FILED
SUPREME COURT
STATE OF WASHINGTON
6/5/2020 4:11 PM
BY SUSAN L. CARLSON
CLERK

FILED
SUPREME COURT
STATE OF WASHINGTON
6/15/2020
BY SUSAN L. CARLSON
CLERK

No. 98320-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GARFIELD TRANSPORTATION AUTHORITY, et al.,
Appellants/Plaintiffs,

WASHINGTON ADAPT; TRANSIT RIDERS UNION; and
CLIMATE SOLUTIONS,
Appellants/Intervenor Plaintiffs,

v.

STATE OF WASHINGTON, et al.,
Respondent/Defendant,

CLINT DIDIER; PERMANENT OFFENSE; TIMOTHY D. EYMAN;
MICHAEL FAGAN, JACK FAGAN; and PIERCE COUNTY,
Respondents/Intervenor Defendants.

AMICUS CURIAE BRIEF OF THE LEAGUE OF WOMEN VOTERS OF WASHINGTON

Curtis C. Isacke, WSBA No. 49303
McNAUL EBEL NAWROT & HELGREN PLLC
600 University Street, Suite 2700
Seattle, Washington 98101
Phone: (206) 467-1816
Fax: (206) 624-5128
cisacke@mcnaul.com
Attorneys for the League of Women Voters of Washington

TABLE OF CONTENTS

I. INTRODUCTION 1

II. IDENTITY AND INTEREST OF AMICUS CURIAE 2

III. STATEMENT OF THE CASE 3

- A. I-976 Would Cause Far-Reaching Changes in Washington Law 3
- B. Having Been Misled by the Ballot Title, Washington Voters Enact I-976 5
- C. Appellants Sue to Enjoin Enforcement of I-976 and the Trial Court Partially Invalidates the Initiative 6

IV. ARGUMENT 8

- A. This Court's Article II, Section 19 Review Protects the Democratic Process by Ensuring Informed Voting 8
- B. The Plain Language of the Ballot Title Misleads the Average-Informed Voter Regarding the Effect of Existing Voter-Approved Charges 11
- C. The Plain Language of the Ballot Title Misleads the Average-Informed Voter Regarding the Ability of the People or the Legislature to Legislate 15
- D. The Plain Language of the Ballot Title Misleads the Average-Informed Voter Regarding the Consumer Cost of Registration 17
- E. The Ballot Title Fails Subject-in-Title Review Because It Does Not Put Voters on Notice of Important Elements of I-976 18
- F. I-976 Fails Subject-in-Title Review if a Substantial Portion of the Ballot Title Is Inoperative 19

V. CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Amalgamated Transit Union Local 587 v. State,
142 Wn.2d 183, 11 P.3d 762 (2000) ..... passim

Ballot Title for Initiative 333 v. Gorton,
88 Wn.2d 192, 558 P.2d 248 (1977) 1

Bradley v. Dep't of Labor & Indus.,
52 Wn.2d 780, 329 P.2d 196 (1958) 16, 17

Cox v. Daniels,
374 Ark. 437, 288 S.W.3d 591 (2008) 1

Howlett v. Cheetham,
17 Wash. 626, 50 P. 522 (1897) ..... passim

In re Parentage of C.A.M.A.,
154 Wn.2d 52, 109 P.3d 405 (2005) 20

Island Cty. v. State,
135 Wn.2d 141, 955 P.2d 377 (1998) 8, 9

Matter of Estate of Hitchman,
100 Wn.2d 464, 670 P.2d 655 (1983) 10, 14

Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1,
149 Wn.2d 660, 72 P.3d 151 (2003) 12

Power, Inc. v. Huntley,
39 Wn.2d 191, 235 P.2d 173 (1951) 19, 20

Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n of State of Wash.,
133 Wn.2d 229, 943 P.2d 1358 (1997) 11, 18

Seymour v. City of Tacoma,
6 Wash. 138, 32 P. 1077 (1893) 1, 9

State v. Brown,
139 Wn.2d 20, 983 P.2d 608 (1999) 10, 15

State v. Thorne,
129 Wn.2d 736, 921 P.2d 514 (1996) 10

W. Petroleum Importers, Inc. v. Friedt,
127 Wn.2d 420, 899 P.2d 792 (1995) 10

Wash. State Farm Bureau Fed'n v. Gregoire,
162 Wn.2d 284, 174 P.3d 1142 (2007) ..... passim

Washington Ass'n for Substance Abuse & Violence Prevention v. State,
174 Wn.2d 642, 278 P.3d 632 (2012) 13, 15

Washington Citizens Action of Washington v. State,
162 Wn.2d 142, 171 P.3d 486 (2007) 9, 10

Washington Fed'n of State Employees v. State,
127 Wn.2d 544, 901 P.2d 1028 (1995) 9, 10

Washington State Grange v. Locke,
153 Wn.2d 475, 105 P.3d 9 (2005) 18

Statutes

RCW 29A.72.050 14

Other Authorities

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (2002) 11

I. INTRODUCTION

Article II, section 19 of the Washington Constitution provides that "[n]o bill shall embrace more than one subject, and that shall be expressed in the title." As this Court has observed, this provision protects the public, so that "no person may be deceived as to what matters are being legislated upon."[1] Nowhere is this protection more important than in initiative ballot titles, which are often a voter's only opportunity to engage with and understand what a proposed piece of legislation will do.[2]

As explained further below, the I-976 ballot title failed to afford the average-informed voter a fair opportunity to evaluate the content and consequences of the initiative. This undermines the democratic mandate of I-976. As a court of a sister state artfully put it, the question before this Court is "whether the voter . . . [was] able to reach an intelligent and informed decision for or against the proposal and underst[ood] the consequences of his or her vote based on the ballot title."[3] If this Court cannot resolve that question in the affirmative, it should protect informed democracy and declare the law unconstitutional.[4] A ruling that strikes I-976 in its entirety is just and necessary here.

---

[1] *Seymour v. City of Tacoma*, 6 Wash. 138, 148–49, 32 P. 1077 (1893).

[2] *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 217, 11 P.3d 762 (2000) (hereinafter "*ATU*"); *Ballot Title for Initiative 333 v. Gorton*, 88 Wn.2d 192, 198, 558 P.2d 248 (1977).

[3] *Cox v. Daniels*, 374 Ark. 437, 443, 288 S.W.3d 591, 595 (2008).

[4] *Howlett v. Cheetham*, 17 Wash. 626, 635, 50 P. 522 (1897).

II. IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus the League of Women Voters of Washington (the "LWVWA" or the "League") submits this amicus brief.[5]

The LWVWA is comprised of a nonpartisan voter education organization and advocacy group supporting informed civic engagement. Core to the League's principles is the belief that "democratic government depends upon the informed and active participation of its citizens and requires that governmental bodies protect the citizen's right to know by giving adequate notice of proposed actions[.]"[6]

Consistent with this mission statement, the LWVWA "supports" the "[i]nitiative and referendum processes in Washington, which provide access for citizens to initiate or modify legislation."[7] At the same time, based on its study of initiatives, the LWVWA has urged reforms to the process that would, among other things, provide voters with "clear and accurate ballot titles, summaries and a clear statement of intent."[8] To this

---

[5] The LWVWA is joined here by 21 local Leagues spanning the State of Washington. *See* Find a Local League, https://lwvwa.org/find-your-local-league (last visited June 3, 2020).

[6] League of Women Voters of Washington, Program in Action 2019-2021, at i, *available at*: https://www.lwvwa.org/resources/Documents/ Program%20In%20Action%202019-20.pdf.

[7] *Id.* at 17. The League bases its support on research developed through its community education process; the League reached state-wide member consensus in favor of initiatives in 1995, expanded the consensus position in 2003, and has reaffirmed its commitment every two years since then. *See id.*

[8] *Id.*; *see also id.* at 4 (The LWVWA supports "[a]ction to support the initiative and referendum process, adopt improvements to the process and require additional information for voters.").

end, the LWVWA continues to sponsor legislation designed to improve voter understanding of initiatives.[9]

The LWVWA has undertaken to prepare this brief because it is troubled by the State's decision to defend palpably incomplete and misleading information supplied to the public in connection with I-976. The League regularly undertakes voter education activities in advance of elections. Before the November 2019 election, the League encountered significant voter confusion relating to I-976 that traces to the ballot title and concise description.[10] The LWVWA is concerned that I-976 offends the voter-protection purpose of article II, section 19 of the Washington Constitution, and therefore must be stricken.

III. STATEMENT OF THE CASE

A. I-976 Would Cause Far-Reaching Changes in Washington Law

Washington voters at the state, regional, and local level have a long history of voting on, and enacting, motor vehicle registration fees. *See, e.g.*, CP 240, 245. Nevertheless, the sponsors of I-976 have repeatedly presented initiatives designed to limit collection of those fees over the last two decades. I-976 is only the most recent, repackaged effort; and it goes

---

[9] *See id.* at 17.

[10] *See also* Danny Westneat, Was the Language Voters Saw on Their Ballots for Initiative 976 Wrong? Sure Seems Like It, SEATTLE TIMES, June 15, 2019, *available at*: https://www.seattletimes.com/seattle-news/politics/was-the-language-voters-saw-on-their-ballots-for-initiative-976-wrong-sure-seems-like-it/ (documenting similar confusion).

far beyond limiting fees by also addressing numerous tax and transportation issues across its many sections. *See* CP 1211-28.

Sections 2 through 5 of I-976 would enact a change to "state and local motor vehicle license fees," setting fees at $30. CP 1212-20. Section 2 would define "state and local motor vehicle license fees" as "the general license tab fees paid annually for licensing motor vehicles" and further states that the definition "do[es] not include charges approved by voters after the effective date of this section." CP 1212.

Sections 6, 10, 11, and 13 would eliminate authority to impose certain motor vehicle fees and taxes. CP 1220-27. Section 6 would repeal statutes that allowed (1) transportation benefit districts to impose certain additional vehicle fees and (2) regional transit authorities (currently only Sound Transit) to impose a motor vehicle excise tax. Section 10 would eliminate the special motor vehicle excise tax that regional transit authorities can impose. Section 11 would repeal a law allowing for voter approval of vehicle levies and excise taxes. And Section 13 would reduce the authority of voter-approved excise taxes for Sound Transit.

Section 7 would address motor vehicle sales taxes and delete a provision imposing a .3 percent sales tax on retail sales. CP 1220-21.

Sections 8 and 9 would provide for the use of "base model Kelley Blue Book value" in calculating motor vehicle excise taxes and resolving

valuation appeals to the Department of Licensing. CP 1222. In addition to the effect noted above, Section 11 would eliminate existing law concerning the calculation of vehicle taxes. CP 1225.

And Section 12 would provide that authorities imposing motor vehicle excise taxes must retire, defease, or refinance bonds. CP 1226.

In sum, I-976 is an initiative attempting to accomplish numerous, disparate policy goals.

B. Having Been Misled by the Ballot Title, Washington Voters Enact I-976

After I-976 secured its place on the November 2019 ballot, the Attorney General was faced with the extraordinarily difficult task of distilling the incongruent threads of I-976 into a clear and concise ballot title. As the Appellants explain, the Attorney General should never have been placed in this situation. *See* App. Br. at 14-34 (describing how I-976 violates the article II, section 19 "single subject" requirement).

Ultimately, the following text appeared as the I-976 ballot title:

> Initiative Measure No. 976 concerns motor vehicle taxes and fees.
>
> 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 316. In total, the ballot title is forty-six words. As the State of Washington has noted, the ballot title's concise description is structured in

three clauses, separated by semicolons. *See* State's Br. at 33.

The first clause addresses the "authority" of the government to "impose" "vehicle taxes and fees." CP 316. The ballot title explains that a "yes" vote would "repeal, reduce, or remove" such authority moving forward. *Id.* This clause is hereinafter termed the "Authority Clause."

The second clause of the concise description addresses the rate of "motor-vehicle license fees." The ballot title explains that a "yes" vote would set these fees at $30 moving forward, "except voter-approved charges." *Id.* This clause is hereinafter termed the "License Fee Clause."

The final clause of the concise description addresses the calculation of "base vehicle taxes." *Id.* It explains that a "yes" vote would calculate these taxes based on "Kelley Blue Book value." This clause is hereinafter termed the "Valuation Clause."

C. Appellants Sue to Enjoin Enforcement of I-976 and the Trial Court Partially Invalidates the Initiative

After the election, Appellants brought suit to enjoin implementation of I-976. Following cross-motions for summary judgment, the trial court determined that Sections 8 and 9 of I-976—described in the ballot title by the Valuation Clause—were unconstitutional under article I, section 12. CP 2371. The court severed these provisions and rejected Appellants' other constitutional challenges. *Id.* Appellants appealed to this Court, seeking direct review, (CP 2442-46, 2456-60), and the State and

Respondent-Intervenors cross-appealed (CP 2557-2606).

Here, Appellants challenge the constitutionality of I-976 on several grounds, including on the basis of article II, section 19. App. Br. at 1. Regarding the ballot title, Appellants argue that the License Fee Clause actively misleads the average-informed voter in at least two ways. First, it suggests that any voter-approved taxes or fees are "excepted" from I-976. App. Reply Br. 28. And, second, the clause suggests that voters will only have to pay $30 in annual vehicle fees, whereas, in reality, the cost is at least $43.25. *See* App. Reply Br. at 33 (citing CP 657, 664).[11]

In response, the State argues that I-976 passes muster by deploying several confused and contradictory "constructions" of the I-976 ballot title. For example, the State claims it is not troubled by the phrase "except voter-approved charges" in the License Fee Clause because, in its view, the phrase merely reflects a truism that always applies to initiatives: The People always retain the power to change the law by passing a new initiative. *See* State's Br. at 28, 35. Even if one were to accept this strained interpretation of the ballot title, the State (1) ignores that its position renders four words of the ballot title effectively surplusage, and (2) does not reconcile that its interpretation of the phrase should apply with equal

[11] Additionally, Appellants argue that I-976 fails Article II, Section 19 review because it contains many disparate policy goals that cannot be—and, in fact, were not—accurately notified in the ballot title. *See* App. Br. 14-34.

force to the Authority Clause and the Valuation Clause, but goes unstated with respect to those provisions. *Infra* § IV.C.

Likewise, the State suggests the ballot title was not misleading even though the trial court struck Sections 8 and 9—which, in turn, rendered the Valuation Clause misleading or meaningless. *See* State's Br. at 29-38. Taking the State's positions together, the State effectively argues that this Court should find I-976 to be knowingly and intentionally enacted by the People even though *the last thirteen words in a forty-six-word ballot title do not accurately describe anything about what I-976 will accomplish* if implemented without Sections 8 and 9. *See* CP 316.

The LWVWA files this amicus brief because it is concerned that the I-976 ballot title offends the voter-protection purpose of article II, section 19 of the Washington Constitution, and therefore must be stricken.

IV. ARGUMENT

A. This Court's Article II, Section 19 Review Protects the Democratic Process by Ensuring Informed Voting

It is this Court's responsibility to ensure that all laws accord with the Washington Constitution. *Island Cty. v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998). In discharging this duty, the Court will "not strain to interpret" a law as constitutional; "a plain reading must make the interpretation reasonable." *ATU*, 142 Wn.2d at 225. If it appears "by argument and research" that there is "no reasonable doubt" a law violates

the Constitution, it must be stricken. *Island Cty.*, 135 Wn.2d at 147.

Article II, section 19 of the Washington Constitution provides that "[n]o bill shall embrace more than one subject, and that shall be expressed in the title." This section provides "two distinct prohibitions": first, "that no bill shall embrace more than one subject," and second, "that no bill shall have a subject which is not expressed in its title." *ATU*, 142 Wn.2d at 207. These protections exist so "that no person may be deceived as to what matters are being legislated upon." *Seymour v. City of Tacoma*, 6 Wash. 138, 148–49, 32 P. 1077 (1893). This Court applies article II, section 19 scrutiny to initiatives. *ATU*, 142 Wn.2d at 207; *see Washington Citizens Action of Washington v. State*, 162 Wn.2d 142, 154, 171 P.3d 486 (2007) (hereinafter "*WCAW*").

The State untenably argues that an initiative passes constitutional muster under article II, section 19 if there is a hypothetical interpretation of the ballot title that is constitutional. State's Br. at 13 (citing *Washington Fed'n of State Employees v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995)). This is incorrect. Only where a *comparably* plausible constitutional reading exists would the rule favoring constitutional construction be implicated. *See ATU*, 142 Wn.2d at 225. The rule is not triggered where—as here—a constitutional interpretation of the ballot title is strained and unlikely to be made by the average voter. *Id.*; *infra* § IV.B.

Generally, the Court's article II, section 19 analysis is an inquiry into the average-informed lay voter's understanding of the ballot title. *WCAW*, 162 Wn.2d at 151; *Matter of Estate of Hitchman*, 100 Wn.2d 464, 469, 670 P.2d 655 (1983). The Court begins this process by considering the "plain" and "ordinary sense and meaning" of the ballot title. *State v. Thorne*, 129 Wn.2d 736, 762, 921 P.2d 514 (1996). In doing so, the Court reads the title text not as an attorney or legislator would, but as "the average informed lay voter would." *State v. Brown*, 139 Wn.2d 20, 28, 983 P.2d 608 (1999) (quoting *W. Petroleum Importers, Inc. v. Friedt*, 127 Wn.2d 420, 424, 899 P.2d 792 (1995)). This means that "technical and debatable legal distinction[s] advanced [by litigants]" are not controlling. *Hitchman*, 100 Wn.2d at 469. The Court then "examines the body of the act to determine whether the title reflects the subject matter of the act." *Washington Fed'n of State Employees*, 127 Wn.2d at 556. If the Court determines that the average-informed voter would have been misled, the Court must declare the initiative invalid. *Howlett*, 17 Wash. at 635.

The I-976 ballot title misleads the average-informed voter about (1) the effect of earlier-enacted voter-approved fees, (2) the authority of the voters and the Legislature to amend initiative topics in the future, and (3) the real cost of motor vehicle registrations moving forward.

B. The Plain Language of the Ballot Title Misleads the Average-Informed Voter Regarding the Effect of Existing Voter-Approved Charges

The License Fee Clause is particularly misleading because a voter reading this clause would understand that any voter-approved charges were outside the scope of I-976 by virtue of that clause's language "*except[ing] voter-approved charges*." CP 316 (emphasis added). In fact, all voter-approved charges predating I-976's enactment are nullified.

Nothing in that ballot title hints that the "voter-approved charge" exemption is only forward-looking. In determining the meaning an ordinary voter would ascribe to the phrase "except voter-approved charges," the word "except" must be given its unmodified, ordinary, and customary meaning: "with the exclusion or exception of." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 791 (2002);[12] *see ATU*, 142 Wn.2d at 219 (citing Webster's to discern voter understanding of a term).[13] Applying this plain language, a voter reading the ballot title would understand that "voter-approved charges," *whenever enacted*, are outside the scope of I-976: "Motor-vehicle-license fees" are limited to $30 "*with the exclusion or exception of*" "voter-approved charges." *Supra*

---

[12] Merriam-Webster.com, https://www.merriam-webster.com/dictionary/except (last visited June 3, 2020) (same).

[13] *Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n of State of Wash.*, 133 Wn.2d 229, 243–44, 943 P.2d 1358 (1997) (average-informed voter understanding determined by reference "standard dictionary" definition).

n.10.

The voter's reasonable reading is only bolstered by the fact that many voters throughout Washington have previously approved motor vehicle "charges." *See, e.g.*, CP 240, 245. The average-informed voter would likely be aware of these previous enactments. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1*, 149 Wn.2d 660, 686–87, 72 P.3d 151 (2003) (explaining "[t]he average informed voter would be aware of" existing education policy). Here, the average-informed voter encountering the phrase "except voter-approved charges" would expect that these earlier votes were the reason for the "except" clause. On the other hand, they would have no reason to anticipate that I-976 would implicitly repeal their votes while telling them that "voter-approved charges" were "except[ed]."

The ballot title could have tidily avoided misleading voters by adding a single word: "except *future* voter-approved charges." This was not done.[14] In this way, the ballot title departs from the text of I-976, which clearly states in Section 2 that the definition of "state and local motor vehicle license fees" "do[es] not include charges approved by voters *after the effective date of this section*." CP 1212 (emphasis added). Likewise, the full summary of the initiative contains this qualification.

[14] The State may argue that the Authority Clause of the ballot title was intended to address this issue. This is incorrect. The clause concerns repealing, reducing, or removing the "authority" of the State to impose" taxes and fees. CP 316. It makes no reference repealing, reducing, or removing *existing* taxes and fees.

CP 1253. The absence of such a qualification in the ballot title leaves the average-informed voter with the impression that I-976 targets statewide fees for reduction but excludes any local, county, or regional democratically enacted fees, whether already in place or in the future.[15]

Because this is not what the initiative does (CP 1212), the ballot title is misleading. *Washington Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 660, 278 P.3d 632 (2012) (hereinafter "*WASAVP*"); *Howlett*, 17 Wash. at 635. Thus, the People cannot be said to have enacted I-976 knowingly, and I-976 fails article II, section 19 review. *WASAVP*, 174 Wn.2d at 660; *Howlett*, 17 Wash. at 635.

In seeking to uphold I-976, the State argues that the words "except voter-approved charges" in the License Fee Clause merely "acknowledged reality," and reflected the truism that "the People via initiative have plenary power to amend or repeal previously enacted laws." State's Br. at 28, 35. Of course, this is always true. An initiative—like any legislation—can always be superseded by subsequent legislative acts. *Wash. State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 290, 301–02, 174 P.3d 1142 (2007) (hereinafter, "*Gregoire*"). But this point is so obvious it goes without saying. The ballot title's inclusion of this language suggests to the

[15] It is not enough under article II, Section 19 that this essential information was available by digging deeper into other sources; where a ballot title is misleading on an essential term, the initiative fails. *See ATU*, 142 Wn.2d at 217.

ordinary voter that something else is afoot—namely, an exemption of prior voter-approved charges from I-976's ambit.

Indeed, the State's argument raises more questions than it answers. First, if the purpose of ballot title language was to apprise voters that *future* actions may trump the license fee limits, why was future conditional language not used? Without language indicating that the People *may, in the future*, approve charges, the argument fails plain language scrutiny.

Moreover, second, why was this "acknowledgement of reality" even necessary? Nothing in I-976 does—or even could—alter the operation of legislative power. *See Gregoire*, 162 Wn.2d at 290. Such a change would require constitutional amendment. *See id.* Even if the voters were to inquire into the I-976 text, they would find nothing confirming that this is what the ballot title meant. This "debatable," after-the-fact justification cannot save the initiative. *Hitchman*, 100 Wn.2d at 469.

Third, why would it be necessary to include this mere truism at the expense of other descriptive words? As the State points out, Washington law limits the length of ballot titles. RCW 29A.72.050. Given that I-976 requires the retirement or defeasement of five hundred million dollars in bonds (CP 1263-66) but the topic goes without mention in the title (CP 316), the words could have been utilized elsewhere. *See infra* § IV.E.

Fourth, and finally, why would this truism be emphasized with

respect to the License Fee Clause only, and separated by semicolons from the Authority Clause and the Valuation Clause? As the State recognizes, this grammatical distinction implies that this exception language was intended to applies only to the License Fee Clause. State' Br. at 33. Yet, as the State also recognizes, the People always retain the authority to enact superseding laws on any topic. *Id.* at 28 (citing *Gregoire*, 162 Wn.2d at 290). Even accepting the State's strained interpretation, the exception language still misleads voters because it does not qualify the entirety of the ballot title. Adopting the State's view of the exception language would simply swap one constitutional confusion for another.

In summary, it is not enough that the State can ascribe an alternative intelligible meaning to words in a ballot title. *See ATU*, 142 Wn.2d at 225; *Brown*, 139 Wn.2d at 28. Where, as here, the plain language is likely to mislead the average-informed lay voter as to an essential term, the initiative must be stricken. *See WASAVP*, 174 Wn.2d at 660; *Howlett*, 17 Wash. at 635.

C. The Plain Language of the Ballot Title Misleads the Average-Informed Voter Regarding the Ability of the People or the Legislature to Legislate

Beyond misleading voters about the status of prior voter-approved charges, the "voter-approved charge" exception misleads voters about the authority to approve charges in the future in three ways.

First, by simply stating that the voters retain the authority to approve higher fees, the ballot title affirmatively leads the average-informed voter to believe that the People retain the ability to enact higher fees, as they have in the past. In fact, I-976 *repeals* many mechanisms for voter approval of motor vehicle fees. *See supra* § III.A; App. Br. at 39-40.

Second, as the State acknowledges, the law dictates that voters always retain the authority to amend *any* enacted initiative through a subsequent enactment. State's Br. 28.[16] If the average voter understood the "voter-approved" caveat as the State suggests, it is puzzling why this language applies to the License Fee Clause *only* and not the Authority Clause or the Valuation Clause. If voters used the State's strained reading, they would be left to understand that the fee amount could be modified by future enactments, but the other aspects of I-976 could not. *See Bradley v. Dep't of Labor & Indus.*, 52 Wn.2d 780, 784, 329 P.2d 196 (1958) ("necessary" cannon of legal interpretation that the "mention of one thing will be taken to imply the exclusion of another thing"). This is not the law. To the extent the People can wield an initiative to amend the License Fee Clause, so too can they amend the Authority Clause or the Valuation Clause. The State's interpretation is incoherent.

[16] *See Gregoire*, 162 Wn.2d at 290 (each Legislature has plenary power under the Constitution that cannot be constrained by prior Legislatures); *ATU*, 142 Wn.2d at 204 (through initiatives, the People exercise the same sovereign power as the Legislature).

Third, if the exception is interpreted as the State would prefer—to exclude only prospective voter-approved amendments to the terms of I-976—the ballot title misleads by implying that *only* the People, and *not* the Legislature, can amend motor vehicle fees in the future. *See Bradley*, 52 Wn.2d at 784. Again, this is not how plenary legislative power works. *Gregoire*, 162 Wn.2d at 290; *ATU*, 142 Wn.2d at 204. The State's construction of this language remains misleading.

For these reasons too, the "exception" language in the License Fee Clause causes I-976 to fail article II, section 19 review.

D. The Plain Language of the Ballot Title Misleads the Average-Informed Voter Regarding the Consumer Cost of Registration

Separately, the License Fee Clause states that the "annual motor-vehicle-license fees" are limited to "$30." CP 316. This is misleading because, as the State concedes, the cost of motor vehicle registrations and renewals will never actually be lower than $43.25. *See* CP 657.

The State contends that this representation in the ballot title is not improper because "motor-vehicle-license fees" is a term of art with a narrower meaning than the total consumer cost of a registration or renewal, and that narrower definition can be discerned by reference to Washington statutory law. State's Br. 34-36.

Yet, this Court has repeatedly rejected this kind of overly technical ballot title interpretation when analyzing average-informed voter

knowledge. *Washington State Grange v. Locke*, 153 Wn.2d 475, 495, 105 P.3d 9 (2005); *see ATU*, 142 Wn.2d at 193, 219, 227; *see also Senate Republican Campaign Comm.*, 133 Wn.2d at 243–44 (rejecting statutory definition of "candidate" in favor of "standard dictionary" definition because that is the meaning "a voter would accord the term"). Particularly where the campaign endorsing I-976 lobbied using the phrase "Bring Back Our $30 Car Tabs," and named the initiative accordingly (CP 1211), it is likely that the average-informed voter would reasonably understand the "motor vehicle fee" to encompass the consumer cost of a registration or renewal.[17] It does not.

E. The Ballot Title Fails Subject-in-Title Review Because It Does Not Put Voters on Notice of Important Elements of I-976

Furthermore, under article II, section 19, a ballot title must provide the average-informed voter with "notice which would lead to an inquiry into the body of the act" and state "the scope and purpose of the law to an inquiring mind." *ATU*, 142 Wn.2d at 217. The ballot title here conveys three discrete topics (CP 316), but is silent on other important issues implicated by I-976. For example, the ballot title is entirely silent regarding the Section 12-imposed retirement or defeasement of hundreds

[17] To the extent the State would respond by arguing that it is limited in what it can convey in a ballot title, it is worth noting that the State utilized four words in the License Fee Clause to convey, in its view, nothing more than a truism regarding the nature of legislative power.

of millions of dollars in bonds. *See* CP 1226. This is an undertaking of immense budgetary significance—one that could have been its own initiative. Instead, the average-informed voter was asked to vote without any notice regarding Section 12 in the ballot title. This plainly violates the subject-in-title requirement of article II, section 19. *See ATU*, 142 Wn.2d at 217; *Power, Inc. v. Huntley*, 39 Wn.2d 191, 198, 235 P.2d 173 (1951).

F. I-976 Fails Subject-in-Title Review if a Substantial Portion of the Ballot Title Is Inoperative

Finally, if this Court affirms the trial court's finding that Sections 8 and 9 of I-976 are unconstitutional, it will render ineffectual the portion of I-976 described in the ballot title's Valuation Clause. *See* CP 316. The trial court deemed Sections 8 and 9 severable from the remainder of the initiative, but in doing so the trial court did not properly consider the implication of its ruling under article II, section 19.

The Valuation Clause represented one-third of the concise description text presented to voters on their ballots. *See* CP 316. It is impossible to know whether the People would have enacted I-976 had they been informed that the Valuation Clause would not be included.

In such circumstances, it is incumbent upon the Court to refrain from rewriting a substantial portion of the initiative and ascribing knowing and intentional popular approval to an initiative where such a mandate

may not exist; instead, the Court should resort to the sound practice of invalidating the law in full to allow for a legislative reevaluation of the proposal in conformity with Constitutional principles. *See In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 69, 109 P.3d 405 (2005). The State fails to cite any authority that an initiative can stand where a substantial portion of the ballot title is found unconstitutional; and the League is aware of none. If Sections 8 and 9 are unconstitutional, the remainder of I-976 should be stricken under article II, section 19 because the ballot title was misleading as to what the initiative would do. *Cf. Power, Inc.*, 39 Wn.2d at 198; *Howlett*, 17 Wash. at 635.

V. CONCLUSION

For the reasons stated herein, the LWVWA respectfully requests that the Court hold I-976 unconstitutional under article II, section 19 of the Washington Constitution.

DATED this 5th day of June, 2020.

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/Curtis C. Isacke

Curtis C. Isacke, WSBA No. 49303
600 University Street, Suite 2700
Seattle, Washington 98101
Phone: (206) 467-1816
Fax: (206) 624-5128
cisacke@mcnaul.com
Attorneys for The League of Women Voters of Washington

DECLARATION OF SERVICE

I am a citizen of the United States, over the age of 21 years, and not a party to this action. On the 5th day of June, 2020, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the foregoing document upon the parties listed below:

For Appellant King County:
David J. Hackett, Attorney
David J. Eldred, Attorney
Erin B. Jackson, Attorney
Jenifer C. Merkel, Attorney
Rafael Munoz-Cintron, Legal Assistant
David.hackett@kingcounty.gov
David.eldred@kingcounty.gov
Erin.Jackson@kingcounty.gov
Jenifer.merkel@kingcounty.gov
rmunozcintron@kingcounty.gov

For Appellant City of Seattle:
Carolyn U. Boies, Attorney
Erica Franklin, Attorney
John B. Schochet, Attorney
Marisa Johnson, Legal Assistant
Carolyn.boies@seattle.gov
Erica.franklin@seattle.gov
John.schochet@seattle.gov
Marisa.Johnson@seattle.gov

For Appellants Washington State Transit Association; Association of Washington Cities; Port of Seattle; Garfield County Transportation Authority; Intercity Transit; Amalgamated Transit Union Legislative Council of Washington; Michael Rogers; City of Burien; and Justin Camarata
Paul.Lawrence@pacificalawgroup.com
Matthew.Segal@pacificalawgroup.com
Jessica.Skelton@pacificalawgroup.com
Shae.Blood@pacificalawgroup.com

For Intervenor-Appellants/Plaintiffs Washington ADAPT, Transit Riders Union and Climate Solutions:
Knoll Lowney, Attorney
knoll@smithandlowney.com

For Intervenor-Respondent/Defendant Pierce County:
Daniel R. Hamilton, Attorney
Frank A. Cornelius, Attorney
Dan.hamilton@piercecountywa.gov
Frank.cornelius@piercecountywa.gov

For Respondent State of Washington:
Alan D. Copsey
Alicia Young
Lauryn Fraas
Karl Smith
Alan.copsey@atg.wa.gov
Alicia.young@atg.wa.gov
Lauryn.fraas@atg.wa.gov
Karl.smith@atg.wa.gov
Kristin.jensen@atg.wa.gov
Rebecca.DavilaSimmons@atg.wa.gov
Morgan.mills@atg.wa.gov
Noah.purcell@atg.wa.gov

For Respondent/Intervenor-Defendant Clint Didier:
Stephen W. Pidgeon, Attorney
spidgeon007@gmail.com

For Intervenor-Defendants Timothy Eyman, Michael Fagan and Jack Fagan:
Mark D. Kimball, Attorney
mkimball@mdklaw.com

For Amicus Curiae San Juan County:
Randall K. Gaylord
randallg@sanjuanco.com

DATED this 5th day of June, 2020, at Seattle, Washington.

By: s/Katie Walker
Katie Walker, *Legal Assistant*

MENH

June 05, 2020 - 4:11 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98320-8
Appellate Court Case Title:	Garfield County Transportation Authority, et al. v. State of Washington

The following documents have been uploaded:

- 983208_Briefs_20200605161036SC123701_4645.pdf
  This File Contains:
  Briefs - Amicus Curiae
  The Original File Name was 20-0605 Amicus Curiae Brief.pdf

A copy of the uploaded files will be sent to:

- Carolyn.Boies@seattle.gov
- Jacob.Giem@atg.wa.gov
- Jessica.skelton@pacificalawgroup.com
- Lise.Kim@seattle.gov
- SGOOlyEF@atg.wa.gov
- alan.copsey@atg.wa.gov
- alicia.young@atg.wa.gov
- cisacke@mcnaul.com
- david.eldred@kingcounty.gov
- david.hackett@kingcounty.gov
- dawn.taylor@pacificalawgroup.com
- dhamilt@co.pierce.wa.us
- erica.franklin@seattle.gov
- erin.jackson@kingcounty.gov
- fcornel@co.pierce.wa.us
- jenifer.merkel@kingcounty.gov
- john.schochet@seattle.gov
- judyg@atg.wa.gov
- karl.smith@atg.wa.gov
- kim.fabel@seattle.gov
- knoll@smithandlowney.com
- kwalker@mcnaul.com
- lauryn.fraas@atg.wa.gov
- mark@mdklaw.com
- matthew.segal@pacificalawgroup.com
- paul.lawrence@pacificalawgroup.com
- pcpatvecf@piercecountywa.gov
- philip@burifunston.com
- shae.blood@pacificalawgroup.com
- shsappealnotification@atg.wa.gov
- spidgeon007@gmail.com
- stephen.pidgeon@comcast.net
- sydney.henderson@pacificalawgroup.com

Comments:

Sender Name: Katie Rogers - Email: katiewalker@mcnaul.com
Filing on Behalf of: Curtis Campbell Isacke - Email: cisacke@mcnaul.com (Alternate Email:)

Address:
600 University Street
Suite 2700
Seattle, WA, 98101
Phone: (206) 467-1816 EXT 362

Note: The Filing Id is 20200605161036SC123701