

FILED
SUPREME COURT
STATE OF WASHINGTON
5/15/2020 4:05 PM
BY SUSAN L. CARLSON
CLERK

NO. 98320-8

**SUPREME COURT OF THE
STATE OF WASHINGTON**

GARFIELD COUNTY TRANSPORTATION AUTHORITY, ET AL,

Appellants/Cross-Respondents,

v.

STATE OF WASHINGTON,

Respondent/Cross-Appellant.

**INTERVENOR DEFENDANT PIERCE COUNTY'S
RESPONDENT'S BRIEF**

MARY E. ROBNETT
Prosecuting Attorney

By
DANIEL R. HAMILTON
Deputy Prosecuting Attorney
Attorneys for Intervenor
Defendant Pierce County

955 Tacoma Avenue South
Suite 301
Tacoma, WA 98402
PH: (253) 798-6732

Table of Contents

| | <u>Page</u> |
|---|-------------|
| Table of Authorities | ii |
| I. INTRODUCTION | 1 |
| II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL..... | 1 |
| III. STATEMENT OF THE CASE | 1 |
| IV. ARGUMENT | 1 |
| A. Pierce County Joined The State’s Opposition to Plaintiffs’ Challenge Because The Passage of I-976 Reflects Local Authority | 2 |
| B. Plaintiffs do not Show <i>Beyond a Reasonable Doubt</i> that I- 967 Violates Art. 11 §12 | 3 |
| V. CONCLUSION..... | 8 |

Table of Authorities

| | <u>Page</u> |
|---|-------------|
| Cases | |
| <i>Amalgamated Transit Union Local 587 v. State</i> , 142 Wn.2d 183, 205, 11 P.3d 762, 27 P.3d 608 (2000)..... | 4 |
| <i>Belas v. Kiga</i> , 135 Wn.2d 913, 919, 959 P.2d 1037 (1998)..... | 5 |
| <i>Clark v. Dwyer</i> , 56 Wn.2d 425, 431, 353 P.2d 941 (1960)..... | 5 |
| <i>Cnty. Telecable of Seattle, Inc. v. City of Seattle, Dep't of Exec. Admin.</i> , 164 Wn.2d 35, 41, 186 P.3d 1032 (2008)..... | 3, 8 |
| <i>Degel ex rel. Estate of Perisho v. Buty</i> , 108 Wn. App. 126, 132, 128, 29 P.3d 768 (2001)..... | 7 |
| <i>Grant v. Spellman</i> , 99 Wn.2d 815, 819, 664 P.2d 1227 (1983)..... | 4 |
| <i>In re Estate of Thompson</i> , 103 Wn.2d 292, 294, 692 P.2d 807 (1984)..... | 5 |
| <i>In re Parentage of R.F.R.</i> , 122 Wn. App. 324, 333, 93 P.3d 951, 956 (2004)..... | 7 |
| <i>Island Cty v. State</i> , 135 Wn.2d 141, 147, 955 P.2d 377 (1998)..... | 4, 5 |
| <i>Pierce Cty. v. State</i> , 150 Wn.2d 422, 430, 78 P.3d 640 (2003) (“Pierce Cty. I”), as amended on denial of reconsideration (Mar. 9, 2004)..... | 4, 7 |
| <i>State ex rel. Distilled Spirits Inst., Inc. v. Kinnear</i> , 80 Wn.2d 175, 180, 492 P.2d 1012 (1972)..... | 5 |
| <i>State ex rel. Heavey v. Murphy</i> , 138 Wn.2d 800, 808–09, 982 P.2d 611 (1999)..... | 5 |
| <i>State v. Gresham</i> , 173 Wn.2d 405, 428, 269 P.3d 207 (2012)..... | 5 |
| <i>State v. Redd</i> , 166 Wash. 132, 6 P.2d 619 (1932)..... | 6, 7 |
| <i>Washington Fed'n of State Employees v. State</i> , 127 Wn.2d 544, 556, 901 P.2d 1028 (1995)..... | 5 |

Washington State Farm Bureau Federation v. Gregoire, 162 Wn.2d 284,
291 n. 7, 174 P.3d 1142 (2007).....8

Statutes

RCW 81.112 *et seq.*.....3

I. INTRODUCTION

Intervenor-Defendant Pierce County joins the State of Washington in requesting that the challenge to Initiative 976 (hereinafter “I-976”) by Plaintiffs Garfield County Transportation Authority, *et al.*, and their intervenors, be rejected and the trial court’s order affirmed. Though Pierce County agrees with and adopts the State’s reasoning as to all *other* issues, it separately asks this Court to reject Plaintiffs’ Article 11 Section 12 attack for reasons *different* than those argued by the State. Specifically, Plaintiffs’ challenge on *that* constitutional ground should be rejected for their failure to overcome the presumption of I-976’s constitutionality. The Court need not, and should not, go further in its analysis of that particular attack than to dismiss it for Plaintiffs’ failure to meet their constitutional burden.

II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL

Pierce County adopts the State’s Assignments of Error and Statement of the Issues on Appeal. *See* RB 3-4.

III. STATEMENT OF THE CASE

Pierce County also adopts the State’s Statement of the Case. *See* RB 4-11.

IV. ARGUMENT

As noted above, though none of the constitutional attacks raised

against I-976 have merit, the attack made under Art. 11, §12 should be rejected for no other reason than that Plaintiffs fail to overcome the Presumption of I-976's Constitutionality.

A. Pierce County Joined The State's Opposition to Plaintiffs' Challenge Because The Passage of I-976 Reflects Local Authority

Apparently without irony, Plaintiffs argue that "I-976 uses state legislative power to squash local taxing decisions" and offends "the 'deep-seated Anglo-American principle of keeping taxation as close to the tax-burdened electorate as possible.'" AB 64, 66. In fact, for voters in Pierce County and most of Washington's other counties, it is Plaintiffs' I-976 challenge that threatens to "squash local taxing decisions" and offend the principle of "home rule." The "taxing decision" of the majority of voters in Washington's "local taxing" authorities was to vote *in favor* of I-976 – including 57.45% of the voters living in the service area of lead Plaintiff Garfield County Transportation Authority.¹ Indeed, because 65.75% of Pierce County voters -- like the majority of voters in *33 of Washington's 39 counties* – made the taxing decision to enact I-976,² the local taxing authority (i.e. the Pierce County Council) voted to have that County actively intervene in this action. *See* CP 985.

¹ See https://results.vote.wa.gov/results/20191105/State-Measures-Initiative-Measure-No-976_ByCounty.html.

² *Id.*

Further, as to Pierce County in particular, it – along with King and Snohomish Counties – are members of a special purpose metropolitan municipal corporation “Sound Transit” created under RCW 81.112 *et seq.* In 2016, a new regional transit system plan was enacted – despite its rejection by Pierce County voters – which increased, among other things, motor vehicle excise taxes. *See* Regional Transportation Authority Prop. No. 1 Light-Rail, Commuter-Rail, and Bus Serv. Expansion; King County Elections, Nov. 29, 2016. However, I-976 allowed Pierce County voters to limit annual car registration fees for vehicles weighing 10,000 pounds at \$30.00, and base vehicle taxes on the Kelley Blue Book value (rather than Sound Transit’s inflated valuation method based on 85 percent of the manufacturer’s base suggested retail price), as well as to repeal the authorization for Sound Transit to impose a motor vehicle excise tax. *See* Washington Initiative 976; The News Tribune, Pierce County sends a message to Sound Transit with vote on the I-976 car-tab measure, Nov. 7, 2019. Consistent with their own arguments, Plaintiffs should not be able to squash local taxing decisions.

B. Plaintiffs do not Show *Beyond a Reasonable Doubt* that I-967 Violates Art. 11 §12

As this Court holds in *Cnty. Telecable of Seattle, Inc. v. City of Seattle, Dep't of Exec. Admin.*, 164 Wn.2d 35, 41, 186 P.3d 1032 (2008), a

court “will avoid deciding constitutional questions where a case may be fairly resolved on other grounds.” In that Plaintiffs’ Art. 11 § 12 attack can be rejected because they have not met their burden of proving beyond a reasonable doubt that I-976 is unconstitutional, the Court *in this case* need not go further on the vesting issue than to find that burden was not met.

An “initiative measure is presumptively constitutional,” and thus a plaintiff who asserts that it “violates the state constitution ‘bears the heavy burden of establishing its unconstitutionality *beyond a reasonable doubt.*” See *Pierce Cty. v. State*, 150 Wn.2d 422, 430, 78 P.3d 640 (2003) (“*Pierce Cty. I*”), as amended on denial of reconsideration (Mar. 9, 2004)(quoting *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762, 27 P.3d 608 (2000))(emphasis added) This requires Plaintiffs to “by argument and research, *convince* the court that there is *no reasonable doubt* that the statute violates the constitution,” see *Island Cty v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998)(emphasis added), which means “every presumption favors validity of an act ..., all doubts must be resolved in support of an act, and it will not be declared unconstitutional unless it clearly appears to be so.” See *Grant v. Spellman*, 99 Wn.2d 815, 819, 664 P.2d 1227 (1983).

Plaintiffs’ burden “is in keeping with the fact that ‘[t]he Legislature possesses a plenary power in matters of taxation except as limited by the

Constitution,’ and ‘the constitution is not a grant but a restriction upon the legislative power,’” so that “‘the power of the legislature to enact all reasonable laws is *unrestrained* except where, either expressly or by fair inference, it is *prohibited* by the state and federal constitutions.” *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 808–09, 982 P.2d 611 (1999) (citing *Belas v. Kiga*, 135 Wn.2d 913, 919, 959 P.2d 1037 (1998); *State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 180, 492 P.2d 1012 (1972) (citing *Clark v. Dwyer*, 56 Wn.2d 425, 431, 353 P.2d 941 (1960)). This fully applies to Plaintiffs’ I-976 challenge because in “approving initiative measures, the people exercise the same power of sovereignty as the Legislature when it enacts a statute.” *See Washington Fed’n of State Employees v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995) (citing *In re Estate of Thompson*, 103 Wn.2d 292, 294, 692 P.2d 807 (1984)). Further, legislation also is presumed Constitutional and a “heavy burden” imposed to overcome it because “‘the Legislature speaks for the people and we are hesitant to strike a duly enacted statute unless *fully convinced*, after a searching legal analysis, that the statute violates the constitution.” *State v. Gresham*, 173 Wn.2d 405, 428, 269 P.3d 207 (2012)(quoting *Island Cty, id.*)(emphasis added). Hence, the presumption favoring I-976, and the burden imposed on Plaintiffs to overcome it, are especially appropriate in analyzing Plaintiffs’ challenge because here the

people *spoke directly for themselves* and did so on *matters of taxation*.

Based alone on this *presumption* of constitutionality and burden to prove *beyond a reasonable doubt* any unconstitutionality, Plaintiffs' argument that the trial court erred because it rejected their claim that Article 11, section 12 was violated is - by its own admission -- deficient. This is so because they admit that in the case law "there has been little consideration given to the impact of article XI, section 12's vesting clause—namely, what is the legal effect of a legislative decision to 'vest in' the municipality 'the power to assess and collect taxes' for local purposes?" AB 69-70. Specifically, though Plaintiffs contend the "vesting" language of Art. 11 § 12 is determinative, they admit it "has not been addressed since *State v. Redd*, 166 Wash. 132, 6 P.2d 619 (1932)" almost 90 years ago. AB 65, 71-73. However, *Redd* did not concern the withdraw of taxing power from local authorities. Rather, it held only that upon being granted taxing power local authorities "have the power to list and value property within the county for local taxation purposes, [and] no other authorities can legally relist and revalue that property for local taxation purposes." *Id.* at 147 (emphasis added). *See also* RB 62-63.

On the other hand, in reaching its decision imposing limitations on the Legislature's power to interfere with local taxation, *Redd* acknowledged the question at issue here: "Would it not follow that the

Legislature could withhold, grant, or *discontinue* the power at its pleasure?” 166 Wash. at 138 (emphasis added). By *Redd*’s subsequent holding, it follows that the answer to that question would have been that the Legislature does *not have that power*. Similarly, though Plaintiffs ignore that Pierce County agrees with the State that the attack based on that provision must fail – but does so on different grounds, Plaintiffs correctly note “co-Respondent, Pierce County, agreed with appellants” that *Pierce Cty I* did not address the Art. 11 § 12 vesting issue raised here (AB 80). *See discussion infra* at 3-6.

Thus, Plaintiffs essentially are relegated to attempting to distinguish caselaw relied upon by the State – i.e. *Pierce County I* – on the ground “the vesting clause of article XI, section 12 was not argued in *Pierce Cty. I*, nor did this Court address it.” *See* AB 80. However, Plaintiffs’ reliance on inapplicable caselaw and attempt to distinguish authority cited by the State, as a matter of law fail to meet their “heavy burden” of overcoming I-976’s presumption of constitutionality. *See e.g. In re Parentage of R.F.R.*, 122 Wn. App. 324, 333, 93 P.3d 951, 956 (2004) (“Ruben has not met his burden of showing that the statute violates” the constitution because he “cites no authority directly supporting his claim” and at least one case “suggests” to the contrary); *Degel ex rel. Estate of Perisho v. Buty*, 108 Wn. App. 126, 132, 128, 29 P.3d 768 (2001) (rejecting

constitutional challenge to statute where, though a prior decision “did not raise the constitutional issues presented in this appeal, the Supreme Court’s insight is nonetheless persuasive,” and “[b]ecause [Plaintiff’s] contentions to the contrary are the crux of her constitutionality argument, we find them to be unpersuasive” and “conclude that [Plaintiff] failed to establish that” the statute in question “is unconstitutional.”)

In short, neither Plaintiffs nor the State cite authority that has ever decided the issue of whether a state-wide withdraw of local taxing power violates Art. 11, § 12 while that power is being exercised. However, the burden in this challenge is on Plaintiffs and their failure to meet it is dispositive of their Art. 11, § 12 argument. Thus, I-976 retains its presumption of constitutionality and the Court need not reach the substantive arguments addressing Art. 11 § 12 but should “adhere to the fundamental principle that if a case can be decided on nonconstitutional grounds, an appellate court should refrain from deciding constitutional issues.” *Washington State Farm Bureau Federation v. Gregoire*, 162 Wn.2d 284, 291 n. 7, 174 P.3d 1142 (2007) (quotation omitted). *See also Cmty. Telecable of Seattle, Inc.*, 164 Wn.2d at 41.

V. CONCLUSION

For the above stated reasons, as well as those asserted in the State’s Brief of Respondent/Cross-Appellant on issues *other than Article 11 § 12*,

Pierce County respectfully requests the Court affirm the trial court's rejection of Plaintiffs' constitutional challenges to I-976.

DATED this 15th day of May, 2020.

MARY E. ROBNETT
Prosecuting Attorney

s/ DANIEL R. HAMILTON
DANIEL R. HAMILTON, WSBA # 14658
Pierce County Prosecutor / Civil
Ph: 253-798-6732
E-mail: dan.hamilton@piercecountywa.gov

s/ FRANK A. CORNELIUS
FRANK A. CORNELIUS, WSBA # 29590
Pierce County Prosecutor / Civil
Ph: 253-798-7746
E-mail: frank.cornelius@piercecountywa.gov

955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Attorneys for Intervenor Defendant Pierce
County

CERTIFICATE OF SERVICE

On May 15, 2020, I hereby certify that I electronically filed the foregoing INTERVENOR DEFENDANT PIERCE COUNTY'S RESPONDENT'S BRIEF with the Clerk of the Court and I delivered a true and accurate copy via electronic mail to the following:

COUNSEL FOR CITY OF SEATTLE:

Carolyn Boies, WSBA #40395
Erica Franklin, WSBA #43477
John B. Schochet,
WSBA #35869
Carolyn.Boies@seattle.gov
Erica.Franklin@seattle.gov
John.Schochet@seattle.gov
Marisa.Johnson@seattle.gov

COUNSEL FOR KING COUNTY:

David Hackett, WSBA #21236
David J. Eldred, WSBA #26125
Erin B. Jackson, WSBA #49627
Jenifer C. Merkel, WSBA #34472
David.Hackett@kingcounty.gov
David.Eldred@kingcounty.gov
Erin.Jackson@kingcounty.gov
Jenifer.Merkel@kingcounty.gov
rmunozcintron@kingcounty.gov

COUNSEL FOR STATE OF WASHINGTON:

Alan D. Copsey, WSBA #23305
Alicia Young, WSBA #35553
Karl Smith, WSBA #41988
Lauryn Fraas, WSBA #53238
Alan.Copsey@atg.wa.gov
Alicia.Young@atg.wa.gov
Karl.Smith@atg.wa.gov
Lauryn.Fraas@atg.wa.gov
Noah.Purcell@atg.wa.gov
Kristin.Jensen@atg.wa.gov
Rebecca.Davilasimmons@atg.wa.gov
Morgan.Mills@atg.wa.gov

COUNSEL FOR PLAINTIFFS WASHINGTON STATE TRANSIT ASSOCIATION, ASSOCIATION OF WASHINGTON CITIES, PORT OF SEATTLE, GARFIELD COUNTY TRANSPORTATION AUTHORITY, INTERCITY TRANSIT, AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHINGTON, AND MICHAEL ROGERS:

Paul J. Lawrence, WSBA #13557
Matthew J. Segal, WSBA #29797

Jessica A. Skelton, WSBA
#36748
Shae Blood, WSBA #51889
Paul.Lawrence@pacificallawgroup.com
Matthew.Segal@pacificallawgroup.com
Jessica.Skelton@pacificallawgroup.com
Shae.Blood@pacificallawgroup.com
Sydney.Henderson@pacificallawgroup.com

**COUNSEL FOR TRANSIT
RIDERS UNION
WASHINGTON ADAPT
CLIMATE SOLUTIONS:**
Knoll Lowney, WSBA #23457
knoll@smithandlowney.com

**COUNSEL FOR CLINT
DIDIER, KEVIN HEINEN,
MATTHEW MORELL,
JOHN LOGUE, PARKER
OLSEN:**
Stephen W. Pidgeon, WSBA
#25265
Stephen.pidgeon@comcast.net

**COUNSEL FOR TIMOTHY
EYMAN, JACK FAGAN AND
MICHAEL FAGAN:**
Mark D. Kimball, WSBA #13146
Joel F. Murray, WSBA #44786
mkimball@mdklaw.com
joel@joelmurray.org

**COUNSEL FOR AMICUS
CURIAE SAN JUAN
COUNTY:**
Randall K. Gaylord,
WSBA#16080
randallg@sanjuanco.com

s/ JEANINE L. LANTZ

JEANINE L. LANTZ
Legal Assistant
Pierce County Prosecutor's Office
Civil Division, Suite 301
955 Tacoma Avenue South
Tacoma, WA 98402-2160
Ph: 253-798-6083 / Fax: 253-798-6713

PIERCE COUNTY PROSECUTING ATTORNEY CIVIL DIVISION

May 15, 2020 - 4:05 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_20200515160241SC217026_6259.pdf
This File Contains:
Briefs - Respondent Intervenor
The Original File Name was Garfield_PC_Resondents Brief.pdf

A copy of the uploaded files will be sent to:

- Carolyn.Boies@seattle.gov
- Jessica.skelton@pacificlawgroup.com
- Lise.Kim@seattle.gov
- SGOOlyEF@atg.wa.gov
- alan.copsey@atg.wa.gov
- alicia.young@atg.wa.gov
- david.eldred@kingcounty.gov
- david.hackett@kingcounty.gov
- dawn.taylor@pacificlawgroup.com
- 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
- lauryn.fraas@atg.wa.gov
- mark@mdklaw.com
- matthew.segal@pacificlawgroup.com
- morgan.mills@atg.wa.gov
- paul.lawrence@pacificlawgroup.com
- shae.blood@pacificlawgroup.com
- shsappealnotification@atg.wa.gov
- spidgeon007@gmail.com
- stephen.pidgeon@comcast.net
- sydney.henderson@pacificlawgroup.com

Comments:

Intervenor Defendant Pierce County's Respondent's Brief

Sender Name: Jeanine Lantz - Email: jeanine.lantz@piercecounitywa.gov

Filing on Behalf of: Daniel Ray Hamilton - Email: dhamilt@co.pierce.wa.us (Alternate Email: pcpatvecf@piercecounitywa.gov)

Address:

955 Tacoma Ave S Ste 301

Tacoma, WA, 98402-2160

Phone: (253) 798-6732

Note: The Filing Id is 20200515160241SC217026