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No. 98320-8

THE SUPREME COURT OF THE STATE OF WASHINGTON

GARFIELD COUNTY TRANSPORTATION AUTHORITY, et al.,

Appellant,

v.

STATE OF WASHINGTON,

Appellees.

INTERVENOR-PLAINTIFFS' REPLY BRIEF

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I. REPLY

Initiative 976 (“I-976”) merges *two* longstanding political goals of its sponsors: lowering car tabs to \$30, and stopping Sound Transit’s expansion of high capacity transit in the Central Puget Sound region. But the Constitution does not allow an initiative to use “logrolling” to harness a popular statewide subject (\$30 car tabs) to push through another subject that could not pass on its own (defeating Sound Transit).

The State Legislature enabled local governments and voters to tax themselves, and communities across the State took advantage of this authority. Members of Washington ADAPT, Transit Riders Union, and Climate Solutions (hereafter “Intervenor-Plaintiffs”), are among the hundreds of thousands of voters who campaigned and voted to increase taxes to fund regional transportation projects, including the Sound Transit 3 expansion of light rail, one of the largest bond measures and construction projects in our State’s history.

Contrary to the State’s arguments, the interest of voters is not on only one side of this dispute. I-976 undermined procedural protections of voters. By combining two subjects, the initiative deprived voters of their right to be heard on both subjects, and the ballot title concealed impacts to Sound Transit and deceived voters by falsely promising to protect the outcome of previous local elections. I-976 also harms voters substantively

by invalidating the outcome of the hard-fought past elections; threatening projects that are planned, financed, and partially completed; and forcing Sound Transit to incur half a billion dollars to refinance voter approved bonds.

The Court must invalidate I-976 to protect voters' past elections, and the projects begun in reliance on those elections, and to ensure that their constitutional rights are protected going forward.

A. “\$30 car tabs” and Sound Transit bonds are separate subjects.

While there are numerous bases for invalidating I-976, as described in Appellants' Opening Brief, one of the clearest is the Initiative's unconstitutional pairing of “\$30 car tabs” (a slogan, not a reality) and the attack on the voter-approved financing for Sound Transit 3 (“ST3”).

Let's be clear. The proponents of I-976, and particularly Tim Eyman, have long sought to stop ST3 and recognized that this is a local issue to be decided by local voters. Indeed, Tim Eyman authorized the Voters' Pamphlet “Statement Against” ST3, arguing: “Why should everyone be forced to pay billions of dollars for a Seattle-centered boondoggle that will be obsolete before it's built ...? Just vote No.”¹

¹ Pierce County Auditor's Office, *Sound Transit (A Regional Transit Authority) Special Election – Proposition No. 1 – Light-Rail, Commuter Rail, and Bus Service Expansion*,

Mr. Eyman lost that election. Voters in the Sound Transit District strongly supported and continue to strongly support ST3.

Having lost on ST3, Eyman seeks to overturn the ST3 election by combining his attack on Sound Transit with a popular statewide campaign for \$30 car tabs. The goal was transparent: bring in enough statewide voters wanting to lower car tabs to drown out the voice of Sound Transit district voters. But the Constitution does not allow such logrolling.

The unconstitutional pairing in I-976 is virtually identical to the logrolling that led this Court to invalidate previous measures. In particular, the law held unconstitutional in *Washington Toll Bridge Authority v. State*, 49 Wn.2d 520, 304 P.2d 676 (1956), sought to combine a statewide and ongoing provision for establishing and financing toll roads with a provision authorizing a specific toll road in the Central Puget Sound region. The first was “continuing in effect, applicable to every toll road project henceforth to be authorized and constructed,” whereas the second was “subject to accomplishment and . . . not continuing in character.” *Id.* at 524. Indeed, like here, one issue had a statewide scope and the other would primarily impact the Central Puget Sound region.

The State’s briefing admits that *Washington Toll Bridge Authority* invalidated the bill “because it had two purposes.” Resp’t Br. at 23. Here, too, I-976 certainly has “two purposes.” This is clear from the **long and**

separate histories of the fight over \$30 car tabs and over Sound Transit. Both have separately been placed before the voters and come before this Court on numerous occasions. Given the separate history of political campaigns behind these two subjects, they must be considered separate for constitutional purposes.

The State's brief tries to argue that the Court found two subjects in *Washington Toll Bridge Authority* and its progeny because the two provisions in those cases had subjects that were "categorically unrelated" to each other. But the State has simply invented this rationale, without any support from the cases. As described in Appellants' and Plaintiff-Intervenors' Opening Briefs, the Court explained its decisions in those cases as stemming from one subject being continuing in nature while the other being a onetime event, one subject being statewide while the other being local, and also considering whether the subjects have historically been addressed together. *See* Appellants' Br. 18-23.

City of Burien v. Kiga, 144 Wn.2d 819, 827, 31 P.3d 659 (2001), shows that this Court's single-subject analysis is about **the impact on voters**, not about semantics and circular-definitions like "categorical relatedness." The Court looks to whether or not the combination of issues creates the type of logrolling that article II, section 19 was designed to prevent:

The kind of logrolling of unrelated measures embodied in I-722 violates the fundamental principle embedded in article II, section 19 and is unconstitutional. **I-722 necessarily required the voters who supported one subject of the initiative to vote for an unrelated subject they might or might not have supported. For example, a person who desired systemic changes to future property tax assessments but did not want to fiscally burden cities with the refunding of 1999 tax increases was required to vote for both measures or neither. Similarly, a person who did not own a home or who was otherwise unconcerned with changing methods for assessing property taxes but did desire a refund of other fees was required to vote for both measures or neither.**

Kiga, 144 Wn.2d at 827-28 (emphasis added). The Court invalidated the initiative because “voters did not have an opportunity to cast a vote that clearly demonstrated their support for either or both subjects. In order to do so, the two subjects needed to be voted on separately.” *Id.*

While it has proven difficult to articulate a uniform definition or test for a “separate subject,” the Court’s jurisprudence can be uniformly explained as applying the single subject rule to prevent logrolling. Where combining issues places voters into a conundrum that threatens logrolling, like in *Kiga*, the Court has found the subjects to be separate. Indeed, the State notes that in *Power, Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951), the Court found “the clearest possible illustration” of logrolling where 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.

Here, we are faced with a situation like in *Power, Inc.* Time and again, voters have showed support for \$30 car tabs. Time and again, they have supported Sound Transit and rejected the attacks on Sound Transit levied by Mr. Eyman and others. The attack on Sound Transit could not pass on its own and only succeeded when combined with the \$30 car tabs. This too is “the clearest possible illustration” of logrolling.

Courts have sniffed out these attempts at logrolling by looking at whether the two issues have been historically combined or whether they were combined simply to achieve passage by impermissible logrolling. *See Wash. Ass’n for Substance Abuse & Violence Prev. v. State*, 174 Wn.2d 642, 657-59, 278 P.3d 632 (2012); *Lee v. State*, 185 Wn.2d 608, 623, 374 P.3d 157 (2016); *Am. Hotel & Lodging Ass’n v. City of Seattle*, 6 Wn. App. 2d, 928, 946-47, 432 P.3d 434 (2018), *review granted*, 193 Wn.2d 1008 (2019), *review dismissed as moot* (Oct. 21, 2019).

Here, the history of these two separate issues paints an unmistakable picture of logrolling. The fight over “\$30 car tabs” and the fight over Sound Transit have always been addressed **separately** before the Legislature. They have always been presented separately to voters—with car tabs being a statewide issue presented to voters throughout the State, and Sound Transit being a local issue presented only to Central

Puget Sound voters. Combining them to reverse the ST3 vote is impermissible logrolling.

Nor can the constitutional requirement that these two subjects be presented separately be overcome merely by I-976's contrived drafting techniques. According to the State, the two subjects became one because I-976 required retirement of Sound Transit bonds to achieve the ongoing, statewide policy of reducing car tabs. If it were so easy to merge two constitutional subjects into one, creative lawmakers could usually find a way to circumvent the constitutional prohibition on logrolling. For example, in *Washington Toll Bridge Authority*, the creative drafter could have simply broadened the Act's first purpose (that which was "continuing in effect") so that it included the construction of the specific toll road in Central Puget Sound (the provision that was "subject to accomplishment"). But such artful drafting would not have solved the constitutional problem created by combining these two subjects into a single piece of legislation. Similarly, if only a "categorical relatedness" was required, then *Kiga* would have been decided differently, since both of the subjects in I-722 involved property taxes. See I-722 Sec. 1(2) (For the purpose of refunding 1999 taxes, "tax" includes, but is not necessarily

limited to ... property taxes. . .”); *id.* sec. 3 (limiting future property taxes).²

The Court should reject the State’s arguments that would allow the single subject rule to be overcome by artful drafting that merely creates interconnections or “categorical relatedness” between the two subjects. *See Kunath v. City of Seattle*, 10 Wn. App. 2d 205, 230, 444 P.3d 1235 (2019), *review denied*, 195 Wn.2d 1013 (2020) (“Accepting tax opponents’ arguments would set a low bar for rational unity and fail to uphold the purposes of article II, section 19.”) The Court should continue to use the purpose-driven analysis shown by *Kiga*, finding separate subjects where, like here, different voters would not necessarily have a unified opinion on both provisions and therefore should rightfully have an opportunity to vote on them separately. And where the subjects have been presented to the legislative body or voters separately, they cannot be combined to achieve a different electoral result. *Power, Inc.*, 39 Wn.2d 191.

Here, the Court should also find that retirement of ST3 bonds and future limitation of car tab fees are different subjects because they have a different geographic scope and impact different electoral constituencies. The Legislature has decided that only voters in the Sound Transit district have a right to vote on whether to allow Sound Transit to levy taxes. *See*

² Washington Secretary of State,
<https://www.sos.wa.gov/elections/initiatives/text/i722.pdf>

RCW 81.112.030(8). The Legislature affirmed this approach when it authorized Sound Transit to raise additional money for ST3 by gaining approval of voters *within the Sound Transit area*. See 2nd Eng. SSB 5987 (2015) (amending RCW 81.104.140 *et seq.*). These interested voters repeatedly voted in favor of Sound Transit and most recently approved ST3. I-976 does not amend these provisions, but merely attempts to overturn the will of the designated electorate with votes from across the State that are being cast on a completely different issue. Pairing two issues with different geographic scopes and different interested electorates creates an unquestionable risk of logrolling and indicates a situation where voters should be given the opportunity to vote on each issue separately.

B. The Initiative violated the Constitution’s subject-in-title requirement.

The Initiative’s unconstitutional logrolling was aided and abetted by a misleading ballot title, which suffered from at least three major problems. Each exacerbated the single subject defect.

First, even though attacking ST3 is one of I-976’s primary purposes and most significant impacts (costing Sound Transit over a half a billion dollars simply to comply with the refinancing requirement), the ballot title gives no hint of any impact to Sound Transit.

Second, the ballot title actively conceals the impact on Sound Transit and transportation benefit districts by telling voters that the measure will not impact the result of past elections. The State attempts legal gymnastics to argue that the ballot title was not legally false, but it cannot deny that most lay voters – those to be protected by the ballot title – were left with the false impression that the initiative would not impact voter approved charges, and this is enough for a subject-in-title violation.

Finally, the initiative overwhelmed Sound Transit district voters by promising statewide voters \$30 car tabs. The ballot title was turned into a campaign piece, repeating the proponents’ campaign promise, notwithstanding that the initiative would not deliver on that promise.

These three errors require invalidation under the subject-in-title requirement of article II, section 19.

II. CONCLUSION

The Court should declare I-976 unconstitutional.

Respectfully submitted this 29th day of May 2020.

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