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SUPREME COURT
STATE OF WASHINGTON

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No. 78844-8

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~~SUPREME COURT OF THE STATE OF WASHINGTON~~

THE STATE OF WASHINGTON, and
WILLIAM RICE, Director of the State Department of Revenue

Appellants,

v.

WASHINGTON CITIZENS ACTION, a Washington Non-Profit
Corporation; WELFARE RIGHTS ORGANIZING COALITION, a
Washington Non-Profit Corporation; 1000 FRIENDS OF
WASHINGTON, a Washington Non-Profit Corporation; and
WHITMAN COUNTY,

Respondents.

BRIEF OF AMICI CURIAE WASHINGTON STATE
ASSOCIATION OF MUNICIPAL ATTORNEYS, ASSOCIATION OF
WASHINGTON CITIES AND WASHINGTON ASSOCIATION OF
COUNTIES IN SUPPORT OF RESPONDENTS

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I. INTRODUCTION.

Amici, Washington State Association of Municipal Attorneys (WSAMA), Association of Washington Cities (AWC) and Washington State Association of Counties (WSAC), join in and fully support the legal arguments raised by the Respondents, Washington Citizens Action, Welfare Rights Organizing Coalition, 1000 Friends of Washington, and Whitman County.

II. STATEMENT OF CASE

Amici, WSAMA and AWC, adopt, reference and incorporate herein the statement of the case as set forth in the pleadings of the Respondents, relative hereto and to Initiative 747 (“I-747”). However, for emphasis, Amici reiterate and restate the pivotal facts as follows:

I-747’s statement of existing law and its assigned ballot title were each factually inaccurate and materially misleading, and each thereby misrepresented the measure as being much more moderate than its actual legal impact. Whether due to a “drafting error,” or intentional design, the text of I-747 understated five fold its actual reduction of property tax limits. Meanwhile, I-747’s ballot title falsely promised that the new limits could be overcome by a vote of the people, concealing that in fact the new limits would permanently cap increases to the State School Levy, the state property tax devoted to supporting our public schools. I-747 thus violated Article 2, Sections 19 and 37 of the State Constitution, which are designed

to protect the integrity of the Lawmaking process by preventing precisely this type of voter deception.

III. ARGUMENT

A. The Fundamental concept underlying all legislative and initiative processes is that those voting on a measure accurately understand its effect.

As noted in the pleadings of the Respondents, there were numerous defects in the language of I-747. The title indicated people could vote to raise the 1% limit imposed by the statute, but this was true only for local levies and not for the state levy. The language of the ballot title also described the initiative as a right to vote on property tax increases, establishing caps and promising voters a mechanism for relief that it could not deliver without running counter to the Constitution. Also, the ballot title was misleading to voters in that it stated that it applied to “state and local government,” whereas in reality it applied to state government and local taxing districts, the definition of which includes much more than the traditional meaning of local government. I-747 also failed to set forth the sections it was amending by referring to the limit factors implemented by I-722, and it ignored that fact that – and gave the voters no notice that – the initiative had been declared unconstitutional.

I-747 purported to amend Initiative 722 (“I-722”), an initiative approved by voters in the 2000 general election. I-722 had amended Referendum 47, another law which had been approved by voters in 1997

after being referred by the Legislature. However, I-722 was enjoined before it ever became law, and was declared unconstitutional by the Washington Supreme Court before I-747 ever went to a vote.

Also, as noted by the Respondents, even though I-722 had been declared void in its entirety before the general election of 2001, the I-747 ballot was drafted as an amendment to I-722 and appeared as such on the ballot. However, even before its having been ultimately declared void, the Thurston County Superior Court issued a preliminary injunction of I-722 on November 30, 2000. Never lifted, this injunction became permanent when the Superior Court granted summary judgment declaring I-722 unconstitutional on February 23, 2001. This decision was, in turn, affirmed on September 20, 2001, by the Washington Supreme Court. *See City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.2d 659 (2001).

The result was thus that I-747 purported to amend I-722, a statute that did not exist. The text of I-747 therefore incorrectly stated that the existing limit factor was 102%, and that enactment would decrease the limit factor to 101%, whereas the existing (valid) law contained a 106% limit factor. Therefore, the voters were being asked to enact a much more significant drop of 5%, which would for the first time lower the limit factor below the rate of inflation.

Once a law has been found to be invalid, it becomes as inoperative as if it had never been passed. *The Boeing Company v. State*, 74 Wn.2d

82, 88, 442 P.2d 970 (1968) (citations omitted). Upon the invalidation of I-722, the cap on property tax increases was once again six percent, not two percent. Therefore, with the permanent injunction against I-722, it became an invalid law, as if it had never been enacted. *See also W.R. Grace & Co. v. Dept. of Revenue*, 137 Wn.2d 580, 610, 973 P.2d 1011 (1999) (“An unconstitutional act is not a law... it is, in legal contemplation, as inoperative as though it had never been passed.”) Thus, I-747 was fatally deceptive when its signatures were collected, and it remained flawed throughout the election process.

The election process cannot function where its votes (by legislators or the voting public) are based on a lack of knowledge of what is being voted upon. By analogy, one of the purposes of Article 2, Section 19 of the Washington State Constitution is to assure that members of the legislature and the public are generally aware of what is contained in proposed new laws. *State Legislature v. State*, 139 Wn.2d 129, 985 P.2d 353, 362 (1999); *Washington Fed'n of State Employees v. State*, 127 Wn.2d 544, 552, 901 P.2d 1028 (1995). Regardless of whether Article 2, Section 19 is implicated in the title of I-747, voters must still be aware of the laws on which they are voting.

Initiatives are subject to the restrictions of the Constitution. *Yelle v. Kramer*, 83 Wn.2d 464, 520 P.2d 927 (1974). They are, as are statutes, presumed to be constitutional, and parties challenging an initiative bear

the heavy burden of showing that the initiative is unconstitutional. *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 982 P.2d 611 (1999).

Nevertheless, the courts must be cautious to avoid giving undue deference to initiatives. Judicial review must give meaning to constitutional limitations on initiatives. As the court stated in *Yelle v. Kramer*:

We reject the contention ... that appropriate constitutional provisions do not apply to initiatives. To do otherwise would be a recognition that we have an initiative process "governed by men and not by law." Nothing in this opinion is to be interpreted as opening a Pandora's box, releasing a runaway, uncontrolled initiative process.

83 Wn.2d at 472.

A similar caution was expressed by the Supreme Court in *State ex rel. Washington Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 24, 200 P.2d 467 (1948), where the court reviewed the beneficial purposes behind Article 2, Section 19 and observed:

[W]hen laws are enacted or amended in substantial violation of this guaranty, the taint of at least suspicion of unfairness is upon them, and courts should not hesitate to declare them void.

Yelle, 32 Wn.2d at 24, quoting *State ex rel. Potter v. King County*, 49 Wash. 619, 623 96 Pac. 156 (1908).

A court, while giving due deference to the presumption of an initiative's constitutionality, should consider the lack of procedural safeguards in the initiative campaign process, and the differences in the manner by which initiatives become law when contrasted with the passage

of legislation. Someone may vote upon an initiative having only read the ballot title. *Washington Fed'n of State Employees v. State*, 127 Wn.2d 544, 554, 901 P.2d 1028 (1995). A defective ballot title can mislead a substantial number of voters. *State v. Broadaway*, 133 Wn.2d 118, 125, 942 P.2d 363 (1997). As noted by Justice Rosellini writing for the plurality in *Fritz v. Gorton*, 83 Wn.2d 275, 333, 517 P.2d 911 (1974), quoting the California Supreme Court:

It is common knowledge that an initiative measure is originated by some organization or a small group of people and they circulate a petition requiring the signature of only eight percent of the voters; that the measure is then placed upon the ballot, and a large number of the population, not knowing what the context of the act is, rely solely upon its title as a guide to intelligent voting thereon. (Internal quotations omitted.)

Further, an initiative is not subject to the measured review of the legislative process. There are no fact-finding hearings during an initiative campaign and initiatives cannot be amended during a campaign to cure flaws in the concept or drafting:

In the legislature the committee process assures that [defective provisions] will be detected: the amendment process provides the remedy. The legislature can delete parts of a proposal it disfavors; the electorate is faced with Hobson's choice; reject what it likes or adopt what it dislikes. Only Article 2, Section 19, preserves the integrity of the initiative process.

Fritz v. Gorton, 83 Wn.2d at 333.

Here, what is before the Court is not just a duplicate subject in the title of an initiative. It is an initiative that was presented to the voters of

this State with multiple factual and legal errors and defects, and with incomplete information as to what the law is that it seeks to amend and the effect its passage would have. These defects are fatal, and they cannot be ignored. They go to the very nature of the initiative, seeking a change in the law that is not even in effect when presented to the voters. Regardless of whether the errors in this initiative were drafting errors or something more deliberate, these errors cannot be dismissed in favor of a vote by voters who do not know, and could not know from the language of the initiative, the effect of their votes on the actual, current law.

B. While Washington Courts have not reached the issue, it is clear that initiatives must not only set forth the law being amended in full, they must also set forth the law *correctly*.

In its reply brief, the State places undue emphasis on the technical language used by courts who have construed Article 2, Section 37. The State contends that the only constitutional requirement is that an initiative set forth “in full” the statutory text to be amended, and claims that I-747 satisfied this test. However, the State ignores the pivotal issue in this case: Did I-747, standing alone, give the voters the *correct* information? The answer to this question is clearly no. I-747, standing alone, told the voters that a “yes” vote would reduce the limit factor from 102% to 101%. This was not the case. In reality, I-747 reduced the limit factor from 106% to 101%.

The State is correct that Washington Courts have focused solely on

the first part of the inquiry under Article 2, Section 37 — that is, does a piece of legislation amend an existing law, such that it must set forth in full the law being amended? However, this is only half the inquiry. The courts must also inquire as to whether the law being amended is accurately presented. If an initiative sets forth a law in such a way as to confuse or mislead the voters, that initiative fails to comply with the Constitution.

The Washington Supreme Court has interpreted the purpose of Article 2, Section 37 as follows:

The second purpose of the constitutional provision is the necessity of insuring that legislators are aware of the nature and content of the law which is being amended and the effect of the amendment upon it. Or, stated another way, to disclose the act's impact on existing laws. The second test for compliance with art. II, § 37 is, therefore, would a straightforward determination of the scope of rights or duties under the existing statutes be rendered erroneous by the new enactment? *The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws.* An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to but not re-published, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law, and the constitution wisely prohibited such legislation.

Amalgamated Transit Union Local 587 v. State (ATU), 142 Wn.2d 183, 246-47, 11 P.3d 762 (2000) (emphasis added) (citations and internal quotations omitted). Thus, the Supreme Court has held that Article 2,

Section 37 exists to prevent legislators and voters from being misled, not merely to ensure that initiative drafters cite the right statutes. Deception of the voting populace could occur not only if a law is not set forth at all, but if a law is set forth incorrectly, such that the impact of an amendment cannot readily be discerned at the time of the vote.

Contrary to the State's assertions, this Court can, and should, interpret the Constitution to require that a law be set forth correctly, such that voters are not misled. The cases interpreting Article 2, Section 37 have focused on the first part of the inquiry—whether a law must be set forth at all—because that was the question presented in those cases. *See, e.g., Washington Education Ass'n v. State*, 97 Wn.2d 899, 652 P.2d 1347 (1982); *Naccarato v. Sullivan*, 46 Wn.2d 67, 278 P.2d 641 (1955); *Spokane Grain & Fuel Co. v. Lyttaker*, 59 Wash. 76, 109 Pac. 316 (1910). In its debate over the constitutional requirement for accuracy, the I-747 litigation presents a case of first impression.

In determining whether an accurate statement of the existing law is required, this Court has ample precedent in case law decided under Article 2, Section 19, which governs ballot titles. *See, e.g., Amalgamated Transit Union Local 587 v. State (ATU)*, 142 Wn.2d 183, 224-26, 11 P.3d 762 (2000) (invalidating I-695 in part because ballot title misled voters as to scope of voter approval requirements). *ATU* and other cases contravene the State's argument that there is "no basis for expanding the requirements

of Article 2, Section 37.” Reply Brief of Appellant at 5. Truly, judicial review of initiatives for accuracy is not a novel concept.

If this Court were to decide, as the State insists, that accuracy is not required as long as some statute—any statute—is fully set forth, the integrity of the entire legislative process would be undermined. Imagine that the legislature presented a referendum to the voters showing a property tax increase from 101% to 102%, when the legislature actually wanted to effect an increase from 101% to 106%.¹ The public outcry would no doubt be deafening, and very justified. Any explanation by the legislature that voters need only read the “fine print” to understand the referendum most certainly would fall on unsympathetic ears. The case of I-747 is no different. If the people have a right to demand accuracy from their legislators, they have an equal right to demand accuracy from the drafters of initiatives.

C. The correctness of an initiative’s statement of the existing law must be determined at the time of the vote, not at the time the initiative is drafted.

Implicit in the State’s arguments is the assumption that, if an initiative is accurate at the time it is drafted, then it can be put before the voters even if it is inaccurate at the time of the vote. This argument is untenable. For one thing, I-747 was not accurate at the time the initiative

¹ Amici recognize that the scenario presented for illustration is exaggerated, but it does demonstrate the point, consistent with the State’s argument.

was drafted. Rather, I-722 and its 102% limit factor had been under a superior court injunction for *five weeks* by the time I-747 was submitted for signatures. But, even assuming I-747 was accurate at the time it was written, by the time of the vote it most certainly was inaccurate, because the Supreme Court had declared I-722 unconstitutional several weeks earlier.

Regardless of any debate over when I-747 became inaccurate, as a bright line rule, accuracy must be determined at the time of the vote. Imagine that the Legislature proposed a bill in the first week of the session, but two weeks later the Supreme Court issued a decision that rendered a facet of that bill unconstitutional. Anyone would agree that the sponsors of the bill would have to amend or withdraw that bill prior to the vote. Failure to do so would be to use fraud and deception to pass a piece of legislation, even despite its constitutional infirmities. The actions of I-747's proponents were no different.

D. Setting forth a 102% limit factor, rather than a 101% limit factor, was not a “drafting error,” but a deliberate attempt to influence the vote on I-747.

The Brief of the Respondent repeatedly attributes I-747's representation of the limit factor as 102% (as per I-722), rather than 106% (as per the pre-existing law), as a “drafting error.” Brief of Respondent at 3, 5 (“Due to a drafting error the initiative proponents refused to cure, the text of I-747 understated five fold its actual reduction of property tax

limits.”) The Respondent is being kind. The word “error” suggests that a mistake occurred, but I-747 was no accident. Rather, all indications are that the drafters of I-747 purposefully included the text of I-722 to make I-747 more likely to pass. Such deception is exactly what the drafters of the Constitution, as well as prior Supreme Court Justices who have interpreted the Constitution, were trying to avoid.

As noted in the Respondent’s brief, the initiative proponents were undoubtedly aware when I-747 was drafted that the court had issued an immediate injunction against I-722. The proponents were explicitly made subject to the Court’s injunction. Moreover, they cited the I-722 lawsuit in the I-747 petition, which freely labeled I-747 as “retribution” for the injunction against I-722. Brief of Respondent at 25 (quoting I-747 Petition, CP 88, as stating, “Last November, I-722 passed overwhelmingly but instead of following the will of the people, politicians instead used taxpayer dollars to sue the taxpayers. . . . Politicians must learn that ignoring the taxpayers is not an option anymore.”). It is plain from their own words that the initiative proponents, angered over the I-695 and I-722 lawsuits, sought to give “Spirit of 695” the best possible chance at passing, even if that meant deceiving the voters.

Moreover, the failure of the initiative proponents to remove I-747 from the ballot, *even after the Superior and Supreme Courts found I-722 to be unconstitutional*, is further evidence of a deliberate intent to deceive.

As explained by the Respondent, I-747's proponents could have avoided voter confusion in several ways. Brief of Respondent at 26-28. Without a doubt, the cleanest way would have been for the proponents to withdraw the initiative and submit a new one the following year. Granted, the proponents may have had to gather new signatures, but if public furor over the 106% limit was as strong as they claim, this should not have been a problem.

However, the proponents did not do this. Rather, even after the Supreme Court declared I-722 unconstitutional in September 2001, they left I-747 in its original, deceptive form. The only explanation for this inaction is that the proponents predicted that if they amended the initiative, they would risk losing those voters who would support a modest, but not a drastic, decrease in the limit factor. Pushing I-747 to vote in 2001 was the best chance the proponents had to ensure that it passed. The State all but admits this in its Reply, which suggests that the desire to pass an initiative justifies the behavior of the initiative's sponsors. Reply Brief of Appellant at 12 (stating that "delay to an initiative campaign caused by litigation interferes with the prospects of passage and support"). While it is certainly understandable for an initiative proponent to want to "strike while the iron is hot," the proponent must not be allowed to do so at the expense of voter clarity.

E. I-747's proponents could not reasonably have expected that the Supreme Court would uphold I-722; thus, it was incumbent upon them not to pursue I-747 in the form in which it was proposed.

The State contends that the initiative proponents should not have been required to engage in a "guessing game" about how the Supreme Court would decide the fate of I-722. Brief of Appellant at 9-12. The State further contends that the proponents should not have been required to wait until after the constitutionality of I-722 was resolved prior to putting it on the ballot, because doing so would have caused "serious repercussions to the constitutional initiative process." Reply Brief of Appellant at 12.

This was not a case where "frivolous" litigation unfairly stalled an initiative. Rather, anyone with a rudimentary knowledge of the issues would have predicted that I-722 would be declared unconstitutional. The initiative proponents were especially aware of this fact. In 2000, the initiative proponents were on the losing side of the *Amalgamated Transit* case, in which I-695 was struck down for violating the single subject rule. I-722 violated the single subject rule in the same manner, leading to it being immediately enjoined upon passage in 2000. The preliminary injunction necessarily involved a finding that the opponents of I-722 had a substantial likelihood of prevailing on the merits. RCW 7.40.020; Civil Rule (CR) 65. The proponents, having witnessed I-695's fate and seen I-

722 immediately enjoined, should certainly have predicted that the Supreme Court would declare I-722 unconstitutional.

In addition, by the time I-747 appeared on the ballot, the Supreme Court had declared I-722 unconstitutional. At that point, the proponents could no longer maintain their incredible claims of ignorance. This is not a case where “an initiative set forth a properly-adopted prior version of a statute, but intervening judicial challenges prevent[ed] that version from taking effect.” Reply Brief of Appellant at 2. The challenge to I-722 was not “intervening.” I-747 was filed five weeks *after* the Superior Court had enjoined I-722, and by the time I-747 appeared on the ballot, the Supreme Court’s decision had been made. The 102% limit factor, as introduced by I-722, was officially dead and never should have appeared on the ballot.

The State wants to place the responsibility of deciphering the confusion on the voters, rather than where it belongs—on the initiative proponents. The voters should not have the responsibility of deciphering the effect of an initiative on a law that is in flux. This is especially true when the law upon which the voters are voting (that is, the 102% limit factor) was substantially likely to be—and ultimately was—found unconstitutional. The proponents of I-747 had the ability, and the responsibility, to wait to propose the initiative until after the status of I-722 was resolved, or at the very least, to withdraw I-747 after the Supreme Court ruled on I-722. Had they done so, they would not be in this

situation today.

The State contends in its reply brief that the fact that the Supreme Court had not yet ruled on I-722 at the time the I-747 Petition was filed excuses the failure to remove I-747 from the ballot. *See* Reply Brief of Appellants at 10-11 (arguing that Article 2, Section 37 must be read in conjunction with Article 2, Section 1(a), which governs the content of initiative petitions). Yet, there is no authority for the proposition that a properly-drafted initiative petition excuses the failure to amend an impermissibly misleading initiative, or to remove that initiative from the ballot. As noted, whether an initiative sets forth an accurate statement of existing law must be determined at the time of the vote. Otherwise, Article 2, Section 37 would be rendered meaningless.

F. Rather than imposing an “impossible,” “technical,” or “complex” requirement upon the proponents of initiatives, the second stage of the Article 2, Section 37 analysis protects the initiative process.

The State accuses the Respondents of foisting a hyper-technical, overly-burdensome accuracy standard upon the proponents of initiatives. *See* Reply Brief of Appellants at 7, 11-12. However, what Respondents seek is an obvious and necessary second stage in the Article 2, Section 37 analysis, which actually protects the initiative process.

In the context of this case, this second step in the analysis should ask whether the law being amended was set forth such that it was

materially accurate and not misleading.

Here, this analysis quite simple. The difference between 101% and 106%, as opposed to 101% and 102%, is far from a technicality and it involves the central substantive feature of the initiative. A difference of five percentage points in the limit factor is a material change that very likely altered the vote on I-747. In addition, the Respondents have never suggested that any “complex” legal analysis, or complicated modifications to I-747, needed to occur. All the initiative proponents needed to do was change the “2” to a “6.” Because the fix was so simple, and the error’s potential for deception so great, the onus was on the initiative proponents to put the correct limit factor in front of the voters.

Moreover, the State ignores the fact that the constitutional provisions governing initiatives are designed to help the initiative process succeed. Were this Court to rule that amendatory legislation must set forth the correct version of the existing law at the time of the vote, initiative proponents would know in advance what is expected of them. Assuming initiative sponsors then strived for accuracy in their proposals, fewer initiatives would be declared unconstitutional, and the true will of the voters would be more easily discerned.

The second stage in the Article 2, Section 37 analysis also gives the Courts an opportunity to overlook a drafting error that is “hyper-technical or immaterial and which, therefore, does not implicate the fundamental

voter-protection policies of Article 2, Section 37. Whereas the rules to determine whether Article 2, Section 37 applies is fairly technical, the test for compliance looks to whether the error has the capacity to mislead the voters, and thus goes to the substantive constitutional policies. This analysis is not novel under Article 2, Section 37, and is certainly well developed under the Court's Article 2, Section 19 jurisprudence. *See e.g., Amalgamated Transit Union*, 142 Wn.2d at 245. While the error in this case materially misled voters about the central change proposed by the initiative, therefore requiring I-747 to be declared unconstitutional, the same result won't be required for merely technical violations.

G. I-747 violated Article 2, Section 19 because the ballot title misled the voters as to the extent of their voting rights.

Article 2, Section 19 of the Washington Constitution contains the "single subject" and "subject in title" requirements for ballot titles. Courts interpreting this section have clearly required that ballot titles be accurate and not misleading. *See* Brief of Respondent at 33-35. In this case, I-747's ballot title misled the public, perhaps deliberately, by overstating the public's right to vote on tax increases. Because, as the Respondent explains, I-747 was advertised as a "right to vote" initiative, this overstatement was materially deceptive and could very well have influenced I-747's passage.

The State glosses over this lapse in accuracy by contending that I-

747 did not change any laws. Reply Brief of Appellant at 18 (“Initiative 747 does not purport either to extend or to restrict this pre-existing power concerning statewide levies.”). It is true that I-747 does not create or abolish a mechanism for a statewide vote on property tax increases. However, the ballot title still stated the existing law in a misleading fashion. According to the statute, the 101% limit factor as applied to the State is not subject to increase by a vote of the people. Rather, the limit factor for the state is set forth in RCW 84.55.005(2)(c) at the lesser of 101% or 100% plus inflation. (By contrast, RCW 84.55.0101 specifically states that “taxing districts *other than the state*” can have a vote for higher taxes.)

The State seems to accept that there is no statutory mechanism for a statewide vote. Instead, it takes the fallback argument that the ballot title is correct because the voters can approve a lid lift under their powers of referendum. This is incorrect. The voters would need to collect signatures to obtain the right to vote, and there would be no underlying legislation on which to call a referendum.

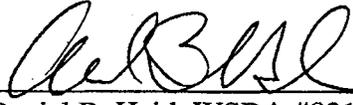
The State’s contention that the voter approval provision was an “essential feature” of I-747, and thus had to be included in the ballot title, rings hollow. Voter approval was not an essential feature of I-747 - it was included for the simple reason that it gave voters an escape valve from the drastic tax limitations imposed by Initiatives 722 and 747. I-722

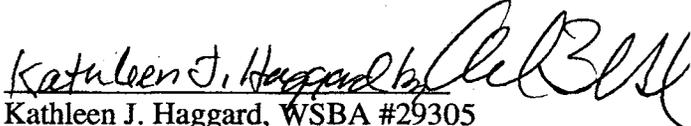
attempted to modify the law in the same way as I-747, by reducing the limit factor from 106% to 102%. Yet, I-722's ballot title contained no reference to the "right to vote" on tax increases. In short, the proponents of I-747 did not need to include a reference to voting in I-747's ballot title. But, once they did include such a reference, they had a responsibility to ensure that the reference was accurate and not misleading. Because I-747 presented a deceptive statement on the public's right to vote, it is unconstitutional under Article 2, Section 19 of the Washington Constitution.

IV. CONCLUSION.

Because of the significant false representations in I-747's ballot title and the errors in its text, the Court should affirm the trial court's ruling that I-747 is unconstitutional.

Respectfully submitted this 5th day of April, 2007.


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