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NO. 98320-8

SUPREME COURT OF THE STATE OF WASHINGTON

GARFIELD COUNTY TRANSPORTATION AUTHORITY; et al.,
Appellants,
WASHINGTON ADAPT; TRANSIT RIDERS UNION; and
CLIMATE SOLUTIONS,
Appellants/Intervenor-Plaintiffs,
v.
STATE OF WASHINGTON,
Respondent/Cross-Appellant,
CLINT DIDIER; PERMANENT OFFENSE; TIMOTHY D. EYMAN;
MICHAEL FAGAN; JACK FAGAN; and PIERCE COUNTY,
Respondents/Intervenor-Defendants.

**CORRECTED BRIEF OF RESPONDENT/CROSS-APPELLANT
STATE OF WASHINGTON**

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I. INTRODUCTION

Washington voters cherish and regularly exercise their right to legislate by initiative, “[t]he first power reserved by the people” in Washington’s Constitution. Const. art. II, § 1(a). When Washington voters approved Initiative 976, they exercised this constitutionally protected power, sending a clear message that they wanted to achieve what the Initiative proposed: reducing motor vehicle fees and taxes. Under our Constitution and this Court’s precedent, the voters’ decision is final unless it is clear, beyond a reasonable doubt, that the Initiative is unconstitutional. I-976 easily clears this hurdle and should be upheld.

Plaintiffs offer a multitude of theories as to why I-976 is allegedly unconstitutional, but none withstands careful scrutiny. Indeed, this Court already rejected many of their arguments as to a similar measure. Initiative 776, like I-976, limited state vehicle license fees to \$30 and repealed local authority to impose certain vehicle fees and taxes. *See Pierce County v. State (Pierce County I)*, 150 Wn.2d 422, 430, 78 P.3d 640 (2003). Multiple plaintiffs sued, raising nearly every claim presented here. *Id.* at 428-29. This Court rejected all of these arguments, *id.* at 430-31, just as it should again. While this Court later held that one section of I-776 impaired bonds issued by Sound Transit, *Pierce County v. State (Pierce County II)*, 159 Wn.2d 16, 39, 148 P.3d 1002 (2006), I-976 specifically avoided that concern by conditioning certain sections on Sound Transit’s ability to retire or defease certain bonds.

Even if there were no precedent so directly on point, Plaintiffs could not meet their burden of proving I-976 unconstitutional on any of the grounds they claim. Plaintiffs cannot demonstrate that I-976 contains multiple subjects because all parts of the Initiative relate to one general subject: “motor vehicle taxes and fees.” They cannot show that the title misrepresented the subject of the measure because the title accurately described the measure and gave “notice that would lead to an inquiry into the body of the act.” *Pierce County I*, 150 Wn.2d at 436. They cannot show that it amended statutes without setting them forth in full, because it set forth the statutes it amended and there is no requirement to set forth statutes that are repealed. They cannot show that it impermissibly infringes local authority because local governments can only impose taxes specifically allowed by the State, and the State can always revoke taxing authority previously granted. *See Pierce County I*, 150 Wn.2d at 440. They cannot show that it facially violates the privileges and immunities clause because the provisions they challenge may never take effect, and even if they do, are perfectly constitutional. And they cannot show that it violates separation-of-powers principles because I-976’s provisions fall well within the People’s power to legislate by initiative.

In short, the voters have spoken, and there is no constitutional flaw in I-976 that would justify ignoring their clear message. The Court should uphold the measure.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in denying in part the State and Pierce County's motion for summary judgment as to Appellants' and Appellant-Intervenors' claims under article I, section 12 of the Washington Constitution. CP 2229.

2. The trial court erred in granting Appellants' motion for summary judgment as to their claims under article I, section 12 of the Washington Constitution and in declaring sections 8 and 9 of I-976 unconstitutional in violation of article I, section 12. CP 2371.

3. The trial court erred in entering judgment declaring sections 8 and 9 of I-976 unconstitutional in violation of article I, section 12. CP 2443.

III. ISSUES ON APPEAL

1. Does I-976 violate article II, section 19 of the Washington Constitution?

2. Does I-976 violate article II, section 37 of the Washington Constitution?

3. Does I-976 violate article XI, section 12 of the Washington Constitution?

4. Does I-976 violate article I, section 19 of the Washington Constitution?

5. Does I-976 violate article VII, section 5 of the Washington Constitution?

6. Does I-976 violate separation of powers provisions in the Washington Constitution?

7. Does I-976 violate article I, section 12 of the Washington Constitution? (Assignments of Error 1-3.)

8. If any part of I-976 violates any of the provisions described above, is that part severable from the remainder of the Initiative? (Assignments of Error 1-3, in part.)

IV. STATEMENT OF THE CASE

A. I-976 Passed at the November 5, 2019 General Election

Initiative 976 was approved with 52.99% of the vote in the November 5, 2019, General Election. CP 1199. More than one million Washingtonians voted for it, and it passed in 33 of Washington's 39 counties. CP 1201-1209. In Pierce County, a member jurisdiction of Sound Transit, I-976 passed by a two-thirds majority. CP 1207.

B. The Ballot Title for I-976

As required in RCW 29A.72.050, the Attorney General's Office prepared the ballot title for I-976, consisting of three parts: a statement of the measure's subject, a concise description of the measure, and the question of whether the measure should be enacted into law. *Wash. Ass'n for Substance Abuse & Violence Prevention v. State* (WASAVP), 174 Wn.2d 642, 655, 278 P.3d 632 (2012). The ballot title for I-976 read:

Statement of Subject: Initiative Measure No. 976 concerns motor vehicle taxes and fees.

Concise Description: 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.

Should this measure be enacted into law? Yes [] No []

CP 1253.

C. Legal Backdrop of I-976

Initiative 976 generally repeals, reduces, and removes state and local authority to impose certain motor vehicle fees and taxes. Washington law before I-976 authorized a number of distinct types of motor vehicle taxes and fees relevant here. While taxpayers may not have distinguished between these taxes and fees because they were paid at the same time and some had similar names, each was legally distinct.

First, RCW 46.17 imposed statewide “vehicle license fees.” *See* RCW 46.17.350, .355. This type of fee was imposed only by the State, not by any local government. *See* RCW 46.04.671 (defining “vehicle license fee” as “a fee collected by the state of Washington,” excluding “taxes or fees collected by the department [of licensing] for other jurisdictions”). Use of these fees is governed by Article II, section 40 of the Washington Constitution, which requires that “[a]ll fees collected by the State of Washington as *license fees* for motor vehicles . . . shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes.”

Second, RCW 82.80.140 authorized local transportation benefit districts (TBDs) to impose annual “vehicle fees.” TBDs could impose a vehicle fee of up to \$50 without voter approval, or up to \$100 with voter approval. RCW 36.73.065(1), (4); RCW 82.80.140. Many TBDs imposed vehicle fees, but only one (Seattle’s) was approved by voters—the rest were approved by local TBD boards, without a vote of the People. *See* CP 1232.

While these fees were due when renewing a vehicle license, and were collected by the Department of Licensing on behalf of TBDs, the statute makes clear that they are distinct from “vehicle license fees under RCW 46.17[.]” RCW 82.80.140(1). Consequently, the “vehicle fees” that TBDs collect are not subject to article II, section 40 and may be used for non-highway purposes. *See, e.g.*, RCW 36.73.020 and RCW 36.73.015(6) (together allowing TBDs to fund “high capacity transportation, public transportation, and other transportation projects and programs”).

Finally, RCW 81.104.160 allowed regional transit authorities (at present, only Sound Transit) to impose a motor vehicle excise tax (MVET). This tax, which varied based on vehicle value, was also collected by the Department of Licensing at license renewal, even though it was not a “vehicle license fee” that RCW 46.17 addresses.

I-976 altered these vehicle taxes and fees, as well as several others.

D. Effects of I-976 on Existing Law

Sections 2 through 4 of the Initiative amend RCW 46.17 and address the “motor vehicle license fees” that chapter imposes. Section 2 limits “[s]tate and local motor vehicle license fees” to “\$30 per year” and defines “state and local motor vehicle license fees” as “the general license tab fees paid annually for licensing motor vehicles,” but not including “charges approved by voters after the effective date of this section.” (The full text of I-976 is at CP 1211-1228).

Section 3 amends RCW 46.17.350, which sets forth “vehicle license fee by vehicle type.” I-976, § 3(1). This section reduces the snowmobile

license fee and commercial trailer fee to \$30. *Id.* It further states that the “vehicle license fee” required under this subsection is in addition to other filing fees and any other fee or tax required by law. *Id.* § 3(2).

Section 4 amends RCW 46.17.355, which sets forth “license fee by weight.” *Id.* § 4(1)(b). This section, which generally applies to trucks, reduces license fees to \$30 per year for vehicles under 10,000 pounds. *Id.* §§ 4(1)(b), 4(5). This section further states that “license fees” and “the freight project fee” in this section are in addition to other filing fees and any other fee or tax required by law. *Id.* § 4(4).

Section 5 reduces the electric vehicle fee from \$100 to \$30 and eliminates an additional \$50 electric vehicle fee. *Id.* §§ 5(1), 5(4)(a).

Section 6 repeals several statutes, including RCW 46.17.365, which imposed a passenger weight fee of between \$25 and \$72 per vehicle; RCW 82.80.140, which authorized TBDs to impose annual vehicle fees of up to \$100 per vehicle; and RCW 82.80.130, which authorized imposition of a local MVET to support passenger-only ferries. *Id.* § 6. Section 6 also repeals RCW 46.68.415, which addressed how the passenger weight fee would be used.

Section 7 removes the provision in RCW 82.08.020 that imposed an additional 0.3 percent sales tax for each retail sale of a motor vehicle. *Id.* § 7(3).

Section 8 adds a new section to the motor vehicle excise tax chapter to require that any motor vehicle excise tax use a vehicle’s “base model Kelley Blue book value.”

Section 9 amends RCW 82.44.065 to incorporate the Kelley Blue Book method for valuing a vehicle when persons paying state or locally imposed taxes appeal the valuation to the Department of Licensing.

Section 10 amends RCW 81.104.140 to eliminate the special MVET that a regional transit authority is allowed to impose under RCW 81.104.160. Under section 16, this section takes effect only after “the regional transit authority complies with section 12 of this act and retires, defeases, or refinances its outstanding bonds.” *Id.* § 16(1).

Section 11 repeals RCW 82.44.035 and RCW 81.104.160. Under section 16, this section takes effect only after “the regional transit authority complies with section 12 of this act and retires, defeases, or refinances its outstanding bonds.” *Id.* § 16(1).

Section 12 states that “[i]n order to effectuate the policies, purposes, and intent of this act to ensure that the motor vehicle excise taxes repealed by this act are no longer collected, an authority that imposes a motor vehicle excise tax under RCW 81.104.160 must fully retire, defease, or refinance any outstanding bonds” if (1) “[a]ny revenue collected prior to the effective date of this section from the motor vehicle excise tax imposed under RCW 81.104.160 has been pledged to such bonds” and (2) “[t]he bonds, by virtue of the terms of the bond contract, covenants, or similar terms, may be retired or defeased early or refinanced.”

Section 13 amends RCW 81.104.160 to reduce the authority for voter-approved excise taxes for regional transit authorities from 0.8 percent to 0.2 percent on the value of each motor vehicle owned by a resident of the

taxing district. Under section 16, this section takes effect on April 1, 2020, if sections 10 and 11 have not taken effect by March 31, 2020. *Id.* § 16(2).

Section 14 requires that the Initiative be liberally construed to effectuate its intent, policies, and purposes.

Section 15 provides a severability clause.

Section 16 sets forth the effective dates for sections 10, 11, and 13.

Section 17 provides a title.

E. Impact of I-976 on Washington Vehicle Owners

The repeal, reduction, and removal of motor vehicle taxes and fees will result in substantial savings to Washington vehicle owners. All vehicles in Washington, unless exempt, must be registered yearly with the Department of Licensing. RCW 46.16A.030, .040, .110. At registration, owners must pay all applicable fees and taxes. RCW 46.16A.040(3), .110(1). This currently includes TBD fees authorized under RCW 82.80.140.

Once I-976 is implemented, Washington vehicle owners will no longer pay numerous vehicle taxes and fees, including the passenger weight fee, the motor home weight fee, and TBD fees. I-976, § 6. In addition, the following fees are lowered to \$30: vehicle license fee by weight for vehicles under 10,000 pounds, *id.* § 4; electric vehicle fee, *id.* § 5; snowmobile registration fee, *id.* § 3; and commercial trailer fee, *id.* § 3. Washington residents who purchase cars will no longer have to pay the additional 0.3 percent sales tax on the car's price. *Id.* § 7.

I-976 would save Washington vehicle owners over \$300 million annually in state motor vehicle taxes and fees. CP 1238 (bottom row of table). Vehicle owners in the 62 municipalities that impose TBD vehicle fees—which range from \$20 to \$80 per vehicle—will save an additional \$58 million annually. CP 1239, 1242-45.

F. Procedural History

Shortly after Washington voters approved I-976, Appellants filed a lawsuit challenging I-976 in King County Superior Court. They sought, and the trial court granted, a preliminary injunction. CP 831-838. The preliminary injunction was based solely on the trial court’s conclusion that Appellants were likely to succeed on the merits of their challenge under the subject-in-title requirement of article II, section 19, a theory the trial court later rejected on the merits. The preliminary injunction ordered the State to “continue to collect all fees, taxes, and other charges that would be subject to or impacted by I-976 were it not stayed” CP 837. This Court declined to stay the preliminary injunction. The parties then proceeded with expedited merits briefing and agreed that discovery was unnecessary “because the issues presented for review are legal.” CP 900-03, 909-12.

Following extensive briefing and a full-day hearing on the parties’ cross-motions for summary judgment, the trial court entered an order denying virtually all of Appellants’ and Intervenor-Plaintiffs’ claims. CP 2196-2230. It dismissed with prejudice claims alleging violation of (i) article II, section 19 of the Washington Constitution (single-subject rule); (ii) article II, section 19 (subject-in-title rule); (iii) article II, section

37; (iv) article XI, section 12; (v) article I, section 19; (vi) article VII, section 5; and (vii) separation of powers. CP 2229-2230. The trial court withheld summary judgment on two claims—article I, section 12; and article I, section 23 as to the City of Burien (pending discovery)—and left its preliminary injunction in place. *Id.*

On competing motions for reconsideration, the trial court ruled that sections 8 and 9 of I-976 (related to Kelley Blue Book) violated article I, section 12, but found those sections to be severable from I-976. CP 2370-2373. The trial court vacated the injunction, except as to Burien’s contract impairment claim, but temporarily stayed its order vacating the injunction. CP 2371-2373. This Court also has temporarily stayed the trial court’s order vacating the preliminary injunction.

Following the trial court’s entry of a stipulated CR 54(b) certification and judgment, Appellants appealed directly to this Court, CP 2442-46, 2456-60, and the State and Pierce County timely cross-appealed. CP 2557-2606.

V. ARGUMENT

A. **Standard of Review: Appellants Must Demonstrate That I-976 Is Unconstitutional Beyond a Reasonable Doubt**

A law enacted through initiative is presumed constitutional. *Lee v. State*, 185 Wn.2d 608, 619, 374 P.3d 157 (2016) (citing *Amalgamated Transit Union Local 587 v. State (ATU)*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000)). A party challenging the constitutionality of an initiative must demonstrate its unconstitutionality beyond a reasonable doubt. *Id.* The

challenger must, “by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution.” *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998). A court may not strike down an initiative unless “fully convinced, after a searching legal analysis,” that there is no reasonable doubt that the initiative violates the constitution. *Id.* Appellants thus bear a “heavy burden” to overcome the presumption of constitutionality. *Pierce County I*, 150 Wn.2d at 430. Wherever possible, the Court must read I-976 so as to preserve its constitutionality. *Lee*, 185 Wn.2d at 619; *Wash. Fed’n of State Emps. v. State (WFSE)*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995).

This Court repeatedly has emphasized that its role is not to determine whether a measure is good or bad public policy, or whether the Court considers it to be beneficial or detrimental to the interests of those affected by the measure:

[I]t is not the prerogative nor the function of the judiciary to substitute what they may deem to be their better judgment for that of the electorate in enacting initiatives . . . unless the errors in judgment clearly contravene state or federal constitutional provisions. Nor is it the province of the courts to declare laws passed in violation of the constitution valid based upon considerations of public policy.

ATU, 142 Wn.2d at 206 (alterations in *ATU*) (citation omitted) (quoting *Fritz v. Gorton*, 83 Wn.2d 275, 287, 517 P.2d 911 (1974)); *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 24-25, 200 P.2d 467 (1948)).

B. Appellants Cannot Meet Their Heavy Burden of Showing That I-976 Violates Article II, Section 19 of the Washington Constitution

Appellants argue that I-976 violates article II, section 19, which provides that “[n]o bill shall embrace more than one subject, and that shall be expressed in the title.” Const. art. II, § 19. This provision applies to initiatives in the same way it applies to bills enacted by the Legislature. *WASAVP*, 174 Wn.2d at 654. There are “two distinct prohibitions” within article II, section 19, both of which Appellants allege are contravened: (1) the single-subject rule, which precludes an initiative from covering more than one subject; and (2) the subject-in-title rule, which requires that the title of an initiative inform voters of the subject matter of the measure they are voting on. *See ATU*, 142 Wn.2d at 207.

Both requirements of article II, section 19 are to be “liberally construed in favor of the legislation.” *Pierce County I*, 150 Wn.2d at 436 (quoting *WFSE*, 127 Wn.2d at 555). If the words in a title can be given two interpretations, one of which makes the measure constitutional and the other unconstitutional, a court is to adopt the constitutional interpretation. *WFSE*, 127 Wn.2d at 556. “[A]ny reasonable doubts are resolved in favor of constitutionality.” *Id.*

Initiative 976 complies with the single subject rule because, as expressed in its ballot title, I-976 generally concerns motor vehicle taxes and fees, and all of its provisions relate to that subject and to each other. I-976 complies with the subject-in-title rule because its title is accurate and gives notice that would lead to an inquiry into the body of the act.

1. Appellants have not met their burden of showing that I-976 violates the “single-subject” requirement

The single-subject requirement of article II, section 19 requires that “no bill shall embrace more than one subject.” *Pierce County I*, 150 Wn.2d at 436. This Court has made clear that the “single-subject rule” does not require legislative bills or initiatives to be narrowly focused, and it has upheld initiatives with multiple far-reaching effects. This Court’s decisions in *WASAVP* and *Fritz* show the flexibility of the single subject-rule.

In *WASAVP*, this Court rejected a single-subject rule challenge to a wide-ranging initiative. Initiative 1183 “dramatically changed the State’s approach to regulating the distribution and sale of liquor in Washington,” *WASAVP*, 174 Wn.2d at 649, including authorizing the private sale of liquor, directing the state to auction off state liquor retail and distribution facilities, modifying the wine distribution system, imposing a variety of new fees on liquor retailers and distributors, changing laws regulating liquor advertising, and providing a \$10 million public safety earmark that was not directly linked to any liquor-related issues, *id.* at 649-51. This Court nevertheless upheld the initiative against a single-subject challenge. *Id.* at 656, 660.

Similarly, in *Fritz*, this Court rejected a single-subject rule challenge to Initiative 276, which established financial disclosure requirements for elected officials, registration requirements and regulations for lobbyists, and campaign finance reporting requirements, and also required public access to public records held by state and local agencies. *Fritz*, 83 Wn.2d at 290. Although these requirements were “new, novel . . . most extensive and very,

very detailed,” the Court held that they all related to one overarching topic: “openness in government.” *Id.* at 286, 290.

In a single-subject challenge, this Court first determines whether the title is general or restrictive. *City of Burien v. Kiga*, 144 Wn.2d 819, 825, 31 P.3d 659 (2001) (citing *ATU*, 142 Wn.2d at 207-10). Where, as here, the title is general, the law is constitutional so long as there is “rational unity” among the incidental subjects. *ATU*, 142 Wn.2d at 209; *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 782-83, 357 P.3d 1040 (2015).

a. The title of I-976 is general, not restrictive

The starting point for analyzing a single-subject challenge is the title of the measure. *Lee*, 185 Wn.2d at 620; *Kiga*, 144 Wn.2d at 825; *ATU*, 142 Wn.2d at 207; *WFSE*, 127 Wn.2d at 555. “A ballot title consists of a statement of the subject of the measure, a concise description of the measure, and the question of whether or not the measure should be enacted into law.” *WASAVP*, 174 Wn.2d at 655 (citing RCW 29A.72.050). Here, the ballot title for I-976 reads as follows:

Statement of Subject: Initiative Measure No. 976 concerns motor vehicle taxes and fees.

Concise Description: 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.

Should this measure be enacted into law? Yes [] No []

CP 1253.

When a ballot title “suggests a general, overarching subject matter for the initiative,” it is considered general. *Wash. Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 369, 70 P.3d 920 (2003). Here, the overarching subject matter of I-976, identified in the ballot title’s Statement of Subject, is “motor vehicle taxes and fees.” CP 1253. Appellants concede for purposes of this appeal, as they must, that I-976 has a general ballot title. Op. Br. 15.

b. There is rational unity between the title of I-976 and its provisions

Because the title is general, the single-subject rule is violated only if the general subject and incidental subjects of the initiative lack “rational unity.” *ATU*, 142 Wn.2d at 209. “Rational unity exists when the matters within the body of the initiative are germane to the general title and to one another.” *Filo Foods*, 183 Wn.2d at 782-83. The Court uses “great liberality” in making this determination. *Id.* at 782; *see also ATU*, 142 Wn.2d at 207. There is no violation just because a “general subject contains several incidental subjects or subdivisions.” *ATU*, 142 Wn.2d at 207. Rather, the scope of a general title

should be held to embrace any provision of the act, directly or indirectly related to the subject expressed in the title and having a natural connection thereto, and not foreign thereto. . . . [A]ll matters which are naturally and reasonably connected with it, and all measures which will, or may, facilitate the accomplishment of the purpose so stated, are properly included in the act and are germane to its title.

Id. at 209 (quoting *Kueckelhan v. Fed. Old Line Ins. Co.*, 69 Wn.2d 392, 403, 418 P.2d 443 (1966)).

There is rational unity among all of I-976's provisions. Each is germane to "motor vehicle taxes and fees," the overarching subject of the measure. The incidental subjects are limitations on state motor vehicle taxes and fees (sections 2-5, 6(1), 6(2), 7), limitations on motor vehicle taxes and fees imposed by local governments (sections 6(3), 6(4), 10, 11(2), 12, 13), and ensuring honest and accurate valuations of motor vehicles for tax purposes (sections 8, 9, 11(1)). These incidental subjects are all germane to the general subject, "motor vehicle taxes and fees."

Though Appellants concede that this is a general ballot title, they seek to rewrite it by adding restrictive language to narrow its scope. Op. Br. 16-17. Adding language to narrow the title is inconsistent with this Court's admonition that the single-subject requirement of article II, section 19 "is to be liberally construed in favor of the legislation," and that a ballot title is to be given a constitutional interpretation if possible. *WFSE*, 127 Wn.2d at 555-56. And their reliance on *Pierce County I* in this regard is misplaced. Although that decision repeated the trial court's characterization of I-776's general subject, it did not adopt or approve of it; the Court simply held that "policy fluff" does not constitute a subject under article II, section 19. *Pierce County I*, 150 Wn.2d at 434. Significantly, when the Court turned to the "subject-in-title" requirement of article II, section 19, it focused specifically on the ballot title itself, and not on the trial court's characterization. *Id.* at 436-37. The Court also reaffirmed that both analyses

under article II, section 19 are to be “liberally construed in favor of the legislation.” *Id.* at 436-37 (quoting *WFSE*, 127 Wn.2d at 555).¹

Having rewritten the title of I-976, Appellants then attempt to parse the initiative into discrete subjects in an attempt to defeat rational unity. In the trial court, Appellants purported to identify seven “disparate” subjects in I-976. CP 1865. Now they are down to five subjects. Op. Br. 23. Either way, their attempt to identify and isolate discrete subjects is contrary to the way a court is to determine rational unity. As noted above, the Court uses “great liberality” in assessing whether the topics in an initiative have rational unity, *Filo Foods*, 183 Wn.2d at 782, and the inclusion of “incidental subjects or subdivisions” does not violate the single subject requirement, *ATU*, 142 Wn.2d at 207.

Indeed, if Appellants’ parsing analysis were correct, neither the People nor the Legislature could adopt any meaningful comprehensive legislation, because challengers could always find ways to claim a lack of relationship among some parts of comprehensive measures. Measures like those approved in *WASAVP* and *Fritz* would have been overturned. But those measures were upheld in single-subject challenges under article II, section 19. *See WASAVP*, 174 Wn.2d at 654-60 (upholding I-1183); *Fritz*, 83 Wn.2d at 289-91 (upholding I-276). General titles allow the Legislature—or the People acting in their legislative capacity under article

¹ Appellants also point to the “legislative title” the sponsors of I-976 provided. Op. Br. 17. “[I]t is the *ballot title* to which [article II, section 19] is applied where an initiative to the people is concerned,” not the legislative title. *WFSE*, 127 Wn.2d at 555 (emphasis added); *accord ATU*, 142 Wn.2d at 211-12.

II, section 1—“to include in one general enactment all of the statutory law relating to a cognate subject.” *Lee*, 185 Wn.2d at 621 (quoting *State v. Nelson*, 146 Wash. 17, 20, 261 P. 796 (1927)).

Appellants argue that sections 7 and 12 of I-976 are not germane to the title they would give to I-976, rather than the title that was given. But, as summarized above at pages 6-9, section 7 is among the provisions that directly address motor vehicle taxes and fees by repealing, reducing, or removing authority to impose various taxes and fees on motor vehicle sales or licensing. Section 12 is germane to the general subject of motor vehicle taxes and fees because it is intended to ensure that one type of repealed motor vehicle tax, the MVET, is no longer collected. By making the elimination of Sound Transit’s authority to levy and collect MVETs (sections 10 and 11) contingent on Sound Transit’s ability to retire, defease, or refinance its outstanding bonds, section 12 is a rational response to avoid the unconstitutional flaw identified in *Pierce County II*, 159 Wn.2d at 39 (holding that I-776 unconstitutionally impaired contracts between Sound Transit and its bondholders by limiting MVETs that Sound Transit could collect). Because section 12 helps implement sections 10 and 11, which eliminate the authority to impose an MVET, section 12 is germane to the overarching subject of motor vehicle taxes and fees.

Appellants have not met their burden of demonstrating the absence of rational unity between the provisions of I-976 and the title of I-976.

c. There is rational unity among the provisions of I-976

(1) Section 12 is germane to other sections of I-976

Appellants also argue that section 12 has no rational unity with the other provisions in I-976. As just explained, section 12 helps implement sections 10 and 11, and to the extent section 12 is necessary to avoid the impairment of contract issue identified in *Pierce County II*, 159 Wn.2d at 39, it is necessary to the implementation of sections 10 and 11. Sections 10 and 11, in turn, are rationally related to sections 2 through 11 and section 13—which eliminate, limit, or reduce various motor vehicle taxes and fees—because they constitute coherent, interacting subjects that are incidental to the overarching subject of motor vehicle taxes and fees.

Nevertheless, Appellants try to separate out section 12 by arguing that it is a one-time directive to Sound Transit to reconfigure its debt and reallocate its revenues, while the other sections are of a continuing nature. Op. Br. 23. They are wrong in several ways.

Appellants attempt to manufacture a new subject by arguing that the cost to Sound Transit to defease or refinance its outstanding debt would require additional taxes and the reallocation of taxpayer funds. Op. Br. 23. Their argument puts the cart before the horse. The possibility that a government agency will respond to an initiative in a particular way does not make that response one of the initiative’s “subjects.” If that were the rule, the possible responses of cities to I-502 would have been “subjects” of the measure; how local governments would revise their budgets in light of the

changes in liquor taxation under I-1183 would have been “subjects” of the measure; and how county sheriffs would implement I-1639 would have been a “subject” of the measure. That is not how the analysis works. A local government cannot manufacture a subject of an initiative by claiming that it will respond in a particular way, much less that a non-party local government *might* respond in a particular way.

Appellants argue that section 12 also is uniquely local in nature, in contrast to other subjects in I-976. Op. Br. 24. Putting aside the question of whether the MVET addressed in sections 10 through 12 is truly local,² the distinction Appellants draw does not demonstrate the absence of rational unity. The fundamental flaw in their analysis is that the “criteria” they purport to derive, *see* Op. Br. 18-23, are better understood as fact-specific descriptions of the initiatives at issue in those cases, rather than as dispositive criteria to be wielded as swords to strike down initiatives and legislative enactments. The cases they cite do not support their attempt to sequester section 12.

Consider, for example, their “criterion” involving the combination of general or continuing purposes with specific or one-time purposes. Op. Br. 18-20. They cite *ATU*, in which the Court invalidated I-695 because it combined a \$30 “license tab fee” provision with provisions addressing a

² The three-county region it covers contains more than half the state’s population. As of April 1, 2019, 52 percent of Washington’s population lived in Snohomish, King, or Pierce County. Office of Fin. Mgmt., *April 1, 2019 Population of Cities, Towns and Counties Used for Allocation of Selected State Revenues State of Washington*,” https://www.ofm.wa.gov/sites/default/files/public/dataresearch/pop/april1/ofm_april1_population_final.pdf.

wide range of taxes and fees *entirely unrelated to vehicles*.³ The Court held that I-695 addressed two subjects—(1) providing for \$30 “license tab fees”; and (2) requiring voter approval for a wide range of unrelated state and local taxes and fees including property taxes, business and occupation taxes, impact fees, permit fees, and “any monetary charge by government”—and that neither subject was necessary to implement the other. *ATU*, 142 Wn.2d at 193, 219. The Court held that its resolution of the single-subject issue was controlled by *Washington Toll Bridge Authority v. State*, 49 Wn.2d 520, 304 P.2d 676 (1956), and by the “similar analysis” in *Power, Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951). *ATU*, 142 Wn.2d at 216. In both *Power, Inc.* and *Washington Toll Bridge Authority*, the Court found a violation of the single-subject requirement, but not for the same reason, and neither case hinged on the general/continuing vs. specific/one-time dichotomy Appellants posit.

In *Power, Inc.*, the bill at issue had been proposed as two separate bills in the Legislature, neither of which passed on its own, but passed when combined. *Power, Inc.*, 39 Wn.2d at 198, 201. The Court described this history as the “clearest possible illustration” of logrolling. *Id.* at 199. That kind of history is not present here. And even if it were, the Court in *ATU* made clear that the single-subject analysis centers on what is in the measure itself, not on the history of the bill or initiative. *ATU*, 142 Wn.2d at 212.

³ That alone distinguishes I-976 from the initiative challenged in *ATU*. As explained above, all of the provisions in I-976 relate to motor vehicle taxes and fees.

In *Washington Toll Bridge Authority*, the Court invalidated a bill passed by the Legislature because it had two purposes, one granting the Authority the general power to build toll roads, and the other providing for the construction of a specific toll road. *Wash. Toll Bridge Auth.*, 49 Wn.2d at 523-24. While the Court described the first purpose as “*continuing in effect*,” and the second as “*not continuing in character*,” the more pertinent distinction appears to be the combining of “enabling legislation having no particular relationship to any specific road” with “the construction of a specific toll road linking Tacoma, Seattle, and Everett.” *Id.* at 523. As the Court explained, providing for the construction of that specific toll road “is not germane to the purpose of creating an authority for the establishment of toll roads generally.” *Id.* at 524. In other words, it was not the difference in duration or generality that was dispositive, but the fundamental difference between enabling language specifying agency powers and a provision directing the completion of a specific construction project. That kind of categorical difference is not present in I-976.

Even if I-976 combined specific short-term and general continuing provisions, the Court in *Kiga*, decided less than a year after *ATU*, explicitly recognized that long-term and short-term purposes can constitutionally coexist in a single bill or initiative. *Kiga*, 144 Wn.2d at 826 (citing *Brower v. State*, 137 Wn.2d 44, 969 P.2d 42 (1998), as an example). Consistent with that recognition, the Court accurately described the holding in *ATU* as resting on the *unrelatedness* of the purposes:

We found both the purpose of setting a \$30 license tab fee and the purpose of requiring voter approval on future tax increases related to the general topic of limiting taxes. Nevertheless, we held Initiative 695 was void because the purposes were unrelated. We also noted neither purpose was necessary to the implementation of the other.

Kiga, 144 Wn.2d at 827 (citing *ATU*, 142 Wn.2d at 217). The Court then explained why the two subjects in I-722, the initiative at issue in *Kiga*, were not germane to one another. One subject (the nullification and onetime refund of a wide variety of 1999 tax increases and monetary charges implicating “utility charges, hospital charges, housing authority rents, city moorage rates, park district admissions, port district cold storage charges, and numerous other ‘monetary charges’”) was “unnecessary and entirely unrelated to” the second subject (a permanent, systemic change in property tax assessments). *Id.* As in *ATU*, it was not because one subject was general and the other specific; the two subjects were not germane because they were *entirely unrelated* to one another.

I-1366, the initiative invalidated in *Lee*, 185 Wn.2d 608, attempted to force the Legislature to send a constitutional amendment to voters, by enacting a substantial but unrelated tax cut if the legislature did not act. *Id.* at 613. The constitutional violation was not temporal; it was categorical: it contained an “invalid contingency.” *Id.* at 612. The tax cut was “not necessary to implement” a constitutional amendment. *Id.* at 623. The two subjects had no “nexus.” *Id.* at 626. The single-subject problem was that the operative provisions were *unrelated* to one another, as evidenced by the Court’s use of that term no fewer than nine times in explaining the violation. *See id.* at 619-29. I-976, in contrast, contains a valid contingency that is

necessary to preserve the constitutionality of sections withdrawing local taxing authority and thus related to those provisions.

The cases Appellants rely on for their “criterion” involving general/continuing versus specific/one-time criterion are better understood as involving subjects that are categorically unrelated to one another. That situation does not exist in I-976. As shown above, section 12 is closely related to sections 10 and 11 because of their interaction, and those three sections are categorically related to the sections of I-976 that eliminate, limit, or reduce various motor vehicle taxes and fees. Plaintiffs have not met their burden of demonstrating the absence of rational unity between the provisions of I-976.

Appellants cite the same cases for their argument that local effects cannot be combined with statewide effects. Op. Br. 20-21. None of those cases postulate any sort of single-subject rule barring local effects and statewide effects from coexisting in one bill or initiative. As just explained, the focus of those cases is on categorical unrelatedness, not temporal or spatial differences, and that is true also in the additional decision they cite, *Kunath v. City of Seattle*, 10 Wn. App. 2d 205, 444 P.3d 1235 (2019), *review denied*, 195 Wn.2d 1013 (2020). One part of *Kunath* involved a single-subject challenge to SSB 4313 (Laws of 1984, ch. 91), which prohibited a local tax on net income. The Court of Appeals concluded SSB 4313 lacked rational unity between its subparts because they “lack a common unifying theme.” *Id.* at 229 (noting references to school districts, state revenue calculations, collective bargaining rights, and pension and disability

benefits). Consequently, even if section 12 of I-976 were purely local, there is no single-subject bar to combining it with statewide provisions that are, as here, categorically related to section 12 and the sections it helps implement.

Perhaps because they cannot seriously challenge that section 12 is necessary to implement sections 10 and 11, Appellants expand their argument, contending that I-976 lacks rational unity because section 12 is not necessary to implement every other section of I-976. Op. Br. 26. No case stands for that proposition. This Court has *found* rational unity where one subject or provision is “necessary to implement” another subject or provision, as illustrated in *ATU* and *Kiga*. But “necessary to implement” has never been used as a criterion for *invalidating* a bill or initiative. *See* Op. Br. 21-22. The Court specifically rejected the argument that provisions in a measure share rational unity only if they are necessary to one another, but the Court agreed that “[p]rovisions necessary to one another understandably share rational unity[.]” *Wash. Ass’n of Neighborhood Stores*, 149 Wn.2d at 370. The comment in *ATU* and *Kiga*—that the two subjects were not necessary to one another—does not make necessity a requirement for rational unity. *Id.* Rather the comment was more likely intended to “further illustrate how unrelated the two were.” *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 638, 71 P.3d 644 (2003); *see also id.* at 637 (explicitly rejecting challengers’ assertion that showing one provision was

not “necessary to implement” another is dispositive in a single subject challenge).⁴

Here, section 12 clearly is necessary to implement sections 10 and 11. All three sections are part of a coherent sequence of provisions that eliminate, limit, or reduce various motor vehicle taxes and fees, and that are germane with each other and with the title of I-976.

The final “criterion” suggested by Appellants is whether the Legislature historically has treated the subjects of a bill or initiative together. Op. Br. 22-23. They point to an absence of history regarding such treatment here. Op. Br. 27. However, both cases they cite treat history as a factor that might *support* rational unity, but whose absence does not *defeat* rational unity. *See WASAVP*, 174 Wn.2d at 657; *Lee*, 185 Wn.2d at 623. The absence of history here proves nothing.

Appellants have not demonstrated the absence of rational unity beyond a reasonable doubt.

(2) “Voter-approved charges” is not a separate subject of I-976

Appellants assert that the title of I-976 is affirmatively misleading. It is not. But neither does the proper interpretation of I-976 in any way limit the Legislature’s authority to increase state vehicle license fees in the future. *See* Op. Br. 29. Because I-976 did not abolish—or establish—any particular

⁴ Appellants also cite *American Hotel & Lodging Association v. City of Seattle*, 6 Wn. App. 2d 928, 944, 432 P.3d 434 (2018), *review granted*, 193 Wn.2d 1008 (2019), *review dismissed as moot* (Oct. 21, 2019). Op. Br. at 22. That decision adds nothing to the legal analysis; it simply applied this Court’s decisions to conclude that a Seattle ordinance lacked rational unity.

mechanism for future increases in state vehicle license fees, there is no separate subject to analyze.

The State did not somehow create a separate subject by pointing out the obvious: I-976's silence as to how additional fees, taxes, or charges might be legislatively approved in the future does not bar them from being approved, perhaps by another initiative or by the Legislature. *See, e.g.*, CP 1182, 2326. The State simply acknowledged reality—the People via initiative have plenary power to amend or repeal previously enacted laws, and the Legislature has plenary authority to adopt new mechanisms allowing local voter approval of taxes and fees. *See Wash. State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 290, 301-02, 174 P.3d 1142 (2007) (each Legislature has plenary power under the Constitution that cannot be constrained by the enactment of a prior Legislature); *ATU*, 142 Wn.2d at 204 (in approving an initiative measure, the People exercise the same power of sovereignty as the Legislature does when enacting a statute). I-976's implicit recognition of that reality does not constitute a separate subject.⁵

Appellants have not met their burden.

(3) Section 7 is germane to other sections of I-976

Appellants try to separate out section 7 of the Initiative, arguing that a sales tax is different from a licensing fee or tax. But the subject of the

⁵ Nor does acknowledging reality constitute an implied attempt to amend the Constitution. Op. Br. 29-30.

measure is “motor vehicle taxes and fees,” of which licensing fees and taxes and sales taxes are subsets. And neither *Kiga* nor *Lee* assists Appellants. As explained above, the Court in *Kiga* found that the “nullification and onetime refund of various 1999 tax increases and monetary charges” was “unnecessary and entirely unrelated to [the] permanent, systemic changes in property tax assessments” in I-722. *Kiga*, 144 Wn.2d at 827. In *Lee*, the \$30 “license tab fee” provision was entirely unrelated to the provisions seeking to change the application of all sales taxes applied in Washington. *Lee*, 185 Wn.2d at 622-23. Neither of those decisions held that an initiative cannot address more than one kind of tax or fee, or that an initiative cannot repeal one tax while limiting another—unless the different taxes or fees are entirely unrelated to one another.

Here, all of the taxes and fees in I-976—including the sales tax repealed in section 7—are taxes and fees on motor vehicles, and they share the common purpose of reducing or limiting taxes and fees imposed on owners of motor vehicles. They are not “entirely unrelated” to one another, as the provisions were in *Kiga* and *Lee*. Appellants have not shown that section 7 lacks rational unity with the remainder of I-976.

(4) Sections 8 and 9 are germane to other sections of I-976 and do not constitute a separate subject

Appellants’ argument that sections 8 and 9 constitute a separate subject rests on two contentions. First, they contend that sections 8 and 9 affect only a local issue. Op. Br. 32. The insufficiency of that argument was demonstrated above. *See* pages 25-26 above. Their second contention is that

sections 8 and 9 must be a separate subject because the trial court severed them from the rest of I-976 based on its article I, section 12 ruling. But Appellants make no cogent argument in support of that contention, suggesting only that “if these sections were germane, their elimination would raise a serious question” Op. Br. 33. That theory would lead to the absurd result that any time a court found part of a law severable, the entire bill would be unconstitutional because it contained multiple subjects. That makes no sense. Appellants have not met their burden of demonstrating that sections 8 and 9 constitute a separate subject.

Appellants have the “heavy burden” of demonstrating unconstitutionality beyond a reasonable doubt. *Pierce County I*, 150 Wn.2d at 430; *ATU*, 142 Wn.2d at 205. Raising doubt is not enough, since all doubts must be resolved in favor of constitutionality. *WFSE*, 127 Wn.2d at 556. Appellants have not met their burden. They have not demonstrated that I-976 violates article II, section 19’s single-subject requirement.

2. Appellants have not met their burden of showing that I-976 violates the “subject-in-title” requirement in article II, section 19

Appellants claim I-976 violates the subject-in-title rule because it supposedly misleads voters about the “\$30 cap” and does not disclose all of the subjects included in the measure. Op. Br. 35. They are incorrect, and their arguments rely on misunderstanding I-976 and its ballot title.

The subject-in-title requirement of article II, section 19 requires that “no bill shall have a subject which is not expressed in its title.” *ATU*, 142 Wn.2d at 207. As applied to initiatives, the purpose of this rule is to ensure

that members of the voting public are put on proper notice “of the subject matter of the measure.” *Id.* To be constitutionally adequate, “[t]he title need not be an index to the contents, nor must it provide details of the measure.” *WASAVP*, 174 Wn.2d at 660 (citing *ATU*, 142 Wn.2d at 217). Rather, a title is sufficient “if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law.” *Id.* (quoting *WFSE*, 127 Wn.2d at 555). The “material representations in the title must not be misleading or false,” but “[a]ny objections to the title must be grave and the conflict between it and the constitution palpable before [the Court] will hold an act unconstitutional.” *Id.* at 660, 661 (internal quotations marks omitted).

As with the single-subject requirement, the subject-in-title requirement “is to be liberally construed in favor of the legislation.” *Pierce County I*, 150 Wn.2d at 436 (quoting *WFSE*, 127 Wn.2d at 555). Any doubts are resolved in favor of constitutionality. *WFSE*, 127 Wn.2d at 556. “When the words in a title can be given two interpretations, one of which renders the act unconstitutional and the other constitutional, [the Court] adopts the constitutional interpretation” *Id.* (quoting *Treffry v. Taylor*, 67 Wn.2d 487, 491, 408 P.2d 269 (1965), *appeal dismissed*, 385 U.S. 10, 87 S. Ct. 70, 17 L. Ed. 2d 10 (1966)).

Here, the ballot title for I-976 appropriately notifies the public that it “concerns motor vehicle taxes and fees,” and 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 1253. Although space limitations did not permit the ballot title to detail which vehicle taxes and fees were affected, how a “motor-vehicle-license fee” is defined, or how and when the exception for “voter-approved charges” might arise, it was sufficient to give notice that would lead an interested person to inquire into the text of the Initiative. *See Pierce County I*, 150 Wn.2d at 436-37 (noting the tight word limits state law imposes on ballot titles in concluding that a ballot title “was sufficiently detailed to prompt an inquiring mind to read the initiative for further details”). There was no need to parse out the particular taxes and fees at issue, or the charges that could or could not be approved by voters. The language of I-976’s title was sufficient to prompt an inquiring voter to ask which taxes and fees are affected, and which voter-approved charges are excepted.

Nor is the ballot title misleading or false. Appellants claim the title misled voters into thinking that “local vehicle fees previously approved by voters would remain” or that voting for the measure would “[retain] a mechanism where a subsequent vote of the people could exceed the \$30 cap for important local projects.” Op. Br. 38. But that is not what the title said.

The first clause in the Concise Description clearly informs voters that the measure would broadly “repeal, reduce, or remove authority to impose certain vehicle taxes and fees,” without mentioning or exempting voter-approved charges. The second clause refers not to “vehicle taxes and fees” generally, but instead specifies that I-976 would “limit annual *motor-vehicle-license fees* to \$30, except voter-approved charges” (emphasis

added). The clauses are separated by a semi-colon, and under normal rules of grammar and statutory construction, the exception for “voter-approved charges” in the second clause clearly refers back only to the \$30 limit on “motor-vehicle-license fees.” *See, e.g., Dep’t of Labor & Indus. v. Slauch*, 177 Wn. App. 439, 450-51, 312 P.3d 676 (2013) (holding that in a series of items separated by semicolons, a modifying phrase following a comma in one item in the series should normally be understood to modify only that item).⁶

This description accurately reflects the language of the Initiative. Section 2 of I-976 amends RCW 46.17 to provide that “motor-vehicle-license fees”—the specific type of fee referenced in the second clause of the Concise Description—are limited to \$30, except voter-approved charges. Section 2 defines “motor vehicle license fees” to mean the “general license tab fees paid annually for licensing motor vehicles,” which specifically “do not include charges approved by voters after the effective date of this section.”⁷ Thus, while the ballot title does not describe the temporal limitations of voter-approved changes, section 2 clearly does. And the ballot

⁶ *See also, e.g.,* Christina Sterbenz, *The Truth About Semicolons: How To Use The World’s Most Controversial Punctuation Mark* (Sept. 24, 2013), <https://www.businessinsider.com/how-to-use-semicolons-2013-9> (“1. Use a semicolon to separate items in a list or series containing internal punctuation.”); State of Washington, Office of the Code Reviser, *Bill Drafting Guide* 65-66 (2019), <http://leg.wa.gov/CodeReviser/Documents/2019BillDraftingGuide.pdf>.

⁷ The definition of “motor vehicle license fee” in section 2 is consistent with (although not identical to) the definition of “vehicle license fee” in RCW 46.04.671, which is “a fee collected by the state of Washington as a license fee . . . for the act of registering a vehicle under chapter 46.16A RCW.” This difference in definitions provides no basis for constitutional invalidity. A law duly enacted by voters is not to be invalidated based on “nuances between terms.” *WASAVP*, 174 Wn.2d at 665.

title clearly informs voters that I-976 would “repeal, reduce, or remove authority to impose certain vehicle taxes and fees,” regardless of whether they were voter-approved, which would reasonably prompt a voter to “read the initiative for further details.” *See Pierce County I*, 150 Wn.2d at 437.

Appellants claim it was misleading for the ballot title to accurately reflect the language of sections 1 and 2 of I-976 by stating that the \$30 cap on “vehicle license fees” excepted “voter-approved” increases, because section 6 repealed local authority to impose various voter-approved taxes and fees beyond \$30. Op. Br. 39. Their claim fails because it ignores the title’s actual language and the differences between the types of fees and taxes I-976 affects.

Section 6 repeals statutes authorizing fees and taxes that are separate and distinct from “vehicle license fees”—the fees referenced in section 2 and the second clause of the Concise Description. One statute repealed by section 6 is RCW 82.80.140, which authorized local TBDs to impose an additional, separate “annual vehicle fee” on “each vehicle subject to vehicle license fees under RCW 46.17.350” or “gross weight license fees under RCW 46.17.355.” Thus, by its own language, RCW 82.80.140 distinguishes the TBD “vehicle fees” authorized in that section from the “vehicle license fees” authorized under RCW 46.17.350 and .355. A second repealed statute, RCW 82.80.130, authorized certain TBDs to impose a local option motor vehicle excise tax to provide passenger-only ferry service. Like the TBD fee, it is separate and distinct from a “vehicle license fee.”

Crucially, “vehicle license fees” are a specific type of fee that may only be used for highway purposes. Const. art. II, § 40. Other charges voters pay when registering a vehicle, such as TBD fees and local MVETs, are not “motor vehicle license fees.” The definition of “vehicle license fee” in RCW 46.04.671 reflects this constitutional limitation, by specifically excluding “taxes and fees collected by [the Department of Licensing] for other jurisdictions”—thus excluding TBD fees and local option MVETs from the definition. Although MVETs and TBD vehicle fees are collected at the same time as motor-vehicle-license fees under RCW 46.17, they are separate charges. Notifying voters, as the ballot title did, that the measure limits “motor-vehicle-license fees to \$30, except voter-approved charges,” is not misleading or false given that TBD fees and MVETs are separate and would not be subject to the voter-approval exception.

Additionally, while I-976 does not specify how voters could approve charges above the \$30 cap on motor-vehicle-license fees in the future, that does not make the ballot title misleading. Op. Br. 39. As noted above at page 288, the People via initiative have plenary power to amend or repeal previously enacted laws, and the Legislature has plenary authority to adopt new mechanisms allowing local voter approval of taxes and fees. The title did not need to reference this existing authority since it was unaffected by the Initiative. In short, I-976’s ballot title accurately informs voters as to the general impacts of the measure (to “repeal, reduce, or remove authority to impose certain vehicle taxes and fees”) and, more specifically, that one type of fee (“motor-vehicle-license fees”) would be limited to \$30, absent voter-

approved charges regarding that fee. That is neither deceitful nor misleading.

Appellants also incorrectly argue that the title is misleading in describing the measure as limiting annual motor-vehicle-license fees to \$30, because the measure leaves in place a variety of fees charged under RCW 46.17, such as the “license plate technology fee,” RCW 46.17.015, or the filing fees required under RCW 46.17.005, which will make total state charges for car tabs exceed \$30. Op. Br. 41-42. But their reading again misrepresents I-976. Reading the Initiative together with the existing law it amended, it is clear that the charges I-976 leaves in place beyond \$30 are not “vehicle license fees.” *See, e.g.*, RCW 46.04.671 (explaining that “‘Vehicle license fee’ does not include license plate fees”); I-976, §§ 3(2), 4(4) (at CP 1214, 1217) (providing that the “vehicle licensing fee,” which was reduced to \$30 in §§ 3(1) and 4(1), is “in addition to the filing fee required under RCW 46.17.005, and any other fee or tax required by law from other fees or taxes required by law”). Appellants’ misreading of the title does not make the title affirmatively misleading.

Appellants also argue that I-976’s reference to “state and local motor vehicle license fees” in section 2(2) of I-976 expands the category described in the title’s second clause to include things like TBD fees and MVETs. Op. Br. at 43. But section 2(2) defines “state and local motor vehicle license fees” as “*fees paid annually for licensing motor vehicles*” (emphasis added). By its own terms that definition does not include *taxes* like MVETs, and it cannot include TBD fees because fees paid “for licensing motor vehicles”

may be used constitutionally only for highway purposes, not the transit purposes for which TBD fees are commonly used. Const. art. II, § 40. Even if this point were debatable, a court is required to construe any debatable language in favor of the Initiative's constitutionality. *WFSE*, 127 Wn.2d at 556. The trial court did exactly what *WFSE* required.

Finally, Appellants claim that I-976's title violates the subject-in-title requirement because it did not mention bonds, sales taxes, and electric vehicle fees. Op. Br. 44-45. Just as they did in their single-subject argument, they offer interpretations that would make the measure unconstitutional, rather than attempting to construe I-976 in favor of constitutionality as directed in *Pierce County I*, 150 Wn.2d at 436, *WFSE*, 127 Wn.2d at 555-56, and other cases. As noted above, "[t]he title need not be an index to the contents, nor must it provide details of the measure" to comply with the subject-in-title requirement. *WASAVP*, 174 Wn.2d at 660 (citing *ATU*, 142 Wn.2d at 217). Because ballot titles have strict word limits, a title is constitutionally sufficient "if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law." *Pierce County I*, 150 Wn.2d at 436 (quoting *YMCA v. State*, 62 Wn.2d 504, 506, 383 P.2d 497 (1963)). The title here served those purposes. It could not possibly have mentioned every tax or fee affected by the measure, but instead used a general reference in the first clause, and the measure's impact on bonds is directly related to facilitating the tax reductions mentioned in the title. There is no violation of article II, section 19.

Appellants have not met their burden of demonstrating beyond a reasonable doubt that I-976 violates the subject-in-title requirement.

C. I-976 Complies With Article II, Section 37 of the Washington Constitution

I-976 complies with article II, section 37, and Appellants have failed to carry their heavy burden to show otherwise. Article II, section 37 requires that when a law “revise[s] or amend[s]” an existing law, the revision or amendment must “be set forth at full length.” The purpose of article II, section 37 is “to protect the members of the Legislature and the public against fraud and deception, not to trammel or hamper the Legislature” or the People “in the enactment of laws.” *Spokane Grain & Fuel Co. v. Lyttaker*, 59 Wash. 76, 82, 109 P. 316 (1910).

The first inquiry under article II, section 37 is whether an enactment “amends” existing law (i.e., whether it is “amendatory”). If not, article II, section 37 is not implicated. If an enactment is amendatory, the second inquiry is whether the amendment is set forth in full. *See, e.g., Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142, 171 P.3d 486 (2007) (invalidating law that set forth erroneous version of the law to be amended). This case involves only the first inquiry.

In order to determine whether a law is amendatory, this Court employs a two-prong inquiry. First, the Court determines whether the challenged aspect of the enactment is a “complete act.” Second, the Court determines whether “a straightforward determination of the scope of rights or duties under the existing statutes [would] be rendered erroneous by the

new enactment.” *Black v. Cent. Puget Sound Reg’l Transit Auth.*, 195 Wn.2d 198, 205, 457 P.3d 453 (2020) (alteration in *El Centro de la Raza*) (quoting *El Centro de la Raza v. State*, 192 Wn.2d 103, 129, 428 P.3d 1143 (2018) (plurality opinion)).

Appellants contend first that I-976 is incomplete as to the authority of TBDs to impose vehicle fees and renders existing statutes in RCW 36.73 erroneous. But Appellants are wrong. I-976 eliminates the ability of TBDs to impose vehicle fees, a conclusion that is clear from the text of RCW 36.73. Appellants also contend that I-976 violates article II, section 37 by silently repealing numerous statutes in RCW 46.17. Appellants are wrong again. I-976 does not amend or eliminate any fees in RCW 46.17 other than those expressly identified.

1. I-976 is complete with respect to the challenged provisions

Each challenged aspect of I-976 is a “complete act” for purposes of article II, section 37. “If the rights under a statute are ‘readily ascertainable from the words of the statute alone,’ then it is a complete act.” *Black*, 195 Wn.2d at 206 (internal quotation marks omitted) (quoting *El Centro de la Raza*, 192 Wn.2d at 129). A bill is complete as to a subject if it “fully declares its terms,” even if the effect of the bill “may be to enlarge or restrict the operation of other statutes.” *Wash. Citizen Action v. Office of Ins. Comm’r*, 94 Wn. App. 64, 69, 971 P.2d 527 (1999) (citing *State v. Manussier*, 129 Wn.2d 652, 665, 921 P.2d 473 (1996)).

Appellants fundamentally misunderstand the nature of the “complete act” prong. Appellants argue that because some provisions⁸ of I-976 amend other statutes, I-976 as a whole is not a “complete act.” Op. Br. 48-49. This is wrong for two reasons: (1) whether an enactment is a “complete act” does not depend on whether it is accomplished by amending existing law; and (2) the “complete act” inquiry is assessed on a subject-by-subject basis, not by looking to the enactment as a whole.

Whether an enactment alters the text of an existing statute does not determine whether it is a “complete act.” For example, in *Black*, 195 Wn.2d at 208, this Court held that the MVET statute was a “complete act,” even though it was adopted as an amendment to an existing statute, Laws of 2015, 3d Spec. Sess., ch. 44, § 319. *Accord ATU*, 142 Wn.2d at 251-52 (“A later enactment which is a complete act may very well change prior acts and is exempt from the requirement of art. II, § 37.”). Instead, the inquiry is whether “the rights under [the enactment] are ‘readily ascertainable from the words of [the enactment] alone.’” *Black*, 195 Wn.2d at 206.

To facilitate the inquiry of whether the rights are readily ascertainable, the “complete act” inquiry operates on a right-by-right—or subject-by-subject—basis. For example, in *ATU*, this Court determined that one section of the enactment under review was a “complete act” while another section was not. *ATU*, 142 Wn.2d at 253-55; *accord El Centro de*

⁸ Appellants’ contention that “I-976 consists entirely of provisions that amend or repeal **other** existing laws . . .” is demonstrably false. Op. Br. 48. Sections 1, 2, 8, 12, 14, 15, 16, and 17 neither amend nor repeal existing law.

la Raza, 192 Wn.2d at 129 (lead opinion) (holding that Charter School Act “is complete” even though 35 of the enacting law’s 43 sections amended existing law); *id.* at 134 (concurring opinion) (agreeing with lead opinion).

Any argument that I-976 is not complete with respect to the authority of TBDs to impose vehicle fees fails for two reasons. First, this argument relates to the repeal of RCW 82.80.140, and this Court has held that “repealers are not within art. II, § 37 whether the new act is complete or not.” *ATU*, 142 Wn.2d at 254. Second, I-976 is complete because the authority of TBDs to impose vehicle fees is readily ascertainable from I-976 alone. I-976 unambiguously repeals that authority. I-976, § 6(4).

I-976 is also complete with respect to fees under RCW 46.17. Which fees will be assessed—and which fees will not—is readily ascertainable from the text of I-976 alone. I-976 reduces some vehicle license fees in RCW 46.17.350 and RCW 46.17.355, reduces the electric vehicle fee in RCW 46.17.323, and repeals fees (commonly referred to as “passenger weight fees”) in RCW 46.17.335. I-976, §§ 3-5, 6(1). I-976 expressly maintains all other fees “provided by law.” *Id.* §§ 3(2), 4(b)(4). RCW 46.17 provides other fees and taxes, and nothing in I-976 amends those fees.⁹

Appellants’ argument to the contrary is based on their erroneous assumption that I-976 impliedly repeals provisions in RCW 46.17. It does not. Appellants’ reliance on section 2 of the Initiative is misplaced. Section 2 uses the term “license fees,” a term that also appears in

⁹ An enactment need not set forth every related law. *E.g.*, *Wash. Educ. Ass’n v. State*, 97 Wn.2d 899, 904, 652 P.2d 1347 (1982).

RCW 46.17.350 and RCW 46.17.355. Appellants’ argument ignores that I-976 expressly states that there will still be “other fee[s] . . . required by law.” *Id.* §§ 3(2), 4(b)(4). It also ignores basic rules of statutory interpretation. I-976 expressly repeals certain sections of RCW 46.17. The omission of provisions repealing other sections is presumptively intentional. *See, e.g., Perez-Crisantos v. State Farm Fire & Cas. Co.*, 187 Wn.2d 669, 680, 389 P.3d 476 (2017). And even if Appellants could show that section 2 created ambiguity, the Court interprets ambiguous statutes so as to render them constitutional. *See State v. Watkins*, 191 Wn.2d 530, 535, 423 P.3d 830 (2018).

In short, I-976 is complete with respect to both of Appellants’ article II, section 37 challenges.

2. I-976 does not render erroneous a straightforward determination of any existing statute

I-976 does not render erroneous “a straightforward determination of the scope of rights or duties under” RCW 36.73 or RCW 46.17. *El Centro de la Raza*, 192 Wn.2d at 129 (quoting *Manussier*, 129 Wn.2d at 663). This is a nuanced inquiry. It is not enough that an enactment “renders the existing law by itself ‘erroneous’ in a certain sense.” *Wash. Educ. Ass’n*, 97 Wn.2d at 906. This Court has upheld enactments where the modification “should be apparent,” *id.*, or is “obvious,” *Black*, 192 Wn.2d at 212 (quoting *State v. Thorne*, 129 Wn.2d 736, 756, 921 P.2d 514 (1996)).

a. I-976's does not render RCW 36.73 erroneous

Nothing in I-976 renders erroneous a straightforward determination of the rights and duties of TBDs to impose vehicle license fees. TBDs' authority to impose vehicle fees comes from RCW 82.80.140(1): "Subject 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" In repealing RCW 82.80.140, the People removed the authority for TBDs to "fix and impose an annual vehicle fee."

Nothing in RCW 36.73 creates independent or separate authority for TBDs to impose vehicle fees. To the contrary, RCW 36.73 expressly recognizes that TBDs may adopt such fees only "in accordance with RCW 82.80.140" or as "authorized in RCW 82.80.140." RCW 36.73.040(3)(b), .065(3)-(5). Because I-976 repeals RCW 82.80.140, it would be obvious to anyone reading RCW 36.73 that TBDs do not have authority to adopt a vehicle fee. No "thorough search" is required; a reader need only consult the express cross-reference.¹⁰ See *El Centro de la Raza*, 192 Wn.2d at 131.

Appellants' remaining arguments about RCW 36.73 also lack merit. RCW 82.80.140(1)'s use of the phrase "subject to the provisions of RCW 36.73.065" does not mean that RCW 36.73.065 independently authorizes vehicle fees. Instead, it merely recognizes that while RCW 82.80.140 creates the authority to adopt such fees, such authority must be exercised using the process (such as voter approval) set out in RCW 36.73.065.

¹⁰ RCW 36.73.040 now contains a Reviser's note that states "RCW 82.80.140 was repealed by 2020 c 1 § 6."

Likewise, RCW 36.73.065(1) and (6) do not purport to authorize vehicle fees. RCW 36.73.065(1) does not specifically address vehicle fees at all. Instead, it generally addresses all “taxes, fees, charges, and tolls” that TBDs impose. RCW 36.73.065(6) simply provides a procedural requirement for imposing certain vehicle fees. In light of the statutory scheme (particularly the reference in other subsections of RCW 36.73.065 to RCW 82.80.140 as the source of authority to impose vehicle fees) it would be obvious to a reader that these procedures may not be used unless TBDs are otherwise authorized to impose vehicle fees.

b. I-976 does not affect any provision in RCW 46.17 except as expressly set forth

No provision of I-976 renders erroneous a straightforward reading of any provision in RCW 46.17. Other than those amendments that are set forth at full length in I-976, all fees in RCW 46.17 remain in effect. Appellants’ argument to the contrary is based on their misreading of I-976, as discussed above. *See* pages 41-42 above.

In sum, I-976 fully complies with article II, section 37. I-976 is complete with respect to the repeal of TBD authority to impose vehicle fees and with respect to the fees imposed under RCW 46.17. And determining the scope of the associated rights and duties remains straightforward, even in light of I-976. This Court should affirm the trial court’s conclusion that I-976 does not violate article II, section 37.

D. I-976 Complies with Article I, Section 12 of the Washington Constitution

While correctly rejecting most of Appellants’ legal challenges to I-976, the trial court incorrectly found that I-976’s references to the Kelley Blue Book (KBB) facially violate article I, section 12 of the Washington Constitution—the “Privileges or Immunities Clause.” Washington courts employ a two-step inquiry to determine whether a law violates the privileges or immunities clause: (1) whether the law in question involves a privilege or immunity; and, if so, (2) whether the legislative body had a “reasonable ground” for granting the privilege or immunity. *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 776, 317 P.3d 1009 (2014). If the law does not involve a privilege or immunity, the Court does not address the second step of the analysis. *Id.*

This Court should reverse the trial court for four independent reasons. First, Appellants’ theories about how sections 8 and 9 will be implemented are speculative. Sections 8 and 9 may never be implemented, and, even if implemented, will not necessarily result in an exclusive contract with KBB. Second, even if I-976 will require the State to contract with KBB, Appellants fail to demonstrate that a “privilege” is implicated. There is not a fundamental right to do business with the government. Third, even if a privilege were at issue, the People had a reasonable ground to select one consistent method for vehicle valuation. Fourth, Appellants lack standing to raise this challenge.

1. Appellants’ article I, section 12 challenge is theoretical and premature

In this facial challenge, Appellants have the burden of showing that “there exists *no set of circumstances* in which [sections 8 and 9] can constitutionally be applied.” *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000). Appellants cannot meet that burden. Their argument is premised on dual speculative assumptions: (1) that I-976 requires the State to award an exclusive contract to the corporation that owns the KBB; and (2) that section 11 of I-976, which repeals a regional transit authority’s (RTA) MVET authority, will not take effect.

This Court views facial challenges with skepticism:

Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of premature interpretation of statutes on the basis of factually barebones records. Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.

State v. McCuiston, 174 Wn.2d 369, 389, 275 P.3d 1092 (2012). These concerns warrant particular skepticism here.

Appellants have not established their first predicate: that I-976 requires the State to enter into a contract. Nothing in the text of sections 8 or 9 specifies whether and how the government should enter into a business relationship with KBB. Additionally, no contract will be required if section 11 of I-976 takes effect. Section 11 repeals an RTA’s authority to impose an MVET if certain conditions are met. If there is no MVET, there is no

need to enter into a contract for MVET valuation purposes. This is one of many possible examples of why the State might never need to contract for use of KBB value. Because this is a facial challenge, even one example means that Appellants cannot meet their burden to establish “*no set of circumstances* in which [I-976] can constitutionally be applied.” *Tunstall*, 141 Wn.2d at 220.

If sections 8 and 9 of the Initiative were to be implemented in a way that violates article I, section 12, there would be an opportunity for an as-applied challenge at that time, based on specific facts. Until that time, Appellants’ facial challenge is speculative and premature, and it should have been dismissed.

2. No constitutional “privilege” is at issue

Even if I-976 did require the State to contract with KBB, it would not run afoul of article I, section 12 because there is no “privilege” implicated. Not every arrangement or benefit constitutes a “privilege” or “immunity” for purposes of article I, section 12. *Grant Cty. Fire Prot. Dist. 5 v. City of Moses Lake (Grant Cty. Fire)*, 150 Wn.2d 791, 812, 83 P.3d 419 (2004). A “privilege” or “immunity” under the Washington Constitution refers only “to those fundamental rights which belong to the citizens of [Washington] by reason of such citizenship.” *Id.* at 812-13, (citing *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902)). “A ‘privilege’ is an exception from a regulatory law that benefits certain businesses at the expense of others.” *Ass’n of Wash. Spirits & Wine Distribs. v. Liquor Control Bd.*, 182

Wn.2d 342, 360, 340 P.3d 849 (2015) (citing *Am. Legion Post 149 v. Dep't of Health*, 164 Wn.2d 570, 607, 192 P.3d 306 (2008)).

Here, Appellants seem to rely on antagonism to “corporate favoritism” as the “fundamental attribute” of state citizenship they believe to be implicated—for which they cite *Grant County Fire*. CP 2144. But while *Grant County Fire* references the right to carry on business in the State, it does not hold that “prohibitions against corporate favoritism” are fundamental rights which belong to the citizens of Washington by reason of such citizenship. *Grant Cty. Fire*, 150 Wn.2 at 812-13. Appellants have not even alleged that the reference to KBB in sections 8 and 9 of I-976 will preclude any person from carrying on business in the State.

This Court has rejected the notion that the privileges or immunities clause is violated any time a statute treats similarly situated businesses differently. *Am. Legion Post 149*, 164 Wn.2d at 609. Observing that “a ‘privilege’ normally relates to an exemption from a regulatory law that has the effect of benefiting certain businesses at the expense of others,” the Court held that the law at issue did not involve a privilege for purposes of article I, section 12 because the law did not prevent any entity from engaging in business. *Id.* at 607; *see also Ockletree*, 179 Wn.2d at 781. Even accepting Appellants’ speculation that I-976 would result in a contract between the State and KBB, the same is true here. No Washington court has identified the antitrust concerns Appellants raise as fundamental rights of citizenship protected under the privileges or immunities clause in article I, section 12.

Ockletree also does not support Appellants’ argument. It most certainly did not hold that “avoidance of corporate favoritism” is a fundamental attribute of state citizenship, as Appellants maintained below. CP 2336. To the contrary, not only did the Court in *Ockletree* hold that no privilege was implicated in that case, it also emphasized that article I, section 12 “privileges” are decidedly limited. *Ockletree*, 179 Wn.2d at 778 n.7 (noting that this Court had not found a statute to violate the privileges or immunities clause since announcing an independent interpretation).

Appellants’ reliance on *Ralph v. City of Wenatchee*, 34 Wn.2d 638, 209 P.2d 270 (1949), fares no better. In *Ralph*, a municipal ordinance effectively prohibited nonresidents from engaging in the photography business. *Id.* at 641. By contrast, here, as in *American Legion*, I-976 does not prevent any entity from engaging in business and, as a result, there is no “privilege” at issue. This Court should reject Appellants’ invitation to be the first to find that the “avoidance of corporate favoritism” is a fundamental attribute of state citizenship and thus a “privilege” under article I, section 12.¹¹

Additionally, the right to do business with or contract with the State is not a fundamental attribute of state citizenship. Rather, the State may contract with individuals and entities as it sees fit, subject to federal and state constitutional limitations and its own self-imposed laws and processes.

¹¹ Compliance with article II, section 28 and article XII, section 22 is not before this Court. Plaintiffs’ Amended Complaint, while adding an article I, section 12 challenge, did not claim any violation of those sections of the Washington Constitution (art. II, § 28, art. XII, § 22), which Appellants referenced for the first time in their reply brief below.

See Ventenbergs v. City of Seattle, 163 Wn.2d 92, 178 P.3d 960 (2008) (finding no fundamental right to contract with city to haul waste and holding that exclusive contract to other haulers did not implicate privileges and immunities clause).¹² Even if the Constitution precludes laws that have the effect of creating private monopolies by exempting business from regulations to the detriment of other businesses, the *State* is free to do business with whom it pleases. *See Ventenbergs*, 163 Wn.2d at 103; *Chas. Uhden, Inc. v. Greenough*, 181 Wash. 412, 422, 43 P.2d 983 (1935) (constitutional prohibition on monopolies in article XII, section 22 “does not apply to the state itself”).

There is no “privilege” implicated at all here, so there can be no violation of the privilege and immunities clause of article I, section 12.

3. There is a reasonable ground for choosing Kelley Blue Book

Because there is no constitutional privilege, there is no need to address the second step of the two-step inquiry. *See Ass’n of Wash. Spirits & Wine Distribs.*, 182 Wn.2d at 359-63. But even if a privilege were implicated, Appellants have failed to prove beyond a reasonable doubt that the People lacked a “reasonable ground” for choosing KBB valuation.

¹² *See also Amunrud v. Bd. of Appeals*, 152 Wn.2d 208, 220-21, 143 P.3d 571 (2006) (rational basis review appropriate standard for evaluating regulations affecting one’s ability to work in either a governmental position or occupation of one’s choosing), *abrogated on other grounds*, *Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2020); *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313-14, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976) (no fundamental right to government employment). *See also Grant Cty. Fire*, 150 Wn.2d at 813-14 (rejecting argument that annexation petition procedures implicate privileges or immunities clause because the power of annexation is vested in the State’s plenary power).

Rather, it is perfectly reasonable for the People to choose a valuation method that is widely known by the public and widely accepted for purposes of private transactions. *Cf.* RCW 48.74.030(3)(e) (relying on data “published by Moody’s Investors Service, Inc.”); RCW 48.23.085 (same). Appellants have not even attempted to show otherwise.

4. Appellants lack standing to assert their article I, section 12 claim

Finally, none of the Appellants has standing to raise this article I, section 12 challenge. Appellants assert standing based on their “right to legislation that is without corporate favoritism [or] special privileges” and to avoid “unconstitutional cost to the State from requiring the use of Kelly Blue Book.” CP 2337. These are not sufficient bases for standing here. “A litigant does not have standing to challenge a statute on constitutional grounds unless the litigant is harmed by the particular feature of the statute which is claimed to be unconstitutional.” *Kadoranian ex rel. Peach v. Bellingham Police Dep’t*, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992). “[T]he harm must be more than a general dissatisfaction with the statute, it must be ‘actual damage or injury’.” *Id.* (footnote omitted); *see also Federal Way Sch. Dist. 210 v. State*, 167 Wn.2d 514, 528, 219 P.3d 941 (2009) (“a party must be directly affected by a statute to challenge its constitutionality” and must show that it is “being affected or denied some benefit”). Further, Appellants lack standing to assert the right of a hypothetical competitor to KBB. *See Locke v. City of Seattle*, 162 Wn.2d 474, 481-83, 172 P.3d 705 (2007) (rejecting City of Seattle’s attempt to assert the rights of one group

of employees against another and refusing to address its privileges and immunities claim on that basis).

Appellants try to skirt the standing requirement by arguing that it should be relaxed because this case is of serious public importance. CP 2338. The “public importance” they rely on is the potential loss of government revenue. *Id.* But “efforts to increase or secure a tax base are not an issue that involves a ‘controversy of serious public interest such that standing requirements will be applied more liberally.’” *Grant Cty. Fire*, 150 Wn.2d at 804 (quoting *Steilacoom Historical Sch. Dist. I v. Winter*, 111 Wn.2d 721, 725, 763 P.2d 1223 (1988)); *see also Locke*, 162 Wn.2d at 483 n.2). Appellants have not demonstrated standing to claim a violation of article I, section 12, and they should not be excused from the requirement that they do so.

Appellants failed to meet their burden to demonstrate that I-976 violates article I, section 12, and this Court should reverse the trial court’s judgment to the contrary.

E. Sections 8 and 9 are Severable

If the Court were to conclude that sections 8 and 9 violate article I, section 12, this Court should affirm the trial court’s conclusion that they are severable from the rest of the initiative. *See Pierce County II*, 159 Wn.2d at 51 (invalidating and severing only a single section of I-776).

An initiative “is not unconstitutional in its entirety unless invalid provisions are unseverable and it cannot reasonably be believed that the [People] would have passed one without the other, or unless elimination of

the invalid part would render the remaining part useless to accomplish the legislative purposes.” *McGowan v. State*, 148 Wn.2d 278, 294, 60 P.3d 67 (2002). A severability clause indicates the voters’ intent to pass the remaining sections even if others are found invalid. *See id.* 294-95.

Sections 8 and 9 serve the same overarching purpose as the remainder of I-976, and they share a rational unity with the rest of the Initiative, but they are sufficiently independent that their elimination would not render the rest of the measure “useless to accomplish” the People’s purposes. Only sections 8 and 9 of I-976 refer to the KBB, so that severing those sections does not render the remaining parts of I-976 useless to accomplish I-976’s purpose. Even without those provisions, I-976 accomplishes the purpose of reducing or limiting certain taxes and fees.

Moreover, by including a severability clause, the People indicated their clear intent to pass the rest of the Initiative even if certain provisions were later invalidated.

Appellants argue that sections 8 and 9 cannot be severed because the Kelley Blue Book valuation method was included in I-976’s ballot title. But this is inconsistent with this Court’s decision in *League of Education Voters v. State*, 176 Wn.2d 808, 295 P.3d 743 (2013). In that case, this Court considered I-1053’s requirement that any bill containing a tax increase be passed by a two-thirds majority vote of the Legislature and held that it was unconstitutional. *Id.* at 812, 826. The ballot title for I-1053 included explicit

reference to the two-thirds majority requirement,¹³ yet this Court found that the offending provision was severable from the remainder of the initiative. *Id.*

League of Education Voters controls the severability analysis here. As in that case, I-976 contains a severability clause, and “[w]here the initiative passed by the people contains a severability clause, the court may view this as conclusive as to the circumstances asserted unless it can be said that the declaration is obviously false on its face.” *League of Educ. Voters*, 176 Wn.2d at 827 (internal quotation marks omitted) (quoting *McGowan*, 148 Wn.2d at 296). Just as I-1053, even without the supermajority requirement, still served the voters’ intent “to make passing tax increases more difficult,” *id.* at 828, I-976, even without the KBB valuation, would still reduce vehicle taxes and fees. Just as there was no reason in *League of Education Voters* “to believe the voters passed the” other requirement “only because it was accompanied by the Supermajority Requirement,” *id.*, there is no reason to believe here that I-976 passed only because of the KBB valuation.

League of Education Voters also forecloses Appellants’ argument that the severability clause should be disregarded because voters supporting I-976 intended *both* to impose a KBB valuation method *and* to reduce other vehicle taxes and fees. This Court recognized that “[a]nytime a bill or initiative contains multiple provisions, it can be argued that the legislators

¹³ See Initiative 1053, Ballot Title, <https://www.sos.wa.gov/elections/initiatives/people.aspx?y=2010>.

or voters intended to pass multiple provisions.” *Id.* at 827-28. But “[w]hether those provisions were intended to be severable is a different inquiry.” *Id.* at 828.

Appellants’ citation to *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 93 P.3d 176 (2004), is unavailing. That case involved a pre-election challenge to whether a local initiative exceeded the scope of the local initiative power. *Id.* at 386-93. No article I, section 12 claim was at issue, and the Court of Appeals’ reference to the ballot title in that case has no application here. Moreover, because it is the language of the initiative that creates operative law, not the ballot title, an article I, section 12 claim necessarily addresses only the language of the initiative.

Additionally, the logical consequence of Appellants’ argument against severability is that the Attorney General’s Office, when crafting an initiative’s ballot title, should prejudge the constitutionality of each of the initiative’s provisions and omit from the ballot title mention of any provision it believes may risk being invalidated, in order to prevent risking invalidation of the entire initiative. This is contrary to the presumption of constitutionality, the neutrality the Attorney General must maintain in drafting ballot titles, and the purpose of severability.

F. I-976 Complies with Article XI, Section 12 of the Washington Constitution

In enacting I-976, the People exercised their constitutional power to rescind some of the taxing authority of certain types of municipalities. This Court expressly recognized the People’s power to do so in *Pierce County I*, 150 Wn.2d at 440. Appellants argue that a municipality’s “active exercise” of taxing authority the State has granted deprives the State of its constitutional control over the scope of municipal taxation. Op. Br. 75. In addition to being squarely contrary to *Pierce County I*, this argument misunderstands the structure of the Washington Constitution and 130 years of case law, legislative experience, and scholarship. Enacting a tax for local purposes does not create an “indefeasible” right in a municipality to continue collecting, either in perpetuity or for any shorter period. This Court should reject Appellants’ bid to re-write the constitutional relationship between the State and local governments.

1. Appellants fail to identify the relevant provisions of I-976

Appellants entirely fail to identify which provisions of I-976 allegedly violate article XI, section 12. The State assumes that Appellants challenge sections 6(3), 6(4), 11(2), and 13.¹⁴

¹⁴ Section 6(3) repeals the authority of public transportation benefit areas to impose an MVET for passenger-only ferry service. RCW 82.80.130(1). Section 6(4) repeals the authority of TBDs to “fix and impose an annual vehicle fee.” RCW 82.80.140(1).

Section 11(2) contingently repeals the authority (a) of regional transit authorities (RTAs) to impose an MVET for high capacity transportation service, and (b) of “[a]n agency and high capacity transportation corridor area” to impose a rental-car sales and use taxes for high capacity transportation service.” RCW 81.104.160(1)-(2). This section takes effect only if the RTA fully retires, defeases, or refinances its outstanding bonds. CP 1228 (§ 16(1)).

2. This Court rejected Appellants’ argument in *Pierce County I*

This Court’s decision in *Pierce County I* is dispositive of Appellants’ article XI, section 12 argument. In that case, this Court squarely held that “[t]he legislature—or the people legislating by initiative—may rescind by general laws the authority previously granted. When that happens, as here, no violation of article XI, section 12 occurs.” *Pierce County I*, 150 Wn.2d at 440. That is all that occurred here. In enacting I-976, the People adopted a general law rescinding the authority previously granted to municipalities to impose certain fees and taxes.

The issue presented here is indistinguishable from the issue presented in *Pierce County I*. In that case, the article XI, section 12 argument was predicated on I-776 repealing authority for counties to impose a \$15 vehicle fee and for Sound Transit to impose an MVET. 150 Wn.2d at 440-41. Here, the article XI, section 12 argument is (presumably) predicated on I-976 repealing authority for certain municipalities to impose a vehicle fee, an MVET, and/or a rental-car sales and use tax.

Appellants’ suggestion that *Pierce County I* is limited to “**unexercised** local taxing authority,” Op. Br. 81, is demonstrably false. *Pierce County I* concerned an initiative that rescinded authority for vehicle fees that “some counties *had imposed*” and for an MVET that “Sound

Section 13 contingently reduces a RTA’s maximum authorized tax rate from 0.8 percent to 0.2 percent. CP 1226. This section takes effect only if the RTA does not fully retire, defease, or refinance its outstanding bonds. CP 1228 (§ 16(2)).

Transit had levied.” *Pierce County I*, 150 Wn.2d at 440 (emphases added); *see also id.* at 437-38. Appellants’ narrow interpretation is simply incorrect.

Appellants’ dissatisfaction with the specific legal arguments made in *Pierce County I* also does not distinguish that case. The challengers in *Pierce County I* devoted five of their fifty pages to a scholarly history of article XI, section 12, Resp. Br. of the Pls./Resp’ts, *Pierce County v. State*, No. 73607-3, at 38-43 (May 21, 2003). Appellants may wish that their predecessors in *Pierce County I* had emphasized the word “vest,” but *stare decisis* is not so fragile.

This Court’s decision in *Piel v. City of Federal Way*, 177 Wn.2d 604, 306 P.3d 879 (2013), illustrates how *stare decisis* operates in this context. In *Piel*, this Court gave *stare decisis* effect to an earlier decision, even though the earlier decision “did not directly address” the particular prong in dispute. *Id.* at 611. *Piel* holds that a prior decision is binding if it resolves a closely “similar[.]” question and “plainly consider[s]” the underlying issue. *Id.* at 613. As noted above, this case and *Pierce County I* involved nearly identical questions, and *Pierce County I* plainly considered the constitutional relationship between the State and municipalities with respect to local taxing authority. *Pierce County I*, 150 Wn.2d at 440-41. *Pierce County I* is controlling. Appellants provide no argument that it is “incorrect and harmful,” as would be required to overrule *Pierce County I*. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 346-47, 217 P.3d 1172 (2009).

3. Appellants’ interpretation of article XI, section 12 is contrary to the structure of the Washington Constitution

In Washington, the general rule is that “[t]he Washington State Constitution . . . vests taxing power in the state legislature.” *Watson v. City of Seattle*, 189 Wn.2d 149, 166, 401 P.3d 1 (2017). The Legislature may delegate taxing authority to municipal corporations. *Id.* (citing Const. art. VII, § 9). This is important, because “[m]unicipal corporations have no inherent power to tax.” *Id.* While the Legislature cannot itself impose municipal taxes for municipal purposes, under article XI, section 12, our constitutional structure clearly assigns to the Legislature responsibility for determining the scope of municipalities’ authority to impose taxes.

Appellants’ interpretation of article XI, section 12 is contrary to this structure. Under Appellants’ interpretation, municipalities could usurp the Legislature’s role by enacting taxes with no expiration date, rendering the State powerless to ever constrict the scope of the municipalities’ taxing authority. Appellants’ suggestion that the State could impose temporal restrictions when granting taxing authority does not resolve this difficulty, as numerous existing statutes authorizing municipal taxation contain no such restriction. *See, e.g.*, RCW 35A.11.020 (taxing authority for code cities); RCW 35.22.280 (taxing authority for first class cities); RCW 82.80.140 (TBD vehicle fees);¹⁵ RCW 82.14.030 (county and city

¹⁵ This is not hypothetical. Some TBDs have adopted vehicle fees with no sunset date. *See, e.g.*, Port Orchard Municipal Code § 3.44.080; Washougal Municipal Code § 3.99.020; Covington Municipal Code § 12.125.045.

sales and use tax). Municipalities would be free to permanently lock in local taxes under the existing statute. This Court should reject that result.

Appellants' appeal to principles of "home rule" rings hollow for two reasons. First, I-976 primarily rescinds the authority of special purpose municipalities to impose taxes, and "home rule" principles do not apply to special purpose municipalities. Hugh Spitzer, "*Home Rule*" vs. "*Dillon's Rule*" for Washington Cities, 38 Seattle U. L. Rev. 809, 835-36, 856 (2015). Second, even to the extent that home rule principles apply, they do not support Appellants' argument. "[T]he late nineteenth century . . . home rule movement was a coalition of people with quite divergent political philosophies," many of whom supported limits on local taxing authority. *Id.* at 821. Consequently, principles of home rule do not establish that the Framers intended to give municipalities broad authority over local taxation. Instead, the Framers established a constitutional structure that provides the Legislature with the power to control, through general laws, the scope of local taxing authority.

Moreover, Appellants' understanding of article XI, section 12 as it relates to principles of home rule is precisely backwards.

The first clause serves home rule principles by preventing the Legislature from imposing municipal taxes for municipal purposes. This clause, which represents "[t]he focus of article 11, section 12," *Citizens for Financially Responsible Gov't v. City of Spokane*, 99 Wn.2d 339, 346, 662 P.2d 845 (1983), is the "home rule" aspect of article XI, section 12. *City of Wenatchee v. Chelan Cty. Pub. Util. Dist. 1*, 181 Wn. App. 326, 334, 325

P.3d 419 (2014). Appellants do not argue, nor could they, that I-976 violates this home rule clause.

By contrast, the second clause is a limitation on home rule, authorizing the Legislature to delegate to municipal corporations authority to impose municipal taxes and thus giving the State primary authority over the scope of municipal taxation. In this clause, the Framers clearly declined to adopt Appellants' preferred rule of absolute "local control regarding issues of primarily local concern." Op. Br. 65. Instead, the Framers unequivocally gave the Legislature primary control over the permissible scope of municipal taxation. See Phillip A. Trautman, *Legislative Control of Municipal Corporations in Washington*, 38 Wash. L. Rev. 743, 754 (1963). This undermines Appellants' argument that the Legislature loses such control once it delegates authority and a municipality exercises it.

4. Appellants' argument is inconsistent with almost 130 years of history

Almost 130 years of judicial understanding, legislative practice, and scholarship establish that the second clause of article XI, section 12 simply permits the Legislature to delegate municipal taxing authority. This history contradicts Appellants' argument that delegations of municipal taxing authority create an indefeasible right in municipalities.

This Court's decisions have consistently understood article XI, section 12's use of the term "vest in" to mean "delegate to," "authorize," or

“grant.”¹⁶ In contrast to this overwhelming weight of authority, Appellants cite no case—and the State is aware of none—understanding the word “vest” in this context to mean “create an indefeasible right in.”

Appellants’ reliance on *Redd* is misplaced. In *Redd*, this Court relied on the first clause of article XI, section 12 to invalidate a statute that, in effect, allowed the State to impose taxes for local purposes. Pursuant to a delegation to the county to impose a local tax, the county assessor conducted a valuation of property. *Redd*, 166 Wash. at 133. State law, however, “authorize[d] the state tax commission to reassess property . . . for county . . . purposes[.]” *Id.* at 136. *Redd* stands for the general proposition that a law allowing the *State* to reassess final local tax valuations effectively

¹⁶ *Watson*, 189 Wn.2d at 166 (“grant” and “allow[]”); *Pierce County II*, 159 Wn.2d at 43-44 (“delegate”); *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 758, 131 P.3d 892 (2006) (“delegate”); *Sheehan v. Cent. Puget Sound Reg’l Transit Auth.*, 155 Wn.2d 790, 798, 123 P.3d 88 (2005) (“grant”); *Arborwood Idaho, L.L.C. v. City of Kennewick*, 151 Wn.2d 359, 365, 89 P.3d 217 (2004) (“grant”); *Pierce County I*, 150 Wn.2d at 440 (“legislate” and “grant[]”); *Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls Library Capital Facility Area*, 134 Wn.2d 825, 837, 953 P.2d 1150 (1998) (“grant” and “authorize[]”); *San Telmo Assocs. v. City of Seattle*, 108 Wn.2d 20, 23, 735 P.2d 673 (1987) (“grant”); *King County v. City of Algona*, 101 Wn.2d 789, 791, 681 P.2d 1281 (1984) (“grant”); *Citizens for Financially Responsible Gov’t*, 99 Wn.2d at 347; *Moses Lake Sch. Dist. 161 v. Big Bend Cmty. Coll.*, 81 Wn.2d 551, 561, 503 P.2d 86 (1972); *State ex rel. King County v. Tax Comm’n of Wash.*, 174 Wash. 668, 671, 26 P.2d 80 (1933) (“granted”); *State ex rel. Tax Comm’n v. Redd*, 166 Wash. 132, 139-40, 6 P.2d 619 (1932) (“delegate,” “confer,” and “authorize”); *Great N. Ry. Co. v. Stevens County*, 108 Wash. 238, 243, 183 P. 65 (1919) (“granted”); *State v. Ide*, 35 Wash. 576, 584-85, 77 P. 961 (1904) (“authorize” and “delegate”), *overruled on other grounds by Town of Tekoa v. Reilly*, 47 Wash. 202, 209, 91 P. 769 (1907); *see also In re Salary of Superior Court Judges*, 82 Wash. 623, 629, 144 P. 929 (1914) (“empower”).

The Court of Appeals has similarly understood the term. *Kunath*, 10 Wn. App. 2d at 217-18 (“delegate and “grant”); *City of Wenatchee*, 181 Wn. App. at 336 (“delegate” and “authorize”); *Whatcom County v. Taxpayers of Whatcom Cty. Solid Waste Disposal Dist.*, 66 Wn. App. 284, 289, 292-93, 831 P.2d 1140 (1992) (“delegate” and “grant[]”); *Ivy Club Investors Ltd. P’ship v. City of Kennewick*, 40 Wn. App. 524, 699 P.2d 782 (1985).

allows it to impose local taxes for local purposes, in violation of the first clause of article XI, section 12. *See* Trautman, 38 Wash. L. Rev. at 750-51.

Longstanding legislative practice confirms that the Legislature may rescind municipal taxing authority. Since statehood, the Legislature has repeatedly rescinded, in whole or in part, authority for municipal corporations to impose taxes for municipal purposes. *E.g.*, Laws of 2010, 1st Spec. Sess., ch. 15, § 14(18) (repealing authorization of sales tax on lodging); *see also State v. Superior Court of Whitman County*, 92 Wash. 360, 363, 159 P. 383 (1916) (giving effect to Legislature’s partial repeal of previously-granted municipal authority for road poll tax). These rescissions are not always limited to unexercised taxing authority, and no reported case has questioned this practice.

Like this Court and the Legislature, legal scholars have consistently understood the second clause of article XI, section 12 as a delegation clause. *E.g.*, Robert F. Utter & Hugh D. Spitzer, *The Washington State Constitution*, 192 (2d ed. 2013); Trautman, 38 Wash. L. Rev. at 754-55; Alfred Harsch, *The Washington Tax System—How it Grew*, 39 Wash. L. Rev. 944, 950 (1965). None of these scholars has ever suggested that article XI, section 12 creates an “indefeasible right” for municipalities to exercise taxing authority. At least one scholar has suggested the opposite. Erin Adele Scharff, *Powerful Cities?: Limits on Municipal Taxing Authority and What to Do About Them*, 91 N.Y.U. L. Rev. 292, 307 (2016) (discussing article XI, section 12 and stating that “[t]he state . . . can also take away this municipal taxing authority through legislation”).

In light of this long and uninterrupted historical practice and understanding, Appellants simply cannot meet their burden to show, through argument and research, that there is no reasonable doubt that I-976 violates the constitution. *Larson*, 156 Wn.2d at 757.

5. A related provision confirms that delegation under article XI, section 12 does not create an indefeasible right

Article IV, section 1 confirms that, when referring to action by the Legislature, the Constitution's use of the term "vest in" does not create an indefeasible right. Article IV, section 1 provides, in relevant part, that "[t]he judicial power of the state shall be vested in . . . such inferior courts as the legislature may provide." Under Appellants' proposed interpretation of "vest in," once the Legislature grants authority to an inferior court and that court exercises the delegated authority, the Legislature can never rescind the authority of the inferior court. That would be inconsistent with practice. *E.g.*, Laws of 1979, 1st Exec. Sess., ch. 136 § 20 (removing authority of justices of peace to hold jury trials for traffic infractions).

The constitutional provisions relied on by Appellants do not support their argument. Appellants correctly point out that several constitutional provisions "vest" powers in specific bodies or officers and that the legislature cannot take away these powers by legislative acts. Op. Br. 78 (citing Const. art. II, § 1; Const. art. III, § 2; Const. art. IV, § 1). But that does not compel the conclusion that "vest" was intended to create an indefeasible right. Instead, it is the fact that the Constitution itself grants the power that prohibits legislative intrusion. There is a distinction between

constitutional provisions that directly vest power in an officer and provisions that allow the Legislature to do so. While “vest” is synonymous with “grant” in both instances, the effect is different. The Legislature cannot take away powers the Constitution itself vests in an officer, but the Legislature can take away powers that the Legislature gave via statute in the first place.

6. Contemporary definitions are consistent with the longstanding interpretation

Contemporary dictionaries provided multiple definitions of the term “vest.” Appellants identify an alternative definition suggesting that, at the time, “vest” *could* mean “to give a fixed and indefeasible right.” Op. Br. 76 (quoting Henry Campbell Black, *A Dictionary of Law* 1217 (1891)). But this is just the fourth of four contemporaneous definitions. The first three are “[t]o accrue to; to be fixed; to take effect.” *Id.* These definitions are all consistent with understanding that the delegation clause of article XI, section 12 does not create an indefeasible right. Appellants’ two other authorities fare no better. The Rapalje and Lawrence quotation establishes only that “vest” *could* mean “entitled to a right” and the Whitney quotation again involves alternative definitions and, in any event, says nothing about indefeasibility. *See* Op. Br. 77.

7. Appellants’ interpretation would allow one Legislature to interfere with future Legislatures

Appellants’ argument is also inconsistent with the fundamental constitutional principle that “one legislature cannot enact a statute that prevents a future legislature from exercising its law-making power.” *Wash.*

State Farm Bureau Fed'n, 162 Wn.2d at 301. This specifically encompasses the general rule that “succeeding legislatures may repeal or modify acts of a former legislature.” *Id.* (internal quotation marks omitted). Under Appellants’ theory, one Legislature can grant municipalities the right to impose taxes, and no succeeding Legislature may repeal or modify that authority as to municipalities that exercise it. Appellants’ novel interpretation of “vest” is a thin reed on which to disregard such a fundamental constitutional principle.

8. Appellants’ argument fails under their own interpretation

Even if, contrary to fundamental constitutional principles and 130 years of experience and understanding, “vest in” had the meaning argued by Appellants, their article XI, section 12 argument still fails. Under article XI, section 12, the State “*may . . . vest . . . the power to assess and collect taxes for [municipal] purposes.*” (Emphasis added). It is well-established that this provision is “not self-executing.” *Arborwood Idaho, L.L.C.*, 151 Wn.2d at 366. If Appellants’ interpretation of “vest” is correct, they would establish at most that the Legislature may *choose* to grant an indefeasible right. But nothing in the statutes at issue here reflects such an intent.

G. I-976 Complies with the Separation of Powers

This Court should decline to consider Appellants’ separation of powers argument, as it is presently nonjusticiable. In the alternative, the Court should reject the argument. Section 12 of I-976 is an integral

component of changing state policy regarding the taxing authority of Regional Transit Authorities (RTAs).

1. There is no existing controversy regarding section 12's application to Sound Transit

Appellants' argument regarding section 12's impact on RTAs is premature. There is no "present and existing dispute," only a "hypothetical" one, and the parties do not have "genuine and opposing interests" as to a necessary predicate. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)); *see also Snohomish County v. Anderson*, 124 Wn.2d 834, 840, 881 P.2d 240 (1994) (affirming dismissal of statutory challenge where particular provisions had not been implemented and claim was speculative). Additionally, the State's only RTA is not a party to this proceeding, and "[t]he standing doctrine prohibits a litigant from raising another's legal rights." *Walker v. Munro*, 124 Wn.2d 402, 419, 879 P.2d 920 (1994). As a result, Appellants lack standing to raise the issue, and the issue is nonjusticiable.¹⁷

Appellants' separation of powers argument assumes that I-976 requires that an RTA "retire, defease, or refinance any outstanding bonds." Op. Br. 82-87. But section 12 is conditional. An RTA is required to "fully

¹⁷ Standing and justiciability may be raised for the first time on appeal. *Wash. Beauty Coll., Inc. v. Huse*, 195 Wash. 160, 166, 80 P.2d 403 (1938). The State has not been dilatory in asserting this argument, as Appellants first argued that section 12 violates the separation of powers in response to the State's motion for summary judgement. *See* CP 412-15 (separation of powers argument without reference to section 12); CP 1025 (same); CP 1891-94 (same).

retire, defease, or refinance” its outstanding bonds *only* if “[t]he bonds, by virtue of the bond contract, covenants, or similar terms, *may* be retired or defeased early.” CP 1226 (§ 12(2)) (emphasis added). Appellants assume—but do not show—that Sound Transit, the State’s only RTA, may retire, defease, or refinance its outstanding bonds early. But the terms of Sound Transit’s outstanding bonds are not part of the record and Sound Transit is not a party. As a result, the parties do not have genuine and opposing interests as to whether section 12 applies. Consequently, Appellants lack standing with respect to this issue, and it is not presently justiciable.

2. I-976 is well within the scope of the “legislative authority”

In any event, Appellants’ separation of powers argument lacks merit. “[T]he people’s legislative power is coextensive with the legislature’s” *Coppernoll v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 318 (2005). This authority is broad and stands in contrast to “the more limited powers of initiatives under city or county charters, or enabling legislation.” *Id.* at 299, 305; *see also* Const. art. II, § 1.

Section 12 of I-976 does not exceed the State’s legislative power. Section 12 must be understood in context. I-976 conditionally repeals the authority of RTAs to impose an MVET. I-976, § 11. In order to avoid an impairment of contracts, I-976 makes that repeal conditional on the ability of an RTA to fully retire, defease, or refinance its bonds early. *See id.* § 12. Section 12 is thus part of I-976’s policy decision to repeal the authority of RTAs to impose an MVET.

Repealing the authority of a municipal corporation to impose an MVET is well within the legislative power of the State. *See* Const. art. XI, § 12 (permitting the Legislature to grant municipalities the power to impose taxes). This includes the power to rescind that authorization. Section 12 of I-976 is an integral part of the exercise of this legislative power.

Appellants' arguments to the contrary fail for two reasons. First, they take section 12 out of context. Section 12 expressly ties itself to the repeal of the MVET, an act that is well within the state legislative authority. Second, Appellants rely on cases concerning legislative authority of local electorates. This is doubly-flawed. The legislative authority of local government is "more limited" than the legislative authority of the state government. *Coppernoll*, 155 Wn.2d at 299; *see also Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 620 P.2d 82 (1980). And the scope of the local *initiative* power is yet more limited than the legislative authority of the local legislative body. *Protect Pub. Health v. Freed*, 192 Wn.2d 477, 482, 430 P.3d 640 (2018). As a result, cases about the scope of the *local initiative* power are particularly uninformative regarding the scope of the *state legislative* power.¹⁸

Ruano is not a helpful case for Appellants. *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973). *Ruano* concerned the scope of the initiative power under the King County Home Rule Charter. *Id.* at 822-23.

¹⁸ In this context, a "separation of powers" argument is indistinguishable from a "scope of the initiative power" argument. Under Appellants' argument, if I-976 is within the scope of the initiative power (i.e., the state legislative power), there is no separation of powers violation.

In defining the outer boundary of municipal action which is “legislative,” *Ruano* relied, sensibly, on a treatise titled “Municipal Corporations.” *Id.* at 823. The legislative powers of state government are more expansive than the powers of local government. *Coppernoll*, 155 Wn.2d at 299.

Ruano is distinguishable on its own terms. In determining that only “administrative” acts remained, this Court relied on the trial court’s finding that the county was “wholly, totally, completely and irretrievably and irrevocably committed” to the act that the initiative sought to preclude. *Ruano*, 81 Wn.2d at 824. That is not so here. By its terms, section 12 applies only if it is possible for the bonds to “be retired or defeased early or refinanced;” that is, only if the RTA is *not* irretrievably committed. CP 1226.

Here, the People in adopting I-976 made the legitimate policy decision to conditionally rescind the state law authorizing RTAs to implement an MVET. Section 12 was a necessary condition in light of this Court’s decision in *Pierce County II*.

H. I-976 Complies with Article VII, Section 5 of the Washington Constitution

Finally, Appellants’ article VII, section 5 argument also lacks merit. Article VII, section 5 states, “[n]o tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied.” Here, I-976 does not levy or impose any taxes, and Appellants do not argue otherwise. Instead, Appellants incorrectly contend that I-976 improperly diverts local tax revenue in

violation of article VII, section 5. Op. Br. 88. This Court should not consider Appellants' argument, however, because it is presently nonjusticiable and they lack standing. Alternatively, this Court should reject Appellants' fundamental misunderstanding of article VII, section 5.

Like their separation of powers argument, their article VII, section 5 argument exclusively challenges section 12 of I-976, which is part of a conditional repeal of the authority of RTAs to impose taxes. But the State's only RTA—Sound Transit—is not a party to this action; it is not clear whether section 12, which is conditional, will ever take effect; and there is no genuine adversity between the parties. As discussed above, this issue is not presently justiciable, and Appellants lack standing to make it.

Even if the Court considers it, Appellants' article VII, section 5 argument lacks merit. Appellants contend that under this constitutional provision, if voters or legislators approve a tax to fund a particular project or type of project, no subsequent law can affect how that money may be spent. But this theory is not consistent with text, is contrary to case law, and makes no sense.

The text of article VII, section 5 does not address the situation here, where voters choose to repeal or reduce taxes previously imposed. The text, in relevant part, provides that a tax shall “only . . . be applied” to “the object of the tax.” That language prohibits only uses of taxes that are “wholly unrelated” to the purpose of the tax. *Sheehan*, 155 Wn.2d at 804.

Here, far from being “wholly unrelated,” section 12 is closely related to the object of the RTA's taxes, which have been pledged to secure

Sound Transit bonds. *See Pierce County II*, 159 Wn.2d at 23-24. As the trial court correctly found, use of the RTA's taxes to pay back the bonds they were pledged to secure is far from "wholly unrelated." CP 2224 (quoting *Sheehan*, 155 Wn.2d at 804). Where an electorate makes a policy decision to wind down a project previously undertaken, use of taxes collected for the project to wind it down is closely related. Moving forward with a project and winding the project down are two sides of a coin. Indeed, this Court foreshadowed this situation in *Pierce County II*, stating that "nothing in our decision today forecloses Sound Transit from electing to retire the bonds early." *Pierce County II*, 159 Wn.2d at 50.

Nor does the authority cited by Appellants support their argument. Appellants primarily rely on *Sheldon v. Purdy*, 17 Wash. 135, 49 P. 228 (1897), but that case is readily distinguishable. *Sheldon* involved the relationship between two separate funds. One fund was, under the state constitution, "devoted to the support of the public schools," and included money appropriated by the state and money from county taxes. *Id.* at 140. The second fund was a special fund of the school district, which included money from bonds related to school construction. *Id.* at 136-37. A state law purported to authorize payment of the school construction bonds from the support-of-public-schools fund. *Id.* at 139-40. This Court held that the purpose of school construction was unrelated to "support of public schools," in light of the article IX constitutional backdrop. *Id.* at 140-41. Consequently, the Court held that the statute was unconstitutional "in so far as it purports to command the treasurer to pay interest from coupons from

moneys raised by taxation for another purpose[.]” *Id.* at 141. Here, by contrast, I-976 does not command the payment of money from one fund to pay for obligations on another, unrelated fund.

The two other cases that Appellants cite also do not support their argument. *State ex rel. Latimer v. Henry*, 28 Wash. 38, 45-46, 68 P. 368 (1902), holds only that a fund for county purposes cannot pay for a non-county purpose. *Thompson v. Pierce County*, 113 Wash. 237, 193 P. 706 (1920), does not cite, much less interpret, article VII, section 5, and addresses only the scope of executive authority without further legislative action. *Id.* at 240-41; *cf. Sane Transit v. Sound Transit*, 151 Wn.2d 60, 85 P.3d 346 (2004) (holding that government agency has discretionary authority to scale back voter-approved project).

Appellants’ theory also leads to absurd consequences. It would mean, for example, that once the Legislature approves a tax for a particular purpose, neither voters nor the Legislature could ever repeal that tax or direct it to another purpose. It would mean that once local voters approve a tax to fund a specific project, even those same voters could not then decide to cancel that project and use the tax money for another purpose—it would have been unconstitutional, for example, for Seattle voters to approve an MVET to fund an expanded monorail, *see Larson*, 156 Wn.2d at 755, and then later vote to terminate the project and repeal the tax. It would also mean that if local voters approved a tax to fund a particular project, and the State subsequently passed a law rendering that type of project illegal, the State

law would be unconstitutional because it “diverts” local taxes that voters approved for a particular purpose. That makes no sense.

Finally, even if Appellants’ untenable theory were correct, their allegations would not show a violation. As Respondents explained in the trial court, Appellants’ claim about Sound Transit would—at most—create a factual issue precluding summary judgment. Here, Appellants would need to establish at least two foundational facts in order to show a violation, both of which are missing. First, they would have to establish that Sound Transit is able to retire, defease, or refinance any outstanding bonds. I-976, § 12(2). But the record does not establish whether that condition is met; the relevant bond contracts are not part of the record in this case.¹⁹ Second, Appellants would need to establish that Sound Transit would have to use voter-approved tax revenues to retire, defease, or refinance its outstanding bonds. Sound Transit, however, has many non-tax resources at its disposal, including, for example, fare revenues, reserves, and excess debt capacity. *See* CP 2040-43, 2048-49, 2079 (Sound Transit, *2020 Financial Plan & Proposed Budget* (Oct. 2019)). Thus, even if Appellants’ legal theory under article VII, section 5 were viable—and it is not—it would not establish that I-976 is unconstitutional.

¹⁹ Nor does the declaration of Sound Transit employee Tracy Butler answer this issue. Moreover, the State objected to the Declaration of Tracy Butler in the trial court on the grounds that there had been no discovery on this issue, CP 2014 (footnote 3), as the parties had agreed that the issues to be presented to the trial court on expedited summary judgment briefing were purely “legal,” CP 900-903, 909-912.

Accordingly, this Court should affirm the trial court's determination that I-976 does not violate article VII, section 5.

VI. CONCLUSION

The Court should reject each and every constitutional challenge to I-976 raised by the Appellants, affirm the constitutionality of I-976, vacate the injunction against the implementation of I-976 (except as to the impairment of contract claim regarding the City of Burien's bonds, which is still pending in the trial court), and allow I-976 to take effect as the voters intended.

RESPECTFULLY SUBMITTED this 15th day of May 2020.

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DATED this 15th day of May 2020, at Olympia, Washington.

s/ Kristin D. Jensen
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