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No. 98320-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CLINT DIDIER,

Appellant Intervenor,

v.

GARFIELD COUNTY TRANSPORTION AUTHORITY;
KING COUNTY; CITY OF SEATTLE;
WASHINGTON STATE TRANSIT ASSOCIATION;
ASSOCIATION OF WASHINGTON CITIES;
PORT OF SEATTLE; INTERCITY TRANSIT;
AMALGAMATED TRANSIT UNION;
LEGISLATIVE COUNCIL OF WASHINGTON;
CITY OF BURIEN; ADAPT WASHINGTON; and
MICHAEL ROGERS;
Respondents/Appellees.

BRIEF OF RESPONDENT / APPELLANT

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INTRODUCTION

In the November general election, Initiative Number 976 (I-976) was passed by the people of this state, 1,055,749 (52.99%) voting in favor, and 936,751 (47.01%) voting against. Of the counties in this State, only six counties failed to adopt the measure: Whatcom, San Juan, Island, King, Thurston and Jefferson. (CP 1144-1149).

Following this vote, Garfield County Transportation Authority, King County, the City of Seattle, Washington State Transit Association, the Association of Washington Cities, the Port of Seattle, Intercity Transit, the Amalgamated Transit Union, the Legislative Council of Washington and Michael Rogers (hereafter, "Government plaintiffs") filed suit in King County seeking a preliminary injunction. (King County Case No. 19-2-30171-6). (CP 1).

King County Superior Court Judge Marshall Ferguson, following oral argument, found that Plaintiffs were likely to prevail at trial and entered a preliminary injunction. (CP 831-838). Thereafter, Didier moved to intervene as a taxpayer with standing, and intervention was granted (CP 1005-1007) within the guidelines of the summary judgment schedule entered by the court in December. (CP 909-912). Didier answered the Government plaintiffs' First Amended Complaint and asserted 1)

improper venue and the appearance of bias; and 2) Plaintiffs' violation of RCW 42.17A.555 and unclean hands (CP 1097-1100).

On oral argument, Didier again raised Plaintiffs' violation of RCW 42.17A.555 and unclean hands (RP2 348-349). The court did not address the argument in its findings, conclusions, or orders.

Ultimately, the trial court upheld I-976 as constitutional, after severing Sections 8 and 9, and retained an argument for the City of Burien on one remaining issue. (CP 2443).

ASSIGNMENTS OF ERROR

The trial court erred in failing to recuse itself from adjudicating a case which included King County as plaintiff.

The trial court erred by allowing the named Respondents (hereafter, the government plaintiffs) who were public offices or agencies to bring an action in violation of RCW 42.17a.555.

The trial court erred in granting equitable relief to the City of Burien when the City of Burien, a public office or agency, came before the court with unclean hands.

The trial court erred in granting relief to the City of Burien whose claim of contract impairment was not ripe for adjudication.

The trial court erred in sustaining any portion of the government plaintiffs' motion for summary judgment.

STATEMENT OF THE CASE

On November 5, 2019, Initiative Number 976 (I-976) was passed by Washington voters. Before I-976 became law, Plaintiffs, all of which were public offices or agencies save Michael Rogers, (CP 1) filed suit in King County seeking a preliminary injunction. The trial court granted the preliminary injunction, and thereafter, the City of Burien, a public office or agency, joined the case. Didier intervened reserving the arguments of improper venue and unclean hands in his initial pleading. (CP 1097-1100). The parties later filed motions on summary judgment, responses, and replies, followed by motions for reconsideration and an eventual Order on Motions for Reconsideration Regarding Article I, Section 12 Issues, and a Final Order was entered. All the orders of the trial court are in error. Didier enjoys a presumption of constitutionality. The trial court has prevented the effective implementation of I-976 and has done so in error.

ARGUMENT

I. DE NOVO REVIEW ON SUMMARY JUDGMENT

A. Standard of Review

In reviewing an order of summary judgment, the Court engages in the same inquiry as the trial court. *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wash.2d 201, 5 P.3d 691, 696 (2000), *citing, Reid v. Pierce County*, 136 Wash.2d 195, 201, 961 P.2d 333 (1998). Summary judgment is

upheld if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Tunstall, op. cit., citing Green v. A.P.C. (American Pharm. Co.)*, 136 Wash.2d 87, 94, 960 P.2d 912 (1998) (citing, inter alia, CR 56(c)).

B. A King County Superior Court Judge, sitting for the King County Superior Court, adjudicating a case which included King County as Plaintiff required recusal to avoid due process violations and an appearance of bias.

Venue in this case is not exclusive to King County Superior Court, but the King County Superior Court cannot avoid the appearance of bias or partiality and was required to recuse its judges from adjudicating this case.

Article VI, Clause 2 of the United States Constitution states as follows:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Fourteenth Amendment to the U.S. Constitution provides in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .

The ancient Rule of Necessity has been applicable to the issue of judicial impartiality for over five centuries. Its earliest recorded invocation was in 1430 and requires judges to consider their own disqualifications in a case or controversy pursuant to applicable law and precedents when necessary. *See United States v. Will*, 449 U.S. 200, 101 S. Ct. 471 (1980).

A fair trial in a fair tribunal is a basic requirement of due process. Although state courts and judges often decide otherwise, the long-standing precedent in the United States is that the “Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *accord In re Murchison*, 349 U.S.133, 136 (1955). As the Marshall court specifically stated:

This requirement of neutrality in adjudicative proceedings safeguards the two critical concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision-making process. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law.

Marshall, 446 U.S. at 242.

This due process right “has been jealously guarded by this Court” because it “preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done.” *Id.*

Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing. *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995) (quoting *State v. Ladenberg*, 67 Wn. App. 749, 754-55, 840 P.2d 228 (1992), reversed on other grounds by *State v. Finch*, 137 Wn.2d 792, 975 P.2d 967 (1999)).

A “fair and impartial tribunal” guaranteed by the Fourteenth Amendment requires not just “an absence of actual bias” – there must not be “even the probability of unfairness” and “justice must satisfy the appearance of justice,” *Murchison*, 349 U.S. at 135-36, quoting *Offut v. United States*, 348 U.S. 11, 14. (1954).

As the United States Supreme Court stated in *Capertaron v. Massey Coal Co.*, 556 U.S. 868, 129 S. Ct. 2252 (2009): “Under our precedents there are objective standards that require recusal when ‘the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable.’” *Id.* at 872, quoting *Withrow v.*

Larkin, 421 US 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). State judges or the Attorney General declaring they are not actually biased or can act with impartiality or objectivity ignore the wide body of these powerful Due Process precedents. *See e.g. Rippo v. Baker*, 137 S. Ct. 905, 907 (2017); *Williams v. Pennsylvania*, 579 U. S. ___, 136 S. Ct. 1899, 195 L.Ed.2d 132 (2016), and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S. Ct. 2252, 173 L Ed. 2d 1208 (2009).

A King County judge who stands for reelection in King County hearing a case brought by King County on a ballot issue in which King County was one of six counties voting against the measure (CP 1) is the appearance of bias. (CP 2443). All the orders of the trial court should be set aside, and the case remanded for summary dismissal.

C. The Government plaintiffs have unclean hands in bringing an action in violation of RCW 42.17a.555.

Plaintiffs who are public offices and agencies, none of whom are state officers or state employees qualifying for the exception to the statute, violate the prohibition found in RCW 42.17A.555, in appearing, funding litigation to challenge the ballot measure, and bringing this appeal. As a result, government plaintiffs have unclean hands in respect of this action, and may not be accorded equitable relief.

It is well settled that a party with unclean hands cannot recover in equity. *J.L. Cooper & Co. v. Anchor Sec. Co.*, 9 Wash.2d 45, 73, 113 P.2d 845 (1941).

In the case of *O'Brien v. Johnson*, 32 Wn.2d 404, 202 P.2d 248 (1949), the Supreme Court sustained the equitable power of the Court to determine constitutionality. There, the treasurer of Pierce County was threatening to and would, unless restrained, seize and distrain property of the appellant in 1947, to collect personal property taxes for the years 1931, 1932, 1933, 1934, and 1936. The complaint further alleged that the taxes in question had theretofore been paid. A temporary restraining order pendente lite was prayed for, with a permanent injunction or restraining order to follow.

The Court then reiterated the position initially established in *Roon v. King County*, that granting injunctive relief is within the equitable power of the Court saying [bold added] “. . . the courts retain all the equitable powers inherent in them and may still exercise them when the occasion demands it.” *O'Brien, op. cit.*, at 407, citing *Roon v. King County*, 24 Wn. (2d) 519, 166 P. (2d) 165.

Government plaintiffs have unclean hands, having acted illegally to bring this action at the outset. “Equitable relief is available to innocent

parties only.” *Christman v. General Constr. Co.*, 2 Wn. App. 364, 467 P.2d 867, *review denied*, 78 Wn.2d 994 (1970).

Didier asserted this issue in his Answer, (CP 1097-1100), and raised this issue again on oral argument. The argument remains ripe for de novo review here.

D. The City of Burien is not deserving of equitable relief as the City of Burien appears before this court with unclean hands.

The City of Burien is a public office or agency employing others to challenge a ballot issue in violation of the prohibition found in RCW 42.17A.555, and continues to violate this law in appearing, in pursuing litigation to challenge the ballot measure, and in bringing an appeal. The City of Burien also has unclean hands and may not be accorded equitable relief. *J.L. Cooper & Co. v. Anchor Sec. Co.*, 9 Wash.2d 45, 73, 113 P.2d 845 (1941); *O'Brien v. Johnson*, 32 Wn.2d 404, 202 P.2d 248 (1949); *Roon v. King County*, 24 Wn. (2d) 519, 166 P. (2d) 165; *Christman v. General Constr. Co.*, 2 Wn. App. 364, 467 P.2d 867, *review denied*, 78 Wn.2d 994 (1970). The City of Burien may not be granted equitable relief.

E. The City of Burien’s claim is not ripe for adjudication.

The City of Burien does not have a justiciable controversy on the issue of impairment of contracts (CP 2551-2553) in violation of Article I,

Section 23 because Initiative 976 has not yet become law. They have no damages.

Justiciability requires (1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive. *Asarco Inc. v. Department of Ecology*, 145 Wash. 2d 750, 43 P. 3d 471, 475 (2002), quoting *First United Methodist Church of Seattle v. Hearing Exam'r*, 129 Wash.2d 238, 245, 916 P.2d 374 (1996) (quoting *First Covenant Church v. City of Seattle*, 114 Wash.2d 392, 398, 787 P.2d 1352 (1990) (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wash.2d 811, 815, 514 P.2d 137 (1973)).

The City of Burien can point to no actual damages caused by I-976, because they haven't yet experienced any actual damages. Plaintiffs' claim may be possible, but for the time being, their claim is dormant, hypothetical, and speculative. Potential, theoretical, abstract, or academic damages are not justiciable.

Plaintiffs argue that the City of Burien is harmed by the violation of Article I, Section 23 of Washington's Constitution which provides: "No

bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.” This prohibition applies to “any form of legislative action, including ... direct action by the people”. *Ruano v. Spellman*, 81 Wash.2d 820, 825, 505 P.2d 447 (1973). Article I, Section 10 of the United States Constitution states that “[n]o state shall ... pass any ... law impairing the obligation of contracts ...”.

However, the prohibition against any impairment of contracts “is not an absolute one and is not to be read with literal exactness”. *Washington Fed. of State Emp. v. State*, 127 Wash.2d 544, 901 P.2d 1028, 1036 (1995), citing *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 428, 78 L.Ed. 413, 54 S.Ct. 231 [236] 88 A.L.R. 1481 (1934).

A 3-part test is used to determine if there has been an impairment of public contract: (1) does a contractual relationship exist, (2) does the legislation substantially impair the contractual relationship, and (3) if there is a substantial impairment, is it reasonable and necessary to serve a legitimate public purpose. *Caritas Services v. DSHS*, 123 Wn.2d 391, 403 869 P.2d 28 (1994); *Carlstrom v. State*, 103 Wn.2d 391, 694 P.2d 1 (1985).

As it currently stands, the legislation does not impair the contracts alleged by the government plaintiffs at all, because I-976 is not yet law. The matter is speculative.

“Even if a substantial impairment of contract occurs, ... it may nonetheless be constitutional if it was reasonable and necessary to achieve a legitimate public purpose.” *Washington Fed. of State Emp. v. State*, at 1038, *citing Caritas*, at 411, 869 P.2d 28 (*citing United States Trust Co. v. New Jersey*, 431 U.S. 1, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977)). More than one million people have declared the legitimate public purpose of a reduction in motor vehicle license fees. In this democracy, the voice of the people is constitutionally authoritative as to public purpose. Article I, Section 1, of the Constitution of the State of Washington.

Yet, because I-976 has not become effective law, Burien’s claim is speculative, hypothetical, and not ripe for adjudication. Notwithstanding the unclean hands of the City of Burien, this impairment claim is non-cognizable as a matter of law. *Asarco Inc. v. Department of Ecology*, *supra*.

II. DE NOVO REVIEW OF CONSTITUTIONAL ISSUES

A. Standard of Review

“An exercise of the initiative power is an exercise of the reserved power of the people to legislate.” *Amalgamated Transit Union Local 587 v. State*, 142 Wash.2d 183, 204, 11 P.3d 762 (2000), *opinion corrected*, ___ Wash.2d ___, 27 P.3d 608 (2001). “In approving an initiative measure, the

people exercise the same power of sovereignty as the Legislature does when enacting a statute.” *Id.*

Interpretation of an initiative is a question of law that is reviewed de novo by the Courts of Appeal. *Washington Citizens Action of Washington v. State*, 162 Wash.2d 142, 151, 171 P.3d 486 (2007). The Court applies the rules of statutory construction to initiatives. *Roe v. Tele-Tech Customer Care Mgmt. (Colorado) LLC*, 171 Wash.2d 736, 746, 257 P.3d 586 (2011). Thus, when interpreting the meaning of a statute enacted through the initiative process, the purpose is to ascertain the intent of the voters who, acting in their legislative capacity, enacted the measure. *Id.* Where the voters have clearly expressed their intent in the statute, the Courts are not required to look any further. *Amalgamated*, 142 Wash.2d at 205, 11 P.3d 762.

Analysis is to focus on the language as the average informed voter, voting on the initiative, would read it. *Roe*, 171 Wash.2d at 746, 257 P.3d 586. If the language of an initiative enactment is plain and unambiguous, and in harmony with its natural and ordinary meaning, the enactment is not subject to judicial interpretation. *Id.*; *Amalgamated*, 142 Wash.2d at 205, 11 P.3d 762. However, if there is ambiguity in the enactment, the Court may examine statements in the voters' pamphlet in order to ascertain

the collective intent of the voters. *Amalgamated*, 142 Wash.2d at 205-06, 11 P.3d 762.

An initiative must be read in light of its various provisions, and in light of the surrounding statutory scheme, rather than in a piecemeal approach. *Am. Legion Post #149 v. Dep't of Health*, 164 Wash.2d 570, 585, 192 P.3d 306 (2008). The Court must, when possible, give effect to every word, clause, and sentence of a statute enacted through the initiative process. *Id.*

B. The Ballot Title is Constitutionally Sufficient

RCW 29A.72.050 provides that “[t]he ballot title for an initiative to the people, an initiative to the legislature, a referendum bill, or a referendum measure consists of: (a) A statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form prescribed in this section for the ballot measure in question. The statement of the subject of a measure must be sufficiently broad to reflect the subject of the measure, sufficiently precise to give notice of the measure's subject matter, and not exceed ten words. The concise description must contain no more than thirty words, be a true and impartial description of the measure's essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure.”

RCW 29A.72.080 provides that “[a]ny persons, including the attorney general or either or both houses of the legislature, dissatisfied with the ballot title or summary for a state initiative or referendum may, within five days from the filing of the ballot title in the office of the secretary of state, appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title or summary, and their objections to the ballot title or summary and requesting amendment of the ballot title or summary by the court.” . . . “The decision of the superior court shall be final.”

The Attorney General’s Statement of Subject for I-976 reads as follows: “Initiative Measure No. 976 concerns motor vehicle taxes and fees.” (CP 1128) The Attorney General’s Concise Description reads as follows: “This measure would repeal, reduce, or remove authority to impose certain vehicle taxes and fees; limit annual motor-vehicle license fees to \$30, except voter-approved charges; and base vehicle taxes on Kelley Blue Book value.” (CP 1128). This ballot title provides a description which is as comprehensive and complete of the initiative’s policies as 33 words will permit.

The Attorney General’s formation of the short description is simply not subject to appeal. *Eyman v. Ferguson*, 433 P. 3d 863, 870, (Wash Court of Appeals, 2nd Div.) (2019). “When the short description is

finally established under RCW 29A.72.283, the secretary of state shall [file and mail it]. ... Thereafter such short description shall be the description of the measure in all ballots.” RCW 29A.72.285. The effect of this provision, together with RCW 29A.72.283, is that the Attorney General's short description is not subject to appeal and shall be used in ballots after the events described in RCW 29A.72.285. *Id.*, at 871. Any challenge to the ballot title and summary is untimely.

The title of an initiative ““need not be an index to its contents; nor is the title expected to give the details contained in the bill.”” *Wash. Fed'n of State Employees*, 127 Wash.2d at 555, 901 P.2d 1028 (1995), (*quoting Treffry v. Taylor*, 67 Wash.2d 487, 491, 408 P.2d 269 (1965)). The contents of an initiative can constitutionally entail “any subject reasonably germane” to its title. *DeCano v. State*, 7 Wash.2d 613, 627, 110 P.2d 627 (1941).

A ballot title need not include a unifying “umbrella” term but, rather, “[i]f the subject of the act can be reasonably gathered from reading the title as a whole, the subject is sufficiently expressed therein.” *Fritz v. Gorton*, 83 Wash.2d 275, 291, 517 P.2d 911, *appeal dismissed*, 417 U.S. 902, 94 S.Ct. 2596, 41 L.Ed.2d 208 (1974), (*quoting Maxwell v. Lancaster*, 81 Wash. 602, 607, 143 P. 157 (1914)). In *Fritz*, the words “openness in government” did not appear within the 100-word ballot title

but was determined to be the (single) subject of the act. *Fritz*, 83 Wash.2d at 290, 517 P.2d 911.

Moreover, when the words of a title may be given two interpretations, only one of which renders the act constitutional, it is the constitutional interpretation which must be adopted by the court. *Wash. Fed'n of State Employees*, 127 Wash.2d at 556, 901 P.2d 1028 (1995), (quoting *Treffry*, 67 Wash.2d at 491, 408 P.2d 269). Objections to the title “must be grave and must present a palpable conflict between the title and the constitution before the act will be held unconstitutional.” *Shea v. Olson*, 185 Wash. 143, 152, 53 P.2d 615 (1936). Differing meanings attributed to the term “tax” are neither “grave” nor do they rise to the level of “a palpable conflict between the title and the constitution.” *Id.*

Most fundamentally an initiative title is constitutionally sufficient “if it gives notice that would lead to an inquiry into the body of the act,” *Wash. Fed'n of State Employees*, 127 Wash.2d at 555, 901 P.2d 1028 (1995), (quoting *YMCA v. State*, 62 Wash.2d 504, 506, 383 P.2d 497 (1963)). Statements in the official Voters Pamphlet “may be considered to ascertain the collective purpose and intent of the people,” *State v. Thorne*, 129 Wash.2d at 763, 921 P.2d 514 (1996).

C. The Statutes to be Amended by I-976 are set forth in the Initiative and the Intent of the Measure is Mere Dicta

The Voters Pamphlet included a complete text of Initiative Measure No. 976, (CP 1128-1133), the title of the act: BRING BACK OUR \$30 CAR TABS. (CP 1128), and the Initiative's bill title: AN ACT Relating to limiting state and local taxes, fees, and other charges relating to vehicles; amending RCW 46.17.350, 46.17.355, 46.17.323, 82.08.020, 82.44.065, 81.104.140, and 81.104.160; adding a new section to chapter 46.17 RCW; adding a new section to chapter 82.44 RCW; adding a new section to chapter 81.112 RCW; creating new sections; repealing RCW 46.17.365, 46.68.415, 82.80.130, 82.80.140, 82.44.035, and 81.104.160; and providing an effective date. (CP 1128-1133),

The Voters Pamphlet also included Section 1 of the Initiative which set forth the policies and purposes. (CP 1128). This is often referred to as the intent section. Although government plaintiffs argue that the intent of this section is somehow misleading, the standing rule concerning precatory language is that it has no legal effect.

As the court reasoned in *Pierce County v. State*, 150 Wash. 2d 422, 78 P. 3d 640, 648 (2003): "The distinction between a proposed measure's legal substance and its policy fluff was tersely drawn in an early opinion of this court: "A law is a rule of action. An argument is not.... [A] preface or preamble stating the motives and inducement to the making of [the law] is without force in a legislative sense.... It is no part of the law." *State ex rel.*

Berry v. Superior Court for Thurston County, 92 Wash. 16, 30-32, 159 P. 92 (1916). Just as the common inclusion of dicta in judicial opinions does not compromise the legal effect of a decision, policy expressions in a bill or initiative are "no part of the law." Because I-776's "rule of action" was \$30 license tabs and because its policy statements were "no part of the law," I-776 did not embrace two unrelated laws or enactments. Its "operative and relevant sections," as the superior court termed them, were all rationally related to the enactment of a \$30 ceiling on license tab fees.

**D. I-976 Embraces a Single Subject and Complies with Article II,
Section 19's Single Subject Rule.**

Initiative I-976 was initially filed on March 19, 2018 and was entitled BRING BACK OUR \$30 CAR TABS. (CP 1128). The electorate has every right and constitutional authority to adopt an initiative to impede taxing authority, and to enact in a single measure all rationally related provisions designed to achieve the single objective of the initiative – which is an initiative “limiting state and local taxes, fees, and other charges relating to vehicles.” (CP 1128).

“[T]here must be some rational unity between the matters embraced in the act, the unity being found in the general purpose of the act and the practical problems of efficient administration.... For purposes of legislation, ‘subjects’ are not absolute existences to be discovered by some sort of a

priori reasoning but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act.” *State ex rel. Wash. Toll Bridge Auth.*, 61 Wash.2d at 33, 377 P.2d 466 (quoting *State ex rel. Test v. Steinwedel*, 203 Ind. 457, 467, 180 N.E. 865, 868 (1932)).

The text of I-976 includes the initiative to “limit state and local taxes, fees, and other charges relating to motor vehicles.” Specifically, I-976 “limit[s] annual motor vehicle fees to \$30, except voter approved charges.” Id. I-976 adds a new section to chapter 46.17 RCW that imposes a hard cap on vehicle registration and annual renewal fees: “State and local motor vehicle license fees may not exceed \$30 per year for motor vehicles, regardless of year, value, make or model.” The term “state and motor vehicle license fees” means the general license tab fees paid annually for licensing motor vehicles . . . and do not (sic) include charges approved by voters after the effective date of this section.” The \$30 motor vehicle license fee restriction applies to “initial” registration and each annual “renewal vehicle registration.” (CP 1128).

Sections 3 and 4 of I-976 set the vehicle license fee at \$30 for many non-commercial vehicles. (CP 1128). Although I-976 directly addresses some general license registration fees in chapter 46.17 RCW. In addition to limiting the vehicle license fee to \$30 for many vehicles, I-976 also

eliminates the electric vehicle mitigation fee established by RCW 46.17.323. Under existing law, this mitigation fee was imposed to address “the impact of vehicles on state roads and highways and for the purpose of evaluating the feasibility of transitioning from a revenue collection system based on fuel taxes to a road user assessment system.” RCW 46.17.323 (3)(a). It is “separate and distinct from other vehicle license fees.” (CP 1128).

Under the heading, “Repeal and Remove Authority to Impose Certain Vehicle Taxes and Charges,” section 6 of I-976 repeals several statutes. (CP 1130). I-976 repeals RCW 46.17.365 and .415, which required payment of a “weight fee in addition to all other taxes and fees required by law” and authorized WSDOT to adopt rules for determining the weight of certain vehicles. I-976 also repeals RCW 82.80.130, which allowed Public Transportation Benefit Areas to submit a proposed motor vehicle excise tax (“MVET”) of .4% to voters for passenger ferry service. (CP 1130).

Section 7 amends RCW 82.08.020. The amendment would eliminate an additional .3% sales tax on vehicle sales. (CP 1131). Section 8 adds a new section to chapter 82.44 RCW, which states that “any motor vehicle excise tax” must be calculated using the “base model Kelley Blue

book value.” (CP 1131). Section 9 amends RCW 82.44.065 to implement the use of this new Kelley Blue Book valuation method. (CP 1131).

Section 10 amends RCW 81.104.140, which addresses dedicated funding sources for high capacity transportation services. The amendments purport to preclude regional transit authorities (“RTAs”) from levying and collecting the special MVET authorized by RCW 81.104.160. (CP 1131). Section 11 then purports to repeal RCW 82.44.035, which established the current method of valuing vehicles, and RCW 81.104.160, which authorized RTAs covering counties with populations exceeding 1.5 million people to collect an excise tax of up to .8% when approved by voters. (CP 1131-1132).

Section 12 adds a new section to chapter 81.112 RCW, which states that any RTA collecting taxes under RCW 81.104.160 “must fully retire, defease or refinance any outstanding bonds” if RCW 81.104.160 revenues are pledged, and defeasement or retirement is possible under the bond terms. Although repealed under section 11, RCW 81.104.160 is also amended by section 13 to purportedly reduce the authorized MVET to .2%. (CP 1132).

Section 14 requires liberal construction “to effectuate the intent, policies, and purposes of this act.” Section 15 provides for severability. Section 16 establishes an effective date for certain sections of the

Initiative. Under this section, sections 10 and 11 take effect on the date that the RTA complies with section 12 of I-976. Id. But section 13 takes effect April 1, 2020, if sections 10 and 11 have not taken effect by March 31, 2020. The RTA is supposed to inform authorities on effective dates. (CP 1132-1133).

However, these sections are rationally unified means to accomplish but a single end, the limitation of taxing authority. In fact, all the components of the initiative are a rationally unified approach to address the problem set forth in the voters' pamphlet, which was affirmed by the majority of Washington voters in the last election.

Unless Section 12 is included, the remainder of the initiative fails, because it is necessary "to effectuate the policies, purposes, and intent of this act and to ensure that the motor vehicle excise taxes repealed by this act are no longer imposed or collected." Rational unity between the matters embraced in the act is achieved, because the unity being found in the general purpose of the act is unified with the practical problems of efficient administration. *State ex rel. Wash. Toll Bridge Auth.*, 61 Wash.2d at 33, 377 P.2d 466 (quoting *State ex rel. Test v. Steinwedel*, 203 Ind. 457, 467, 180 N.E. 865, 868 (1932)).

Section 13, reduces regional transit authorities limit to impose a motor vehicle excise tax from .8% to .2%, which is a provision to "limit

state and local taxes, fees, and other charges relating to motor vehicles.” (CP 1133).

Section 14 requires liberal construction, consistent with existing precedent governing the adjudication of the initiative. (CP 1133).

Section 15 provides for severability, stating that “[i]f any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances in not affected.” (CP 1133); Section 16 sets an effective date; and Section 17 gives the title of the act. (CP 1133).

The unified tax limitation subject found in I-976 stands in stark contradistinction to the government plaintiffs’ examples of multiple and dissimilar subject enactments, such as joining criminal penalties for dognapping with attorney fees in civil replevin actions (*Barde v. State*, 90 Wash.2d 470, 584 P.2d 390 (1978)) or joining civil rights legislation with regulation of cemeteries (*Price v. Evergreen Cemetery Co.*, 57 Wash.2d 352, 357 P.2d 702 (1960)). Those subjects bear no rational connection with one another whereas this topic is generically linked to achieve a singular purpose.

While it is believed that the single subject issue is controlled by *Wash. Toll Bridge Auth. v. State*, 49 Wash.2d 520, 304 P.2d 676 (1956), asserting a distinction between objects of an initiative which are general

versus specific, as well as objects subject to immediate accomplishment in contrast to those which continue, the Court's explanation of the rational unity analysis admits of no such distinctions. Rather than distinguishing between general and specific, continuing or final, the rational unity analysis invites the Court's inclusion as necessarily related to the efficient administration and accomplishment of an overall objective.

The single subject of this initiative is to "limit state and local taxes, fees, and other charges relating to motor vehicles" (CP 1128), and includes provisions necessarily related to the efficient administration and accomplishment of an overall objective. It is simply a democratic effort to control the effort to ever inflate vehicle and licensing fees, which have not only returned notwithstanding the voters expression repeatedly that they desire \$30 tabs, but which has metastasized to include broad authority that allows local governments and agencies to pile on.

I-976 embraces but a single subject addressed through complementary measures. It therefore complies with the letter of article II, section 19's single subject rule. The constitutional single subject rule is not violated by a general subject which contains several incidental subjects or subdivisions. There is no violation of art. II, § 19 even if a general subject contains several incidental subjects or subdivisions. *Wash. Fed'n*, 127

Wash.2d at 556, 901 P.2d 1028; *State v. Grisby*, 97 Wash.2d 493, 498, 647 P.2d 6 (1982).

E. The Government Plaintiffs cannot establish that the Subject

Title violates Article II, Section 19

A general title is one which is broad rather than narrow. *Wash. Fed'n*, 127 Wash.2d at 555, 901 P.2d 1028; *O'Brien*, 105 Wash.2d at 90, 711 P.2d 993; *Gruen v. State Tax Comm'n*, 35 Wash.2d 1, 22, 211 P.2d 651 (1949). It may be comprehensive and generic rather than specific. *Olympic Motors, Inc. v. McCroskey*, 15 Wash.2d 665, 672, 132 P.2d 355 (1942); *DeCano*, 7 Wash.2d at 627, 110 P.2d 627. Examples of general titles are: An Act relating to violence prevention. *In re Boot*, 130 Wash.2d 553, 566, 925 P.2d 964, 971 (1996): An Act Relating to the amendment or repeal of statutes superseded by court rule. *State v. Howard*, 106 Wash.2d 39, 45, 722 P.2d 783 (1985): Shall campaign contributions be limited; public funding of state and local campaigns be prohibited; and campaign related activities be restricted? *Wash. Fed'n*, 127 Wash.2d at 555, 557, 901 P.2d 1028: [A]n act relating to capital projects.... *O'Brien*, 105 Wash.2d at 79-80, 711 P.2d 993: An Act relating to tort actions.... *Scott v. Cascade Structures*, 100 Wash.2d 537, 546, 673 P.2d 179 (1983): An Act Relating to Community Colleges.... *Wash. Educ. Ass'n v. State*, 97 Wash.2d 899, 906-07, 652 P.2d 1347 (1982): An Act Relating to the death penalty....

State v. Grisby, 97 Wash.2d 493, 498, 647 P.2d 6 (1982): An Act Relating to industrial insurance.... *Wash. State Sch. Dirs. Ass'n v. Dep't of Labor & Indus.*, 82 Wash.2d 367, 371, 510 P.2d 818 (1973): An Act to provide an Insurance Code for the State of Washington; to regulate insurance companies and the insurance business; to provide for an Insurance Commissioner; to establish the office of State Fire Marshall; to provide penalties for the violation of the provisions of this act.... *Kueckelhan v. Fed. Old Line Ins. Co.*, 69 Wash.2d 392, 402, 418 P.2d 443 (1966): An Act Relating to revenue and taxation; increasing the motor vehicle fuel tax, the use fuel tax and motor license fees, gross weight fees, fees in lieu of gross weight fees, seating capacity fees, providing for the distribution of said revenue; establishing an urban aid account in the motor vehicle fund; establishing a Puget Sound reserve account; providing for the use of the urban aid account ...; authorizing investment of the Puget Sound reserve account.... *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 61 Wash.2d 28, 31-33, 377 P.2d 466 (1962): and an Act authorizing the incorporation of mutual savings banks, defining their powers and duties, and prescribing penalties for violations hereof. *In re Peterson's Estate*, 182 Wash. 29, 33, 45 P.2d 45 (1935).

In assessing whether a title is general, it is not necessary that the title contain a general statement of the subject of an act; [a] few well-

chosen words, suggestive of the general subject stated, is all that is necessary. *State ex rel. Schofield*, 182 Wash. at 212, 46 P.2d 1052 (1935); *accord Wash. Fed'n*, 127 Wash.2d at 554, 901 P.2d 1028; *In re Peterson's Estate*, 182 Wash. at 33, 45 P.2d 45.

Where a general title is used, all that is required is rational unity between the general subject and the incidental subjects. *Wash. Fed'n*, 127 Wash.2d at 556, 901 P.2d 1028; *Grisby*, 97 Wash.2d at 498, 647 P.2d 6; *Scott*, 100 Wash.2d at 545, 673 P.2d 179; *Kueckelhan*, 69 Wash.2d at 403, 418 P.2d 443; *Gruen v. State Tax Comm'n*, 35 Wash.2d 1, 22, 211 P.2d 651 (1949), *overruled on other grounds by State ex rel. Washington State Fin. Comm. v. Martin*, 62 Wash.2d 645, 384 P.2d 833 (1963). This principle has been explained as follows:

Under the true rule of construction, the scope of the 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. Or, the rule may be stated as follows: Where the title of a legislative act expresses a general subject or purpose which is single, all 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.

Kueckelhan, 69 Wash.2d at 403, 418 P.2d 443 (quoting *Gruen*, 35 Wash.2d at 22, 211 P.2d 651). The requirement of rational unity has also been explained as follows:

[A constitutional single-subject prohibition] does not by restricting the contents of an 'act' to one subject, contemplate a metaphysical singleness of idea or thing, but rather that there must be some rational unity between the matters embraced in the act, the unity being found in the general purpose of the act and the practical problems of efficient administration. It is hardly necessary to suggest that matters which ordinarily would not be thought to have any common features or characteristics might, for purposes of legislative treatment, be grouped together and treated as one subject. For purposes of legislation, 'subjects' are not absolute existences to be discovered by some sort of a priori reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act....

State ex rel Washington Toll Bridge Auth. v. Yelle, 61 Wash.2d at 33, 377 P.2d 466 (quoting *State ex rel. Test v. Steinwedel*, 203 Ind. 457, 467, 180 N.E. 865 (1932) (discussing Indiana constitutional provision)).

Furthermore, this court “has never favored a narrow construction of the term ‘subject’ as used in Const. art. 2, § 19.” *State v. Waggoner*, 80 Wash.2d 7, 9, 490 P.2d 1308 (1971).

The title of an initiative “need not be an index to its contents; nor is the title expected to give the details contained in the bill.” *Wash. Fed’n of State Employees*, 127 Wash.2d at 555, 901 P.2d 1028 (1995), (quoting *Treffry v. Taylor*, 67 Wash.2d 487, 491, 408 P.2d 269 (1965)). The contents of an initiative can constitutionally entail “any subject reasonably germane” to its title. *DeCano v. State*, 7 Wash.2d 613, 627, 110 P.2d 627 (1941).

A ballot title need not include a unifying “umbrella” term but, rather, “[i]f the subject of the act can be reasonably gathered from reading the title as a whole, the subject is sufficiently expressed therein.” *Fritz*, 83 Wash.2d at 291, 517 P.2d 911 (quoting *Maxwell v. Lancaster*, 81 Wash. 602, 607, 143 P. 157 (1914)). In *Fritz*, the words “openness in government” did not appear within the 100-word ballot title but was determined to be the (single) subject of the act. *Fritz*, 83 Wash.2d at 290, 517 P.2d 911.

Moreover, when the words of a title may be given two interpretations, only one of which renders the act constitutional, that is the interpretation which must be adopted by the court. *Wash. Fed'n of State Employees*, 127 Wash.2d at 556, 901 P.2d 1028 (1995), (quoting *Treffry v. Taylor*, 67 Wash.2d at 491, 408 P.2d 269 (1965)). Objections to the title “must be grave and must present a palpable conflict between the title and the constitution before the act will be held unconstitutional.” *Shea v. Olson*, 185 Wash. 143, 152, 53 P.2d 615 (1936). Differing meanings attributed to the term “tax” are neither “grave” nor do they rise to the level of “a palpable conflict between the title and the constitution.”

Most fundamentally an initiative title is constitutionally sufficient “if it gives notice that would lead to an inquiry into the body of the act, ...” *Wash. Fed'n of State Employees*, 127 Wash.2d at 555, 901 P.2d 1028 (1995), (quoting *YMCA v. State*, 62 Wash.2d 504, 506, 383 P.2d 497 (1963)).

F. The Government Plaintiffs cannot establish that Sections 8 and 9 of I-976 violate Article I, Section 12.

The Government plaintiffs’ have argued in respect of Sections 8 and 9 of Initiative 976 that Article I, Section 12 of the Washington Constitution is violated because the Initiative requires the state to enter into a contract with Kelley Blue Book or its parent corporation to arrive at

Kelley Blue Book valuations. (CP 1131). No such binding language to contract exists in the Initiative. (CP 1140). A contract is not required by the Initiative; rather only the valuation scheme is required, if ever applicable.

Section 8 of the Initiative specifies use of Kelley Blue Book value only for purposes of calculating motor vehicle excise tax (MVET), (CP 1140) but Section 11 of the Initiative repeals the only MVET currently applied in Washington: (CP 1141). Once Section 11 takes effect (when Sound Transit “retires, defeases, or refinances its outstanding bonds”), then there will be no existing MVET that would require the use of Kelley Blue Book valuation, rendering the application scheme moot.

However, the trial court apparently assumed that the valuation algorithm used by Kelley Blue Book could not lawfully be obtained by the State. Plaintiffs argued Article I, Section 12 was violated, as Section 8 and 9 created a “privilege” which the framers sought to prevent, in the form of favoritism toward certain business interests. (CP 1131).

However, “a statute can be declared unconstitutional only where specific restrictions upon the power of the legislature can be pointed out, and the case shown to come within them, and not upon any general theory that the statute conflicts with a spirit supposed to pervade the constitution, but not expressed in words.” *Ockletree v. Franciscan Health Sys.*, 179

Wn.2d 769, 778, 317, P.3d 1009 (2014), *quoting State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902).

The Court has rejected the argument that a “privilege” is defined by reference to common rights, because it would mean “recognizing a privilege anytime a statute grants a right to some but not others.” *Id.* at 779. In fact, the court went on to say “We therefore reject Ockletree’s invitation to broaden the meaning of the word ‘privilege’ for purposes of Article I, Section 12, and then went on to reiterate that “a privilege in this context is limited to those fundamental rights of citizenship.” *Id.*

The Court in *Ockletree* went on to point out that “since announcing an independent interpretation of Article I, Section 12, we have not found a statute to violate the privileges and immunities clause.” *Ockletree*, 179 Wn.2d at 778 n.7 (additional citations omitted). Simply put, “avoidance of corporate favoritism” is not a fundamental attribute of state citizenship, and no privilege is implicated because Article I, Section 12 “privileges” are narrowly limited to fundamental attributes of state citizenship. *Id.*

Federal law also speaks to the contrary. At the lower court, Didier pointed out that the algorithm of Kelley Blue Book valuations has already been determined by the State, where Danny Masterson’s MVET Vehicle Valuation Comparison prepared chart was prepared in support of proposed Senate Bill 6066. (CP 2238 – 2239). Any rights claimed by Kelley Blue

Books do not protect information which can be discovered by fair and honest means, such as by independent invention, accidental disclosure, or by reverse engineering, that is by starting with the known product and working backward to divine the process which aided in its development or manufacture. *Kewanee Oil Co. v. Bicron Corp.*, 416 US 470, 476 (Supreme Court 1974), *National Tube Co. v. Eastern Tube Co.*, 3 Ohio C. C. R. (n. s.) 459, 462 (1902), *aff'd*, 69 Ohio St. 560, 70 N. E. 1127 (1903). Kelley Blue Book valuations can therefore be lawfully obtained and used without entering into a contract with Kelley Blue Book or its parent corporation, rendering the entirety of the government plaintiffs' argument myopic in allowing only their unconstitutional application, which is wrong as a matter of law.

In respect of Sections 8 and 9, plaintiffs cannot meet their burden of proving that "there exists no set of circumstances in which [I-976] can constitutionally be applied." *City of Redmond v. Moore*, 151 Wn.2d 664, 680, 91 P.3d 875 (2004).

**F. The Government Plaintiffs Fail to Meet the Burden to Establish
Beyond a Reasonable Doubt that I-976 is Unconstitutional**

A statute enacted through the initiative process is, as are other statutes, presumed to be constitutional. *Brower v. State*, 137 Wash.2d 44, 52, 969 P.2d 42 (1998); *Gerberding v. Munro*, 134 Wash.2d at 196, 949

P.2d 1366 (1998); *State ex rel. O'Connell v. Meyers*, 51 Wash.2d 454, 458, 319 P.2d 828 (1957). A party challenging the statute's constitutionality bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt. *State ex rel. Heavy v. Murphy*, 138 Wash.2d at 808, 982 P.2d 611 (1999); *Gerberding*, 134 Wash.2d at 196, 949 P.2d 1366. Plaintiffs have failed to muster any persuasive argument as to any aspect of the Initiative.

It is a presumption that a statute enacted through the initiative process is constitutional unless its unconstitutionality appears beyond a reasonable doubt, and the burden of proving its failure to meet constitutional scrutiny rests with the party challenging its constitutionality. *Potelco, Inc. v. Dept. of Labor & Industries*, 191 Wn. App. 9, 361 P. 3d 767, 776 (2015); *Heesan Corp. v. City of Lakewood*, 75 P. 3d 1003, 1009 (2003); *City of Seattle v. Eze*, 111 Wash.2d 22, 26, 759 P.2d 366 (1988). Impossible specificity standards are not required. *Eze*, 111 Wash.2d at 26, 759 P.2d 366.

Rules of statutory construction apply to initiatives. *Seeber v. Wash. State Pub. Disclosure Comm'n*, 96 Wash.2d 135, 139, 634 P.2d 303 (1981); *Gibson v. Dep't of Licensing*, 54 Wash.App. 188, 192, 773 P.2d 110 (1989). Thus, in determining the meaning of a statute enacted through the initiative process, the court's purpose is to ascertain the collective

intent of the voters who, acting in their legislative capacity, enacted the measure. *Wash. State Dep't of Revenue v. Hoppe*, 82 Wash.2d 549, 552, 512 P.2d 1094 (1973). Where the voters' intent is clearly expressed in the statute, the court is not required to look further. *Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n*, 133 Wash.2d 229, 242, 943 P.2d 1358 (1997); *City of Tacoma v. State*, 117 Wash.2d 348, 356, 816 P.2d 7 (1991); see *Biggs v. Vail*, 119 Wash.2d 129, 134, 830 P.2d 350 (1992) (if statutory meaning is clear from plain and unambiguous language, that meaning must be accepted by the court).

In determining intent from the language of the statute, the court focuses on the language as the average informed voter voting on the initiative would read it. *State v. Brown*, 139 Wash.2d 20, 28, 983 P.2d 608 (1999); *Senate Republican Campaign Comm.*, 133 Wash.2d at 243, 943 P.2d 1358. Where the language of an initiative enactment is plain, unambiguous, and well understood according to its natural and ordinary sense and meaning, the enactment is not subject to judicial interpretation. *State v. Thorne*, 129 Wash.2d 736, 762-63, 921 P.2d 514 (1996). However, if there is ambiguity in the enactment, the court may examine the statements in the voters' pamphlet in order to determine the voters' intent. *Thorne*, 129 Wash.2d at 763, 921 P.2d 514; see *Lynch v. Dep't of Labor & Indus.*, 19 Wash.2d 802, 812-13, 145 P.2d 265 (1944); see *Biggs*,

119 Wash.2d at 134, 830 P.2d 350 (if there is ambiguity, extrinsic aids, such as legislative history, may be used to determine legislative intent).

A statute is void for vagueness only if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. *Faghih v. Dep't of Health, Dental Quality Assurance Comm'n*, 148 Wash.App. 836, 847, 202 P.3d 962 (2009) (citing *Haley v. Med. Disciplinary Bd.*, 117 Wash.2d 720, 739, 818 P.2d 1062 (1991)). Vagueness challenges are evaluated by inspecting the actual conduct of the party challenging the rule and not by examining “hypothetical situations at the periphery of the [rule's] scope.” *Am. Legion Post 149 v. Dep't. of Health*, 164 Wash.2d 570, 612, 192 P.3d 306 (2008) (quoting *City of Spokane v. Douglass*, 115 Wash.2d 171, 181-82, 795 P.2d 693 (1990)).

G. The Voters Pamphlet May Be Considered to Determine the Purpose and Intent of the People.

“Where possible, the intent of the electorate is to be derived initially from the language of the statute itself, *see In re Williams*, 121 Wash.2d 655, 663, 853 P.2d 444 (1993), but statements contained in the official Voters Pamphlet also may be considered to ascertain the collective purpose and intent of the people.” *State v. Thorne*, 129 Wash.2d at 763,

921 P.2d 514, 527 (1996), citing *Hi-Starr, Inc. v. Liquor Control Bd.*, 106 Wash.2d 455, 460, 722 P.2d 808 (1986).

In the case *Sane Transit v. Sound Transit*, 151 Wash.2d 60, 85 P.3d 346 (2004), the Court considered the principle that acts approved by the people are construed by focusing on the language of the proposal as the average informed voter would read it. See *Amalgamated Transit Union Local 587 v. State*, 142 Wash.2d 183, 205, 11 P.3d 762, 27 P.3d 608 (2000); *State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n*, 140 Wash.2d 615, 637, 999 P.2d 602 (2000); *City of Spokane v. Taxpayers of City of Spokane*, 111 Wash.2d 91, 98, 758 P.2d 480 (1988). The Court concluded as follows:

In cases where voters are not provided with the full text of the measure to be voted upon, *Sane Transit* would have us *ignore the language* of the measure (emphasis added) and attempt to construe the measure based on extrinsic documents sent to the voters which the average informed voter may or may not have read. An inquiry into the voter's subjective understanding of what he or she thought he or she was enacting is a task we will not undertake. See generally *Amalgamated Transit*, 142 Wash.2d at 205, 11 P.3d 762 (inquiry into the voters' intent will not occur where the text of an initiative is unambiguous); *City of Spokane*,

111 Wash.2d at 97, 758 P.2d 480 (the court will avoid entering the realm of pure speculation about what individual voters were thinking, nor will it assume voters do not read or understand the measure presented to them). *Sane Transit v. Sound Transit*, 151 Wash.2d 60, 85 P.3d 346 (2004).

In this case, the Voters Pamphlet set forth the entirety of the text, arguments for and against, together with a fiscal impact statement. (CP 1131-1143). While the Court cannot surmise what the voters subjectively concluded, the plaintiffs' argument that the Court should conclude that the voters did not read or understand the Voters Pamphlet is another inquiry the Court may not make.

III. CONCLUSION

“A summary judgment motion under CR 56(c) can be granted only if the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.” *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P. 2d 1030 (1982), *citing Barrie v. Hosts of Am., Inc.*, 94 Wn.2d 640, 642, 618 P.2d 96 (1980). “The court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party.” *Wilson, op. cit.*, *citing Yakima Fruit & Cold Storage Co. v. Central Heating & Plumbing*

Co., 81 Wn.2d 528, 530, 503 P.2d 108 (1972); *Barber v. Bankers Life & Cas. Co.*, 81 Wn.2d 140, 142, 500 P.2d 88 (1972). “The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion.” *Wilson, op. cit., citing Morris v. McNicol*, 83 Wn.2d 491, 494-95, 519 P.2d 7 (1974).

Didier enjoys a presumption of constitutionality. *Potelco, Inc. v. Dept. of Labor & Industries*, 191 Wn. App. 9, 361 P. 3d 767, 776 (2015); *Heesan Corp. v. City of Lakewood*, 75 P. 3d 1003, 1009 (2003); *City of Seattle v. Eze*, 111 Wash.2d 22, 26, 759 P.2d 366 (1988). Plaintiffs’ argument is an argument in equity – to determine that I-976 violates the Constitution of the State of Washington. Plaintiffs who have violated RCW 42.17a.555 have unclean hands foreclosing them from seeking equity. *J.L. Cooper & Co. v. Anchor Sec. Co.*, 9 Wash.2d 45, 73, 113 P.2d 845 (1941); *O’Brien v. Johnson*, 32 Wn.2d 404, 202 P.2d 248 (1949); *Roon v. King County*, 24 Wn. (2d) 519, 166 P. (2d) 165.

Material issues of fact prevent summary judgment in favor of plaintiffs. The trial court recognized that the City of Burien could not present its contract impairment claim without first substantiating its contracts before the trial court to find facts therein. (CP 2551 - 2553). Prior to the City of Burien proving a contract, the facts being construed in a light most favorable to the non-moving party – Didier – would require

recognition that no such contract exists for purposes of summary judgment.

However, on Didier's summary judgment motion, whether the City of Burien has contracts is not a material issue, because I-976 is not law, and Burien has not been impaired. There are no other material issues of fact, and the failure of the plaintiffs to prove any unconstitutionality means Didier is deserving of judgment as a matter of law.

Didier, and the one million other taxpayers who voted to enact I-976 as law have been deprived of due process rights by the trial court in this action. While the trial court has made findings and reached conclusions that hand the taxpayers a pyrrhic victory, the injunction and stay have thwarted the will of the taxpayers continuously since December 5, 2019, in the payment of the vehicle license fees and other taxes.

Equitable relief requires clean hands, and the Government plaintiffs were unlawfully violating a statute prohibiting them from using any resources to challenge a ballot issue. To allow these Government plaintiffs to proceed is to turn a blind eye to the expectation of taxpayers that all Washingtonians are equal under the law and to render RCW 42.17a.555 meaningless and unenforceable as applied.

Finally, Sections 8 and 9 of I-976 do not violate Article I, Section 12 of the Washington Constitution. Both the Government plaintiffs and

the trial court assumed a contract was necessary to achieve the stated objective of these sections, when the facts before the court on reconsideration demonstrated that possibilities other than a contract existed, and when other provisions of I-976 make all of the Kelley Blue Analysis of no effect, since the MVET would be eliminated altogether, and where the alleged corporate privilege does not amount to a constitutional infringement as a matter of law.

Didier therefore asks this court to grant summary judgment in his favor, to deny the summary judgment motion of plaintiffs, to find that I-976 as enacted by the voters in this state is constitutional, and to render it enforceable as a matter of law effective on December 5, 2019. .

Respectfully submitted this 15th day of May 2020.



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CERTIFICATE OF SERVICE

I hereby declare that on this day I caused true copies of the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification to all counsel of record, and by email this 15th day of May 2020 upon the following parties:

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