrelated subjects in the legislation title, and eliminate one of them, notwithstanding a severability clause in the legislation). Because severance of unconstitutional initiative provisions contained in the ballot title undermines the purposes of article II, section 19, it was error for the trial court to sever sections 8 and 9 of I-976, rather than invalidating the entire initiative.<sup>29</sup>

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<sup>29</sup> Given restrictions on pre-election constitutional challenges to initiatives, severance should not be the only repercussion for including unconstitutional provisions in an initiative, especially when the unconstitutional provision is contained in the ballot title. With an overly forgiving severance rule, initiative sponsors would be able to ensure passage of initiatives by including potentially popular, but perniciously unconstitutional provisions in their initiatives, knowing that such provisions will merely be severed **after** they assist in passage of the initiative itself.

**2. The Unconstitutional KBB Provision Cannot Be Severed Because It Was Essential to the Initiative’s Narrow Passage by Voters.**

In addition to violating article II, section 19, the decision to sever the KBB provisions fails the basic severability test, which is:

whether the constitutional and unconstitutional provisions are so connected . . . that it could not be believed that the legislature would have passed one without the other, **or** where the part eliminated is so intimately connected with the balance of the act as to make it useless to accomplish the purposes of the legislature.

*Gerberding v. Munro*, 134 Wn.2d 188, 197, 949 P.2d 1366 (1998)

(internal quotations omitted; emphasis added). A severability clause in legislation has been viewed as providing “the necessary assurance” that the legislation would have been enacted regardless of elimination of a provision. *Id.* Such clauses, however, which are included in virtually every piece of new legislation, are by no means dispositive. *See League of Women Voters of Wash.*, 184 Wn.2d at 412. Unlike experienced state legislators with access to professional committee staff, there is no reason to assume that voters are able to look beyond the ballot title (which does not mention the severance clause), discover the clause deep in initiative text, or consult counsel with questions about its effect on the initiative.

Rather, a provision is not severable unless it is “grammatically, functionally, and volitionally severable” and a clause is volitionally

severable only “if the balance of the legislation would have likely been adopted had the legislature foreseen the invalidity of the clause at issue.” *State v. Abrams*, 163 Wn.2d 277, 287-88, 178 P.3d 1021 (2008). Thus, the question is whether, without the KBB provision, 51 percent of voters likely still would have voted for the initiative. Here, it cannot be determined that such a vote was likely, given (1) the placement of KBB in the ballot title and (2) the repeated promises in the initiative and related materials that KBB would provide retribution for past failed initiatives by eliminating an allegedly “dishonest, inaccurate, and artificially inflated” valuation system and instead ensure “an honest and accurate calculation.” CP 298, 308, 316, 1458-59.

First, as discussed above, the promise to use the KBB valuation **in the ballot title** is a placement with substantial legal significance—such a provision cannot be severed out as if it never existed in the package voted upon. *See Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 632 (“[I]t is the ballot title with which the voters are faced when voting . . .”). The subsequent invalidation of a provision contained in the ballot title eliminates one important basis for voters’ decisions, leaving this Court to speculate as to whether the initiative would have passed even without the unconstitutional provision.

Here, it cannot be reasonably concluded that a majority of voters would have supported the initiative without inclusion of the KBB provision. To the contrary, as reflected by the ballot title shopping of the initiative sponsor, the inclusion of the KBB provision in the ballot title was key to its passage. Out of nine proposed ballot titles drafted for the various versions of I-976,<sup>30</sup> the sponsor declined to proceed with ballot titles that did not expressly include “Kelley Blue Book” in the concise description. CP 1732-40. Proposed initiatives 967, 975 and 1626 all had concise descriptions that merely stated the measures would “change vehicle-valuation laws” and 1610 said only that it would “change other vehicle tax laws.” CP 1732, 1734, 1738, 1740. This underscores that the reference to KBB valuation specifically, rather than just the promise of a new valuation method, was essential to the measure.

Further, one of the primary selling points for I-976 would not have been satisfied without the KBB provision. The initiative would “base vehicle taxes on Kelley Blue Book rather than the dishonest, inaccurate, and artificially inflated manufacturer’s suggested retail price (MSRP).” CP 298. As made clear in the “Arguments For” section of the voters’

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<sup>30</sup> It is the practice of this initiative sponsor to submit numerous initiatives with nearly identical operative text, as happened here. CP 1502-1730. The State then generates different ballot titles for each proposed measure. CP 1732-40.

pamphlet, the existing valuation method used to calculate the MVET was a hot button issue and the opening argument for passage of I-976. *See* CP 1458 (“Taxing a \$10,000 vehicle like it’s \$25,000 is fraud. I-976 repeals the dishonest valuation schedule **politicians are currently using** to artificially inflate your taxes. No more price gouging!” (emphasis in original)). The voters’ pamphlet may provide evidence of voters’ intent. *ATU*, 142 Wn.2d at 223. The valuation method was also the subject of a separate lawsuit pending at the time the initiative was presented to the voters. *See Black*, 457 P.3d at 456-57. Because the KBB valuation method was a key selling feature of the initiative, its severance is not permissible.

Thus, the KBB provision was a primary source of the emotional appeal to voters, repeatedly described in both the voters’ pamphlet and no less than three separate sections of the initiative as a new, “honest” vehicle valuation method. CP 297-98, 308, 1458-59. For an initiative that attempts to motivate voters to support it by stressing concepts of fairness, vehicle valuation is the most passionately articulated example of the (alleged) unfairness of the current system, and KBB was the offered specific alternative. Section 8 and 9 do not just specify use of a new valuation method; they both **vouch for** KBB values as “honest and accurate.” CP 308. Given in particular the statements in the initiative and

voters' pamphlet, the KBB provisions' importance in securing voter support for I-976 cannot be understated or minimized. Thus, this Court should hold that I-976 was not "likely to be adopted" without those provisions.

In summary, either because severance is precluded by article II, section 19, or because it fails the general severance test, the trial court erred in severing sections 8 and 9 and this Court should invalidate the entirety of I-976.

**F. I-976 Violates Article XI, Section 12 by Interfering with Vested Local Taxing Authority That Is Actively Being Exercised for Local Purposes.**

I-976 uses state legislative power to squash local taxing decisions. Local voters, directly or through their elected representatives, have established over 60 local TBDs throughout the state, as well as an RTA in the central Puget Sound area, to provide transit and transportation services for their local communities. In accord with state law, voters funded those services through local vehicle registration fees. Article XI, section 12 precludes the state legislature from imposing local taxes for local purposes **and** protects the "home rule"<sup>31</sup> rights of local communities against state

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<sup>31</sup> At the time of the Constitution's framing, "home rule" referred generally to local control of local affairs, not just the concept of a home rule charter government. *See generally* Hugh Spitzer, "Home Rule" vs. "Dillon's Rule" for Washington Cities, 38 SEATTLE U. L. REV. 809, 810,

legislative interference following the levy of such taxes. This second provision of article XI, section 12, which has not been addressed since *State v. Redd*, 166 Wash. 132, 6 P.2d 619 (1932), provides that a legislative grant of authority to local governments to collect local taxes for local purposes “vest[s] in” the local government. I-976 is unconstitutional because the vesting clause of article XI, section 12 (and similar vesting language in article VII, section 9) precludes the state from interfering midstream with local taxing authority that is actively being used to fund local projects and services.

**1. The Home Rule Provisions of Article XI, Section 12 Limit the Legislature’s Authority Over Local Taxes for Local Purposes.**

The Washington Constitution enshrines home rule values of local control regarding issues of primarily local concern. *See, e.g., Twp. of Opportunity v. Kingsland*, 194 Wash. 229, 237, 77 P.2d 793 (1938) (“local self-government . . . is fundamental in our conception of free government”). As this Court recently noted, the constitutional home rule provisions regarding taxation establish the “**presumption** of autonomy in local governance.” *Watson v. City of Seattle*, 189 Wn.2d 149, 166, 401

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824-25 (2015) (explaining how founders included home rule in our constitution).

P.3d 1 (2017) (emphasis added). This Court held: “The ‘home rule’ principle seeks to increase government accountability by limiting state-level interference in local affairs. . . . This is particularly important with respect to local taxation authority.” *Id.* at 166-67. As a result, our state follows the “deep-seated Anglo-American principle of keeping taxation as close to the tax-burdened electorate as possible.” *Id.* at 167 (internal quotations omitted).

The founders addressed local taxation through two provisions of the constitution—article XI, section 12 and article VII, section 9. *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 756-57, 131 P.3d 892 (2006). Under the heading “Assessment and Collection of Taxes in Municipalities,” article XI, section 12 bars the Legislature from imposing local taxes for local purposes, but allows it to “vest” such power in local governments:

The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, **vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.**

(Emphasis added). Similar vesting language is found in article VII, section 9.<sup>32</sup>

Under article XI, section 12, the Legislature “is expressly prohibited from direct taxation of municipalities and their inhabitants and property for local purposes.” *Larson*, 156 Wn.2d at 758. Instead, the Legislature’s power is limited to “delegat[ing] to the corporate authorities of municipalities the power to tax such municipalities, their inhabitants, and property for local purposes.” *Id.* The legislature can condition its delegation of local taxing power to municipalities by specifying rates, duration, etc. *See, e.g., State ex rel. Sch. Dist. 37 of Clark Cty. v. Clark Cty.*, 177 Wash. 314, 322, 31 P.2d 897 (1934) (the legislative grant of power to municipalities may be “attended by such conditions and limitations as that body may prescribe” (internal quotations omitted)); *Owings v. City of Olympia*, 88 Wash. 289, 294, 152 P. 1019 (1915) (when vesting a local tax, the Legislature may condition its exercise). One example of conditioning a grant of local taxing authority is the requirement of appropriate fiscal controls. *See Weyerhaeuser Timber Co.*,

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<sup>32</sup> Entitled “Special Assessments or Taxation for Local Improvements,” article VII, section 9 authorizes the legislature to “vest” taxing authority in local governments: “For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes[.]” *See also Weyerhaeuser Timber Co. v. Roessler*, 2 Wn.2d 304, 307, 97 P.2d 1070 (1940).

2 Wn.2d at 308 (“But the legislature, in authorizing the subordinate taxing districts to levy taxes, has seen fit to hedge the power about with other restrictions calculated to protect the taxpayer against abuse of the power by unnecessary or excessive exactions.”). Another example is the inclusion of a sunset clause. *See, e.g.*, RCW 82.14.525 (authorizing seven-year local tax for cultural access programs); RCW 84.52.069 (authorizing six- or ten-year local emergency medical services levy). Thus, **at the time of initial delegation**, the Legislature has nearly plenary power to define the scope and limits of any municipal taxing power that it grants.

Such legislative delegations of local taxing authority for local purposes are common and necessary for operation of municipal government. In addition to TBDs and the RTA, taxing authority for local purposes has been granted to other special purpose districts.<sup>33</sup> Likewise,

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<sup>33</sup> *See, e.g.*, RCW 70.44.060(6) (public hospital districts park districts); RCW 36.69.145 (park districts); RCW 86.15.160 (flood control zone districts).

cities and counties may use local taxing authority to enhance specified community services,<sup>34</sup> or to construct facilities for local benefit.<sup>35</sup>

Thus, under article XI, section 12, the Legislature grants the option of local taxes for local purposes under established conditions. If those conditions are acceptable, then the local government or its voters may choose to impose the local tax and implement the resulting local project or service. As Justice Thomas Cooley explained in his seminal opinion on home rule, “[t]he right in the state is a right, not to run and operate the machinery of local government, but to provide for and put it in motion.” *People ex rel. Le Roy v. Hurlbut*, 24 Mich. 44, 111 (1871).

**2. When a Municipality Accepts a Delegation of Local Taxing Authority, the “Vesting Clause” of Article XI, Section 12 Precludes Legislative Interference with the Taxing Authority While it is Being Actively Utilized for its Local Purpose.**

Although many cases address article XI, section 12’s prohibition against state legislative imposition of local taxes for local purposes, there has been little consideration given to the impact of article XI, section 12’s vesting clause—namely, what is the legal effect of a legislative decision to

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<sup>34</sup> See, e.g., RCW 68.52.290 (county tax authorized for cemetery improvements); RCW 36.49.050 (county tax authorized for dog license fund); RCW 82.14.525 (city tax authorized for cultural programs).

<sup>35</sup> See, e.g., RCW 82.14.530 (local tax authorized for affordable housing); RCW 67.28.180 (local lodging tax authorized for various local purposes).

“vest in” the municipality “the power to assess and collect taxes” for local purposes? Once the Legislature vests authority in local government and local government exercises that authority, is the legislature precluded from subsequent enactments that would further condition, modify, interfere with, or eliminate the municipality’s local taxing authority, during the life of the particular enactment or taxation purpose? If the founders’ intent to grant home rule authority with regard to local taxation for local purposes is to have any meaning, the answer must be “yes.” *See Redd*, 166 Wash. at 137 (“A municipality without the power of taxation would be a body without life, incapable of acting, and serving no useful purpose.” (internal quotations omitted)).

As a key “home-rule provision,” article XI, section 12 restricts “direct legislative action as to local taxing matters” with the objective to “bar the state legislators, whose members come from all parts of the state, from dictating local taxing policy and instead to allow municipalities to control local taxation for local purposes.” *Larson*, 156 Wn.2d at 756 n.3. Thus, article XI, section 12 is a **limitation** on legislative power. *See Moses Lake Sch. Dist. No. 161 v. Big Bend Cmty. Coll.*, 81 Wn.2d 551, 555, 503 P.2d 86 (1972) (“the state constitution is a limitation upon the power of the legislature rather than a grant thereof”). Limitation of the Legislature’s power with respect to taxes for local purposes serves to

guaranty local governments “the right to carry on their strictly domestic or municipal business in their own way, without interference from the State.” *State v. Burr*, 65 Wash. 524, 527, 118 P. 639 (1911). After all, what interest do legislators or state-wide initiative voters have in dictating the local affairs of Asotin County, Moses Lake, or Puget Sound residents?

In *Redd*,<sup>36</sup> this Court addressed article XI, section 12’s limitation on the authority of the Legislature to modify a local tax many years after that authority had vested through its exercise by the municipality for a local purpose. There, Franklin County assessed certain properties in connection with local taxes imposed for local purposes. *Redd*, 166 Wash. at 133. Several years later, a 1931 state law empowered the state, through its tax commission, to reassess those properties in a way that would change their value to alter local tax collections. *Id.* at 134, 136. The county refused to give effect to the tax commission’s reassessment because it violated article XI, section 12 by interfering with the local assessment and collection of taxes in Franklin County for local purposes. *Id.* at 134. The *en banc* Supreme Court held that the 1931 law violated

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<sup>36</sup> The *Redd* case has been frequently cited over the years. Although limited in some details by subsequent cases, it remains both valid and controlling for all purposes cited herein. *See, e.g., Carkonen v. Williams*, 76 Wn.2d 617, 625, 458 P.2d 280 (1969) (*Redd* limited only to extent of possible conflict with uniform valuation requirements).

article XI, section 12 by interfering with the prior delegation of local taxing authority:

**It is not within the power of the Legislature to take from the people of counties, cities, and other municipal corporations the right of local self-government secured to them by our Constitution.** True, the Constitution is not a grant, but a limitation upon the legislative power, and the Legislature may legislate upon any subject not inhibited by the Constitution. However, the Constitution [article XI, section 12] has limited the power of the Legislature, as stated above.

*Id.* at 139 (emphasis added); *see also id.* at 155; *Longview Co. v. Lynn*, 6 Wn.2d 507, 524, 108 P.2d 365 (1940) (“To hold that the statute of 1925 protects bonds issued for improvements ordered prior to the effective date of the act renders the statute obnoxious to article 11, § 12, of our State Constitution[.]”).

***a.) The allocation of legislative power within the structure of article XI, section 12 prevents the Legislature from divesting municipalities of local taxing authority for local purposes during the active exercise of that authority.***

The constitutional structure of article XI, section 12, namely **how** it limits legislative authority, precludes legislative interference with local taxes that are actively being exercised for a defined local purpose.

According to *Redd*, the first provision of article XI, section 12 “divests” the Legislature of the power to impose any local taxes for local purposes. 166 Wash. at 137-39. Having wholly deprived the Legislature

of any power over local taxes for local purposes, article XI, section 12 then “invests” the Legislature “with **a portion** of the power of which it had been divested” so that it could then delegate to local governments the authority to impose and collect local taxes for local purposes. *Id.* at 138 (emphasis added). Using this limited grant of delegation power, the final clause of article XI, section 12 permits the Legislature to then “vest” local governments with the authority to impose and collect local taxes for local purposes. *Id.* at 138-39; *see also State v. Carson*, 6 Wash. 250, 257, 33 P. 428 (1893) (“The power denied to the legislature is the power it is permitted to vest in [municipal] corporate authorities.”).

Thus, once the legislature delegates taxing authority to a municipality for a local purpose and the municipality exercises that taxing authority, such delegation is “absolute and complete:”

The power to tax for corporate purposes has been, as stated above, delegated to counties, cities, and other municipal corporations. **That 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). Following a proper delegation and a local decision to exercise that vested power for a local purpose, a legislative decision to “take away” local taxes dedicated for that

local purpose violates constitutional guarantees of local self-government.<sup>37</sup> *Id.* at 139, 143; *see also* 16 EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 44:9 (3d ed. updated July 2019) (“Provisions as to municipal taxation are frequently contained in state constitutions, and the authority so conferred cannot be interfered with or restricted by legislative enactment, as, for example, by conditioning its exercise by a vote of the electorate.” (footnotes omitted)).

Consistent with article XI, section 12, Appellants acknowledge that a municipality’s right to collect authorized local taxes “vests” only when the delegated taxing authority is actually exercised by the municipality for a defined local purpose. *Cf. Godfrey v. State*, 84 Wn.2d 959, 963, 530 P.2d 630 (1975) (“A vested right, entitled to protection from legislation, must be something more than a mere expectation based upon an anticipated continuance of the existing law[.]”). As such, the legislature can withdraw **unexercised** local taxing authority. *Pierce Cty. I*, 150 Wn.2d at 440. It can also adopt prospective changes to municipal taxing

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<sup>37</sup> Although article XI, section 12 precludes the Legislature from interfering with vested local taxing authority, the local jurisdiction itself retains the right to cease collections, either through a vote of the local population or their elected representatives. For example, Seattle voters brought the monorail tax to a “constitutional ending” when a local vote determined to terminate the project. *Larson*, 156 Wn.2d at 777 (J.M. Johnson, J. dissenting).

authority. *See Serv. Emps. Int’l Union Local 925 v. Dep’t of Early Learning*, 194 Wn.2d 536, 553, 450 P.3d 1181 (2019) (“[N]o law may retroactively infringe” upon a vested right). But once the municipality enacts the local tax, the limitations on legislative power in article XI, section 12 prevent the Legislature from divesting the local taxing authority during its active exercise for a local purpose.

As the founders implicitly recognized, the vesting of local taxes is important to ensure municipal planning and a stable local tax base for local projects. Municipal taxes often cover complicated local projects that require many years to construct. Absent article XI, section 12’s vesting of taxing authority to fund these long-term projects, municipal governments would either be required to forego the project altogether, bond merely to protect against state interference, or face substantial risk that the project will fail following significant sunk costs. *See End Prison Indus. Complex v. King Cty.*, 192 Wn.2d 560, 573-74, 431 P.3d 998 (2018) (pointing out that loss of excess property tax halfway through completion of local project could cause “local governments’ plans and finances [to] be thrown into disarray” and would “undermine the will of the voters”). By vesting delegated taxing authority in municipal governments, the home rule provisions of article XI, section 12 allow local governments to serve the

purposes deemed important by local communities without undue state interference.

*b.) By using the term “vest” in article XI, section 12, the founders intended to preclude legislative interference with delegated local taxing authority that is being actively used for a local purpose.*

The meaning of the article XI, section 12 vesting clause is also apparent from its language. As this Court has noted, “[w]hen interpreting constitutional provisions, we look first to the plain language of the text and will accord it its reasonable interpretation.” *Wash. Water Jet Workers Ass’n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004); *see also Malyon v. Pierce Cty.*, 131 Wn.2d 779, 799, 935 P.2d 1272 (1997) (“Appropriate constitutional analysis begins with the text and, for most purposes, should end there as well.”). When interpreting Washington’s 1889 constitution, the words of the text “will be given their common and ordinary meaning, **as determined at the time they were drafted.**” *Wash. Water Jet Workers Ass’n*, 151 Wn.2d at 477 (emphasis added).

Within the late Nineteenth Century context of our constitution, the term “vest” carried an important and particularized meaning. The 1891 Black’s Dictionary of Law defines the term “vest” to mean “[t]o accrue to; to be fixed; to take effect; to give a **fixed and indefeasible right.**” HENRY CAMPBELL BLACK, A DICTIONARY OF LAW 1217 (1891) (emphasis added).

Similarly, the 1888 Dictionary of American and English Law states that “[w]hen a person becomes **entitled to a right**, estate, etc., it is said to **vest** in him.” RAPALJE & LAWRENCE, A DICTIONARY OF AMERICAN AND ENGLISH LAW, Vol. II (1888) (emphasis added). When used with “in,” as in article XI, section 12 (“vest in”), it means “[t]o place or put in possession or at the disposal of; give or confer formally or legally **an immediate and fixed right or present or future possession, occupancy or enjoyment of**; commit to.” WILLIAM WHITNEY, 6 THE CENTURY DICTIONARY 6740 (1889) (emphasis added). Consistent with these definitions of “vest” connoting a fixed and indefeasible right or entitlement, a contemporaneous U.S. Supreme Court decision defined vested rights as “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) (definition adopted in *Adams v. Ernst*, 1 Wn.2d 254, 264-65, 95 P.2d 799 (1939)).

Thus, when our founders used “vest” in article VII, section 9 and article XI, section 12 of the Constitution, it incorporated a legal expectancy and entitlement to the continued exercise of the right to levy local taxes for local purposes. Our founders understood that **a right, once vested, precluded legislative interference**. See, e.g. *Templeton v. Linn*

*Cty.*, 22 Or. 313, 318, 29 P. 795 (1892) (“Vested rights are placed under constitutional protection, and cannot be destroyed by legislation.”); *see also Judd v. Judd*, 125 Mich. 228, 231, 84 N.W. 134 (1900) (“[T]he legislature cannot interfere with vested rights.”).

The meaning of “vest” as a right and entitlement is apparent in other sections of the Constitution. For example, article II, section 1 of the Constitution “vest[s]” legislative power in the Legislature (with certain powers expressly reserved for the people), while article III, section 2 “vest[s]” executive power in the Governor, and article IV, section 1 “vest[s]” judicial power in the courts. Barring express constitutional provisions conditioning or limiting these vested powers, they cannot be interfered with or taken away by legislative acts. *See, e.g., State v. Gresham*, 173 Wn.2d 405, 432, 269 P.3d 207 (2012) (invalidating statute that interfered with this Court’s constitutional authority to establish its own procedural rules). Consistent with the important meaning of vest in these other constitutional provisions, when the founders used vest in article XI, section 12, it created an entitlement in the municipality to continue levying local taxes without legislative interference until its local purpose was complete.

**3. I-976 Violates the Vesting Clause of Article XI, Section 12 By Attempting to Eliminate Vested Local Taxing Authority for Local Purposes.**

In direct violation of article XI, section 12, I-976 operates to divest municipal corporations—notably TBDs and RTAs—of previously delegated, lawfully exercised and vested authority to collect local taxes for local purposes. As such, the initiative cannot be applied to any local governments that are actively utilizing previously vested local taxing authority for local purposes like transit or transportation projects, including jurisdictions that adopted such taxes by council vote, or those that adopted taxes by a vote of the people.

It is particularly troubling when a legislative act like I-976 is being used to override the vote of a local population to impose local taxes on themselves for a local purpose. In addition to article XI, section 12 vesting concerns, the effective invalidation of a local taxing vote by later statewide initiative implicates article I, section 19, which mandates that “[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Both the Seattle electorate (in a 2014 local election enacting Seattle’s current local vehicle fees) and the Sound Transit electorate (in a 2016 local election approving ST3) utilized vested local taxing authority to raise funds for local transit services. Although voter-approved and

council-approved local taxes carry equal weight under article XI, section 12, this Court should be particularly reluctant to allow an initiative measure that disregards the home rule rights of local populations to self-determination on local taxing decisions.

Below, the State’s only response to Appellants’ article XI, section 12 argument was that *Pierce Cty. I* precluded the argument. But the State’s co-Respondent, Pierce County, agreed with Appellants that the State “is itself mistaken when it asserts there is a case that ‘rejects [Appellants’] argument.’” CP 1916. Respondent Pierce County correctly noted that *Pierce Cty. I* does not control because the Supreme Court “was **never presented with [Appellants’] argument** that local taxing power cannot be removed by the **state legislature** or the vote of those **outside the taxing authority** after it has been exercised and is being collected by a local government for local purposes.” CP 1916-17 (emphasis in original).

Certainly, the vesting clause of article XI, section 12 was not argued in *Pierce Cty. I*, nor did this Court address it. Instead, the respondents in *Pierce Cty. I* claimed only that I-776 violated vague “precepts of local home rule” under article XI, sections 4 and 12, because the repeal of local MVET authority “imposed a tax on those local governments by requiring them to find other funding sources for local

transportation projects.”<sup>38</sup> 150 Wn.2d at 429, 440. Although *Pierce Cty. I* correctly observes that state legislative action can rescind **unexercised** local taxing authority, the case does not address the constitutionality of modifying or eliminating local taxing authority that has been vested in and exercised by a local government and is actively being used for local purposes. *Pierce Cty. I* is neither relevant nor controlling authority.<sup>39</sup>

Because the vesting clause of article XI, section 12 precludes subsequent legislative acts that interfere with or eliminate exercised local taxing authority for local purposes, I-976 is unconstitutional. Enforcement of the vesting clause is necessary to preserve constitutional home rule, which favors local control over matters of local concern.

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<sup>38</sup> Rather than arguing the impact of the vesting clause of article XI, section 12, the respondents in *Pierce Cty. I* based their contentions exclusively on article XI, section 4 and the **first clause** of article XI, section 12, which forbids the legislature from imposing local taxes. CP 1448-49. As this Court properly noted, the gist of respondents’ argument was that “the practical effect of I-776 **is** to impose local taxes in King and Pierce Counties.” CP 1451 (emphasis added). This is not the gist of Appellants argument here.

<sup>39</sup> The sole place that vesting arose in *Pierce Cty. I* was with regard to a substantive due process argument. 150 Wn.2d at 441. This Court found “[n]o authority” for the proposition that the local citizenry has a vested right derived from substantive due process in public projects. *Id.*

**G. Section 12's Bond Administration Directives Violate the Separation of Powers Doctrine.**

I-976 also violates Washington's separation of powers doctrine by dictating the administration of issued and outstanding bonds. Section 12 seeks to require Washington's sole RTA, namely Sound Transit, to "fully retire, defease, or refinance any outstanding bonds" issued under chapter 81.112 RCW. CP 312. Because section 12 is a legislative intrusion on executive branch powers to administer the law, I-976 is unconstitutional.

Whether state or local, any initiative "is limited in scope to subject matter which is legislative in nature" and does not encompass administrative acts. *Ford v. Logan*, 79 Wn.2d 147, 152-155, 483 P.2d 1247 (1971). As discussed in *City of Port Angeles v. Our Water-Our Choice!*, "neither 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**. 170 Wn.2d 1, 8, 239 P.3d 589 (2010) (emphasis added); *see also Philadelphia II v. Gregoire*, 128 Wn.2d 707, 718, 911 P.2d 389 (1996) (the "initiative process is limited to acts that are legislative in nature").

The intrusion of an initiative into administrative functions renders it unconstitutional. The Constitution incorporates foundational separation

of powers principles. *Zylstra v. Piva*, 85 Wn.2d 743, 754, 539 P.2d 823 (1975) (Utter, J. concurring; cited with approval in *Matter of Salary of Juvenile Dir.*, 87 Wn.2d 232, 240, 552 P.2d 163 (1976)). Separation of powers is violated when “the activity of one branch threatens the independence or integrity or invades the prerogatives of another.” *Auto. United Trades Org. v. State*, 183 Wn.2d 842, 859, 357 P.3d 615 (2015) (internal citation omitted). Here, I-976 violates the core principle of separation of powers because, rather than legislating new law or policy about existing bonds, section 12 addresses administrative matters properly left for Sound Transit to decide.

It is well settled under Washington law that the statewide initiative power cannot intrude on a project for which only administrative decisions remain. In *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973), this Court set out the applicable test to determine whether an action is legislative or administrative. If an action “is one to make new law or declare a new policy,” it is legislative, but if it is “merely to carry out and execute law or policy already in existence,” it is administrative. *Id.* at 823-24. In *Ruano*, the legislative decision to build the Kingdome had been made by local officials, including deciding to finance it through bonds and to repay those bonds from specified revenue sources. *See id.* at 821-22. Subsequently, a local initiative was adopted to halt the project

and require repayment of issued bonds. *Id.* at 822. This Court struck down the initiative as intruding on an ongoing project because “only administrative decisions remained in connection with the stadium project, decisions not subject to the initiative process.” *Id.* at 825. Thus, an initiative intrudes on executive branch administrative powers when it directs an agency on how to pay back bonds within the policies of existing law and the parameters of existing bond contracts.

Here, long before I-976, legislation authorized RTA voters to approve high capacity transportation projects, raise taxes through an MVET, and bond against pledged MVET revenues. *See* RCW 81.104.160; RCW 81.104.210(3). Voters in the Sound Transit district made the determination to proceed with building ST1, ST2 and ST3, while financing that construction with revenue bonds backed by the RTA MVET. CP 1260-1263.

Section 12 of I-976, without making a legislative change, directs a transit authority to retire, defease, or refinance existing bonds based on “the terms of the [existing] bond contract.” CP 312. Simply put, the initiative instructs Sound Transit on how it is to administer its bonds, which is a prototypical intrusion of the legislative branch into executive powers and a flat out violation of separation of powers doctrine. There is nothing **new** in section 12 regarding bonds. Instead, from the existing

menu of administrative choices regarding timing of bond repayment available to Sound Transit, the initiative attempts to dictate that timing.

The *Ruano* case is both factually analogous and legally controlling. If ending a previously approved project and requiring complete repayment of bonds “as soon as practical” is administrative, then so too is attempting to direct Sound Transit to retire, defease, or refinance existing bonds for an ongoing project. *Ruano*, 81 Wn.2d at 822, 829. Other jurisdictions evaluating the distinction between administrative and legislative matters have drawn similar lines to *Ruano*. See, e.g., *Keigley v. Bench*, 97 Utah 69, 89 P.2d 480, 485-486 (1991) (ordinance **provision that gives a city “the option to shorten the period for retirement of the bonds . . . is administrative”** when the bonds fell within the previously authorized repayment period); *Lewis v. City of S. Hutchinson*, 162 Kan. 104, 123-28, 174 P.2d 51 (1946) (proposed ordinance stating that bonds authorized at previous election would not become valid obligations until completed plans and materials were available for construction was administrative); *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 492, 821 P.2d 146 (1991) (holding that decisions “carrying out the public purpose established in the [prior] bond election” are administrative acts.).

In the proceedings below, the State attempted to distinguish *Ruano* because it involved a local initiative impacting existing bonds, rather than

a state initiative. But this distinction makes no difference for a separation of powers analysis. *Ruano* is a separation of powers case, not a case about differences between state and local initiatives. Its core holding applies to both state and local initiatives—if an act is administrative in nature, it cannot be addressed through the legislative mechanism of an initiative. Not a single Washington case allows statewide initiatives—or acts of the Legislature—to intrude on administrative decisions. The State’s argument—that local initiatives cannot intrude on administrative decisions but statewide initiatives can—simply makes no sense.

In fact, the reasoning of *Ruano* applies with equal force to statewide initiatives. In *Pierce Cty. I*, this Court explained that I-776 survived the *Ruano* separation of powers analysis because it repealed a general law authorizing an MVET, rather than directing how administrative decisions based on **existing law** must be made:

Sound Transit argues that, in repealing the MVET, I-776 exceeded the scope of the initiative power prescribed in article I [sic], section 1 of the state constitution. Sound Transit relies on [*Ruano*], which concerned the efforts of citizens to stop the Kingdome’s construction by filing an initiative under the King County charter. The *Ruano* court determined that only administrative acts remained and that the charter’s initiative power did not extend to administrative acts. However, whereas the *Ruano* initiative was a local effort to stop administrative acts of a local government, **I-776 is a statewide initiative that repeals a general act of the legislature and has no legal effect on any legislative or administrative act of Sound Transit. As a general law**

**repealing an existing general law (RCW 81.104.160), I-776 does not exceed the scope of the people’s constitutionally granted initiative power.**

150 Wn.2d at 440-41 (internal citations omitted; emphasis added). In contrast, I-976 leaves general law regarding the term and early repayment of the bonds untouched, while attempting to **direct** Sound Transit’s administrative choices on how to execute its bonds. Moreover, it cannot be said with any confidence that the measure would have passed without this key provision. This administrative direction amounts to a core separation of powers violation, and this Court should declare I-976 unconstitutional on this additional ground.

**H. I-976 Improperly Diverts Local Tax Revenue in Violation of Article VII, Section 5.**

I-976 also changes the object to which local taxes must be applied, contravening article VII, section 5 of the Constitution. This provision mandates that “every law imposing a tax shall state distinctly the object of the same to which only it shall be applied.” Const. art. VII, § 5. “[T]he ‘state distinctly’ requirement in article VII, section 5 is directed not simply to the method of taxation but rather the relationship between the tax and the purpose of the tax.” *Sheehan v. Cent. Puget Sound Reg’l Transit Auth.*, 155 Wn.2d 790, 804, 123 P.3d 88 (2005). This Court has, therefore, long recognized that it “is an elementary doctrine in taxation”

that article VII, section 5 prevents the “**diversion of moneys collected by taxation for a special purpose**, and placed in a fund created for such purpose.” *Sheldon v. Purdy*, 17 Wash. 135, 141, 49 P. 228 (1897) (emphasis added); *see also Thompson v. Pierce Cty.*, 113 Wash. 237, 241, 193 P. 706 (1920) (“It is elementary law that when funds are raised by the issuing of bonds or by taxation for a designated purpose they cannot be diverted to some other purpose.”).

Under this Court’s precedent and the undisputed record on summary judgment, section 12 of I-976 (pertaining to Sound Transit’s bonds) violates article VII, section 5. Sound Transit is an RTA authorized under chapter 81.112 RCW. It is empowered to submit plans to voters to construct and operate regional transit supported by taxes designated to implement those plans. *See* RCW 81.112.030. Voters in the Sound Transit district have approved such plans as well as specific taxes that must be used to implement them, including an MVET, a rental car tax, a sales and use tax, and a property tax. CP 1260-61. In other words, the stated “object” of these taxes is high capacity transit as approved by voters.

Section 12 of I-976 purports to require early retirement, defeasance, or refinancing of Sound Transit’s bonds. CP 312. But to comply with this directive would force Sound Transit to divert tax revenue

raised exclusively by statute and approved by voters for the construction and maintenance of high capacity transit, to accelerated debt retirement at a direct cost to Sound Transit of at least \$521 million. *See supra*, Section IV(B)(3); CP 1261, 1264-65. That cost consists of additional principal and increased interest associated with borrowing the amount of replacement debt necessary to redeem the existing debt. CP 1265. Thus, section 12 takes taxes allocated for Sound Transit capital improvements and reallocates them to pay for a forced debt retirement scheme that far exceeds the cost of Sound Transit’s current debt obligations. This violates article VII, section 5. *See Sheldon*, 17 Wash. at 139-41; *Thompson*, 113 Wash. at 240-41; *State ex rel. Latimer v. Henry*, 28 Wash. 38, 43-46, 68 P. 368 (1902).

The trial court reasoned that section 12 applies only to Sound Transit bonds whose terms allow early retirement and, thus, section 12 “[a]t most” requires that “MVET revenues be used to perform enforceable contract terms that are contained in financing agreements for the **very same** Sound Transit projects.” CP 2224 (emphasis in original). The trial court misread the record and erred in reaching this conclusion.

No contract terms require Sound Transit to trade good debt for bad at a cost to the public of hundreds of millions of dollars. Sound Transit issued bonds at favorable interest rates that were tailored to the plans

approved by voters. CP 1260-61, 1263, 1265. Section 12 of I-976 attempts to require Sound Transit to divert tax revenue for the purpose of incurring and servicing new, additional debt, with no legitimate nexus to what the voters approved. In fact, if the revenue were diverted as section 12 contemplates, Sound Transit could not complete its plans on the voter-approved schedules. CP 1265-66.

This Court has held the redirection of revenues earmarked for a specific purpose to unnecessary debt service is an unlawful diversion under article VII, section 5. In *Sheldon*, bondholders sued to compel the county treasurer to pay sums due on bonds issued by a school district, arguing that a specific section of the county code required the county treasurer to use any available school district funds to pay interest on those bonds. 17 Wash. at 135-37, 139-40. This Court concluded the section relied on by the bondholders violated article VII, section 5 because it purported to require the county treasurer to “divert taxes raised” specifically for “the payment of current expenses” and the “support of the common schools” to “the payment of [the school district’s] special local debt.” *Id.* at 140-41. *Sheldon* remains a seminal opinion on article VII, section 5, and establishes a violation here. Tax revenues restricted by law and approved by popular vote for the development of high capacity transit

projects cannot be summarily re-directed to pay down a newly created and wholly unnecessary financial obligation.

In sum, I-976 unlawfully diverts Sound Transit tax revenue from high capacity transportation to wholesale retirement, defeasement, or refinancing of existing bonds, contrary to article VII, section 5.

## VI. CONCLUSION

I-976 violates multiple constitutional provisions that ensure honesty and transparency in legislation and that protect principles of home rule. This Court should reverse the trial court and invalidate I-976.

RESPECTFULLY SUBMITTED this 24th day of April, 2020.

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I am a citizen of the United States, over the age of 21 years, and not a party to this action. On the 24<sup>th</sup> day of April, 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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