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SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON ASSOCIATION FOR SUBSTANCE ABUSE AND
VIOLENCE PREVENTION, a Washington non-profit corporation;
DAVID GRUMBOIS, an individual,

Appellants,

v.

The STATE OF WASHINGTON

Respondent,

and

JOHN MCKAY, BRUCE BECKETT, COSTCO WHOLESALE
CORPORATION, WASHINGTON RESTAURANT ASSOCIATION,
THE YES ON 1183 COALITION, MACKAY RESTAURANT GROUP,
NORTHWEST GROCERY ASSOCIATION, SAFEWAY, INC., THE
KROGER COMPANY, and FAMILY WINERIES OF WASHINGTON,

Intervenor-Respondents.

**JOINT ANSWER OF STATE AND INTERVENORS TO
TEAMSTERS' *AMICI CURIAE* BRIEF**

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ORIGINAL

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I. INTRODUCTION

Respondent State of Washington and Respondent-Intervenors John McKay, et al. (collectively, "Respondents") hereby answer the *Amici Curiae* Brief of General Teamsters Local Union No. 174 and United Food and Commercial Workers Local Union No. 21 in Support of Appellants ("Teamsters' Brief").¹

II. ISSUES PRESENTED

A. Is Initiative 1183's ("I-1183") allocation of a portion of Liquor Revolving Fund revenues to local jurisdictions to enhance public safety programs related to liquor and the other aspects of the initiative?

B. Did the statement in the ballot title that I-1183 would "set license fees based on sales" adequately inform voters of the effect of the initiative, which imposes license fees that are based on the amount of sales by the licensee?

III. ARGUMENT

A. Initiative I-1183's allocation of a portion of Liquor Revolving Fund distributions to local jurisdictions to enhance public safety is related to liquor and the other aspects of the initiative.

The Teamsters' brief primarily argues that the \$10 million distributed specifically to counties, cities, and border areas (out of

¹ For ease of reference, Respondents will refer to the amici General Teamsters Local Union No. 174 and United Food and Commercial Workers Local Union No. 21 as "Teamsters."

hundreds of millions distributed without restriction to the same entities and the State) is not “in any meaningful sense ‘directly or indirectly related to’ the measure's primary objective of liquor privatization.” Teamsters’ Br. at 12. As addressed more fully by both the State and Respondent-Intervenors in their response briefs,² this argument ignores the history of distributions from the Liquor Revolving Fund, makes overblown predictions about the safety of democracy, and seeks to impose, without any basis in precedent, an unwarranted and unfeasible degree of oversight on money allocated to localities.³

Washington has long supported local government with Liquor Revolving Fund revenues that are derived from the sale of liquor and distributed for general purposes. I-1183 continues this historical practice. See Local Gov’t *Amicus* Br. at 5-9. Section 302 of the initiative is consistent with this history.

The last sentence of section 302, which Teamsters allege creates a separate subject, simply allocates an additional, specific sum to border areas, counties, cities, and towns for the stated purpose of enhancing public safety programs. I-1183, § 302. Other funds distributed to local governments from the Liquor Revolving Fund are not expressly subject to

² State’s Response Br. at 22-25, Intervenor-Respondent’s Br. at 19-25.

³ The State and Intervenor-Respondents also agree with the analysis of the Local Government *Amici* on these points.

this public safety use limitation. *See, e.g., id.*; RCW 66.08.190(1) (distributing funds without restriction). Not only is this allocation done in the same manner as previous allocations, it is also related to, and can be used to defray, the possible consequences of transferring the state liquor business to the private sector.

Teamsters also allege that the additional funds were included in I-1183 solely to increase public support for the Initiative, and this constitutes "logrolling" in violation of article II, section 19.⁴ Teamsters' Br. at 9, 11-12. The Teamsters further speculate about future initiatives making law by mixing popular and unpopular, unrelated provisions. But I-1183 does not commit any of the violations that the single subject rule is intended to prevent. Instead, the initiative enacted a law that included a provision that addressed voters' concerns about the possible effects of that law. That is precisely what constitutes the exercise of the democratic principles that underlie the initiative and legislative processes in Washington.

Logrolling involves attaching a popular, unrelated provision to an unpopular provision to obtain passage. *City of Burien v. Kiga*, 144 Wn.2d

⁴ The Court should reject the Teamsters' invitation to apply a stricter level of scrutiny to this Initiative because, allegedly (but without proof), the measure benefits certain commercial interests over others and was passed without "public enthusiasm for the measure." Teamsters' Br. at 11 n. 6, 9 n. 4. The case law is clear that initiatives do not receive a heightened standard of scrutiny. *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003).

819, 825, 31 P.3d 659 (2001). The fallacy of Teamsters' argument is that the additional funds for public safety, which they allege is the popular provision, *is related* to the rest of I-1183.⁵ Including a provision addressing increased funding for public safety in this initiative was *responsive* to perceived public concern about the increased availability of spirits and its impact on public safety. Making changes to proposed legislation in order to address concerns expressed about the impact of that very legislation is not logrolling, but the essence of legitimate political process.

Indeed, taken to its logical conclusion, Teamsters' interpretation of logrolling would mean that anytime the Legislature amended a proposed bill to reflect the input of the public or other Legislators, it would be engaging somehow in an impermissible process of "vote buying." But the concept of logrolling hinges on the *unrelatedness* of the provision, not the alleged or actual result of gathering support.

Teamsters argue as if I-1183 has a restrictive title, which would allow for more rigorous review. In fact, this Court has repeatedly held

⁵ *Amici* go so far as to suggest that applying the relatedness test of rational unity is a futile exercise because, in a concurring opinion in *Calif. Div. of Labor Standards Enforcement v. Dillingham Constr.*, 519 U.S. 316, 335, 117 S. Ct. 832, 136 L.Ed.2d 791 (1997), Justice Scalia noted that "everything is related to everything else." Teamsters' Br. at 13 n. 8. Their suggestion is not helpful to the Court in applying the rational unity test. Nor do *amici* offer any other test for rational unity that does not involve determining whether the provisions of the act are related.

that when a statute has a general title, “all that is required is there be some rational unity between the general subject and the subdivisions.” *Citizens Assoc. of Neighborhood Stores v. State*, 149 Wn.2d 359, 370, 70 P.3d 920 (2003). *See also* State’s Response Br. at 9-10 (discussing general vs. restrictive titles).

Finally, Teamsters argue that rational unity could only be achieved here by specifically requiring counties, cities, and border areas to segregate their proportional share of the additional \$10 million and spend it solely on public safety programs related to liquor. Teamsters’ Br. at 12. The Teamsters tacitly admit, as common sense dictates, that the sale of liquor is related to public safety in general, but appear to argue for a “strict scrutiny” standard of having all legislation narrowly tailored to a specific purpose. The Teamsters’ argument completely reverses this Court’s standard of review, which liberally construes the initiative and invalidates it only when unconstitutional beyond a reasonable doubt. The argument also ignores the practical realities of the allocation.

The infeasibility, and indeed undesirability, of restricting local governments’ use of funds to public safety or law enforcement related to liquor has been addressed by local government officials themselves. Local Gov’t *Amicus* Br. at 9. First, they point out that distributions from the Liquor Revolving Fund to cities and counties has generally not been

restricted to a particular purpose. Second, local governments are entitled to discretion in managing their financial resources and burdens. *Id.* Finally, it is difficult to imagine how, in practice, localities could segregate funds to be used only for fighting liquor-related crimes, since such funds for each locality are relatively modest and unlikely to fully fund any complete program on public safety related to liquor.⁶ The allocation of funds to support public safety programs has a rational unity with the sale of liquor, and this Court has never required that such funds be targeted with the pinpoint precision envisioned by Teamsters. Accordingly, I-1183 does not violate the single-subject rule of article II, section 19.

B. The ballot title description that I-1183 would “set license fees based on sales” adequately informed voters of the effect of the initiative, which imposes license fees that are based on the amount of sales by the licensee.

The Teamsters’ brief echoes Appellants’ argument that the ballot title’s description that the initiative sets “license fees based on sales” violates the subject-in-title requirement of article II, section 19. Teamsters’ Br. at 14-20. What the Teamsters fail to address is how, in an article II, section 19 analysis, a contested dispute about the legal

⁶ For example, assuming 2011 revenue levels, Garfield County will receive only \$618 under the second sentence of section 302 from the Liquor Revolving Fund. The median amount received per county is approximately \$88,000. See <http://www.liq.wa.gov/about/where-your-liquor-dollars-go>.

classification of a revenue mechanism can trump the voters' common-sense understanding of the title.

The concise description in I-1183's ballot title states that the initiative would "set license fees based on sales." CP 238 (Voters' Pamphlet, Nov. 8, 2011 Gen. Election). The body of the initiative, in turn, establishes license fees based on sales to be paid by spirits retail licensees under section 103(4), and spirits distributor licensees under section 105(3). This title meets the requirement of Const. article II, section 19 that the subject of an act must be expressed in its title. It "gives notice which would lead an inquiring mind to an inquiry into the body of the act." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 217, 11 P.3d 762 (2000), *opinion corrected by* 27 P.3d 608 (2001). The term clearly indicated that a charge would be imposed on licensees for the privilege of selling liquor and summarized how the charge would be set. Any voter could consult the text of the initiative to look for the details.

Nevertheless, Teamsters allege that the effect of this provision was not expressed in the title because they claim that the "fee" meets some of the tests for a "tax" under confusing jurisprudence demarcating "taxes" from "fees" in specific circumstances. As a law review article cited by Teamsters themselves states, there are many types of fees that have been charged for many years by governments to serve varying governmental

purposes, but which have not been fully analyzed in the case law. See Hugh D. Spitzer, *Taxes vs. Fees: A Curious Confusion*, 38 Gonz. L. Rev. 335, 336-337, 343-365 (2003).⁷

Teamsters cite, in particular, cases that determined whether municipalities and counties possessed authority to impose a charge. Teamsters Br. at 16-17 (citing *Covell v. City of Seattle*, 127 Wn.2d 874, 905 P.2d 324 (1995); *Thurston Cnty. Rental Owners Ass'n v. Thurston Cnty.*, 85 Wn. App. 171, 931 P.2d 208 (1997)). Those cases are not on point because they did not involve fees charged by the State (but a municipality or county, which have reduced powers of taxation) nor an article II, section 19 challenge.

Teamsters' argument about interpreting the term "fees" by referring to case law overlooks this Court's rule that "[l]anguage in an initiative should be construed as the average informed voter voting on the initiative would read it." *Amalgamated Transit Union*, 142 Wn.2d at 219. As the *Amalgamated* opinion illustrates, the Court may look to the

⁷ Mr. Spitzer's law review article opens with the statement that "Washington case law concerning the distinction between taxes and fees has been *murky and confusing*, primarily because the courts often resort to a simplistic dichotomy between taxes and *regulatory fees*." Spitzer, 38 Gonz. L. Rev. at 336 (footnote omitted) (emphasis added). Teamsters fail to explain how the resolution of a complicated legal analysis, usually applied to gauge a revenue mechanism's compliance with different constitutional provisions, can conclusively establish that voters were surprised or deceived because the use of the term "fees" "gave no intimation" of its meaning and was thus adopted "unintentionally." Teamsters' Br. at 14. Indeed, as Mr. Spitzer further explains, any black-and-white distinction between "taxes" and "regulatory fees" "fails to recognize the existence of alternative charges." Spitzer, 38 Gonz. L. Rev. at 336.

dictionary definition to measure the common understanding of a term in an initiative. "Fee" is defined broadly, "a charge fixed by law or by an institution for certain privileges or services." *Webster's Third New International Dictionary of the English Language Unabridged* 833 (1993).

The license fees based on sales established by I-1183 certainly met this dictionary definition and informed the public of their existence and how they would be calculated, even if the voter did not look into the body of the initiative.

In sum, I-1183's license fees are commonly understood to be fees, but the title says more than that; it also describes how these fees are calculated. The essential elements of this new revenue mechanism were disclosed remarkably well in the short space allotted in the ballot title and fully satisfy the notice requirements of article II, section 19.

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IV. CONCLUSION

Teamsters have raised no new issues or arguments as *amici* regarding the constitutionality of I-1183. Accordingly, and as set forth fully in their Responses, Respondents ask this Court to declare that I-1183 is consistent with the Washington Constitution.

RESPECTFULLY SUBMITTED this 14th day of May 2012.

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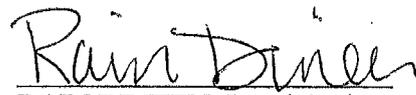
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Attached for filing is the Joint Answer to Teamsters' Amicus Brief in the matter of:

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Filed for Mary M. Tennyson, Sr. AAG, WSBA# 11197, Bruce L. Turcott, AAG WSBA# 15435 and Peter Gonick, Deputy Solicitor General, WSBA# 25616

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