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No. 98320-8

THE SUPREME COURT OF THE STATE OF WASHINGTON

GARFIELD COUNTY TRANSPORTATION AUTHORITY, et al.,

Appellant,

v.

STATE OF WASHINGTON,

Appellees.

INTERVENOR-PLAINTIFF'S OPENING BRIEF

Knoll Lowney, WSBA No. 23457
SMITH & LOWNEY, PLLC
2317 E. John Street
Seattle, WA 98112
Telephone: (206) 860-2883
knoll@smithandlowney.com

Attorney for Intervenor-Plaintiffs
Transit Riders Union, Climate Solutions,
and Washington ADAPT.

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I. INTRODUCTION

Washington ADAPT, Transit Riders Union, and Climate Solutions (hereafter “Intervenor-Plaintiffs”) intervened in the action below to amplify the interests of voters in the Central Puget Sound region who secured the passage of certain ballot measures to improve local transit. ADAPT largely adopts and incorporates the briefing and arguments of the original plaintiffs in this action, Garfield County *et al.* (hereafter “Garfield”), but it is critically important for this Court to consider the impact of Initiative 776 (“I-776”) on previously-approved local ballot measures and the organizations and individuals who worked and/or voted to secure passage of such measures. By design, I-776 harnessed a popular statewide movement about motor vehicle fees to override certain election results in the Central Puget Sound region, and in doing so it violates the State Constitution.

Intervenor-Plaintiffs are membership organizations comprised of individuals who worked and voted for the passage of local measures that increased taxes to fund transportation improvements, including but not limited to, the passage of the local measures authorizing the establishment and funding of Sound Transit and the local Transportation Benefit Districts (“TBDs”). The State of Washington granted these members’ local governments the authority to enact these measures, and in

successfully securing their passage the voters secured a protected interest in the outcome of the elections.

Neither I-976 nor its ballot title acknowledge the initiative's impact on voters who have availed themselves of their statutory right to secure passage of these local measures. The ballot title explicitly denies the initiative's impact on voter approved charges, violating the State Constitution's "subject in title" requirement.

I-976 also violates the Constitution's single subject requirement. This violation is clearest in the initiative's attempt to take on both motor vehicle license fees and its specific provisions targeting Sound Transit. These two subjects cannot constitutionally be combined into a single initiative because they have a significantly different "scope." This scope problem, which has led to the invalidation of numerous past initiatives, is multi-faceted. The initiative's limits on taxes and fees are of a long term and continuing nature, whereas provisions requiring Sound Transit to abandon its bonds or suffer a punitive loss of revenue is about a onetime, narrow event. Additionally, these subjects cannot be combined because they have a different geographic scope. Voters throughout the State share interests about vehicle license fees, but only Central Puget Sound residents have a direct interest in those I-976 provisions that would effectively nullify hard-fought elections authorizing Sound Transit's funding. The

State Legislature has determined that only voters within the Sound Transit area have a say on that agency's revenue sources, validating that the I-976's two subjects have different geographical scopes that cannot be combined into a single measure. Finally, the initiative's Sound Transit provisions are not germane to the other provisions of the initiative, rendering the initiative unconstitutional.

ASSIGNMENTS OF ERROR

1. Does I-776 violate the subject in title requirement of Article II, Section 19 of the Washington State Constitution?
2. Does I-776 violate the single subject requirement of Article II, Section 19 of the Washington State Constitution?

STATEMENT OF THE CASE

Intervenor-Plaintiffs hereby incorporate Garfield County's statement of the case.

STANDARD OF REVIEW

Intervenor-Plaintiffs hereby incorporate Garfield County's briefing on the standard of review.

ARGUMENT

Intervenor-Plaintiffs hereby join in Garfield County's arguments and provide the following additional argument and authority as to I-976's violation of Article II, Section 19 of the Washington State Constitution.

“There are two distinct prohibitions in article II, section 19: (1) no bill shall embrace more than one subject and (2) no bill shall have a subject that is not expressed in the title. Its purpose is (1) to prevent ‘logrolling’, or pushing legislation through by attaching it to other necessary or desirable legislation, and (2) to assure that the members of the legislature and the public are generally aware of what is contained in proposed new laws.” *Lee v. State*, 185 Wn.2d 608, 620, 374 P.3d 157 (Wash. 2016) (citations and quotation marks omitted). These mandates are often referred to as the “single subject rule” and the “subject in title rule.” The court “will not hesitate” to invalidate a law that violates either rule. *Wash. Ass’n for Substance Abuse & Violence Prev. v. State*, 174 Wn.2d 642, 654, 278 P.3d 632 (Wash. 2012) [hereinafter *WASAVP*]. A bill need not violate the subject in title rule to violate the single subject rule, and vice versa. *Lee v. State*, 185 Wn.2d at 620; *Amalgamated Transit v. State*, 142 Wn.2d 183, 217, 11 P.3d 762 (Wash. 2000).

A. I-976 violates Article II, Section 19’s “subject in title rule.”

- 1. The ballot title falsely stated that the initiative exempts voter-approved charges, thereby concealing the initiative’s repeal of existing voter-approved charges and statutory authority for such charges.**

The ballot title for I-976 was unconstitutional because it failed to accurately represent the actual content of the initiative. This is particularly

important to voters, like many members of Intervenor-Plaintiffs, who reside in the 110 jurisdictions that enacted transportation benefit districts. Based upon the explicit assurances in the ballot title, these voters believed that I-976 would have no impact on the voter-approved funding for their TBDs. The I-976 ballot title explicitly stated that I-976 would have no impact on such “voter approved charges.” *See* I-976 Ballot Title.

This part of the ballot title is false and misleading, since I-976 will repeal the statutory authority used to enact these voter approved charges, preventing local jurisdictions from continuing to collect them, despite voter approval. It is hard to imagine a more false and deceptive ballot title in this respect.

The ballot title’s falsely stated exception runs directly afoul of Article II, Section 19 since the subject does not put voters on notice of the initiative’s impacts to voter approved charges. This is not a situation where voters can be held to a duty to investigate the initiative. By affirmatively stating that voter approved charges will be exempt, the false ballot title tells voters that there is no need to investigate further.

While the constitutional violation is obvious, its impact on the election is insidious. The ballot title falsely affirmed the sponsor’s slogan that the initiative would simply “let the voters decide,” by “limiting motor-vehicle-license fees to \$30, except voter-approved charges.” I-976, p. 3

(section 2 headline). *See also* I-976 § 1 (“This measure would limit annual motor vehicle license fees to \$30, except voter-approved charges”). This had the result of deceiving voters into believing that the initiative was far more moderate than it was, securing I-976’s narrow passage.

The deception here had an outsized impact because it neutralized a large group of voters who were likely to oppose the measure: voters in jurisdictions that enacted voter-approved vehicle charges. By pandering to these voters with false assurances that the initiative will protect their past elections and future “right to decide,” the unconstitutional ballot title stole the election.

2. The ballot title failed to reflect the initiative’s attack on Sound Transit.

A related but equally important violation of the subject in title rule arises from the ballot title’s failure to inform voters about that I-976 has numerous provisions targeting Sound Transit. The ballot title never discloses or insinuates any impacts to the statutory authority for regional transit authorities, RCW chapter 81.112, or to Sound Transit. Thus, voters were not even put on notice to investigate the initiative for such impacts.

Yet, I-976 is largely focused on hobbling Sound Transit by repealing statutory funding sources, including authority for a vehicle excise tax and the sales and use tax on rental cars. *See* I-976 §§ 10, 11

(repealing RCW 81.104.160). Section 12 of I-976 adds a new substantive provision into RCW chapter 81.112 that purports to require Sound Transit to “fully retire, defease, or refinance” certain outstanding bonds. Section 13 amends RCW chapter 81.104.160 to lower the rate of excise tax that Sound Transit may collect by 75 percent.

Finally, section sixteen contains contingent effective dates that are designed as an enforcement tool directed solely to Sound Transit. If Sound Transit respects its contracts with bondholders by retaining the funding that secures its bonds and not retiring, defeasing, or refinancing the bonds, then the initiative will punish Sound Transit by reducing the excise tax rate by 75 percent. I-976 § 16.

The ballot title gives no hint whatsoever that this initiative contains provisions that laser-target Sound Transit in ways that will undermine both voter-approved funding and the agency’s commitments to bondholders (and consequently, its credit rating and future costs of borrowing).

B. I-976 violates Article II, Section 19’s single subject requirement.

The initiative’s most egregious violation of the single subject requirement stems from I-976’s attempt to address both the subject of vehicle license fees and Sound Transit. Given the initiative’s focus on

Sound Transit in sections 10–13 and 16, this must be considered a separate subject.

Under *Pierce Cty. v. State*, 150 Wn.2d 422, 435-36, 78 P.3d 640 (2003), efforts to target Sound Transit constitute a separate subject if they are made an enforceable part of the initiative, which is precisely the situation here. That case found that there was no second subject only because the initiative at issue there “creates no legally binding obligations on Sound Transit to repay bonds early or conduct a re-vote on light rail.” *Id.* at 433. I-976’s proponents seemed to have reached the precisely wrong conclusion from their 2003 trip to the Supreme Court. Like their past initiative, they continued to take on two subjects, but they now also included legally binding obligations on Sound Transit.

Numerous factors lead to the conclusion that I-976 tackles two subjects in violation of Article II, Section 19 by taking on Sound Transit in addition to its touted subject of bringing back “30-dollar car tabs.”

- 1. The initiative fatally combines a subject of a long term and continuing nature with a subject about a onetime event and of a narrow scope.**

Courts have routinely invalidated legislation that combines aspects of different scope—such as a law with a specific or discrete impact and a more general measure for the future—even where there is some common theme among the two aspects. *Lee v. State*, 185 Wn.2d at 623; *City of*

Burien v. Kiga, 144 Wn.2d 819, 827, 31 P.3d 659 (2001). In *Kiga*, the court held that legislation nullifying specific tax increases and changing the method of assessing property taxes violated the single subject rule, despite both provisions relating to the general topic of tax relief. *Kiga*, 144 Wn.2d at 827-28. Another such case, *Washington Toll Bridge Authority v. State*, held that an act embraced two subjects because it granted continuing power to build toll roads and provided for the construction of a particular toll road, despite the common thread of toll roads. *Wash. Toll Bridge Auth. v. State*, 49 Wn.2d 520, 523-25, 304 P.2d 676 (Wash. 1956). The *Kiga* court noted that in *Washington Toll Bridge*, “[p]articularly problematic was the fact the creation of the state agency was long-term and continuing in nature while the funding provision was a onetime event that was narrow in scope.” *Kiga*, 144 Wn.2d 819 at 826.

Here, I-976 creates a “scope” problem” that is very similar to those cases. Whereas most of I-976’s provisions regulate the collection of future taxes and fees, five of its sections are designed to stop or delay Sound Transit’s plan to expand a high capacity transportation system in the Central Puget Sound region as approved by the Sound Transit 3 ballot measure (“ST3”). This is the same type of problem as in *Washington Toll Bridge*. Much of I-976 tackles taxes and fees of a “long-term and continuing nature.” However, sections 10–13 and 16 limit funding for the

ST3 plan and impose requirements relating to abandonment of ST3 bonds (or facing the consequences). These are about “a onetime event that [is] narrow in scope.”

2. The initiative fatally combines two subjects that have different geographical scopes.

An equally important scope defect here involves the dramatically different geographical scopes and interests of the two subjects. I-976’s sections 2–9 apply equally throughout the State of Washington, so everyone in the State of Washington has a stake in the outcome of the election as to those provisions. The question of whether an initiative can combine issues of different geographic scope is admittedly a case of first impression, but critically important to giving meaning to the single subject rule’s purpose to “prevent ‘logrolling,’ or pushing legislation through by attaching it to other necessary or desirable legislation.” *Lee v. State*, 185 Wn.2d 608 at 620 (citations omitted) (internal quotation marks omitted).

The combination of Sound Transit and vehicle fees inevitably resulted in logrolling. People outside of the Central Puget Sound region had no interest in overturning the ST3 vote or requiring Sound Transit to dispose of its ST3 bonds. They did not get a chance to vote on ST3 because they do not pay the taxes. But they were given a forced choice.

To lower car tabs, they had to also vote to gut Sound Transit's funding.

That is quintessential logrolling.

Unlike the *statewide* scope of sections 2–9, the Sound Transit provisions in sections 10–13 and 16 have only a *localized* scope. RCW chapter 81.112 has application only within the Central Puget Sound region. *See* RCW 81.112.020 (“The legislature recognizes that existing transportation facilities in the Central Puget Sound area are inadequate to address mobility needs of the area It is therefore the policy of the state of Washington to empower counties in the state’s most populous region to create a local agency for planning and implementing a high capacity transportation system within that region.”); RCW 81.112.030 (limiting formation of RTA to two or more contiguous counties each having a population of fourth hundred thousand persons or more).

Unlike the rest of the initiative, the Sound Transit provisions only impact people in the Central Puget Sound area. Voters outside of the Sound Transit area have an interest in car tab fees but are disinterested in whether Sound Transit can tax the people in the Central Puget Sound region or not. The Sound Transit voters are the only ones who really care, and they made their opinions heard when they voted to approve the ST3 ballot measure.

The map of the Sound Transit district¹ illustrates the issue:



¹ https://www.soundtransit.org/sites/default/files/documents/stdistrictmap07_10.pdf

In the ST3 vote in November 2016, approximately 1.3 million voters cast a ballot, passing ST3 with 54.05 percent approval.² In contrast, 3.36 million votes were cast statewide.³ While voters across the state care about vehicle fees, the initiative’s Sound Transit provisions only impact those voters residing the Sound Transit district. They are the only ones who really care about sections 10–13 and 16 of I-976 because of the localized geographic scope of those sections. *See* RCW 81.112.020. It is only their votes that would be overturned by the passage of I-976.

This “geographical scope” issue, like the scope issues that proved fatal to so many past initiatives, creates a dangerous and undeniable “logrolling” situation. This is most apparent when looking at the voters outside of Puget Sound. They voted to lower their own car tab fees, the only issue they cared about, and the Sound Transit provisions were just “logrolled” in.

Had the two subjects of Sound Transit and car tabs been presented separately, as the Constitution required, presumably few voters outside of the Sound Transit area would have cared enough to vote on ST3 taxes or bonds. *See* RCW 81.112.030(8) (Legislature determined that only voters in Sound Transit district had an interest in Sound Transit taxes).

² *Regional Transportation Authority Proposition No. 1 Light-Rail, Commuter-Rail, and Bus Service Expansion*. King County Elections. November 29, 2016.

³ <https://results.vote.wa.gov/results/20161108/Turnout.html>

Presumably the Sound Transit district voters would have stood by their strong approval of ST3. The attack on Sound Transit was only successful because it was bootstrapped to the statewide provisions. While it appears that Washington Courts have never addressed this type of logrolling before, combining provisions with such distinctly different geographic scopes should be declared unconstitutional because it so clearly creates “logrolling” that Article II, Section 19 was designed to prevent.

3. The Legislature has recognized the regional scope problem.

The Legislature has provided a critical pronouncement on this “regional scope” issue within RCW chapter 81.112. The Legislature decided that a regional transportation authority (“RTA”) could only be formed through a “ballot proposition to authorize the imposition of taxes to support the implementation of an appropriate phase of the plan within its service area.” RCW 81.112.030(8). Importantly, “[a] simple majority of those voting *within the boundaries of the authority* is required for approval.” *Id.* (emphasis added). Thus, the Legislature validated that only voters within the Sound Transit region have a stake in the outcome and therefore only they should vote on these regional taxes. The Legislature affirmed this approach when it authorized Sound Transit to raise additional money for ST3 by gaining approval of voters *within the Sound*

Transit area. See 2nd Eng. SSB 5987 (2015) (amending RCW 81.104.140 et seq.).

This regional scope problem has another dimension in that the voters within the Sound Transit region in fact voted to approve the ST3 plan and revenue sources. For sections 2–9, this was a new vote for everyone. But that was not the case for sections 10–13 and 16. On those sections, I-976 constituted a re-vote on the hard-fought election in which the voters in the Sound Transit region approved ST3. This geographical scope problem is fatal to I-976.

4. Sections 12 and 16 are not germane to other provisions.

In deciding whether a measure violates the single subject rule, the courts require the measure’s provisions to be germane to both the general title and to one another. *Kunath v. City of Seattle*, 10 Wn.App. 2d 205, 226, 444 P.3d 1235 (Wash. Ct. App. 2019).⁴ Here, the Sound Transit provisions fail that test. The initiative’s acrobatic attempts to hobble Sound Transit by forcing it to abandon its commitment to bondholders or else face a retributory decrease in tax revenue (sections 12 and 16) are in no way germane to the bulk of the initiative focused on lowering future

⁴ This is the more liberal test that applies even if the measure’s title is a general one. I-976 cannot even meet this more liberal test. Moreover, the I-976 title is best described as restrictive so a more stringent test should apply.

vehicle taxes and fees (section 1–9). These Sound Transit bond sections have no impact on those sections that will lower taxes and fees. Moreover, as discussed above, the Sound Transit sections, which apply only locally, cannot be considered germane to statutes that apply statewide. They will have no impact and therefore cannot be germane in most of the State.

5. Sound Transit has historically been considered a separate subject.

In deciding whether Sound Transit is a different subject than general vehicle taxes and fees, courts look to whether these items have been traditionally addressed as the same or different subjects. *Lee v. State*, 185 Wn.2d at 623 (no history that the Legislature has treated sales tax reductions and procedures for approving future taxes together); *WASAVP*, 174 Wn.2d at 659 (that spirits and wine are both liquor “have been governed as such by the same act for decades” indicates they are the same subject). Whereas vehicle excise taxes and fees have long existed, the Legislature first authorized the formation of RTA in 1992 through passage of ESHB 2610, which solely addressed regional transportation authorities.

CONCLUSION

The Court should declare I-776 unconstitutional for the reasons stated herein.

Respectfully submitted this 24th day of April 2020.

Smith & Lowney, pllc
By: /s/ Knoll Lowney
Knoll Lowney WSBA No. 23457
Attorneys for Intervenor-Plaintiffs
Transit Riders Union, Climate
Solutions, and Washington ADAPT.

SMITH & LOWNEY

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- shsappealnotification@atg.wa.gov
- spidgeon007@gmail.com
- stephen.pidgeon@comcast.net
- sydney.henderson@pacificlawgroup.com

Comments:

Filing on Behalf of: Eric D. 'Knoll' Lowney - Email: knoll@smithandlowney.com (Alternate Email: knoll@smithandlowney.com)

Address:
2317 E John St
Seattle, WA, 98112
Phone: (206) 860-1570

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