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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 98320-8

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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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.

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**STATE OF WASHINGTON'S ANSWER TO AMICI**

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## I. INTRODUCTION

None of the four amicus briefs filed in support of Appellants advance any basis for this Court to find any constitutional infirmity in Initiative 976. Their legal arguments repeat those made by Appellants and responded to in the merits briefs filed by the State and Pierce County. Their arguments addressing policy, prospective harm, and the current COVID-19 pandemic are outside the constitutional analyses this Court applies to the constitutional challenges at issue. Collectively and individually, the amicus briefs do not provide any basis for this Court to invalidate any provision in I-976.

## II. ARGUMENT

### A. Initiative 976 Does Not Violate Article II, Section 19 by Misleading the “Average Informed Lay Voter”

Relying heavily on what it considers to be the “average-informed lay voter’s understanding,” the amicus brief filed by the League of Women Voters (League Amicus Br.) contends the title of I-976 is misleading and thus in violation of the subject-in-title requirement of article II, section 19 of the Washington Constitution.

Speculation as to the “average-informed lay voter’s understanding” provides no basis for overcoming the presumption of constitutionality afforded a voter approved initiative to the People. *See Lee v. State*, 185 Wn.2d 608, 619, 374 P.3d 157 (2016); *Amalgamated Transit Union Local*

587 v. *State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000) (*ATU*). Any effort to discern voters' understanding must be undertaken with care and restraint. Compare *Wash. Citizens Action v. State*, 162 Wn.2d 142, 151, 171 P.3d 486 (2007) (interpreting language of an initiative "as the average informed voter voting on the initiative would read it" (quoting *ATU*, 142 Wn.2d at 205)) with *Wash. Fed'n of State Emps. v. State*, 127 Wn.2d 544, 901 P.2d 1028 (1995) (recognizing that "not all voters will read the text of the initiative or the explanatory statement" and may cast their votes based only on the ballot title (quoting *In re Ballot Title for Initiative 333*, 88 Wn.2d 192, 198, 558 P.2d 248, 559 P.2d 562 (1977))). Discerning the "average-informed lay voter's" understanding of an initiative necessarily is speculative.

The Court has made clear it does "not review initiative measures under more or less scrutiny than legislatively enacted bills." *Wash. Citizens Action*, 162 Wn.2d at 151 (citing *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003)). "The basic rules of statutory construction apply with equal force to legislation by the people through the initiative process." *Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n*, 133 Wn.2d 229, 241 n.7, 943 P.2d 1358 (1997) (citing *Seeber v. Pub. Disclosure Comm'n*, 96 Wn.2d 135, 139, 634 P.2d 303 (1981)). The Court applies the "fundamental principle" that the intent behind an initiative is to be derived "solely from its language," unless the

language is ambiguous, and it will not attribute an intent to voters that is not borne out by the language of the initiative. *Id.* at 241. The challenger still “bears the heavy burden of establishing unconstitutionality of the initiative beyond a reasonable doubt.” *Wash. Citizens Action*, 162 Wn.2d at 151 (citing *Pierce County v. State*, 159 Wn.2d 16, 27, 148 P.3d 1002 (2006) (*Pierce County II*)).

The League’s arguments that the average informed voter was misled by the title of I-976 is heavily speculative and rests on multiple assumptions. It picks out individual words from the Initiative and assumes voters read them and assigned specific dictionary meanings to those words. League Amicus Br. at 11. It assumes the average informed voter was aware that “many voters throughout Washington” previously approved motor vehicle “charges.” *Id.* at 12. It assumes that the average voter knows “so well that it goes without saying” that the Legislature has plenary power to amend prior legislation. *Id.* at 13.

At the same time, the League assumes that the average informed voter would not know that I-976 would impact transportation projects generally, and Sound Transit specifically (even though, as Appellants point out, Sound Transit’s financing has been in the public spotlight and extensively litigated for 20 years, Apps.’ Reply Br. at 17). League Amicus

Br. at 18-19.<sup>1</sup> In like manner, San Juan County’s amicus brief assumes the average informed voter would not understand that the title’s reference to “certain vehicle taxes and charges” might reference excise taxes (even with the final clause addressing vehicle valuation). San Juan Cty. Amicus Br. at 8. The speculative assumptions both Amici make as to voters’ understanding—or lack of understanding—seem to vary as convenient to their argument.

Moreover, the League’s amicus brief infers too much from the cases it cites. In *Amalgamated Transit Union*, the relevant problem under article II, section 19 was that the definition of “tax” in the body of I-695 was broader than the common and ordinary meaning of the term, and the title’s unqualified use of the term “tax” did not reflect that breadth. *See ATU*, 142 Wn.2d at 225-26. In *Washington State Grange v. Locke*, 153 Wn.2d 475, 105 P.3d 9 (2005), the Court held that the problem identified in *ATU* was not present in the bill it was reviewing. *Id.* at 495-99. Applying the same analysis as in *ATU*, the Court liberally construed the general title of the bill in favor of the legislation’s constitutionality, and held that “the common and ordinary meaning of the term ‘qualifying primary’” was sufficiently

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<sup>1</sup> In like manner, San Juan County’s amicus brief assumes the average informed voter would not understand that the title’s reference to “certain vehicle taxes and charges” might reference excise taxes (even with the final clause addressing vehicle valuation). San Juan Cty. Amicus Br. at 8.

broad to encompass two alternative primary systems included in the bill. *Id.* at 498 n.13.

Those cases demonstrate the flaws in the League's assertions that the title of I-976 is misleading.

The League's amicus brief argues that the title did not tell voters that only "forward-looking" "voter-approved charges" are preserved. League Amicus Br. at 11-15. In other words, it complains that the title omitted a specific detail. But the title "need not be 'an index to the contents [of the bill], nor must it provide details of the measure.'" *Wash. State Grange*, 153 Wn.2d at 497 (quoting *ATU*, 142 Wn.2d at 217). The title of I-976 is a general title, and its language is broad enough to include the specific limitation contained in the Initiative.

The League argues that the phrase "voter-approved charges" misleads voters into believing their power to vote for new local charges was unaffected by I-976. League Amicus Br. at 16, 17. But the first clause in the Concise Description says explicitly that the measure "would *repeal*, reduce, or remove authority to impose certain vehicle taxes and fees." CP 1253 (emphasis added). That clause notified voters that some authority to impose vehicle taxes and fees no longer would exist, which is sufficient to "lead a reader to inquire into the body of the act to learn the details." *Wash. State*

*Grange*, 153 Wn.2d at 498 (citing *YMCA v. State*, 62 Wn.2d 504, 506, 383 P.2d 497 (1963)). The title was not misleading.

The League’s amicus brief mischaracterizes the State’s argument about the plenary power of the Legislature and the People to repeal or amend prior legislation.<sup>2</sup> League Amicus Br. at 16. Then, abandoning its argument that technical interpretations should not be applied to ballot titles, it suggests voters would be misled because the State’s argument—as mischaracterized by the League—is inconsistent with a technical rule of statutory construction, *expressio unius est exclusio alterius* (mention of one thing implies exclusion of another). *Id.* The League’s effort to craft an alternative of questionable constitutionality is inconsistent with the Court’s oft-repeated direction to liberally construe article II, section 19’s requirements in favor of the legislation. *Wash. State Grange*, 153 Wn.2d at 497 (citing *Pierce County v. State*, 150 Wn.2d 422, 436, 78 P.3d 640 (2003) (*Pierce County I*)); *see also Wash. Fed’n of State Emps.*, 127 Wn.2d at 556 (a ballot title is to be given a constitutional interpretation if possible).

The State already has responded to arguments that I-976 misled voters into believing there was a “\$30 cap” on “license tabs.” State’s Corr.

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<sup>2</sup> The State’s argument responded to Appellant’s contention that the title was misleading because I-976 did not specify any mechanism by which voters could approve new charges in the future. The State responded that the mechanism already exists because of the plenary power of the Legislature and the People to enact new legislation and amend or repeal existing legislation. *See State’s Corr. Br.* at 28, 35.

Br. at 32-33, 36-37. The League’s amicus brief adds nothing new (League Amicus Br. at 17-18), and the State stands on its merits brief.

Finally, the League’s amicus brief argues that if Sections 8 and 9 of I-976 are severed under article I, section 12, the entire Initiative is rendered unconstitutional. The State knows of no case saying that. Neither of the cases the amicus brief cites supports that argument. In *Power, Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951), the Court concluded in its article II, section 19 analysis that the challenged bill contained two subjects, and the Court simply held—consistent with this Court’s modern precedent—that where there is a violation of the single-subject rule, the entire bill must be invalidated. *Id.* at 198; compare *City of Burien v. Kiga*, 144 Wn.2d 819, 825, 31 P.3d 659 (2001). The Court did not hold that a measure necessarily becomes misleading or otherwise in conflict with article II, section 19 if the Court severs one or more provisions on some other basis. The Court in *Howlett v. Cheetham*, 17 Wash. 626, 50 P. 522 (1897), did not discuss severability at all and held that it was not necessary in that case to consider whether the entire act was unconstitutional under article II, section 19. *Id.* at 635.<sup>3</sup>

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<sup>3</sup> But, in direct contradiction to the League’s argument here, the Court in *Howlett* did observe that a title may be broader than the act itself and “still be good as to the subject it fairly indicates.” *Howlett*, 17 Wash. at 635.

**B. Initiative 976 Does Not Violate Article II, Section 19 by Omitting Mention of Specific Accounts, Funds, Programs, and Projects Potentially Affected by the Measure**

Amicus San Juan County argues that I-976 violates article II, section 19 because (1) it did not identify all of the various accounts, funds, programs, and projects that could be affected if the Initiative were to take effect; and (2) those affected accounts, funds, programs, and projects comprise multiple subjects.

San Juan County’s concern regarding the potential impact of I-976 on the Washington State Ferry System is understandable. But none of the cases the County cites gives it what it seeks: a constitutional requirement that “when the initiative takes on the topic of charges, fees, taxes, assessments, the court must look beyond the fee or charge as a subject and examine the purpose of the fee and how it is applied to see if the multiple subject rule is violated.” San Juan Cty. Amicus Br. at 9.

The County’s reliance on *State ex rel. Washington Toll Bridge Authority v. Yelle*, 32 Wn.2d 13, 200 P.2d 467 (1948), is unavailing. In that case, the Court held that a 1945 act contained two subjects (toll bridges and a ferry system), while the title—which the Court held to be *restrictive*, not general—set out but a single subject (“toll bridges and, at most, highway and ferry connections and approaches thereto”). *Id.* at 27. The Court concluded that the reference to “ferry connections” in the title was not

sufficient to provide notice that the acquisition and operation of an entire Puget Sound ferry system was being authorized. *Id.*

Neither does *Washington Toll Bridge Authority v. State*, 49 Wn.2d 520, 523–24, 304 P.2d 676 (1956), support the constitutional requirement San Juan County seeks. As explained in the State’s Corrected Brief at 23, the single-subject problem in that case was the combination of enabling language specifying agency powers and a provision directing the completion of a specific construction project. Here, as San Juan County itself recognizes, the taxes and fees that are repealed, restricted, or limited in I-976 all affect “transportation elements”; the County characterizes those elements as multiple subjects. San Juan Cty. Amicus Br. at 10. That characterization is impliedly contradicted by *Yelle*, which observed that the title of the 1945 act did not “employ any such broad, general term as ‘transportation system,’” implying that the act would have survived the article II, section 19 challenge if it had a general title of that kind. *Yelle*, 32 Wn.2d at 26-27 (“The legislature may, if it chooses, adopt a very broad and comprehensive title in a bill, in which case great liberality will be indulged to hold that any subject reasonably germane to such title may be embraced within the body of the bill.” (quoting *DeCano v. State*, 7 Wn.2d 613, 627, 110 P.2d 627 (1941))); *see also Lee*, 185 Wn.2d at 621 (“The general versus restrictive approach was designed to allow ‘the legislature to include in one

general enactment all of the statutory law relating to a cognate subject’” (quoting *State v. Nelson*, 146 Wash. 17, 20, 261 P. 796 (1927))).

By the County’s argument, the reduction of a general tax—for example, a reduction in the state sales tax—could never be accomplished, either by initiative or by legislation enacted in the normal course by the Legislature. According to the County’s argument, the initiative or bill would fail the subject-in-title requirement if it didn’t list all of the accounts, funds, programs, and projects affected by the general tax reduction. But the County also argues that the affected accounts, funds, programs, and projects should be viewed as separate subjects. By that logic, failing to mention one category of affected expenditures—or perhaps even a single expenditure—would violate the single subject requirement. No case supports that application of article II, section 19.

**C. Amici’s Arguments Related to Home Rule Do Not Support Appellants**

Two amicus briefs address principles of home rule, ostensibly in support of Appellants’ article XI, section 12 argument. *See* San Juan Cty. Amicus Br., and *Amicus Curiae* Brief of International Municipal Lawyers Association and Legal Scholars (Scholars Amicus Br.). Those amicus briefs actually *undermine* Appellants’ novel interpretation of that provision. The fact that seven local-government law professors, an organization of 2,500

municipal attorneys, and San Juan County identified no support for Appellants' argument is strong evidence that there is no support to be had.

Appellants contend that article XI, section 12 prohibits the Legislature from rescinding taxing authority previously granted, so long as that authority is currently being exercised. Op. Br. of Apps. at 65-81. They rely on inapplicable interpretations of the term "vest." See State's Corr. Br. at 59-65. These Amici provide no support for Appellants' interpretation. Collectively, these Amici cite three cases for the general proposition that a state cannot wholly deny cities and counties the authority to impose taxes. Scholars Amicus Br. at 10-11 (citing *Coleman v. Kansas City*, 353 Mo. 150, 161, 182 S.W.2d 74 (Mo. 1944) (en banc) (holding that Legislature may determine "the kind of taxes" cities may impose and "the manner in which" they may do so), and *Sec. Sav. Bank & Tr. Co. v. Hinton*, 97 Cal. 214, 219, 32 P. 3 (Cal. 1893) (affirming that Legislature "has the exclusive power of taxation, except so far as that power is restrained by the constitution, or delegated by the legislature or the constitution to local municipalities"))<sup>4</sup>; San Juan Cty. Amicus Br. at 11-12 (citing *State v. Burr*, 65 Wash. 524, 526-

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<sup>4</sup> Notably, the Missouri and California constitutions were later amended to remove the delegation clause. Compare Mo. Const. of 1875, art. X, § 10 and Cal. Const. of 1879, art. XI, § 12, with Mo. Const. of 1945, art. X, § 10(a) (maintaining prohibition on legislative imposition of local taxes for local purposes but omitting delegation clause) and Cal. Const. art. XI (omitting analogous provision in 1970 Constitution). A constitutional amendment is the appropriate mechanism for Amici to pursue their policy preference for greater local control.

28, 118 P. 639 (1911) (recognizing general rule that “municipal corporations have only such power as is conferred upon them by the Legislature”). But I-976 does not wholly deny cities and counties the authority to impose taxes. I-976 leaves in place substantial taxing authority for municipalities, including TBDs. *E.g.*, RCW 82.14.030 (city and county sales and use taxes); RCW 82.14.0455 (TBD sales and use taxes).

Conspicuously absent from these amicus briefs is any legal authority or historical evidence that supports Appellants’ “vesting” theory. Indeed, Amici’s reliance on Missouri’s experience further undermines that theory. *See Kansas City v. J.I. Case Threshing Mach. Co.*, 337 Mo. 913, 928, 87 S.W.2d (1935) (noting that Legislature’s ability to rescind taxing authority previously granted is “a limitation upon the power of the city to tax”).

Amicus San Juan County additionally attempts to raise a legal argument not advanced by Appellants, citing article XI, section 4 of the Washington Constitution. San Juan Cty. Amicus Br. at 13. This Court should not address that issue, which is raised only by Amicus. *See City of Seattle v. Evans*, 184 Wn.2d 856, 861 n.5, 366 P.3d 906 (2015). In any event, local taxing authority is governed by article XI, section 12; article XI, section 4 is silent as to taxing authority.

The remainder of these Amici’s arguments seek to establish the preferability of greater local control over taxation. Scholars Amicus Br. at

4-9, 11-18. As noted below, the constitutionality of I-976 does not turn on policy preferences. Such policy arguments are appropriately addressed to the Legislature and the People, which can implement such policies through legislation or, if they wish to abdicate the power to control the scope of local taxation, a constitutional amendment.

**D. Amici Tribes' Concerns Do Not Address the Legal Issues Before This Court**

The State understands and does not dispute the seriousness of the potential harms described in the amicus brief of the Puyallup Tribe of Indians, the Nisqually Indian Tribe, and the Tribal Transportation Planning Organization Transit Subcommittee. The concerns they raise warrant careful attention by the policymaking branches of government. But the wisdom of I-976 is not before this Court, only its constitutionality, and its constitutionality does not depend, under any of Appellants' theories, on whether I-976 is good public policy or whether it is beneficial or harmful:

“[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*) (quoting *Fritz v. Gorton*, 83 Wn.2d 275, 287, 517 P.2d 911 (1974) and citing *Yelle*, 32 Wn.2d at 24-25 (1948)).<sup>5</sup>

Amici Tribes' concerns are more appropriately directed to the Legislature, state transportation planning bodies, and local governments. Those bodies can prioritize projects that best address Amici Tribes' concerns. The Legislature and local governments may decide to arrange for alternative revenue sources to mitigate the impacts on transportation funding.

**E. Amici's Reliance on the Effects on COVID-19 Is Misplaced**

Finally, two amicus briefs discuss the impacts of COVID-19. *See* Scholars Amicus Br. at 12-15; Tribes' Amicus Br. at 16-20. Those impacts are not relevant to the constitutional questions before this Court. And, in any event, the Washington Constitution provides a mechanism for addressing unforeseen circumstances. If the Legislature determines that the impacts of COVID-19 warrant it, the Legislature may immediately amend I-976 by a two-thirds vote. Const. art. II, § 1(c).

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<sup>5</sup> Amici Tribes rely on assumed impacts to Sound Transit, but Sound Transit is not a party to this litigation, has not filed any amicus brief in the superior court or this Court, and has not publicly announced how it will respond to I-976 if the Initiative is upheld in this litigation. Consequently, I-976's impact on Sound Transit is not before this Court. *See* State's Corr. Br. at 67-78.

### III. CONCLUSION

The Court should reject each and every constitutional challenge to I-976 raised in this case (apart from the pending article I, section 23 claim regarding the City of Burien's bonds) and allow I-976 to take effect.

RESPECTFULLY SUBMITTED this 22nd day of June 2020.

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*s/ Kristin D. Jensen*  
Confidential Secretary

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