FILED
SUPREME COURT
STATE OF WASHINGTON
11/4/2020 4:40 PM
BY SUSAN L. CARLSON
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GARFIELD COUNTY TRANSPORTION AUTHORITY; KING COUNTY; CITY OF SEATTLE; WASHINGTON STATE TRANSIT ASSOCIATION; ASSOCIATION OF WASHINGTON CITIES; PORT OF SEATTLE; INTERCITY TRANSIT; AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHINGTON; and MICHAEL ROGERS, Petitioners, WASHINGTON ADAPT, TRANSIT RIDERS UNION; and CLIMATE SOLUTIONS, Intervenor-Petitioners, v. STATE OF WASHINGTON, Respondent, and CLINT DIDIER; PERMANENT, OFFENSE; TIMOTHY D. EYMAN, MICHAEL FAGAN; JACK FAGAN; and PIERCE COUNTY, Intervenor-Respondents.	NO. 98320-8

INTERVENORS' MOTION FOR RECONSIDERATION

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Pursuant to RAP 12.4 Intervenor-Respondent Clint Didier, by and through counsel of record Stephen Pidgeon, moves this court for reconsideration of its opinion filed in this court on October 15, 2020, attached hereto as Exhibit A in regard to the decision of the Trial Court, as set forth in its Order Granting Plaintiffs' Motion for Preliminary Injunction, attached hereto as Exhibit B, its Order on Cross-Motions for Summary Judgment, attached hereto as Exhibit C, and the following decision of the Trial Court as set forth in Order on Motions for Reconsideration Regarding Article I, Section 12 Issues, attached hereto as Exhibit D.

Didier seeks reconsideration of this Court's opinion and a new holding which would declare I-976 to contain a single subject and there was no subject-in-title violation, and to otherwise declare the expression of over one million voters to be constitutional as it relates to Article II, section 19.

ARGUMENT

In the General Election on November 5, 2019, Washington voters approved Initiative Measure No. 976 ("I-976") with 52.97 percent of the votes cast. The voters had previously passed "$30 Tabs Initiatives" in 1999 and 2002 and were therefore very familiar with the subject matter.

An exercise of the initiative power is an exercise of the reserved power of the people to legislate. *Amalgamated Transit v. State,* 11 P. 3d 762, 779 (Wash 2000), *citing State ex rel. Heavey v. Murphy,* 138

Wash.2d 800, 808, 982 P.2d 611 (1999); *Belas v. Kiga,* 135 Wash.2d 913, 920, 959 P.2d 1037 (1998). In approving an initiative measure, the people exercise the same power of sovereignty as the Legislature does when enacting a statute. *ATU, op cit., citing Wash. Fed'n of State Employees v. State,* 127 Wash.2d 544, 556, 901 P.2d 1028 (1995).

A statute enacted through the initiative process is, as are other statutes, presumed to be constitutional. *ATU, supra* at 780*; Brower v. State*, 137 Wash.2d 44, 52, 969 P.2d 42 (1998); *Gerberding,* 134 Wash.2d at 196, 949 P.2d 1366; *State ex rel. O'Connell v. Meyers,* 51 Wash.2d 454, 458, 319 P.2d 828 (1957). A party challenging the constitutionality of a statute bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt. *State ex rel. Heavey,* 138 Wash.2d at 808, 982 P.2d 611; *Gerberding,* 134 Wash.2d at 196, 949 P.2d 1366. This standard is met if argument and research show that there is no reasonable doubt that the statute violates the constitution. *Belas,* 135 Wash.2d at 920, 959 P.2d 1037; *Island County v. State,* 135 Wash.2d 141, 147, 955 P.2d 377 (1998).

As the Trial Court stated in its Order on Cross-Motions for Summary Judgment: "A court may not strike down an initiative simply because it dislikes it or disagrees with its policies. As the Washington Supreme Court has made clear:

> [I]t is not the prerogative nor the function of the judiciary to substitute what they may deem to be their better judgment for that of the electorate in enacting initiatives . . . unless the errors in judgments clearly contravene state or federal constitutional provisions. [Citation omitted.] Nor is it the province of the courts

> to declare laws passed in violation of the constitution valid based upon considerations of public policy.

ATU, 142 Wn.2d at 206. (Order on Cross-Motions, pp. 11-12)

The Trial Court found that Plaintiffs did not satisfy their burden of establishing that I-976 violated the "Single Subject Rule" of Article II, Section 19 of the Washington Constitution. (Order on Cross-Motions, p. 12).

Article II, section 19 provides: "No bill shall embrace more than one subject, and that shall be expressed in the title." This provision is to be liberally construed in favor of the legislation. *WASAVP*, 174 Wn.2d at 654. One sees no liberal construction in this Court's opinion. Section 14 of I-976 is the construction clause and it reads: "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." In other words, whenever the proposed legislation, whether enacted by the people or the Legislature, can be read, interpreted, or construed more than one way, the court is required to read, interpret, and construe it in the way that upholds it. The Trial Court did just that.

As the trial court correctly stated: "The single-subject rule aims to prevent the grouping of incompatible measures and to prevent 'logrolling,' which occurs when a measure is drafted such that a legislator or voter may be required to vote for something of which he or she disapproves in order to secure approval of an unrelated law." *WASAVP*, 174 Wn.2d at 655. In determining whether an initiative embraces one subject or multiple subjects, a court begins by examining the initiative's ballot title to

determine whether the title is general or restrictive – broad or narrow, in other words. *Id.* And *Filo Foods, LLC v. City of SeaTac,* 183 Wn.2d 770, 782, 357 P.3d 1040 (2015). "'[A] few well-chosen words, suggestive of the general subject stated, is all that is necessary.'" *WASAVP,* 174 Wn.2d at 655 (quoting *ATU,* 142 Wn.2d at 209). (Order on Cross-Motions, p. 14).

The Trial Court then found that "I-976's ballot title is general, not restrictive. The overarching subject matter identified in the first sentence of the ballot title is "motor vehicle taxes and fees." This broad title description is equivalent to initiative titles that the Washington Supreme Court has recognized as general." See *WASAVP,* 174 Wn.2d at 655; *Filo Foods,* 183, Wn.2d at 784; *ATU,* 142 Wn.2d at 217. (Order on Cross-Motions, p. 15).

As the Trial Court reasoned: "Where a title is general, the constitution requires only that there be 'rational unity' between the initiative's general subject and its component provisions. That is, matters within the body of the initiative must be germane to the general title and they must be germane to one another. *WASAVP, op cit, citing City of Burie v. Kiga, 144* Wn.2d 819, 826, 31 P.3d 659 (2001). "Courts are to use 'great liberality' in making this determination." *Filo Foods, supra.* "There is no violation of [the single-subject rule] even if a general subject contains several incidental subjects or subdivisions." *WASAVP,* 174 Wn.2d at 656, *citing Wash. Fed'n of State Emps.,* 127 Wn.2d at 556. (Order on Cross-Motions, p. 14)

The Trial Court explicitly found that "because I-976 generally 'concerns motor vehicle taxes and fees,' its various substantive provisions need only be germane to that topic and to one another to survive single-subject scrutiny. *Filo Foods,* 183 Wn.2d at 782-83." (Order on Cross-Motions, p. 13).

While this court concluded that section 12 of the initiative was an unconstitutional second subject, the trial court found to the contrary. No wonder it did – consider the specific language in Section 12: *"In order to effectuate (definition of effectuate: "to put into force, carry out, achieve") the policies, purposes, and intent of this act and to ensure that the motor vehicle excise taxes repealed by this act are no longer imposed or collected, an authority that imposes a motor vehicle excise tax under RCW 81.104.160 (right now, that's only Sound Transit but this policy would have affected any other government imposing a tax under this statute) must fully retire, defease, or refinance any outstanding bonds."*

As a result, Didier believes the trial court – which heard nearly eight (8) hours of oral argument on the subject – made the correct determination when it said as follows: "Section 12 is germane to the general subject of motor vehicle fees and taxes because it is intended to ensure that one type of repealed motor vehicle tax, the special MVET levied and collected by Sound Transit, is no longer collected. Section 12 accomplishes this by requiring that bonds repaid by special MVET revenues **must** [bold added] be retired early, defeased, or refinanced. [Footnote omitted]." "Since

Section 12 is necessary to implement Sections 10 and 11 (which repeal Sound Transit's car tab tax), both of which are germane to the general subject of motor vehicle taxes and fees, Section 12 is likewise germane to the same general subject. ... all of I-976's provisions operate in a coordinated, conjunctive way to serve a unified legislative goal of repealing, reducing, or removing authority to impose motor vehicle fees and taxes. They are germane to each other and to I-976's general subject. ... Section 12 is necessary to achieve the repeal of the special MVET ... as such, Section 12's impact upon existing bonds is directly related to facilitating the tax repeals and reductions." (Order on Cross-Motions, pp. 14-15).

Section 12 is not simply germane to the I-976 subject – it is central and of core relevance. The Trial Court recognized this in its review of *Pierce County v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006) ("*Pierce Cty. II*") stating that "by making the elimination of Sound Transit's authority to levy and collect its special MVET contingent upon Sound Transit's ability to retire, defease, or refinance its outstanding bonds, Section 12 of I-976 is a mechanism to avoid the unconstitutional flaw that the Supreme Court identified in *Pierce Cty. II*." (Order on Cross-Motions, p. 14). This mechanism is both rationally related to and germane to the general subject.

Again, the Trial Court explained its reasoning in not finding a second subject violation, stating that "if Sound Transit were to retire its bonds pursuant to Section 12 before its tax authority is repealed under

Sections 10 and 11 of I-976, then the repeal of Sound Transit's tax authority could not and would not impair its bond contracts." Importantly, the Court reasoned that "Section 12 is necessary [bold added] to implement Sections 10 and 11, both of which are germane to the general subject or motor vehicle taxes and fees."

The Court went on to the state "Section 12 is likewise germane to the same general subject." *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 637, 71 P.3d 644 (2003). (Order on Cross-Motions, p. 14).

The same holds for subject-in-title. The Trial Court made clear there was nothing wrong with the ballot title: "Like the single-subject rule, the subject-in-title rule is to be liberally construed in favor of the legislation. At the preliminary injunction phase of this case, this Court concluded that Plaintiffs were likely to prevail on their subject-in-title claim. Now, upon consideration of the parties' additional arguments and authorities, the Court concludes the Plaintiffs have failed to satisfy their heavy burden of establishing a violation of Article II, section 19. The ballot title does not mislead … Nowhere does the 'voter-approved charges' exception identify with specificity which 'charges' would be allowed to exceed the $30 annual limit. Ultimately, a plain reading of I-976's ballot title indicates to an inquiring mind the scope and purpose of the initiative and gives notice that would lead to an inquiry into the body of the act. Voters wondering whether their favored local fee or tax would

survive I-976 would have received no assurance either way from the ballot title. … Liberally construing I-976's ballot title in favor of the initiative, as the Court must, the Court concludes that is satisfies the subject-in-title rule. Since the first clause of I-976's ballot title makes clear that certain fees and taxes would be repealed or removed, the second clause does not mislead by indicating that non-specified 'voter-approved charges' would exceed the $30 limit." (Order on Cross-Motions, pp. 20-21)

Because of these issues, Didier respectfully asks this Court to reconsider its opinion and to restructure its decision to find that Plaintiffs did not meet their burden to establish beyond a reasonable doubt the I-976 was unconstitutionally invalid.

DATED this 4th day of November 2020.

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CERTIFICATE OF SERVICE

I hereby declare that on this day I caused true copies of the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification to all counsel of record, and by email upon the following parties:

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Dated November 4, 2020.

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Exhibit A

FILE
IN CLERK'S OFFICE
SUPREME COURT, STATE OF WASHINGTON
OCTOBER 15, 2020

THIS OPINION WAS FILED
FOR RECORD AT 8 A.M. ON
OCTOBER 15, 2020

SUSAN L. CARLSON
SUPREME COURT CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GARFIELD COUNTY TRANSPORTATION AUTHORITY; KING COUNTY; CITY OF SEATTLE; WASHINGTON STATE TRANSIT ASSOCIATION; ASSOCIATION OF WASHINGTON CITIES; PORT OF SEATTLE; INTERCITY TRANSIT; AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHIINGTON; and MICHAEL ROGERS,	)	
Petitioners,	)	
WASHINGTON ADAPT; TRANSIT RIDERS UNION; and CLIMATE SOLUTIONS,	)	
Intervenor-Petitioners,	)	
v.	)	No. 98320-8
STATE OF WASHINGTON,	)	
Respondent,	)	
CLINT DIDIER; PERMANENT OFFENSE; TIMOTHY D. EYMAN;	)	

MICHAEL FAGAN; JACK FAGAN;)
and PIERCE COUNTY,)
)
Intervenor-Defendants.)
) Filed: October 15, 2020
_____)

GONZÁLEZ, J.— The people of our state have the power to propose and approve legislation. WASH. CONST. art. II, § 1. When the people act in their legislative capacity, they are, like any other legislative body, bound by constitutional constraints. Under our constitution, "[n]o bill shall embrace more than one subject, and that shall be expressed in the title." WASH. CONST. art. II, § 19. Initiative Measure 976 (I-976) contains more than one subject, and its subject is not accurately expressed in its title. Accordingly, it is unconstitutional.

BACKGROUND

I-976 is the latest in a series of initiatives about reducing or eliminating local motor vehicle excise taxes, including taxes that have been pledged to support major transportation projects in our state. These efforts are a response to the legislature's decision to authorize "counties in the state's most populous region to create a local agency for planning and implementing a high capacity transportation system," which ultimately resulted in the creation of Sound Transit. LAWS OF 1992, ch. 101 (largely codified in ch. 81.112 RCW); *Cent. Puget Sound Reg'l Transit Auth. v. Miller*, 156 Wn.2d 403, 406-07, 128 P.3d 588 (2006). Authorized regional transit authorities were empowered to ask their voters to approve

transportation system proposals and financing secured by local taxes and fees, including local motor vehicle excise taxes. RCW 81.112.030, .050, .130-.150. The legislature also empowered local transportation benefit districts and other local governments to impose taxes, including motor vehicle excise taxes, and fees to fund local transportation projects and to seek voter approval for additional funding. *E.g.*, LAWS OF 2005, ch. 336; ch. 36.73 RCW; ch. 82.80 RCW.

A "motor vehicle excise tax" is "a tax on the privilege of relicensing a motor vehicle for use on public roadways." *Sheehan v. Cent. Puget Sound Reg'l Transit Auth.*, 155 Wn.2d 790, 802, 123 P.3d 88 (2005). Motor vehicle excise taxes are "based on the value of the vehicle, as set out by statute in a depreciation schedule." *Black v. Cent. Puget Sound Reg'l Transit Auth.,* 195 Wn.2d 198, 202, 457 P.3d 453 (2020) (citing former RCW 82.44.041 (1991)). Whether they are based on the value of the vehicle or are a flat fee can make a tremendous difference in the amount an individual will pay. For example, a 1 percent tax on a vehicle worth $100,000.00 would be $1,000.00. A 1 percent excise tax on a vehicle worth $1,000.00 would be $10.00. If instead there is a flat fee of $43.25, the relicensing of every vehicle would cost the same.

Sound Transit was formed in 1993. In 1996, voters in the counties of King, Pierce, and Snohomish approved a transportation proposal and a funding plan secured by local taxes and fees, including local motor vehicle excise taxes. *Id.*

Based on that vote, Sound Transit issued bonds secured by these local funding sources. *Id.* (citing *Pierce County v. State*, 159 Wn.2d 16, 24, 148 P.3d 1002 (2006) (*Pierce County* II)). Not long after those bonds were sold, some taxpayers began challenging the taxes and fees funding Sound Transit and other locally approved transportation projects through litigation, legislation, referenda, and initiatives. *See, e.g.*, *Pierce County* II, 159 Wn.2d 16; *Sheehan*, 155 Wn.2d at 795; *Amalg. Transit Union Local 587 v. State*, 142 Wn.2d 183, 191, 11 P.3d 762 (2000) (*ATU*).

In 2018, initiative sponsors filed at least 13 initiatives concerning motor vehicle taxes. The attorney general drafted ballot titles for at least 9 of them. After receiving these ballot titles, the sponsors chose to proceed with I-976 and a ballot title that read:

> 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.
>
> Should this measure be enacted into law?
>
> Yes [ ]
>
> No [ ]

Clerk's Papers (CP) at 1131, 316, 1253. The ballot title appears to have been drawn from the "policies and purposes" section of I-976, which reads in relevant part:

> This measure and each of its provisions limit state and local taxes, fees, and other charges relating to motor vehicles. This measure would limit annual motor vehicle license fees to $30, except voter-approved charges, repeal and remove authority to impose certain vehicle taxes and charges; and base vehicle taxes on Kelley Blue Book.

CP at 1212.

The initiative passed statewide with about 53 percent of the vote, though it was rejected by about 53 percent of the voters in the Sound Transit region, about 60 percent of King County voters, and about 70 percent of San Juan voters, who depend heavily on ferries funded by motor vehicle excise taxes.

Several counties, cities, associations and private citizens (collectively challengers) challenged I-976's constitutionality. These challengers argued that I-976 violated many provisions of our state constitution. They argued that I-976 contained multiple subjects in violation of article II, section 19's single subject requirement. They also argued I-976 violated section 19's subject-in-title requirement because the ballot title falsely suggested voter-approved motor vehicle taxes would not be repealed. In fact, the initiative repealed both current voter-approved taxes and fees, and the existing statutory mechanism for voter approval in the future. Among many other things, plaintiffs also argued that the ballot title

falsely suggested vehicle license registration fees would be reduced to $30.00 when, in fact, the lowest would be $43.25.

The challengers successfully sought a preliminary injunction in King County Superior Court to block its implementation. The trial judge initially concluded that the plaintiffs were likely to prevail on the grounds that the ballot title was misleading. Meanwhile, several parties, including the initiative sponsors, a group of taxpayers, Pierce County, transit groups, and environmental groups were granted leave to intervene.

Most parties moved for summary judgment. At summary judgment, the trial judge largely upheld the initiative. The trial judge did find that the initiative violated the privileges and immunities clause of the state constitution by giving Kelley Blue Book a legislative privilege, but also that those provisions were severable. Those provisions would have replaced a statutory depreciation schedule for valuing vehicles with the values established by Kelley Blue Book. LAWS OF 2020, ch. 1, § 8 (I-976). The trial judge allowed further factual development on the city of Burien's impairment of contract claim under article I, section 23. The primary parties stipulated that direct review of the remaining issues was appropriate, and we accepted review. Amicus briefs in support of the challengers have been filed by the International Municipal Lawyers Association and Legal Scholars; San Juan County; the League of Women Voters of Washington; and the

Puyallup Tribe of Indians, the Nisqually Indian Tribe, and the Tribal Transportation Planning Organization Transit Subcommittee.

ANALYSIS

This case is here on appeal from summary judgment. Our review is de novo. *Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 652, 278 P.3d 632 (2012) (*WASAVP*) (citing *Pierce County v. State*, 150 Wn.2d 422, 429, 78 P.3d 640 (2003) (*Pierce County* I)).

In our state, the people have a constitutional power to propose and pass legislation. WASH. CONST. art. II, § 1(a). When acting in this legislative capacity, the people are subject to the constraints laid out in our constitution. *ATU*, 142 Wn.2d at 204 (citing *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 808, 982 P.2d 611 (1999)). We presume initiatives are constitutional, and the challenger bears the burden of establishing otherwise. *Id.* (citing *Brower v. State*, 137 Wn.2d 44, 52, 969 P.2d 42 (1998); *Heavey*, 138 Wn.2d at 808). Initiatives are read as the average informed lay voter would read them. *WASAVP*, 174 Wn.2d at 662 (quoting *W. Petrol. Imps., Inc. v. Friedt*, 127 Wn.2d 420, 424, 899 P.2d 792 (1995)).

1. Article II, section 19 single subject requirement

Under our constitution, "[n]o bill shall embrace more than one subject, and that shall be expressed in the title." WASH. CONST. art. II, § 19. The challengers

contend that I-976 violates article II, section 19's single subject requirement. This constitutional provision is liberally construed in favor of upholding legislation. *WASAVP*, 174 Wn.2d at 654 (citing *ATU*, 142 Wn.2d at 206).

Article II, section 19 serves three purposes. *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 24, 200 P.2d 467 (1948). First, it prevents "logrolling," where a popular measure is attached to an unpopular one to ensure passage of the unpopular measure. *Pierce County* I, 150 Wn.2d at 429-30 (citing *Wash. Fed'n of State Emps. v. State*, 127 Wn.2d 544, 554, 901 P.2d 1028 (1995)). Second, it "enlighten[s] the members of the legislature [and voters considering initiatives] against provisions in bills of which the titles give no intimation." *Yelle*, 32 Wn.2d at 24. Third, it informs the public through the regular publication of legislative proceedings about the subjects being considered. *Id.* Initiatives that contain more than one subject are void in their entirety. *City of Burien v. Kiga*, 144 Wn.2d 819, 825, 31 P.3d 659 (2001) (citing *Power, Inc. v. Huntley*, 39 Wn.2d 191, 200, 235 P.2d 173 (1951)). We construe legislation liberally to avoid a multiple subject problem, but we do not shirk from our responsibility to enforce the constitution's mandates. *See, e.g.*, *Lee v. State*, 185 Wn.2d 608, 622-23, 374 P.3d 157 (2016) (finding a two subjects violation in an initiative that both set a sales tax rate and proposed a constitutional amendment requiring a supermajority vote or voter approval to raise taxes); *ATU*, 142 Wn.2d at 217 (finding a two

subjects violation when an initiative set car tab fees at $30 and required a supermajority vote or voter approval to raise taxes).

I-976 has 17 sections. Briefly, section 1 of the initiative states that its purpose is to limit vehicle licensing costs. LAWS OF 2020, ch. 1, § 1 (I-976). Specifically,

> This measure and each of its provisions limit state and local taxes, fees, and other charges relating to motor vehicles. This measure would limit annual motor vehicle license fees to $30, except voter-approved charges, repeal and remove authority to impose certain vehicle taxes and charges; and base vehicle taxes on Kelley Blue Book rather than the dishonest, inaccurate, and artificially inflated manufacturer's suggested retail price (M[SR]P). Voters have repeatedly approved initiatives limiting vehicle costs. Politicians must learn to listen to the people.

Id.

Sections 2-5 are in the portion of the initiative labeled "LIMITING ANNUAL MOTOR-VEHICLE-LICENSE FEES TO $30, EXCEPT VOTER-APPROVED CHARGES." LAWS OF 2020, ch. 1.

Section 2 creates a new section in chapter 46.17 RCW that provides, among other things, "State and local motor vehicle license fees may not exceed $30 per year for motor vehicles, regardless of year, value, make, or model." *Id.* § 2(1). It defines "state and local motor vehicle license fees" as "the general license tab fees paid annually for licensing motor vehicles" but not "charges approved by voters after the effective date of this section." *Id.* § 2(2). "Vehicles" are broadly defined

as including cars, sport utility vehicles, light trucks, motorcycles, and motor homes. *Id.*

Section 3 reduces license fees on snowmobiles, some trucks, and commercial trailers. *Id.* § 3(1).

Section 4 also reduces license fees on light trucks. *Id.* § 4(1)(b).

Section 5 reduces fees that had been charged on electric and hybrid vehicles to mitigate their impact on the state's highways. *Id.* § 5(1).

Sections 6 and 7 are in the section labeled "REPEAL AND REMOVE AUTHORITY TO IMPOSE CERTAIN VEHICLE TAXES AND CHARGES." LAWS OF 2020, ch. 1.

Section 6 repeals the statutes that authorized transportation benefit districts to impose annual vehicle fees of up to $100 per vehicle and that authorized imposition of a local motor vehicle excise tax to support passenger-only ferries. *Id.* It also repeals a statute that imposed fees on motor home vehicles, a statute that imposed a passenger weight fee, and a statute that directed the use of those funds.

Section 7 repeals a sales tax on motor vehicles. *Id.*

The remaining 10 sections are in a section titled "BASE VEHICLE TAXES USING KELLEY BLUE BOOK VALUE." LAWS OF 2020, ch. 1.

Section 8 creates a new section in chapter 82.44 RCW that requires taxes to be based on Kelley Blue Book values. *Id.*

Section 9 requires the use of Kelley Blue Book values in taxpayer appeals. *Id.*

Section 10 removes regional transit authorities' power to levy and collect a special motor vehicle excise tax after a public vote. *Id.* § 10(4)(a)(ii). Sound Transit is currently the only regional transit authority in our state. By virtue of section 16, this provision takes effect only after outstanding bonds secured by the tax are retired, defeased, or refinanced. *Id.* § 16(1).

Section 11 eliminates the special motor vehicle excise tax previously approved by voters in the Sound Transit region, as well as some sales and use taxes. *Id*. § 11(2). It also eliminates the existing motor vehicle excise tax valuation method based on purchase price instead of Kelley Blue Book values. *Id.* § 11(1). It also takes effect only after outstanding bonds are retired, defeased, or refinanced. *Id.* § 16(1).

Section 12 creates a new section in chapter 81.112 RCW requiring Sound Transit to retire early, defease, or refinance existing bonds funded by previously voter-approved special motor vehicle excise tax funds if permissible under the bond contracts. *Id.* § 12(2). The initiative drafters may have been trying to avoid the impairment of contracts problem that was fatal to Initiative 776 (I-776) in *Pierce County* II, 159 Wn.2d at 24. Sections 10 and 11 come into effect only if Sound Transit can lawfully retire, defease, or refinance the bonds. *Id.* § 16(1).

Section 13 changes the maximum motor vehicle excise tax Sound Transit can seek approval from voters to impose from eight-tenths of a percent to two-tenths of a percent of a vehicle's value. *Id.* § 13(1). It comes into effect if Sound Transit does not retire, defease, or refinance existing bonds by March 31, 2020. *Id.* § 16(2).

Section 14 requires liberal construction. *Id.* § 14.

Section 15 makes any invalid provision of the initiative severable. *Id.* § 15.

Section 16 sets forth the time limits relevant to §§ 10, 11, and 13. *Id.* § 16.

Section 17 declares that the initiative shall be called "Bring Back Our $30 Car Tabs." *Id.* § 17.

Our single subject analysis is framed differently depending on whether the ballot title is general or restrictive. *ATU*, 142 Wn.2d at 209-211 (collecting cases). The parties agree that I-976 has a general title. In such cases, all that is required is "'rational unity between the general subject and the incidental subdivisions.'" *WASAVP*, 174 Wn.2d at 656 (internal quotation marks omitted) (quoting *State v. Grisby*, 97 Wn.2d 493, 498, 647 P.2d 6 (1982)). "[T]he existence of rational unity or not is determined by whether the matters within the body of the initiative are

germane to the general title and whether they are germane to one another." *Kiga*, 144 Wn.2d at 826 (citing *ATU*, 142 Wn.2d at 209-10).[1]

While the parties agree that the title is general, they disagree on how to articulate the subject of the initiative. The State suggests I-976 has a general title that expresses its subject as "motor vehicle taxes and fees." Corrected Br. of Resp't State of Wash. at 17. Based in part on the sponsor's title, the challengers suggest the general title expresses the subject of "'limiting' vehicle taxes and fees paid at vehicle registration." Opening Br. of Appellants at 17 (noting that the sponsors title the initiative "AN ACT Relating to **limiting** state and local taxes, fees, and other charges relating to vehicles").

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[1] We take this opportunity to overrule this court's opinion in *Price v. Evergreen Cemetery Co. of Seattle*, 57 Wn.2d 352, 357 P.2d 702 (1960). We may overrule a prior case when it is both incorrect and harmful. *Deggs v. Asbestos Corp.*, 186 Wn.2d 716, 727-28, 381 P.3d 32 (2016) (quoting *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970)). *Price* is both. *Price* considered the constitutionality of a 1953 law that said, "It shall be unlawful for any cemetery under this act to refuse burial to any person because such person may not be of the Caucasian race." LAWS OF 1953, ch. 290, § 53, at 838. Section 53 was part of a larger bill with the title "AN ACT relating to the regulation of cemeteries." *Id.*, ch. 290. The majority concluded the bill had two subjects in violation of article II, section 19: "(1) civil rights, and (2) the endowment care funds of private cemeteries and the creation of a cemetery board." *Price*, 57 Wn.2d at 354. This was a strained and incorrect way to divide the subjects in the bill, all of which were germane to the subject of cemetery regulation. It is harmful for two reasons: first, because it suggests a more stringent standard than is required to survive an article II, section 19 challenge, second, and more importantly, the case is harmful because of Justice Mallery's concurrence, which condemns civil rights and integration. *Id.* at 355-58. "As judges, we must recognize the role we have played in devaluing black lives." Letter from the Wash. State Supreme Court to the Members of the Judiciary and the Legal Cmty. 1 (June 4, 2020) (addressing racial injustice). The *Price* concurrence is an example of the unfortunate role we have played.

We faced a somewhat similar situation in *Pierce County* I. There, the ballot title said:

> "Initiative Measure No. 776 concerns state and local government charges on motor vehicles. This measure would require license tab fees to be $30 per year for motor vehicles, including light trucks. Certain local-option vehicle excise taxes and fees used for roads and transit would be repealed."

Pierce County I, 150 Wn.2d at 427 (quoting record). We found that the subject was "limiting license tab fees on cars and light trucks." *Id.* at 436. However, while the parties disputed the subject, it was not a major issue in the case.

By contrast, determining the subject of the initiative was a major issue in *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 71 P.3d 644 (2003). In that case, the ballot title read, "'Shall it be a gross misdemeanor to capture an animal with certain body-gripping traps, or to poison an animal with sodium fluoroacetate or sodium cyanide?'" *Id.* at 627 (quoting record). The challengers argued that the initiative contained two subjects, killing animals with poison and killing animals with body-gripping traps. *Id.* at 635. The State argued that the subject was the humane treatment of animals. *Id.* We rejected both the challengers' distillation as overly restrictive and the State's as overly broad. *Id.* at 635-36. Instead, we made "[a] more moderate interpretation" and found the subject "deals with banning methods of trapping and killing animals." *Id.* at 636. Given that, we found that the different provisions relating to traps and to poison

were germane to each other and that the initiative did not violate article II, section 19's single subject requirement. *Id.*

Similarly, in *WASAVP*, we rejected a single subject challenge to an initiative that privatized liquor sales. 174 Wn.2d at 659-60. The ballot title for that initiative read:

> "Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits (hard liquor).
>
> "This measure would close state liquor stores and sell their assets; license private parties to sell and distribute spirits; set license fees based on sales; regulate licensees; and change regulation of wine distribution.
>
> "Should this measure be enacted into law?
>
> "[ ] Yes
>
> "[ ] No"

Id. at 647 (quoting record). The challengers argued that the subject of the initiative was liquor sales privatization and that provisions in the initiative that earmarked revenue for public safety, privatized wine distribution, impacted liquor advertising, and modified the State's policy on liquor were all unconstitutional separate subjects. *Id.* at 656. Without specifically accepting or rejecting the challengers' formulation of the subject, we rejected their challenge. *Id.* at 656, 660. We found "an obvious connection" between liquor sales and public safety. *Id.* at 657. We found a close connection between liquor and wine, especially as they "share the common distinction of being liquor and have been governed as such by the same

act for decades." *Id.* at 659. We concluded that advertising was clearly germane and that policy changes were not separate subjects for purposes of article II, section 19. *Id.* at 659-60.

Similar to the initiative at issue in *Pierce County* I and II, here, we conclude that the subject expressed in the ballot title is "limiting vehicle taxes and fees."

The challengers contend that several provisions in I-976 are not germane to each other or to the general subject. Without reaching all of their arguments, we agree that section 12, which requires Sound Transit to retire, defease, or refinance bonds, is not germane to limiting vehicle taxes and fees, and the provisions of the initiative that carry out that subject. Thus, section 12 is an unconstitutional second subject.

This court faced a very similar challenge to I-776 in *Pierce County* I and II. 150 Wn.2d at 432-33*; Pierce County* II, 159 Wn.2d at 48-49. That case involved an initiative that reduced motor vehicle excise taxes and fees, and repealed taxes that had been pledged to repay bonds. *Pierce County* II, 159 Wn.2d at 21-22; LAWS OF 2003, ch. 1 (I-776). In addition to the operative sections of the initiative that repealed or reduced taxes and fees, two sections called for, but did not require, existing bonds secured by those taxes to be retired and a future vote held before

any further sale. LAWS OF 2003, ch. 1, §§ 1, 7.[2] The trial court found these sections created a second subject in violation of article II, section 19. *Pierce County* I, 150 Wn.2d at 432-33. Over a forceful dissent, this court reversed on the grounds "that policy expressions in a bill or initiative measure do not contribute additional 'subjects' within the meaning of article II, section 19." *Id.* at 433. The dissent disagreed, characterizing the initiative as containing

> at least two subjects. First, it limits the amount state and local governments may charge for motor vehicle licensing. Initiative Measure 776 (I-776) §§ 2, 3, 4, 6 & 8. Second, it calls for four counties to halt development of a voter-approved light rail transit system until the funding mechanisms are revisited and reapproved. I-776 §§ 1, 7. These subjects are not rationally related, and therefore the initiative violates our constitution.

Id. at 443 (Chambers, J., dissenting). In Justice Chambers' view,

> [t]he evils of logrolling are not eliminated (though they may be diminished) merely because some text is inoperative. Further, the proponents of future legislation will be encouraged to add inoperative subjects to sell their proposal with empty (and probably unfunded) promises. Results could range from whimsical to menacing. A group seeking the decriminalization of certain drugs would be wise to seek votes from older voters by adding an inoperative subject demanding legislation legalizing the production of

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[2] Section 7 said:

> If the repeal of taxes in section 6 of this act affects any bonds previously issued for any purpose relating to light rail, *the people expect transit agencies to retire these bonds using reserve funds* including accrued interest, sale of property or equipment, new voter approved tax revenues, or any combination of these sources of revenue. *Taxing districts should abstain from further bond sales* for any purpose relating to light rail until voters decide this measure. *The people encourage transit agencies to put another tax revenue measure before voters* if they want to continue with a light rail system dramatically changed from that previously represented to and approved by voters.

LAWS OF 2003, ch. 1, § 7 (emphasis added).

> generic versions of currently patented and highly priced drugs to reduce the costs of medications. The same group might seek votes from tax foes by demanding legislation repealing the sales tax on all pharmacologically related products. . . . [T]he confusion and distraction will not serve our State and is prohibited by our constitution. The potential and temptations for creative logrolling have few limits. Our constitution, read properly, forbids embracing two subjects in one bill whether the subjects are operative or not.

Id. at 445 (Chambers, J., dissenting). Because of the way the case was presented in *Pierce County* I, a majority of the court never reached whether an *operative* requirement to retire bonds secured by repealed taxes would have violated the single subject rule.

But in *Pierce County* II, the parties' arguments did require the court to reach whether an operative requirement to retire bonds secured by repealed taxes was germane to limiting taxes and fees. *Pierce County* II primarily concerned whether I-776 violated article II, section 23 of the state constitution by impairing contracts with bondholders by repealing taxes that secured existing bonds. 159 Wn.2d at 22-23. Defenders of I-776 suggested that any unconstitutional impairment of contracts could be resolved by making section 7 of the initiative mandatory and directing Sound Transit to retire its bonds. We rejected that argument, concluding that crucial to our determination was section 7 of the initiative being precatory, mere "policy fluff" and not enforceable. Section 7 of the initiative provided in part that "[i]f the repeal of taxes in section 6 of this act affects any bonds previously issued for any purpose relating to light rail, the people expect transit agencies to

retire these bonds." LAWS OF 2003, ch. 1 § 7 (I-776). The intervenors ask this court to "revive" this inoperative part of the initiative, contrary to both the contract clause and article II, section 19 of the constitution. *See Pierce County* I, 150 Wn.2d at 444 (Chambers, J. dissenting) (suggesting that I-776 violates Washington Constitution article II, section 19 because section 7 of the initiative constitutes a second subject: "$30 license tabs across the entire state are not germane to the financing" of a local transit system).

> The law should not be construed to do indirectly what it cannot do directly. *Gelpcke v. City of Dubuque*, 68 U.S. (1 Wall.) 175, 192, 17 L. Ed. 520 (1864) ("It is almost unnecessary to say, that what the legislature cannot do directly, it cannot do indirectly. The stream can mount no higher than its source."); *W. River Bridge Co. v. Dix*, 47 U.S. (6 How.) 507, 516, 12 L. Ed. 535 (1848) ("All the powers of the states, as sovereign states, must always be subject to the limitations expressed in the United States Constitution . . . . What is forbidden to them, and which they cannot do directly, they should not be permitted to do by color, pretence, or oblique indirection."). We will not give effect to a provision that would result in a violation of the single subject requirements by directing the parties to order their financial affairs in a manner that coerces compliance with unlawful legislation. To do so would, in Chief Justice Marshall's words, "subvert the very foundation of all written constitutions." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178, 2 L. Ed. 60 (1803).

Pierce County II, 159 Wn.2d at 48-49 (alteration in original). I-976 suffers from the same flaw. Simply put, section 12 is a separate subject in violation of article II, section 19. It is not mere "policy fluff" as was the similar provision in I-776. *Id.* at 48. Section 12 is a specific directive to retire, defease, or refinance existing

bonds, if possible. This is a separate subject from "limiting vehicle taxes and fees." Accordingly, I-976 violates article II, section 19's single subject rule.

While *Pierce County* II is dispositive, there are other difficulties with combining a requirement to retire, defease, or refinance existing bonds that secure a specific existing project with more general statutory changes. We have regularly found two subjects in violation of article II, section 19 when a measure both contained a one-time required action (for example, building a toll road from Tacoma to Everett) and a broader systematic change in the law (for example, empowering a state agency to establish and operate a system of toll roads). *Wash. Toll Bridge Auth. v. State*, 49 Wn.2d 520, 521, 523-25, 304 P.2d 676 (1956). Similarly, we found two subjects when an initiative combined a one-time refund of taxes with systematic changes to the property tax assessment system. *Kiga*, 144 Wn.2d at 827. We also found two subjects when an initiative set car tabs at $30 and required voter approval for tax increases. *ATU*, 142 Wn.2d at 217. A specific direction to Sound Transit to retire, defease, or refinance the bonds is akin to a one-time refund of taxes, the setting of car tabs at $30, and the building of a single toll road; the larger changes to the motor vehicle excise tax system are akin to the systematic changes to the property tax system, the change to the requirements for tax increases, and the creation of a toll road authority, rendering it unconstitutional.

While not dispositive, combining such general and specific provisions in a single bill raises article II, section 19 concerns.

Similarly, we have found constitutional concerns in bills that combine unrelated local and statewide effects, as was the case in *Washington Toll Bridge Authority*, 49 Wn.2d at 523-24. Again, in that case, a single act directed a state agency to build a toll road between high-population cities and dramatically increased that state agency's powers. *Id.* at 523 (citing LAWS OF 1955, ch. 268). The challengers argue this is analogous to the relationship between section 12, which, in effect, directs a single regional transportation district, Sound Transit, to retire, defease, or refinance bonds, and the bulk of the rest of the initiative, which makes significant changes to motor vehicle excise taxes generally. Again, while not dispositive, it is evidence of two subjects.

Consistent with our opinion in *Pierce County* II, we find section 12 creates a separate subject from the main subject in the initiative, limiting vehicle taxes and fees. We do not reach whether the other challenged provisions of I-976 create unconstitutional separate subjects.

2. Article II, section 19 subject-in-title requirement

The challengers, joined by the League of Women Voters of Washington, argue the initiative also violates article II, section 19's subject-in-title requirement. They contend the ballot title is misleading because, among other things, it

incorrectly suggests motor vehicle excise taxes will be reduced to $30, that taxes previously approved by voters will survive, and that voters can still approve taxes in the future.

The ballot title of an initiative is the title for purposes of an article II, section 19 analysis. *WASAVP*, 174 Wn.2d at 655 (citing *Wash. Fed'n of State Emps.*, 127 Wn.2d at 555). The ballot title consists of the subject statement, the concise description, and the question of whether the measure should be enacted into law. *Id.* (citing RCW 29A.72.050). Words in a ballot title are given their common, ordinary meanings, and not a hypertechnical legal interpretation. *See id.* at 661-62 (quoting *ATU*, 142 Wn.2d at 226). Instead, it is read as the average informed voter would read it. *Id.* at 662 (quoting *W. Petrol. Imps*., 127 Wn.2d at 424).

For the purpose of a subject-in-title analysis, "a title complies with the constitution if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law." *Young Men's Christian Ass'n v. State*, 62 Wn.2d 504, 506, 383 P.2d 497 (1963); *ATU*, 142 Wn.2d at 217. "'The title to a bill need not be an index to its contents; nor is the title expected to give the details contained in the bill.'" *Wash. Fed'n*, 127 Wn.2d at 555 (quoting *Treffry v. Taylor*, 67 Wn.2d 487, 491, 408 P.2d 269 (1965)).

While the title need not be an index to the contents of the bill, it must not be misleading. "[T]he material representations in the title must not be misleading or

false, which would thwart the underlying purpose of ensuring that 'no person may be deceived as to what matters are being legislated upon.'" *WASAVP*, 174 Wn.2d at 660 (quoting *Seymour v. City of Tacoma*, 6 Wash. 138, 149, 32 P. 1077 (1893)). "'[A] title which is misleading and false is not constitutionally framed.'" *Id.* at 661 (alteration in original) (quoting *Howlett v. Cheetham*, 17 Wash. 626, 635, 50 P. 522 (1897)). "[O]bjections to the title must be grave . . . before we will hold an act unconstitutional." *N. Cedar Co. v. French*, 131 Wash. 394, 419, 230 P. 837 (1924) (citing *Lancey v. King County*, 15 Wash. 9, 45 P. 645 (1896)).

This court found a bill's title was unconstitutionally deceptive and misleading in *DeCano v. State*, 7 Wn.2d 613, 630-31, 110 P.2d 627 (1941). There, the measure was titled "'AN ACT relating to the rights and disabilities of aliens with respect to land.'" *Id.* at 623; LAWS OF 1937, ch. 220. Chapter 220 amended a previous act that had denied many civil rights to "aliens," including the right to own real property. LAWS OF 1937, ch. 220 (amending LAWS OF 1921, ch. 50). The 1921 act had exempted from its denial of civil rights anyone "who has in good faith declared his intention to become a citizen of the United States." LAWS OF 1921, ch. 50, § 1(a). The 1937 act significantly limited who could own property by also requiring the person to be a citizen or be eligible for citizenship. LAWS OF 1937, ch. 220, § 1(a). The Court found the 1937 act violated article II, section 19 because

> the title . . . is not sufficiently broad and comprehensive to warrant inclusion within the subject matter of the act of 'non-citizens . . . ineligible to citizenship by naturalization,' . . . [and,] by adopting a term defined in the earlier statute without giving any indication that its meaning has been changed and broadened by statutory definition, actually, although inadvertently no doubt, tends to be misleading and deceptive.

DeCano, 7 Wn.2d at 630-31. Relying in part on *DeCano*, we found that the ballot title for Initiative Measure 695 (I-695) was inadequate for failing to give notice of the measure's contents in *ATU*. *ATU*, 142 Wn.2d at 226. That ballot title said: "'Shall voter approval be required for any tax increase, license tab fees be $30 per year for motor vehicles, and existing vehicle taxes be repealed.'" *Id.* at 193. The body of I-695 said that "'tax' includes, but is not necessarily limited to . . . impact fees, license fees, permit fees, and any monetary charge by [the] government." LAWS OF 2000, ch. 1, § 2(2). The court concluded:

> I-695 violates the subject-in-title rule of article II, section 19 on the basis that the ballot title of I-695 states "[s]hall voter approval be required for any *tax* increase" without any indication in the title that "tax" has a meaning broader than its common meaning. Nothing about this ballot title gives any notice that would indicate to the voters that the contents of the initiative would include voter approval for charges other than taxes or suggest inquiry into the act be made to learn the broad meaning of "tax."

ATU, 142 Wn.2d at 227 (alteration in original) (footnote omitted). In contrast, we found no subject-in-title problem with the liquor privatization bill, Initiative 1183. That title said that

> "Initiative Measure No. 1183 concerns liquor: beer, wine, and spirits (hard liquor).

> "This measure would close state liquor stores and sell their assets; license private parties to sell and distribute spirits; set license fees based on sales; regulate licensees; and change regulation of wine distribution."

WASAVP, 174 Wn.2d at 647 (quoting *State of Washington Voters' Pamphlet, General Election* 19 (Nov. 8, 2011)). The challengers argued that the ballot title was inadequate and misleading because some of those fees were in fact taxes. We rejected that challenge because

> [a] common understanding of the term "fee" is "a charge fixed by law or by an institution (as a university) for certain privileges or services <a license [fee]>. . . ." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 833 (2002). The license issuance fees under I–1183 correspond with this common meaning, as they are charges for the privilege of selling liquor in Washington State.

Id. at 664 (alterations in original). Thus, that ballot title was not deceptive or misleading. Here, the ballot statement for I-976 says:

> 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 at 1131 (emphasis added). The challengers argue that the initiative violates the subject-in-title rule because it misleadingly implies that local vehicle excise taxes and fees previously approved by voters will survive passage of the initiative, when in fact sections 6, 10, 11 and 13 would eliminate a large number of voter-approved charges and remove the very statutory mechanism by which voters could approve charges in the future. The State concedes that I-976 cancels voter-approved taxes

and removes the mechanisms for voters to approve them in the future. It contends, however, that the ballot title is not misleading because it says that certain taxes are repealed and because, under our constitution, the legislature or the people, via initiative, could reenact such authority in the future.

We read ballot titles as the average informed lay voter would. *WASAVP*, 174 Wn.2d at 662 (quoting *W. Petrol. Imps*., 127 Wn.2d at 424). The average informed lay voter would not think that "[t]his measure would . . . limit annual motor-vehicle-license fees to $30, except voter-approved charges" would mean charges previously approved by voters would be eliminated. CP at 1131. As the League of Women Voters notes, many voters have voted on such measures in the past, and "the average-informed voter encountering the phrase 'except voter-approved charges' would expect that these earlier votes were the reason for the 'except' clause [and] would have no reason to anticipate that I-976 would implicitly repeal their votes while telling them that 'voter-approved charges' were 'except[ed].'" Amicus Curiae Br. of League of Women Voters of Wash. at 12 (second alteration in original). [3]

[3] The State does not dispute that under I-976, no person would pay less than $43.25 to renew their car tabs. At oral argument, the State suggested that voters might have well understood "$30.00 car tabs . . . is a political phrase, it's like promising a 'chicken in every pot.' It's not a promise." Wash. Supreme Court oral argument, *Garfield County Transp. Auth. v. State*, No. 98320-8 (June 30, 2020), at 42 min., 33 sec., *video recording by* TVW, Washington State's Public Affairs Network, http://www.tvw.org (available at https://www.tvw.org/watch/?eventID=2020061188). While ballot titles may not be promises,

Similarly, the average informed lay voter would not think the initiative eliminates the statutory mechanism for voters to approve charges in the future. We are unpersuaded by the State's argument that this clause is not misleading because future legislation could create a new mechanism to permit voters to approve taxes. The ballot statement of an initiative concerns the effect of the initiative. It is not the place for truisms about legislative power. We hold that the initiative violates the subject-in-title rule because it is deceptive and misleading since the average informed lay voter would conclude voter approved taxes – such as those used to fund local and regional transportation projects across our state – would remain.

3. Remaining arguments

We do not reach the remaining constitutional arguments and dispose of the nonconstitutional arguments briefly. One of the intervenors contends that the trial judge should have recused himself since he works for, and stands for election in, King County. Nothing in the record suggests any party made a motion for the trial

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they must be accurate. To the extent the State argues that $43.25 can be understood as $30.00, the argument is not well taken.

judge to recuse himself. Any error is unpreserved, and we decline to reach it. *See* RAP 2.5(a).

An intervenor also contends that county and municipal plaintiffs who have challenged I-976 have violated RCW 42.17A.555. That statute says in most relevant part:

> No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.

RCW 42.17A.555.

A "'[b]allot proposition' means . . . any initiative . . . proposed to be submitted to the voters." RCW 42.17A.005(4). At the time of the court challenge, I-976 was no longer "proposed to be submitted to the voters." It was an enrolled piece of legislation. LAWS OF 2020, ch. 1. Finally, we decline to consider whether I-976 unlawfully interferes with bonds issued by the city of Burien as it was not designed for our review.

CONCLUSION

We hold that that I-976 violates article II, section 19 because it contains multiple subjects and an inaccurate ballot title. Accordingly, we reverse in part and remand to the trial court for further proceedings consistent with this opinion.

González, J.

WE CONCUR:

Stephens, C.J. | Gordon McCloud, J.

Johnson, J. | Yu, J.

Montoya-Lewis, J.

Owens, J. | Whitener, J.

No. 98320-8

MADSEN, J. (concurring)—I agree with the majority that Initiative 976 (I-976) violates the single subject rule of our state constitution. Majority at 15; WASH. CONST. art. II, § 19. The initiative's requirement to retire early, defease, or refinance existing bonds is not rationally related to I-976's subject of limiting vehicle taxes and fees. *See* majority at 15. I also agree that *Pierce County* I and II instruct and resolve this case.[1] *Id.* at 15-19.

The majority further holds that I-976 violates the subject-in-title rule because the title is unconstitutionally misleading. *Id.* at 21, 26; WASH. CONST. art. II, § 19. I disagree because the ballot title alerts voters that local revenue options would be affected and prompt further inquiry into the body of the act. Thus, in my view, I-976 does not violate the subject-in-title requirement of article II, section 19.

1. Single Subject Rule

The majority correctly applies our decisions in *Pierce County* I and II. *Pierce County* I concerned Initiative 776 (I-776), which limited license tab fees and called for

[1] *Pierce County v. State*, 150 Wn.2d 422, 78 P.3d 640 (2003) (*Pierce County* I); *Pierce County v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006) (*Pierce County* II).

but *did not require* the early retirement, refinance, and defeasement of existing bonds. *See*, *e.g.*, 150 Wn.2d at 432-33 (citing section 7 of I-776 entitled, "Legislative Intent Relating to Outstanding Bonds"). We upheld the initiative against a single subject challenge, holding that these nonenforceable statements of policy are not separate subjects and do not violate the single subject rule. *Id*. at 433 (citing WASH. CONST. art. II, § 19).

Pierce County II dealt with contract impairment. There, we held that I-776 unconstitutionally impaired contracts with bondholders because it repealed taxes pledged to repay existing bonds. *Pierce County* II, 159 Wn.2d at 31-32. We went on to address the additional claim that if I-776 impaired bondholder contracts, this court should revive and make legally binding the sections requiring early retirement of bonds. *Id*. at 46-48. Relevant to the present case is our reasoning for rejecting this argument. We noted that giving force to nonbinding policy statements to retire bonds would violate both the contracts clause and, importantly, article II, section 19. *Id*. at 48.

Pierce County II rejected the invitation to create in I-776 the exact situation we are faced with here. I-976's operative sections require the early retirement of existing bonds. As *Pierce County* II noted, such sections would constitute an additional subject because bond financing is not germane to limiting vehicle fees and taxes—the subject of I-976.

See majority at 18. For that reason, I agree that *Pierce County* II resolves the current case.[2]

2. Subject-in-Title Rule

The majority concludes I-976's ballot title is misleading and therefore unconstitutional under the subject-in-title rule. Majority at 26; WASH. CONST. art. II, § 19. I disagree.

Article II, section 19 is to be liberally construed in favor of the legislation. *Amalg. Transit Union Local 587 v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2000). A title is misleading if it is not constitutionally framed. *Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 661, 278 P.3d 632 (2012) (quoting *Howlett v. Cheetham*, 17 Wash. 626, 635, 50 P. 522 (1897)). A title is constitutional "if it gives notice which would lead to an inquiry into the body of the act or indicates the scope and purpose of the law to an inquiring mind." *Amalg. Transit*, 142 Wn.2d at 217.

I-976's ballot title states that it would repeal or completely remove "authority to impose certain vehicle taxes and fees; limit . . . fees to $30, except voter-approved charges." Clerk's Papers (CP) at 1131. We interpret the plain language of initiatives in the same way as laws passed by the legislature, which includes grammatical rules. *State*

[2] The majority quotes extensively from the dissenting opinion in *Pierce County* I, which would have held that legislation containing a mandatory subject and an unrelated, nonmandatory one violates article II, section 19. 150 Wn.2d at 444 (Chambers, J., dissenting). We noted these concerns in *Pierce County* II, 159 Wn.2d at 48. Here, the majority's reliance on *Pierce County* I's dissent is instructive for the unique issue before us, yet it is important to note that the majority in *Pierce County* I remains good law as to the issues it addressed.

v. Bunker, 169 Wn.2d 571, 578, 238 P.3d 487 (2010) ("[W]e employ traditional rules of grammar in discerning the plain language of the statute."). The ballot title divides its actions with semicolons, and the phrase "except voter-approved charges" is in the sentence fragment related to $30 car tabs and separate from the terms on repealing authority to impose vehicle taxes. Section 2 of I-976 amends chapter 46.17 RCW to provide that motor vehicle license fees are limited to $30, except voter-approved charges; and the section defines "'motor vehicle license fees'" to mean "'general license tab fees paid annually for licensing motor vehicles,'" which do not include "'charges approved by voters after the effective date of this section.'" Corrected Br. of Resp't/Cross-Appellant State of Wash. at 33 (quoting LAWS of 2020, ch. 1, § 2). I-976 told voters it would remove authority to impose taxes and separated that statement from voter-approved charges.

The construction of this ballot title *may* have generated some confusion as to whether the initiative would remove or reduce authority concerning voter-approved charges. The subject-in-title rule, however, does not require absolute clarity. Ballot titles need not be "'an index to its contents; nor is the title expected to give the details contained in the bill.'" *Wash. Fed'n of State Employees v. State*, 127 Wn.2d 544, 555, 901 P.2d 1028 (1995) (quoting *Treffry v. Taylor*, 67 Wn.2d 487, 491, 408 P.2d 269 (1965)). A title complies with the constitution if it provides notice leading to inquiry into the body of the act. *Amalg. Transit*, 142 Wn.2d at 217.

Critically, I-976's ballot title alerted voters that the measure would affect the authority to impose vehicle taxes and fees, and limit annual vehicle fees to $30, except voter-approved charges. CP at 1131. Although a voter may be unsure as to the meaning of the words—whether local add-on fees remain or are repealed—these words indicate the scope of the initiative would impact local revenue options, prompting a voter to look to the body of the act for further inquiry. *Amalg. Transit*, 142 Wn.2d at 217.

The right to initiative and referendum are guaranteed by our constitution. WASH. CONST. art. II, § 1(a), (b) (reserving to the people the authority to enact laws through initiatives and referenda). This court cannot interpret the initiative in such a manner that it deprives the people of acting in their legislative capacity. *See id.*; *Amalg. Transit*, 142 Wn.2d at 225 ("[L]egislation should be construed to preserve its constitutionality where possible.").

The majority likens I-976's ballot title to those found defective in *Decano v. State*, 7 Wn.2d 613, 630-31, 110 P.2d 627 (1941), and *Amalgamated Transit*, 142 Wn.2d at 226. Majority at 22-24. But both of these cases are distinguishable.

DeCano concerned a measure "'relating to the rights and disabilities of aliens with respect to land.'" 7 Wn.2d at 623. The bill amended an act that denied civil rights to aliens, including the right to own real property, but exempted anyone who "in good faith declared" an intention to become a United States citizen. *Id.* at 623-24. The measure at issue included a clause redefining "alien" to include all persons who are noncitizens of the United States and who are ineligible for citizenship by naturalization. This court

found the measure unconstitutional: "the title of the 1937 statute states that it pertains to the rights of 'aliens' with respect to land, but it gives no intimation whatsoever that the body of the act contains an amended definition of the word 'alien' which brings within its purview a whole new class of persons who are not in fact aliens in common understanding, by judicial construction, or under the express definition contained in the prior law." *Id*. at 624. The bill title was deceptive in that it gave no indication that the measure broadened the term "alien." *Id*. at 630-31.

Amalgamated Transit reviewed Initiative-695. 142 Wn.2d at 193. The ballot title at issue stated "'[s]hall voter approval be required for any tax increase'" without any indication in the title that tax has a meaning broader than its common meaning. *Id*. "Nothing about this ballot title gives any notice that would indicate to the voters that the contents of the initiative would include voter approval for charges other than taxes or suggest inquiry into the act be made to learn the broad meaning of 'tax.'" *Id*. at 227.

DeCano and *Amalgamated Transit* concern ballot titles using terms that are broadened without notice in the body of the act. The term "alien" in *DeCano* gave the voter no indication the measure used a different definition; similarly, in *Amalgamated Transit*, the term "taxes" was broadened. In this case, however, I-976's title did not contain a term that was then broadened in the body of the initiative without notice. Rather, as discussed above, the title indicated that I-976 would impact local revenue options. I would hold I-976's ballot title, unlike those in *DeCano* and *Amalgamated Transit*, is not unconstitutionally misleading.

Though I disagree with the majority that I-976 violates the subject-in-title rule, I agree that the measure contains an impermissible separate subject and is unconstitutional for that reason. Accordingly, I concur.

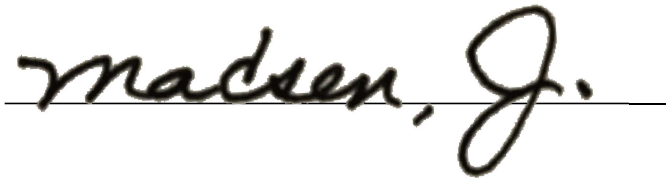

Exhibit B

EXHIBIT 1

The Honorable Marshall Ferguson
Hearing Date: Tuesday, November 26, 2019 at 9:00 a.m.
With Oral Argument

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

GARFIELD COUNTY TRANSPORTATION AUTHORITY; KING COUNTY; CITY OF SEATTLE; WASHINGTON STATE TRANSIT ASSOCIATION; ASSOCIATION OF WASHINGTON CITIES; PORT OF SEATTLE; INTERCITY TRANSIT; AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHINGTON; and MICHAEL ROGERS, Plaintiffs, v. STATE OF WASHINGTON, Defendant.	NO. 19-2-30171-6 SEA ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER came before the Court on November 26, 2019 to consider Plaintiffs' Motion for a Preliminary Injunction. In addition to the pleadings, papers, and records on file in this matter, the Court heard oral argument from the parties and considered declarations, with attached exhibits, from the following persons: Rob Gannon (original and supplemental), Dwight Dively, John Taylor, Kathryn Terry, David Hennes, Ken Canete, Chloe Wilkes, Khieng Lo, Rachel VerBoort, Justin Leighton, Peter King, Geraldine H. Poor, Justin Dixon, Ann Freeman Manzanares, Michael Rogers, Matthew J. Segal (original and supplemental), Tracy Butler, Rick

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Swartz, George Price, Alan Copsey, Jaime Grantham, and Jill Johnson. Pursuant to Civil Rule 65(d), the Court hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In the General Election on November 5, 2019, Washington voters approved Initiative Measure No. 976 ("I-976") with 52.97 percent of the votes cast. By operation of law, nearly all provisions in I-976 are to take effect on December 5, 2019.

2. Plaintiffs include the Garfield County Transportation Authority ("GCTA," a transit authority operating in a primarily rural area of eastern Washington), Intercity Transit (a municipal corporation operating transit services in and around Thurston and Pierce counties), the City of Seattle, the Port of Seattle, King County, the Amalgamated Transit Union Legislative Council of Washington, the Washington State Transit Association, the Association of Washington Cities, and Michael Rogers, an individual Washington taxpayer with cerebral palsy who relies heavily upon paratransit and transit services, especially those provided by Plaintiff Intercity Transit and by non-party Sound Transit. Plaintiffs contend that they each would be harmed, directly and indirectly, if I-976 were to take effect on December 5, 2019 and be thereafter implemented during the pendency of this case.

3. If I-976 takes effect on December 5, 2019 and is thereafter implemented, such acts will result in the following immediate, irreparable harms to Plaintiffs:

a. King County Metro would reduce transit service by 110,000 hours as a result of revenue cuts forced by I-976. After December 9, 2019, such reductions would be permanent for the March 2020 service change date and the lost service could not be restored until September 2020 at the earliest. The reduction in Metro service hours would be the equivalent of full-time work for 82 Metro employees. The lost service hours for customers and the employment income for Metro workers could be neither

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recovered nor retroactively repaid at the next service change date. Metro could not use other funding to pay for the lost service hours. Moreover, King County Metro would stand to lose up to $2 million in federal grant funding (which is based in part upon the number of service hours provided) as a direct result of the 110,000-hour service reduction. The service cuts would also substantially impact service for Metro customers, including more crowded buses and longer waits. *See* Declaration and Supplemental Declaration of Rob Gannon.

b. In December 2019, the City of Seattle would lose $2.68 million in vehicle license fee ("VLF") revenue if I-976 were to take effect on December 5, 2019. In 2020, the City of Seattle would lose $32,813,672. *See* Declaration of David Hennes. The revenue lost during the pendency of this case could not be recovered later if I-976 were ultimately found to be unconstitutional. The City of Seattle uses VLF revenue to fund or partially fund, among other things, King County Metro transit routes, neighborhood traffic control, roadway maintenance, pothole repairs, and ORCA transit card access programs. *See* Declarations of Khieng Lo and Rachel Verboort.

c. Funding to the State's Multimodal Transportation Account ("Multimodal Account") would be significantly reduced. Reductions would commence immediately when I-976 takes effect. The Multimodal Account funds public transit, rail, bicycle, and pedestrian projects statewide via direct allocation to cities and counties, and through grants including the Special Needs Transportation Grant, the Rural Mobility Grant, and the Regional Mobility Grant. Gannon Decl., ¶ 11; Taylor Decl., ¶ 9 and Exhibit B to the Declaration of Peter King, pp. 2-3. Plaintiffs GCTA, Intercity Transit, King County, and the City of Seattle all rely upon money from the Multimodal Account to fund assorted transportation projects and services, as do numerous non-party

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municipalities statewide. *See* Declarations of Dixon, Freeman-Manzanares, Gannon, Taylor, Canete, and Wilkes. If I-976 were to take effect on December 5, 2019, then, depending upon how the Washington Legislature thereafter decided which programs or grants to fund with the remaining Multimodal Account revenue, one or more of the municipal Plaintiffs would be forced to reduce or eliminate programs or services funded by the Multimodal Account. Cuts would likely include critical programs relied upon by special needs, transit-dependent taxpayers like Plaintiff Rogers. *See* Declarations of Rogers, Freeman-Manzanares. Because the Legislature has not yet made any "fund or cut" decisions stemming from Multimodal Account reductions, it is not yet possible for the municipal Plaintiffs to prove which of their respective programs would be cut as a result of I-976. In the Court's view, however, the question is not whether Multimodal Account program cuts would cause any immediate, irreparable harm to Plaintiffs, but rather which of the Plaintiffs would bear such harm.

4. On the other hand, as noted above, a majority of voters statewide approved I-976 and now justifiably expect that I-976 will reduce or eliminate many vehicle-related fees and taxes. If the Court stays implementation of I-976, then Washington residents, many of whom would pay considerably less under I-976, will continue to pay existing vehicle fees and taxes for months or years while this case wends its way not only through this court, but likely the Washington Supreme Court as well.

5. If Defendant State of Washington ultimately prevails in this case, then Washington residents' overpayments of vehicle-related fees and taxes during the pendency of this case can be refunded. The State would incur significant time and expense reviewing, preparing, and issuing the refunds.

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CONCLUSIONS OF LAW

1. A plaintiff is entitled to a preliminary injunction when: (a) it has a clear legal or equitable right, (b) it has a well-grounded fear of immediate invasion of that right, and (c) the acts it is complaining of have or may result in actual and substantial injury.

2. Plaintiffs have demonstrated that they possess a clear legal and equitable right because they are likely to prevail on the merits of their constitutional challenge to I-976 based upon Article II, Section 19 of the Washington Constitution, specifically the "subject-in-title" requirement. Plaintiffs have raised substantial concerns as to whether I-976's ballot title is misleading. The ballot title states that "voter-approved charges" are excepted from the $30 limit on motor vehicle license fees, but Section 2 of I-976 indicates that only charges approved by voters *after the effective date of I-976* are excepted from the $30 limit. In other words, all existing voter approved charges are apparently extinguished by I-976, even though the ballot title suggests that all voter approved charges, past or future, survive I-976. This Court does not herein conclude that I-976 violates the subject-in-title requirement, nor is it a foregone conclusion that this Court will reach that final conclusion in these proceedings. Indeed, the Court still presumes, as it must, that I-976 is constitutional unless and until Plaintiffs have established its unconstitutionality beyond a reasonable doubt. Plaintiffs have not yet done so. Furthermore, there exist plausible arguments supporting the conclusion that I-976 does not violate the subject-in-title rule and there may be additional arguments not yet presented to the Court on that issue. But at this point, Plaintiffs have sufficiently shown that they are likely to prevail as to the issue. As such, Plaintiffs possess a clear legal and equitable right to prevent implementation and enforcement of I-976.

3. Plaintiffs have a well-grounded fear of immediate invasion of the rights afforded by the Washington Constitution due to implementation of I-976. Implementation on December

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5, 2019 of an unconstitutionally misleading statewide initiative, even if approved by a majority of voters, would be an invasion *per se* of Plaintiffs' rights under the Washington Constitution. Put simply, enforcement of what is likely an unconstitutional law would invade Plaintiffs' constitutional rights.

4. As detailed in the above Findings of Fact, implementation of I-976 on December 5, 2019 will result in actual and substantial injury to Plaintiffs.

5. In balancing the equities, interests, and the relative harms to the parties and the public, the Court concludes that the harms to Plaintiffs resulting from the implementation of I-976 outweigh the harms faced by Defendant State of Washington and the public if implementation of I-976 is stayed. If the collection of vehicle license fees and taxes stops on December 5, 2019, there will be no way to retroactively collect those revenues if, at the conclusion of this case, the Court concludes that I-976 is unconstitutional and permanently enjoins its enforcement. Conversely, refunds of fees and taxes impacted by I-976 can be issued if the State ultimately prevails in this matter, albeit at some expense to the State. The Court acknowledges that a majority of Washington voters approved I-976 and that many of those voters ardently and perhaps desperately desire relief from vehicle related taxes and fees. Nonetheless, the continued collection of fees and taxes during the pendency of this case is the only way to prevent the above-described harms to Plaintiffs should this Court ultimately determine that I-976 is unconstitutional. Moreover, it is highly probable that, regardless how this Court rules on the constitutionality of I-976, one party or another will seek direct review by the Washington Supreme Court. As such, the relevant time period to evaluate and balance the respective harms to the parties is not merely the one or two months beyond December 5, 2019 that it might take for this Court to consider all parties' motions and issue a final ruling on I-976's constitutionality. Rather, the relevant time period is the months or potentially years that it could take for all issues

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in the case to be addressed though appellate review. If I-976 were to be implemented over those months or years, then all Plaintiffs, including members of groups such as Plaintiffs Association of Washington Cities and the Washington State Transit Association, would eventually, inevitably be forced to cut a wide array of programs and services due to reductions in fee/tax revenue stemming from I-976.[1] *See, e.g.*, King Decl., ¶¶ 7-16; Leighton Decl, ¶¶ 7-15. If I-976 were ultimately found to be unconstitutional, the long-term hardships endured by Washingtonians whose lifeline transportation services were cut for those many months or years, whose transportation-related work hours were reduced or eliminated completely, and whose transportation projects were unfinished or never started, could not be retroactively mitigated. The balance of equities weighs heavily in favor of granting injunctive relief.

PRELIMINARY INJUNCTION

Given the above findings of fact and conclusions of law, it is hereby

ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion For a Preliminary Injunction is GRANTED. It is further

ORDERED, ADJUDGED, AND DECREED that the effective date of I-976 is STAYED pending further order of this Court. While this stay is in effect, Defendant State of Washington, its officials, employees, agents, and all persons in active concert or participation with Defendant, are enjoined from implementing or enforcing I-976. Defendant shall continue to collect all fees, taxes, and other charges that would be subject to or impacted by I-976 were it not stayed, and shall distribute those funds to local municipalities and political subdivisions as appropriate pursuant to existing laws, regulations, contracts, obligations, policies, and procedures. Any municipality or political subdivision that accepts such funds while this Order is in effect,

[1] Even if the relevant time period is limited to the estimated one or two months of pendency before this Court, several of the Plaintiffs would nonetheless sustain immediate, irreparable harm, as set forth in the Findings of Fact above.

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including those that are not parties to this lawsuit, do so subject to the likelihood that refunds of overpayments may be required should the State ultimately prevail in this action.

Per CR 65(c), Plaintiffs are not required to provide a bond or other security as a condition of this preliminary injunction.

ORDER FOR CONFERENCE OF COUNSEL

The parties' counsel are instructed to confer regarding a proposed schedule for future motions, briefing, and hearings. Although it is presently unclear to the Court whether one or more motions to intervene will be properly brought in the near future, the Court encourages counsel for the existing parties and intervenors' counsel of record to confer regarding scheduling issues if practicable. By **12:00 p.m. on Thursday, December 5, 2019**, the parties should provide the Court with either an agreed proposed scheduling order or their own proposed scheduling orders for future motions, briefing, and hearings. Counsel should also confer with the bailiff for the undersigned judge regarding the Court's future hearing date availability.

DATED this 27th day of November, 2019.

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Exhibit C

The Honorable Marshall Ferguson
Hearing Date: Friday, February 7, 2020 at 9:00 a.m.
With Oral Argument

FILED
KING COUNTY, WASHINGTON
FEB 12 2020
SEA
SUPERIOR COURT CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

GARFIELD COUNTY TRANSPORTATION AUTHORITY; KING COUNTY; CITY OF SEATTLE; WASHINGTON STATE TRANSIT ASSOCIATION; ASSOCIATION OF WASHINGTON CITIES; PORT OF SEATTLE; INTERCITY TRANSIT; AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHINGTON; MICHAEL ROGERS; CITY OF BURIEN; and MICHAEL CAMARATA, Plaintiffs, and WASHINGTON ADAPT; TRANSIT RIDERS UNIION; and CLIMATE SOLUTIONS, Intervenor-Plaintiffs, v. STATE OF WASHINGTON, Defendant, and CLINT DIDIER; PERMANENT OFFENSE; TIMOTHY D. EYMAN; MICHAEL FAGAN; JACK FAGAN; and PIERCE COUNTY, Intervenor-Defendants.	NO. 19-2-30171-6 SEA ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

JUDGE MARSHALL FERGUSON
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I. Introduction and Summary of the Court's Ruling

In the General Election on November 5, 2019, a majority of Washington voters approved Initiative Measure No. 976 ("I-976"). On November 14, 2019, Plaintiffs filed a lawsuit in this Court seeking a judgment declaring I-976 unconstitutional on several grounds and permanently enjoining the measure from going into effect. On November 27, 2019, upon a motion by Plaintiffs, the Court entered a preliminary injunction barring I-976 from going into effect while the lawsuit is pending. Since then, two new plaintiffs and several intervening parties have been added to the lawsuit. The parties and some of the intervenors have prepared and filed motions for summary judgment which, generally speaking, ask the Court to resolve all legal questions in the lawsuit in one side's favor or the other.

On February 7, 2020, the Court held an all-day hearing on the following motions and cross-motions:

- Plaintiffs' Motion For Summary Judgment;
- Plaintiff-Intervenors Transit Riders Union, Washington ADAPT, and Climate Solutions' Joinder and Motion For Summary Judgment;
- Defendant State of Washington and Intervenor-Defendant Pierce County's Joint Motion For Summary Judgment; and
- Intervenor-Defendant Clint Didier's Motion For Summary Judgment.

For the reasons explained below, this Order:

- Denies Plaintiffs' Motion For Summary Judgment in its entirety;
- Denies Plaintiff-Intervenors Transit Riders Union, Washington ADAPT, and Climate Solutions' Joinder and Motion For Summary Judgment in its entirety;
- Grants in part and denies in part Defendant State of Washington and Intervenor-Defendant Pierce County's Joint Motion For Summary Judgment; and

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- Grants in part and denies in part Intervenor-Defendant Didier's Motion For Summary Judgment.

To summarize, this Order dismisses all but two of Plaintiffs' constitutional challenges to I-976. The remaining two claims are not dismissed because Intervenor-Defendant Didier and Defendant State of Washington have requested the Court's permission to conduct discovery concerning those two claims, pursuant to Civil Rule 56(f). The Court grants their CR 56(f) requests and temporarily denies all parties' motions for summary judgment as to those two claims. Consequently, the Court also denies Intervenor-Defendant Didier's request to vacate the preliminary injunction entered by this Court on November 27, 2019. Since this Order does not dispose of all of Plaintiffs' constitutional challenges to I-976, the preliminary injunction barring I-976 from going into effect shall remain in place until further order of the Court. The parties may renew their motions for summary judgment as to Plaintiffs' two remaining constitutional challenges after the requested discovery has been completed.

II. The Record Before the Court

The Court considered the following in ruling on the aforementioned motions:

1. Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief;

2. State of Washington's Answer to Complaint for Declaratory Judgment and Injunctive Relief and Affirmative Defenses;

3. First Amended Complaint for Declaratory Judgment and Injunctive Relief;

4. Defendant State of Washington's Answer to First Amended Complaint for Declaratory Judgment and Injunctive Relief and Affirmative Defenses;

5. Plaintiffs' Motion for Summary Judgment;

6. Declaration of Eric Christensen in Support of Plaintiffs' Motion for Summary Judgment and the exhibits attached thereto;

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7. Declaration of Richard Schober in Support of Plaintiffs' Motion for Summary Judgment and the exhibit attached thereto;

8. Declaration of Ryan Lopossa in Support of Plaintiffs' Motion for Summary Judgment and the exhibits attached thereto;

9. Declaration of Tracy Butler;

10. Declaration of Scott M. Simmons and the exhibit attached thereto;

11. Declaration of Peter King in Support of Plaintiffs' Motion for Summary Judgment and the exhibits attached thereto;

12. Declaration of David J. Hackett in Support of Plaintiffs' Motion for Summary Judgment and the exhibits attached thereto;

13. Defendant State of Washington and Intervenor-Defendant Pierce County's Joint Motion for Summary Judgment;

14. Declaration of Alan D. Copsey in Support of Defendant State of Washington and Intervenor-Defendant Pierce County's Joint Motion for Summary Judgment and the exhibits attached thereto;

15. Clint Didier's Motion for Summary Judgment;

16. Declaration of Client Didier in Support of Intervenor Clint Didier's Motion for Summary Judgment and the exhibits attached thereto;

17. Plaintiff Intervenor's Joinder and Motion for Summary Judgment;

18. Plaintiffs' Consolidated Opposition to the State of Washington's, Pierce County's, and Client Didier's Motions for Summary Judgment

19. Declaration of Jessica A. Skelton in Support of Plaintiffs' Consolidated Opposition to State of Washington's, Pierce County's, and Clint Didier's Motions for Summary Judgment;

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20. Defendant State of Washington and Intervenor-Defendant Pierce County's Combined Opposition to Plaintiffs' and Intervenor-Plaintiffs' Motions for Summary Judgment;

21. Intervenor-Defendant Pierce County's Response to Plaintiffs' Motion for Summary Judgment;

22. Plaintiff Intervenors' Response to Cross Motions for Summary Judgment;

23. Intervenor Didier's Response on Summary Judgment;

24. Plaintiffs' Reply in Support of Motion for Summary Judgment;

25. Declaration of Jenifer Merkel in Support of Plaintiffs' Consolidated Reply and the exhibits attached thereto;

26. Supplemental Declaration of Jessica A. Skelton in Support of Plaintiffs' Reply in Support of Summary Judgment and the exhibits attached thereto;

27. Defendant State of Washington and Intervenor-Defendant Pierce County's Combined Reply in Support of Their Motion for Summary Judgment;

28. Supplemental Declaration of Alan D. Copsey in Support of Defendant State of Washington and Intervenor-Defendant Pierce County's Motion for Summary Judgment and the exhibits attached thereto;

29. Plaintiff Intervenors' Reply in Support of Motion for Summary Judgment;

30. Intervenor Didier's Reply on Summary Judgment;

31. Brief of Amicus Curiae San Juan County;

32. The other pleadings and papers on file in this matter; and

33. The argument of counsel.

The transcript of the February 7, 2020 motion hearing is incorporated as though fully set forth herein.

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Although the Court Rules do not require findings of fact and conclusions of law on decisions of motions for summary judgment (see CR 52(a)(5)(B)), the Court provides the following memorandum of its decision for the benefit of the parties and the public.

III. Factual Background

A. Initiative Measure No. 976

In the General Election on November 5, 2019, a majority of Washington voters approved Initiative Measure No. 976 ("I-976") with 52.99 percent of the votes cast. The following ballot title for I-976 was placed before the voters:

> 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.
>
> Should this measure be enacted into law? Yes [ ] No [ ]

The text of I-976 itself is set forth in seventeen sections. Some sections create new statutory provisions, some amend existing statutes, and some repeal existing statutes.

Section 1 of I-976 contains a non-operative declaration of the "POLICIES AND PURPOSES" of I-976.

Section 2 creates a new section in RCW Chapter 46.17 that purports to limit motor vehicle license fees to $30 per year, except charges approved by voters after I-976 goes into effect.

Section 3 amends RCW 46.17.350 by reducing the annual snowmobile license fee (which had been $50.00) and the commercial trailer license fee (previously $34.00) to $30.00. Before I-976, annual motor vehicle license fees in RCW 46.17.350 for passenger cars, sport utility vehicles, motorcycles, and numerous other kinds of motorized vehicles were *already* set at

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$30.00 or less. I-976 reduces RCW 46.17.350 fees only for snowmobiles, commercial trailers, and light trucks weighing 10,000 pounds or less.

Section 4 amends RCW 46.17.355 by reducing the annual license fees for light trucks weighing 10,000 pounds or less from between $53 and $93 (depending on weight) to $30.00.

Section 5 amends RCW 46.17.323 by reducing an electric vehicle fee from $100 to $30, and eliminates an additional $50 electric vehicle fee.

Section 6 repeals several statutes, including RCW 46.17.365, which imposed a passenger weight fee of between $25 and $72 per vehicle, RCW 82.80.140, which authorized Transportation Benefit Districts ("TBDs") to impose annual vehicle fees of up to $100 per vehicle, and RCW 82.80.130, which authorized imposition of a local motor vehicle excise tax ("MVET") to support passenger-only ferries. Section 6 also repeals RCW 46.68.415, which addressed how the passenger weight fee would be used.

Section 7 amends RCW 82.08.020 to eliminate a 0.3 percent sales tax on retail sales of motor vehicles.

Section 8 creates a new section in RCW Chapter 82.44 requiring that state and local governments use Kelley Blue Book value to determine a vehicle's taxable value for vehicle tax purposes.

Section 9 amends RCW 82.44.065 to incorporate Kelley Blue Book valuations when persons paying state or local vehicle taxes appeal the valuation to the Department of Licensing.

Section 10 amends RCW 81.104.140 by eliminating the authority to levy and collect a special MVET that can only be levied by Regional Transit Authorities ("RTAs") in counties with a population of 1,500,000 people or more,[1] and only after a public vote approving the special MVET.

---

[1] The Central Puget Sound Regional Transit Authority, commonly known as "Sound Transit," is currently the only Regional Transit Authority in existence that meets the statutory definition under RCW 81.104.160.

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Section 11 repeals RCW 82.44.035 and 81.104.160, eliminating the same special MVET referenced in Section 10 and eliminating the existing MVET valuation method.

Section 12 creates a new section in RCW Chapter 81.112 requiring an RTA charging a special MVET under RCW 81.104.160 to retire early, defease, or refinance any outstanding bonds, provided that the bond contract permits it, and provided that special MVET funds have been pledged to repay the bonds. As explained below, Section 12 is necessary to implement Sections 10 and 11.

Section 13 amends RCW 81.104.160 by reducing the authority for voter-approved RTA MVETs from 0.8 percent to 0.2 percent of a vehicle's value. Section 13 is a fallback provision in case the RTA in question (Sound Transit) fails to comply with Section 12. Section 13 is to take effect on April 1, 2020 if compliance with Section 12 has not occurred by March 31, 2020.

Section 14 requires that I-976's provisions be liberally construed to effectuate its intent, policies, and purposes.

Section 15 provides a severability clause.

Section 16 sets forth the effective dates for Sections 10, 11, and 13.

Section 17 provides the title of the act: "Bring Back Our $30 Car Tabs."

B. Plaintiffs' Claims of Harm Caused By I-976

Plaintiffs and Intervenor-Plaintiffs[2] seek two things from this Court: a judgment declaring that I-976 is unconstitutional and a permanent injunction preventing I-976 from ever going into effect. In support of their injunction claim, Plaintiffs have offered supporting declarations and exhibits establishing that, were I-976 to be implemented, it would harm them

[2] For the sake of economy, the Court will usually refer to Plaintiffs and all Intervenor-Plaintiffs collectively as "Plaintiffs," except in specific instances where distinguishing between them is necessary. The Court will likewise refer to Defendant State of Washington and Intervenor-Defendant Pierce County collectively as "Defendants," because they filed a joint motion for summary judgment. The Court will always refer to Intervenor-Defendant Clint Didier separately.

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in numerous ways, including drastic reductions in funding for public transit, road and highway improvement projects, ferry service, and projects that are critical from a public safety standpoint. As this Court previously concluded in granting Plaintiffs' motion for a preliminary injunction, the Court concludes here that I-976, if implemented, would result in actual and substantial injury to Plaintiffs.

C. The Burien Bonds

Following the preliminary injunction proceedings in November 2019, Plaintiffs filed an amended complaint adding the City of Burien as a plaintiff.[3] Plaintiffs allege that if Section 6 of I-976 were to be implemented, it would unconstitutionally impair bond contracts used to finance street improvements. In 2009, Burien created a Transportation Benefit District ("TBD") to finance and facilitate street improvements. The Burien TBD utilized its statutory authority to impose and collect from Burien vehicle owners a $10 vehicle license fee ("VLF"). Burien then pledged the VLF funds to service bond debt totaling $8,900,000. Burien contends that it marketed the bond issuance based, in part, upon the City's pledge of the VLF revenues to repay the bond debt. Burien asserts that bondholders relied upon its pledge in purchasing the bonds. Plaintiffs argue that by extinguishing Burien's TBD's authority to assess and collect the $10 VLF, Section 6 of I-976 unconstitutionally impairs the bond contacts.

As to this issue, Defendants and Intervenor-Defendant Didier respond that there exists a genuine issue of material fact concerning whether bond purchasers relied upon Burien's pledge of VLF funds to debt service on the bonds. Defendants and Intervenor-Defendant Didier contend that discovery is needed as to this issue, precluding summary judgment.

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[3] Plaintiffs also added Justin Camarata as a plaintiff at that time.

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IV. Plaintiffs' Causes Of Action

Plaintiffs seek a permanent injunction and a judgment declaring that I-976 is unconstitutional on the basis that it violates:

- Article II, section 19 of the Washington Constitution (single-subject rule);
- Article II, section 19 of the Washington Constitution (subject-in-title rule);
- Article II, section 37 of the Washington Constitution;
- Article XI, section 12 of the Washington Constitution;
- Article I, section 19 of the Washington Constitution;
- Article VII, section 5 of the Washington Constitution;
- separation-of-powers principles;
- Article I, section 12 of the Washington Constitution; and
- Article I, section 23 of the Washington Constitution.

Plaintiffs contend that there exist no genuine issues as to any material facts and that, therefore, they are entitled to entry of a judgment in their favor as to all of their claims.

Defendants and Intervenor-Defendant Didier deny all of Plaintiffs' claims and contend that they are entitled to entry of a judgment dismissing nearly all of Plaintiffs claims. As to Plaintiffs' claims under Article I, section 12 and Article I, section 23 of the Washington Constitution (regarding the Kelley Blue Book and the Burien bond issues, respectively), Defendants and Intervenor-Defendant Didier contend that there exist genuine issues as to material facts precluding summary judgment for any party as to those claims.

V. Discussion

A. Summary Judgment Standard

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Dean v. Fishing Co. of Alaska*, 177

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Wn.2d 399, 405, 300 P.3d 815 (2013). When determining whether summary judgment is appropriate, the court must consider the facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Shoffner v. State*, 172 Wn. App. 866, 871–72, 294 P.3d 739 (2013).

B. Plaintiffs Bear the Burden of Establishing That I-976 Is Unconstitutional Beyond a Reasonable Doubt

Washington law is clear, and all parties agree, that in approving an initiative measure, the people exercise the same power of sovereignty as the legislature does when it enacts a statute and they are subject to the same constitutional limitations. *Wash. Fed'n of State Emps. v. State*, 127 Wash.2d 544, 556, 901 P.2d 1028 (1995); *City of Burien v. Kiga*, 144 Wash.2d 819, 824, 31 P.3d 659 (2001). "Therefore, even if an initiative is approved by a majority of voters, it will be struck down if it violates Washington's constitution." *Wash. Ass'n. for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 654, 278 P.3d 632 (2012) ("*WASAVP*"). This Court presumes that I-976 is constitutional, just as the Court would presume that a statute duly enacted by the legislature is constitutional. *Id.*

Since an initiative is presumptively constitutional, a party asserting that an initiative violates the state constitution "bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000) ("*ATU*"). The "beyond a reasonable doubt" standard applied here is different from the "beyond a reasonable doubt" evidentiary standard for convictions in criminal trials. *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998). Under the standard here, a court may not strike down an initiative measure unless "fully convinced, after a searching legal analysis," that there is no reasonable doubt that the initiative violates the constitution. *Id.; and ATU*, 142 Wn.2d at 205.

A court may not strike down an initiative simply because it dislikes it or disagrees with

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its policies. As the Washington Supreme Court has made clear:

> [I]t is not the prerogative nor the function of the judiciary to substitute what they may deem to be their better judgment for that of the electorate in enacting initiatives ... unless the errors in judgment clearly contravene state or federal constitutional provisions. [Citation omitted.] Nor is it the province of the courts to declare laws passed in violation of the constitution valid based upon considerations of public policy.

ATU, 142 Wn.2d at 206.

Although the burden of a party challenging the constitutionality of a statute is a heavy one, this Court would shirk its constitutional duty were the Court to allow an unconstitutional law to stand simply as a matter of comity to the legislature, or to voters' exercise of legislative power via initiative. Ultimately, the judiciary must make the decision, as a matter of law, whether a statute enacted through the initiative process violates a constitutional mandate. *Id.* at 205-06; *Island Cty.*, 135 Wn.2d at 147.

Bearing in mind Plaintiffs' heavy burden, the Court turns to their claims that I-976 is unconstitutional.

C. Plaintiffs Have Not Satisfied Their Burden of Establishing, Beyond a Reasonable Doubt, That I-976 Violates the "Single Subject Rule" of Article II, Section 19 of the Washington Constitution

Article II, section 19 provides: "No bill shall embrace more than one subject, and that shall be expressed in the title." This provision is to be liberally construed in favor of the legislation. *WASAVP*, 174 Wn.2d at 654. There are two prohibitions in article II, section 19: the single-subject rule and the subject-in-title rule. This section addresses the single-subject rule of Article II, section 19.

"The single-subject rule aims to prevent the grouping of incompatible measures and to prevent 'logrolling,' which occurs when a measure is drafted such that a legislator or voter may be required to vote for something of which he or she disapproves in order to secure approval of an unrelated law." *WASAVP*, 174 Wn.2d at 655. In determining whether an initiative embraces

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one subject or multiple subjects, a court begins by examining the initiative's ballot title to determine whether the title is general or restrictive – broad or narrow, in other words. *Id.; and Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 782, 357 P.3d 1040 (2015). " '[A] few well-chosen words, suggestive of the general subject stated, is all that is necessary.' " *WASAVP*, 174 Wn.2d at 655 (quoting *ATU*, 142 Wn.2d at 209).

Here, I-976's ballot title is general, not restrictive. The overarching subject matter, identified in the first sentence of the ballot title is "motor vehicle taxes and fees." This broad title description is equivalent to initiative titles that the Washington Supreme Court has recognized as general. *See WASAVP*, 174 Wn.2d at 655; *Filo Foods*, 183 Wn.2d at 784; *ATU*, 142 Wn.2d at 217.

Where a title is general, the constitution requires only that there be "rational unity" between the initiative's general subject and its component provisions. That is, matters within the body of the initiative must be germane to the general title and they must be germane to one another. *WASAVP*, 174 Wn.2d at 656, citing *City of Burien v. Kiga*, 144 Wn.2d 819, 826, 31 P.3d 659 (2001). Courts are to use "great liberality" in making this determination. *Filo Foods*, 183 Wn.2d at 782. "There is no violation of [the single-subject rule] even if a general subject contains several incidental subjects or subdivisions." *WASAVP*, 174 Wn.2d at 656, citing *Wash. Fed'n of State Emps.*, 127 Wn.2d at 556.

Here, because I-976 generally "concerns motor vehicle taxes and fees," its various substantive provisions need only be germane to that topic and to one another to survive single-subject scrutiny. *Filo Foods*, 183 Wn.2d at 782-83.

The Court agrees with Defendants that Sections 2 through 11 and Section 13 of I-976 directly address motor vehicle taxes and fees by repealing, reducing, or removing authority to impose assorted taxes and fees on motor vehicle sales or licensing. Those sections are all

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germane to both the general title and to each other.

Section 12 is germane to the general subject of motor vehicle fees and taxes because it is intended to ensure that one type of repealed motor vehicle tax, the special MVET levied and collected by Sound Transit, is no longer collected. Section 12 accomplishes this by requiring that bonds repaid by special MVET revenues must be retired early, defeased, or refinanced.[4] A prior initiative measure, I-776, attempted to eliminate Sound Transit's authority to collect the special MVET by repealing RCW 81.104.160 without requiring bond retirement. The Washington Supreme Court ultimately held such repeal unconstitutional because it impaired contracts between Sound Transit and its bondholders by eliminating the tax revenues pledged for bond debt repayment. *Pierce County v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006) ("*Pierce Cty. II*"). In the present case, by making the elimination of Sound Transit's authority to levy and collect its special MVET contingent upon Sound Transit's ability to retire, defease, or refinance its outstanding bonds, Section 12 of I-976 is a mechanism to avoid the unconstitutional flaw that the Supreme Court identified in *Pierce Cty. II*. That is, if Sound Transit were to retire its bonds pursuant to Section 12 *before* its tax authority is repealed under Sections 10 and 11 of I-976, then the repeal of Sound Transit's tax authority could not and would not impair its bond contracts. Section 12 is a necessary precursor to the repeal of MVET tax authority implemented in Sections 10 and 11. Since Section 12 is necessary to implement Sections 10 and 11, both of which are germane to the general subject of motor vehicle taxes and fees, Section 12 is likewise germane to the same general subject. *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 637, 71 P.3d 644 (2003).

Section 1 is a non-operative policy statement. Sections 14 through 17 are non-

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[4] In general terms, early "retirement" of a bond means to redeem the bonds from the bondholders or repay the bondholders for the face value (principal balance) of the bonds prior to the maturity date. "Defease" means to set aside cash or other assets sufficient to keep paying the principal and interest when due. "Refinance" means to issue new debt, the proceeds of which are used to replace the existing bond debt.

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substantive, procedural provisions that describe the construction, severability, effective dates, and title of I-976. Plaintiffs provide no argument or authority suggesting a court must apply the rational unity analysis to such provisions, and the Court is not aware of any such authority. Sections 1 and 14 through 17 do not establish a violation of the single-subject rule.

Plaintiffs argue that I-976 violates the single-subject rule because, in their view, some of I-976's provisions are continuing and long-term in nature while others are specific, time-limited, and achievable in the near-term. The Court rejects Plaintiffs' argument. Although Washington law certainly recognizes this distinction (*see ATU*, 142 Wn.2d at 216-17; *and Wash. Toll Bridge Authority v. State*, 49 Wn.2d 520, 523-25, 304 P.2d 676 (1956)), Plaintiffs' attempts to argue the distinction in this case hinges on ambiguous, subjective characterizations of I-976's provisions. For example, Plaintiffs contend that forcing early retirement of Sound Transit bonds "is a onetime event concerning a specific local subject," whereas capping vehicle fees at $30 is a permanent, ongoing, statewide change. Pltfs.' Mot. for Summ. Jmt. (Sub. No. 157), p. 30. Yet, in *ATU* our Supreme Court took nearly the opposite view, characterizing the $30 cap on tab fees in I-695 as specific, while characterizing a different provision as establishing a long-term, continuing method of approving all future tax increases. *Id.* at 217.

The Supreme Court's opinions in *WASAVP* and *Filo Foods* are instructive. In *WASAVP*, the Washington Supreme Court concluded that the assorted provisions in I-1183 did not violate the single-subject rule, even though the initiative's numerous provisions called for closing and selling off of state liquor stores and equipment (near-term, non-continuous, non-specific), changing regulations relating to liquor advertising (long-term, continuous, specific); imposing new distributor license fees (same), altering rules for wine distributors (same), allowing private spirits distribution (same), eliminating both "encouraging moderation" and the "orderly marketing of alcohol" as public policy goals recited in a single statute (one-time, specific), and

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creating a $10,000,000 annual earmark fund for public safety programs (long-term; non-specific?). *Id.* at 649-51. In *Filo Foods*, SeaTac Proposition 1 raised the minimum wage to $15, but also mandated that when any SeaTac employer sold their business, the purchaser would be required to retain existing employees for at least 90 days. *Id.* at 783. The Supreme Court did not find a single-subject violation. *Id.* at 783-84. Although Plaintiffs attempt to distinguish *WASAVP* by the opinion's observation that wine and liquor have historically been broadly regulated together, that was not the case in *Filo Foods*. In this Court's view, applying "great liberality" in making this determination, all of I-976's provisions operate in a coordinated, conjunctive way to serve a unified legislative goal of repealing, reducing, or removing authority to impose motor vehicle fees and taxes. *Id.* at 782. They are germane to each other and to I-976's general subject. The incidental variations and subdivisions in the subject matter of I-976's provisions do not rise to the level of a constitutional defect under the single-subject rule. *WASAVP*, 174 Wn.2d at 656.

Lastly, the Court also rejects Plaintiffs' argument that impermissible logrolling occurs where I-976 purportedly induces non-Sound-Transit-area residents to vote for "$30 car tabs" while eliminating Sound Transit taxes that those residents do not pay. It is noteworthy that neither the trial court nor the Supreme Court identified this as a problem with I-776 in *Pierce County v. State*, 150 Wn.2d 422, 78 P.3d 640 (2003) ("*Pierce Cty. I*"), even though I-776 likewise paired a $30 fee cap with statutory repeal of Sound Transit's MVET. *Id.* at 432 (noting that the trial court found sections 2 and 6 of I-776 were germane to the single general subject of "limiting the amount of state and local government charges that motor vehicle owners must pay upon the registration or renewed registration of a vehicle."). Here, I-976's $30 limit on motor vehicle license fees and its repeal of a statute authorizing a motor vehicle excise tax are both measures that alter general laws to eliminate or reduce vehicle license fees and taxes. They are

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germane to each other and to the general subject of limiting the amount of state and local government charges that motor vehicle owners must pay upon the registration or renewed registration of a vehicle. *Id.*; *and WASAVP*, 174 Wn.2d at 656.[5]

For these reasons, and based upon the argument and authorities offered by Defendants in their motion pleadings and at oral argument, the Court concludes that Plaintiffs have failed to satisfy their burden of establishing, beyond a reasonable doubt, that I-976 violates the single-subject rule of Article II, section 19 of the Washington Constitution.

D. Plaintiffs Have Not Satisfied Their Burden of Establishing, Beyond a Reasonable Doubt, That I-976 Violates the "Subject-In-Title Rule" of Article II, Section 19 of the Washington Constitution

"The purpose of the subject-in-title rule is to notify members of the legislature and the public of the subject matter of a measure." *WASAVP*, 174 Wn.2d at 660. Initiative ballot titles must accomplish this despite a 10-word limit on the "statement of the subject" and a 30-word limit on the "concise description." RCW 29A.72.050. A ballot title complies with our state's constitution "if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law." *WASAVP*, 174 Wn.2d at 660. "The title need not be an index to the contents, nor must it provide details of the measure." *Id.* On the other hand, "the material representations in the title must not be misleading or false, which would thwart the underlying purpose of ensuring that 'no person may be deceived as to what matters are being legislated upon.' " *Id.*, quoting *Seymour v. City of Tacoma*, 6 Wash. 138, 149, 32 P. 1077 (1893). Objections to a ballot title "must be grave and the conflict between it and the

[5] In its *amicus curiae* brief, San Juan County similarly argues that I-976 engages in impermissible logrolling by combing a $30 limit on vehicle license fees with a repeal, in Section 6 of I-976, of RCW 82.80.130, which authorizes a local motor vehicle excise tax to fund passenger ferry service. As with the Sound Transit MVET repeal, I-976's $30 cap on motor vehicle license fees and its repeal of the statute authorizing a vehicle tax that funds ferries are both measures that alter general laws to eliminate or reduce vehicle license fees and taxes. They are germane to each other and to the general subject of limiting state and local vehicle license fees and taxes. Therefore, I-976's combining of those two provisions does not violate the single-subject rule of Article II, section 19. *WASAVP*, 174 Wn.2d at 656.

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constitution palpable." *WASAVP*, 174 Wn.2d at 661. Like the single-subject rule, the subject-in-title rule is to be liberally construed in favor of the legislation. *Pierce Cty. I*, 150 Wn.2d at 436. That being said, "[a] court should not strain to interpret [a] statute as constitutional: a plain reading must make the interpretation reasonable." *ATU*, 142 Wn.2d at 225.

At the preliminary injunction phase of this case, this Court concluded that Plaintiffs were likely to prevail on their subject-in-title claim. Now, upon consideration of the parties' additional arguments and authorities, the Court concludes that Plaintiffs have failed to satisfy their heavy burden of establishing a violation of Article II, section 19 beyond a reasonable doubt.

Generally, Plaintiffs contend that I-976's ballot title violates the subject-in-title rule in four ways: (1) by misleadingly implying that voters would pay no more than $30 for their car tabs where, in fact, the lowest amount that any voter could pay for car tabs after I-976 would be $43.25; (2) by misleadingly implying that all existing voter-approved charges would survive I-976 and could exceed the $30 fee limit; (3) by misleadingly implying that voter-approved charges could even be possible where I-976 repeals existing mechanisms for voter-approval of TBD VLFs and RTA MVETs; and (4) by failing to include any reference to either I-976's repeal of the 0.3 percent sales tax on retail vehicle sales, its repeal of electric vehicle fees, or its requirement that Sound Transit retire, defease, or refinance bonds. Each of these fails to establish a violation of the subject-in-title rule.

1. Plaintiffs' First Contention: The Ballot Title Misleadingly Implies That Voters Would Pay No More Than $30 For Their Car Tabs

Nowhere does I-976's ballot title imply that vehicle owners will receive $30 invoices for their annual vehicle tabs. Rather, the ballot title accurately describes what I-976 would do: "limit annual motor-vehicle-license fees to $30." Indeed, Section 2 caps motor vehicle license fees at $30 per year, while Sections 3 and 4 reduce vehicle license fees for light trucks, commercial trailers, and snowmobiles to $30. Plaintiffs argue that this is misleading because I-976 does not

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eliminate other vehicle-related fees found in Chapter 46.17 RCW, namely the special/personalized license plate fees under RCW 46.17.210 ($52 initial/$42 renewal) and -.220 (up to $45), the $75 transportation electrification fee under RCW 46.17.324, the $3 sanitary RV disposal fee under RCW 46.17.375 ($3), and the $6 abandoned RV disposal fee under RCW 46.17.380. Those other fees are collected annually, are due at the time of initial or renewal vehicle registration, and would show up on a vehicle tab invoice. They are not "license fees," however. The words "license fee" do not appear in those other fee statutes as they do in RCW 46.17.350 and -.355 (the annual license fee statutes). Moreover, as correctly pointed out by Defendants, Sections 3(2) and 4(4) of I-976 provide that the license fees in RCW 46.17.350 and -.355 are "in addition to…any other fee or tax required by law." As such, since the text of I-976 makes clear that vehicle owners would still pay any applicable non-license vehicle fees under Chapter 46.17 RCW in addition to license fees, and since I-976 does limit annual vehicle license fees to $30, I-976's ballot title is not misleading by stating that the initiative will "limit annual motor-vehicle-license fees to $30."[6]

2. Plaintiffs' Second Contention: The Ballot Title Misleadingly Implies That All Voter-Approved Charges Survive I-976 and May Exceed Its $30 Cap On Vehicle License Fees

The first clause of the "concise description" in I-976's ballot title states that I-976 "would repeal, reduce, or remove authority to impose certain vehicle taxes and fees." The second clause states that I-976 would "limit annual motor-vehicle-license fees to $30, except voter-approved

[6] Readers of this Order (other than the parties) might wonder why the Court does not examine how I-976 might have been marketed to voters as promising or implying $30 car tab invoices. For purposes of subject-in-title analysis, however, the Court looks only at the initiative ballot title "because it is the ballot title with which the voters are faced in the voting booth; and because it is the ballot title which can be appealed before an election and which thereafter appears on petitions and the ballot." *ATU*, 142 Wn.2d at 211-12. There is no way for a court to verify with any certainty what types of campaign materials voters might have seen, read, or heard, the impacts of such marketing upon voters' understanding of I-976, the impacts of counter-messaging, whether any campaign information was actually misleading, *et cetera*. By contrast, all voters who voted on I-976 would have been presented with the ballot title.

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charges[.]" Where a fee is *eliminated entirely* through repeal, it cannot possibly be "limited" to $30 because the authority to impose <u>any</u> amount of the fee no longer exists. Likewise, where a fee is eliminated entirely, the fee cannot possibly be an exception to the $30 limit as a "voter-approved charge" because, again, the authority to impose the fee no longer exists. I-976 repeals and removes authority to impose both TBD VLFs and the RTA special MVET. I-976, Sections 6, 10, 11. The MVET is a tax and, therefore, is excluded from the second clause of I-976's ballot title, which concerns only "fees". Even if the MVET were included, since I-976 repeals entirely both the TBD VLF and MVET taxing authority, neither could possibly be "limited" to $30, as referenced in the second clause of the ballot title. Since neither the TBD VLF nor the MVET could be limited to $30, neither could be subject to the "voter-approved charges" exception to the $30 cap. The ballot title does not mislead here. Reading and construing together the first and second clauses of I-976's ballot title concise description, which inform voters *both* that some taxes and fees are repealed and that license fees are limited to $30 except voter-approved charges, the ballot title does not imply either way whether any existing voter-approved vehicle license fees would survive I-976.

Nowhere does the "voter-approved charges" exception identify with specificity which "charges" would be allowed to exceed the $30 annual limit. The second clause does not except "voter-approved TBD vehicle license fees," for example. Nor does it except "*existing* voter-approved charges," or "current", "past", "future", "local", "statewide", or "some", "certain", or "specific" voter-approved charges. For Plaintiffs, the absence of any qualifying or quantifying adjective before "voter-approved" means that the second clause misleadingly implies that <u>all</u> "voter-approved charges" are excepted from the $30 cap and somehow survive I-976. That could not be a plausible implication since, as explained above, fees that are repealed entirely by I-976, like the TBD VLF, cannot possibly be subject to the $30 limit, nor excepted therefrom.

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Ultimately, a plain reading of I-976's ballot title indicates to an inquiring mind the scope and purpose of the initiative, and gives notice that would lead to an inquiry into the body of the act. *WASAVP*, 174 Wn.2d at 660. Voters wondering whether their favored local fee or tax would survive I-976 would have received no assurance either way from the ballot title. The ballot title does not confirm whether any specific fee or tax would be repealed (as mentioned in the first clause) or merely to limited to $30 (per the second clause). Such voters would have been prompted to look into the body of I-976 itself. Liberally construing I-976's ballot title in favor of the initiative, as the Court must, the Court concludes that it satisfies the subject-in-title rule. Since the first clause of I-976's ballot title makes clear that certain fees and taxes would be repealed or removed, the second clause does not mislead by indicating that non-specified "voter-approved charges" would exceed the $30 limit.

3. Plaintiffs' Third Contention: The Ballot Title Misleadingly Implies That Voter-Approved Charges Are Possible But It Eliminates Mechanisms For Voter Approval

I-976 eliminates statutory procedures for voter approval of two kinds of vehicle-related taxes and fees: TBD VLFs and the RTA MVET. I-976, Sections 6, 10, and 11. The initiative does not specify how, absent those repealed statutes, voters could approve future charges above the $30 limit on vehicle license fees. No authority requires that I-976's ballot title contain such information, however. Plaintiffs argue that if I-976 were implemented today, there would exist no possibility of voter approval for a vehicle license fee. To the contrary, voters could approve future vehicle license fees either through the initiative process or if the Legislature creates future authority for local imposition of vehicle license fees. It would be speculation for this Court to conclude that those two avenues for voter approval would never occur or are highly unlikely to occur. Both are possible. Since future voter approval of new or increased vehicle license fees would be legislatively possible after I-976's implementation, the ballot title's reference to an

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exception for voter-approved charges to the $30 limit is not palpably misleading. *See WASAVP*, 174 Wn.2d at 661 ("objections to the title must be grave and the conflict between it and the constitution palpable.").

4. Plaintiffs' Fourth Contention: The Ballot Title Fails To Mention The Sales Tax Repeal, The Electric Vehicle Fee Repeal, Or The Requirement That Sound Transit Retire Its Bonds

An initiative ballot title "need not be an index to the contents, nor must it provide details of the measure." *WASAVP*, 174 Wn.2d at 660. In *WASAVP* and *ATU*, the Washington Supreme Court approved initiative ballot titles that excluded from their concise descriptions substantive provisions contained in the body of the initiative. *WASAVP*, 174 Wn.2d at 646-47; *ATU*, 142 Wn.2d at 228-29. In *WASAVP*, Initiative 1183's ballot title did not mention anywhere that the initiative changed regulations relating to liquor advertising, eliminated both "encouraging moderation" and the "orderly marketing of alcohol" as statutorily-recognized public policy goals for the regulation of alcohol, and created a $10,000,000 annual earmark fund for local public safety programs. *Id.* at 647-51. In *ATU*, the Supreme Court concluded that Section 3 of Initiative 695, which repealed statutes allocating proceeds of license tab fees to police, fire, and other purposes and repealed other statutes establishing accounts for deposit and withdrawal of those funds, did not violate the subject-in-title rule. *Id.* at 228-29. The Court reasoned that I-695's ballot title provided "sufficient notice that the initiative repealed taxes, and thus, notice that decreased revenues and loss of funding would result." *Id.* at 229.

Here, as to both Section 5's amendment to RCW 46.17.323 eliminating electric vehicle fees and Section 7's amendment to RCW 82.08.020 eliminating the vehicle sales tax, I-976's ballot title provided sufficient notice that the initiative repealed vehicle-related taxes and fees. The ballot title need not have specifically parsed out those two fees and taxes.

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As for the absence of any reference in the ballot title to I-976's requirement that Sound Transit retire early, defease, or refinance its bonds, the Court explained in the preceding section of this Order that Section 12 is necessary to achieve the repeal of the special MVET authorized by RCW 81.104.140 and -.160. As such, Section 12's impact upon existing bonds is directly related to facilitating the tax repeals and reductions mentioned in the ballot title. Section 12 requires only the early retirement, defeasance, or refinancing of bonds. It does not mandate the creation of new debt or termination of any existing construction projects. Although such outcomes might be foreseeable consequences of bond retirement, defeasance, or refinancing, no authority cited by any party requires that an initiative or its ballot title describe foreseeable consequences of the measure if enacted. Such a requirement would pose an insurmountable obstacle to virtually any initiative measure. I-976's ballot title provided sufficient notice that the initiative repealed taxes, and thus, notice that decreased revenues and loss of funding would result. *ATU*, 142 Wn.2d at 229.

For these reasons, and based upon the argument and authorities offered by Defendants in their motion pleadings and at oral argument, the Court concludes that Plaintiffs have failed to satisfy their burden of establishing, beyond a reasonable doubt, that I-976 violates the subject-in-title rule of Article II, section 19 of the Washington Constitution.

E. Plaintiffs Have Not Satisfied Their Burden of Establishing, Beyond a Reasonable Doubt, That I-976 Violates Article II, Section 37 of the Washington Constitution

Article II, section 37 of the Washington Constitution proclaims that "[n]o act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." The purpose of this amendment is to avoid "confusion, ambiguity, and uncertainty" by disclosing the "effect of the new legislation" and its "impact on existing laws." *ATU*, 142 Wn.2d at 245-46. Article II, section 37 applies to initiatives. *Id.* at

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247. The result of compliance with Article II, section 37 should be " 'that no further search will be required to determine the provisions of such section as amended.' " *Id.* at 245, quoting *Flanders v. Morris*, 88 Wash.2d 183, 189, 558 P.2d 769 (1977).

Washington courts use a two-pronged test to determine whether a law violates Article II, section 37. First, the court must decide whether the new law is a complete act, one in which "the scope of the rights or duties created or affected by the legislat[ive] action can be determined without referring to any other statute or enactment[.]" *ATU*, 142 Wn.2d at 246; *and El Centro De La Raza v. State*, 192 Wn.2d 103, 129, 428 P.3d 1143 (2018).

Here, I-976 satisfies the first prong of Article II, section 37. I-976 is complete because the rights and duties of government subdivisions that charge, levy, or collect vehicle fees and taxes are "readily ascertainable" from the words of the initiative alone. *El Centro*, 192 Wn.2d at 129, quoting *Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 642.

Second, the court addresses whether "a straightforward determination of the scope of rights or duties under the existing statutes [would] be rendered erroneous by the new enactment[.]" *ATU*, 142 Wn.2d at 246. The second prong ensures that voters are aware of an initiative's impact on existing laws. *El Centro*, 192 Wn.2d at 129. The second prong "is not 'intended to prohibit the passage of a law which declared fully its provisions without direct reference to any other act, although its effect should be to enlarge or restrict the operation of some other statutes.' " *ATU*, 142 Wn.2d at 248, quoting *State v. Thorne*, 129 Wn.2d 736, 755, 921 P.2d 514 (1996). Put another way, Article II, section 37 will not necessarily invalidate a complete act even though the act "may by implication operate to change or modify prior acts." *ATU*, 142 Wn.2d at 247-48. But, where an initiative greatly restricts or eliminates existing statutory rights or duties without explicitly showing how the initiative relates to the statutes it amends, the initiative violates Article II, section 37. *El Centro*, 192 Wn.2d at 132.

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Plaintiffs contend that I-976 fails the second prong because it amends certain vehicle fee provisions in Chapter 46.17 RCW without disclosure and renders erroneous a straightforward determination of rights and duties under those statutes. The Court disagrees.

The Court's conclusion requires a detailed examination of Chapter 46.17 RCW and of Sections 2, 3, and 4 of I-976. Section 2 of I-976 declares that "[s]tate and local motor vehicle license fees may not exceed $30 per year for motor vehicles[.]" I-976, Sec. 2(1). Sections 3 and 4 of I-976 reduce to $30 the "vehicle license fee" for snowmobiles and commercial trailers in RCW 46.17.350, and the "license fee" for trucks weighing 10,000 pounds or less in RCW 46.17.355. Subpart (2) of Section 2 defines "state and local motor vehicle license fees" as "the general license tab fees paid annually for licensing motor vehicles, [...] This annual fee must be paid and collected annually and is due at the time of initial and renewal vehicle registration." Id., Sec. 2(2). Other statutes in Chapter 46.17 also impose additional fees that may appear on a vehicle owner's annual invoice for "general license tab fees." These fees include the special/personalized license plate fees under RCW 46.17.210 ($52 initial/$42 renewal) and -.220 (up to $45), the $75 transportation electrification fee under RCW 46.17.324, the $3 sanitary RV disposal fee under RCW 46.17.375 ($3), and the $6 abandoned RV disposal fee under RCW 46.17.380.

Although those other fees are collected annually, are due at the time of initial or renewal vehicle registration, and would show up on a "general license tab" invoice, they are not "license fees." The words "license fee" do not appear in those other fee statutes as they do in RCW 46.17.350 and -.355. As correctly pointed out by Defendants, Sections 3(2) and 4(4) of I-976 provide that the $30 license fees in RCW 46.17.350 and -.355 are "in addition to…any other fee or tax required by law." I-976 adequately distinguishes between "license fees" and the non-license fees required by other sections of Chapter 46.17, which are not subject to the $30 cap for

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license fees in Section 2 of I-976. Accordingly, I-976 does not render erroneous a straightforward determination of rights and duties under the above-referenced Chapter 46.17 non-license fee statutes.

Plaintiffs further argue that I-976 impliedly amends RCW 36.73.040 and 36.73.065. The Court concludes that I-976 does not render erroneous a straightforward determination of rights and duties under those statutes either. The effect of I-976 on those statutes is manifestly straightforward: TBDs are no longer authorized to impose any amount of the $100 vehicle fee authorized by RCW 82.80.140. Therefore, RCW 36.73.040(3)(b) is impliedly, unambiguously no longer effective. Likewise, all subparts of RCW 36.73.065 referencing the fee authorized by RCW 82.80.140 are no longer effective. Subpart (6) of RCW 36.73.065, which does not contain a reference to RCW 82.80.140, applies only to vehicle fees *other than* the fee authorized by RCW 82.80.140, which no longer exists. That there might not currently exist any other vehicle fee to which Subpart (6) applies does not render erroneous a straightforward determination of rights and duties under that subpart.

For these reasons, and based upon the argument and authorities offered by Defendants in their motion pleadings and at oral argument, the Court concludes that Plaintiffs have failed to satisfy their burden of establishing, beyond a reasonable doubt, that I-976 violates Article II, section 37 of the Washington Constitution.

F. Plaintiffs Have Not Satisfied Their Burden of Establishing, Beyond a Reasonable Doubt, That I-976 Violates Article XI, Section 12 of the Washington Constitution

Article XI, section 12 of the Washington Constitution states:

> The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.

Plaintiffs contend that where the Legislature "vests" in a local government the authority

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to impose any tax, and where the local government then exercises its taxing authority by imposing a tax, the constitution does not allow the Legislature to rescind such taxing authority unless and until the purpose for which the local government has exercised its tax authority is fulfilled. The Court disagrees. In *Pierce Cty. I*, the Washington Supreme Court observed that:

> Article XI, section 12 permits the state to legislate what taxes and fees local governments are authorized to impose: 'The legislature ... may, by general laws, vest in the corporate authorities [of counties, cities, towns or other municipal corporations], the power to assess and collect taxes.' Each local government, in its discretion, then decides whether to impose the taxes and fees authorized by the State's general laws. **The legislature – or the people legislating by initiative – may rescind by general laws the authority previously granted. When that happens, as here, no violation of article XI, section 12 occurs**.

Pierce Cty. I, 150 Wn.2d at 440 (emphasis added). Plaintiffs argue that the Supreme Court in *Pierce Cty. I* was never presented with Plaintiffs' arguments interpreting the word "vest" as a restriction on the Legislature.[7] That might be so, but this Court will not overlook the Supreme Court's unambiguous declaration that an initiative may rescind by general laws tax authority previously granted, especially where that Court quoted the "vest" language in Article XI, section 12 before reaching its conclusion. I-976 rescinds by general laws the Legislature's vesting of authority in local governments to impose an assortment of motor vehicle taxes and fees. Under *Pierce Cty. I*, there is no constitutional violation. Plaintiffs rely heavily upon *State v. Reed*, 166 Wash. 132, 6 P.2d 619 (1932), but *State v. Redd* does not decide whether the Legislature may rescind tax authority once vested. Rather, that opinion examines whether the Legislature may vest local tax authority in an entity *other than* a local government. *Id.*, 166 Wash. at 139 ("The constitutional provision is a limitation upon the power of the Legislature to delegate the right of local taxation to any other than the local authorities of the county, city, town, or other municipal

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[7] Intervenor-Defendant Pierce County makes a similar argument and contends that this Court should deny Plaintiffs' motion for summary judgment as to Article XI, section 12 on the ground that this area of law is "unsettled." Pierce Cty.'s Response to Pltfs. Mot. for Summ. Jmt. (Sub. No. 165), pp. 2-3. That an area of law might be unsettled is not necessarily a basis for denying summary judgment. Nonetheless, the Court denies Plaintiffs' motion for summary judgment as to this issue on different grounds.

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corporation concerned.").

Plaintiffs have failed to satisfy their burden of establishing, beyond a reasonable doubt, that I-976 violates Article XI, section 12 of the Washington Constitution.

G. Plaintiffs Have Not Satisfied Their Burden of Establishing, Beyond a Reasonable Doubt, That I-976 Violates Article I, Section 19 of the Washington Constitution

Article I, section 19 of the Washington Constitution provides that "[a]ll Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Plaintiffs contend that I-976 violates this section by using a statewide vote to interfere with and attempt to undo the results of two local elections in 2014: Seattle voters' approval of a VLF in Proposition 12 and central Puget Sound-area voters' approval of motor vehicle excise tax in ST3. Defendants correctly argue, however, that Article I, section concerns the manner in which elections are held. Nothing in Article I, section 19 guarantees that a measure receiving local voter approval will remain in effect permanently, or for any length of time at all.

As for Plaintiffs' argument that I-976 "dilutes" the weight of local votes, it is worth noting that the questions put to voters in those 2014 local elections were not identical to the question put to voters by I-976. In the local votes, the question was whether local voters consented to a local government entity's exercise of a statutorily-created taxing power. By contrast, in I-976 the question was whether such statutorily-created taxing power should exist in the first place or be repealed. When deciding on I-976, statewide voters did not vote on any local imposition of fees or taxes, nor did they vote to revoke local voters' consent to be taxed. Moreover, it is the Legislature that created the statutory taxing authority to impose TBD VLFs and the MVET in the first place. Legislators statewide participated in their enactment. Where the Legislature creates a statutory power to tax, no "dilution" of local votes occurs where the Legislature (or the people legislating via initiative) rescinds such general laws. Likewise, local

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voters' consent to be taxed under a statutorily-created taxing authority cannot strip the Legislature, or the people, of their power to rescind such statutorily-created authority.

Plaintiffs have failed to satisfy their burden of establishing, beyond a reasonable doubt, that I-976 violates Article I, section 19 of the Washington Constitution.

H. Plaintiffs Have Not Satisfied Their Burden of Establishing, Beyond a Reasonable Doubt, That I-976 Violates Article VII, Section 5 of the Washington Constitution

Article VII, section 5 of the Washington Constitution states: "No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied." I-976 does not levy or impose any tax. To the contrary, the Initiative repeals and removes authority to impose certain vehicle taxes.

Article VII, section 5 goes further though, rendering unconstitutional actions taken to divert taxes assessed for a special purpose into some "wholly unrelated project or fund." *Sheehan v. Cent. Puget Sound Reg'l Transit Auth.*, 155 Wn.2d 790, 804, 123 P.3d 88 (2005). I-976 does not expressly mandate diversion of any tax money. Plaintiffs argue, however, that Section 12 of I-976 would force Sound Transit to divert voter-approved tax revenues away from transit construction projects and toward retiring its bond debt.

Plaintiffs' argument is not persuasive. Section 12 is effective only if the Sound Transit bond contracts include terms that allow for early retirement, defeasance, or refinancing. I-976, Section 12(2). If the contracts so allow, I-976 would not mandate diversion of Sound Transit MVET revenues to some "wholly unrelated project or fund." *Sheehan, supra.* At most, I-976 could be viewed as mandating that MVET revenues be used to perform enforceable contract terms that are contained in financing instruments for the *very same* Sound Transit projects. Such would not violate Article VII, section 5.

Plaintiffs have failed to satisfy their burden of establishing, beyond a reasonable doubt, that I-976 violates Article VII, section 5 of the Washington Constitution.

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I. Plaintiffs Have Not Satisfied Their Burden of Establishing, Beyond a Reasonable Doubt, That I-976 Violates Separation-Of-Powers Principles

The state initiative power is coextensive with its legislative power and is limited only by the federal and state constitutions. *Coppernoll v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 290 (2005); *ATU*, 175 Wn.2d at 545. As explained above, the power of the Legislature, and therefore of the people legislating by initiative, to rescind taxing authority granted to a local jurisdiction is inherent in Article XI, section 12. *Pierce Cty. I*, 150 Wn.2d at 440. I-976 is well within the state initiative power and does not interfere with separation-of-powers doctrines.

More specifically, I-976 does not violate the separation of powers by addressing administrative matters properly left for the executive branch of government, as Plaintiffs argue. Plaintiffs rely upon *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973), and *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 239 P.3d 589 (2010), to argue that state initiative power cannot intrude on local administrative decisions. But *Ruano* involved a local initiative. The opinion does not discuss, let alone create, limitations on state initiative power. In any event, I-976 does not purport to administer the law. It is a legislative act as defined in *Ruano*, because it enacts "new law or policy" that changes the taxing authority legislatively granted to certain municipal corporations.

Nor does I-976 improperly delegate legislative power by including effective date contingencies in Section 16. That section clearly addresses what will happen if a Regional Transit Authority retires, defeases, or refinances its outstanding bonds by March 31, 2020, and what will happen if it does not. The Washington Supreme Court has routinely upheld legislation that is conditioned on action by third parties, even where that action involves the exercise of judgment by those third parties. *Brower v. State*, 137 Wn.2d 44, 969 P.2d 42 (1998); *Diversified Inv. P'ship v. Dep't of Social & Health Servs.*, 113 Wn.2d 19, 775 P.2d 947 (1989); *State v. Storey*, 51 Wash. 630, 99 P. 878 (1909).

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Section 16 establishes a valid contingency, which is not an improper delegation of legislative authority. It is a "clearly recognized" legislative power of long standing. *Brower*, 137 Wn.2d at 55.

Plaintiffs have failed to satisfy their burden of establishing, beyond a reasonable doubt, that I-976 violates separation-of-powers principles.

J. Pursuant To Defendants' and Intervenor-Defendant Didier's CR 56(f) Request, All Parties' Motions For Summary Judgment Regarding Article I, Section 12 of the Washington Constitution and the Use of Kelley Blue Book Valuations Are Denied Without Prejudice

Article I, section 12 of the Washington Constitution states: "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations."

Section 8 of I-976 requires the government to use a Kelley Blue Book ("KBB") valuation to determine the taxable value of a vehicle when imposing a vehicle-related tax. *See also* I-976 Ballot Title ("This measure would … base vehicle taxes on Kelley Blue Book value."). Materials provided to the Court by Plaintiffs establish that the KBB valuation method is a proprietary product owed by a private corporation. Declaration of David J. Hackett (Sub. No. 151), Exhibit 4. KBB is currently owned by an automotive subsidiary of Cox Enterprises, a multi-billion-dollar international conglomerate. Id., Ex. 5. Plaintiffs contend that because I-976 would require the Washington Department of Licensing to use KBB's product in computing taxes, the State would be required to enter into a single-source contract with KBB and Cox Enterprises, due to the many thousands of valuations that the Department must make each year. Plaintiffs argue that the granting of a special contractual privilege to a corporation like KBB/Cox Enterprises under such circumstances violates Article I, section 12.

Neither Defendants nor Intervenor-Defendant Didier have provided affidavits disputing the facts asserted in Plaintiffs' affidavits concerning KBB and its proprietary valuation method.

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Both in pleadings and at oral argument on February 7, 2020, Defendants and Intervenor-Defendant Didier argued that, due to both the expedited summary judgment schedule and the parties' agreement that no discovery would occur during that time, the defense has been unable to obtain affidavits essential to justify their opposition to Plaintiffs' motion for summary judgment regarding KBB. Defendants and Intervenor-Defendant Didier contend that, in fact, it might *not* be the case that the State would need to enter into a contract with KBB/Cox Enterprises in order to utilize KBB values. If such could be shown, then there would exist a genuine issue as to a material fact regarding Plaintiffs' claim under Article I, section 12 of the Washington Constitution, precluding summary judgment for Plaintiffs. Defendants and Intervenor-Defendant Didier request leave of court to conduct discovery regarding this issue.

Court rules provide a remedy. Under Civil Rule 56(f), "[s]hould it appear from the affidavits of a party opposing the motion that for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." CR 56(f).

Here, for good reason shown, it appears the Defendants and Intervenor-Defendant Didier cannot present by affidavit facts essential to justify their opposition. Accordingly, this Court denies all parties' motions for summary judgment as to the Article I, section 12/KBB issue. The denial is without prejudice to any party renewing the motion in the future after pertinent discovery is accomplished. Leave of court to conduct discovery as to this issue is granted.

K. Pursuant To Intervenor-Defendant Didier's CR 56(f) Request, All Parties' Motions For Summary Judgment Regarding Article I, Section 23 of the Washington Constitution and the Burien Bonds Are Denied Without Prejudice

Article I, section 23 of the Washington Constitution provides that "[N]o…law…impairing the obligations of contracts shall ever be passed." The test for

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contractual impairment is well established: "(1) does a contractual relationship exist, (2) does the legislation substantially impair the contractual relationship, and (3) if there is a substantial impairment, is it reasonable and necessary to serve a legitimate public purpose." *Pierce Cty. II*, 159 Wn.2d at 28.

Plaintiffs generally contend that substantially impairs the contractual relationship between the City of Burien and its bondholders. With respect to municipal bond contracts, a law substantially impairs the contract if it "detrimentally affects the financial framework which induced the bondholders originally to purchase the bonds, without providing alternative or additional security." *Tyrpak v. Daniels*, 124 Wn.2d 146, 153-54, 874 P.2d 1374 (1994). Plaintiffs assert that Burien's TBD vehicle license fee was part of the financial framework that induced bondholders to originally purchase the bonds.

In briefing and at oral argument, Intervenor-Defendant Didier contends that, due to both the expedited summary judgment schedule and the parties' agreement that no discovery would occur during that time, he has been unable to obtain affidavits essential to justify his opposition to Plaintiffs' motion for summary judgment regarding the Burien bonds. Intervenor-Defendant Didier contends that, in fact, it might *not* be the case that Burien's bondholders relied upon the existence of Burien's TBD vehicle fee in deciding whether to purchase the bonds. If such could be shown, then there would exist a genuine issue as to a material fact regarding Plaintiffs' claim under Article I, section 23 of the Washington Constitution, precluding summary judgment for Plaintiffs. Mr. Didier requests leave of court to conduct discovery regarding this issue.

Here, for good reason shown, Intervenor-Defendant Didier cannot present by affidavit facts essential to justify his opposition. Accordingly, pursuant to Intervenor-Defendant's CR 56(f) request, this Court denies all parties' motions for summary judgment as to this Article I, section 23/Burien bond issue. The denial is without prejudice to any party renewing the motion

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in the future after pertinent discovery is accomplished. Leave of court to conduct discovery as to this issue is granted.

ORDER

For the reasons enumerated above, it is hereby

ORDERED, ADJUDGED, AND DECREED that Plaintiffs' and Intervenor-Plaintiffs' motions for summary judgment are DENIED in their entirety, provided that such denial is without prejudice to Plaintiffs and Intervenor-Plaintiffs renewing their motions for summary judgment solely as to their claims under Article I, section 12 and Article I, section 23 of the Washington Constitution (regarding KBB and the Burien bonds, respectively). It is further

ORDERED, ADJUDGED, AND DECREED that Defendant State of Washington's and Intervenor-Defendant Pierce County's Joint Motion For Summary Judgment is GRANTED IN PART and DENIED IN PART. Such denial is solely as to their request for summary dismissal of Plaintiffs' and Intervenor-Plaintiffs' claims under Article I, section 12 and Article I, section 23 of the Washington Constitution regarding KBB and the Burien bonds. Such denial is without prejudice to Defendants renewing their motion for summary judgment as to those claims. It is further

ORDERED, ADJUDGED, AND DECREED that Intervenor-Defendant Clint Didier's Motion For Summary Judgment is GRANTED IN PART and DENIED IN PART. Mr. Didier's motion is granted only to the same extent as Defendants' motion. Mr. Didier's motion is denied both as to his request for summary dismissal of Plaintiffs' and Intervenor-Plaintiffs' claims under Article I, section 12 and Article I, section 23 of the Washington Constitution regarding KBB and the Burien bonds, <u>and</u> as to his request that the preliminary injunction entered by this Court on November 27, 2019 be vacated. Since this Order does not dispose of all of Plaintiffs' claims

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that I-976 violates the Washington Constitution, the preliminary injunction shall remain in effect until further order of this Court. It is further

ORDERED, ADJUDGED, AND DECREED that the following of Plaintiffs' and Intervenor-Plaintiffs' claims against Defendants and Intervenor-Defendants in the above-captioned lawsuit are dismissed with prejudice:

1. Violation of Article II, section 19 of the Washington Constitution (single-subject rule;
2. Violation of Article II, section 19 of the Washington Constitution (subject-in-title rule);
3. Violation of Article II, section 37 of the Washington Constitution;
4. Violation of Article XI, section 12 of the Washington Constitution;
5. Violation of Article I, section 19 of the Washington Constitution;
6. Violation of Article VII, section 5 of the Washington Constitution; and
7. Violation of separation-of-powers principles.

It is further

ORDERED, ADJUDGED, AND DECREED that, pursuant to the CR 56(f) requests by Intervenor-Defendant Didier and Defendant State of Washington, discovery relating to Plaintiffs' and Intervenor-Plaintiffs' claims under Article I, section 12 and Article I, section 23 of the Washington Constitution regarding KBB and the Burien bonds is authorized. The parties shall confer with each other and the Court regarding case schedule deadlines for discovery and, if necessary, additional dispositive motions.

DATED this 12th day of February, 2020.

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Exhibit D

The Honorable Marshall Ferguson

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

GARFIELD COUNTY TRANSPORTATION AUTHORITY; KING COUNTY; CITY OF SEATTLE; WASHINGTON STATE TRANSIT ASSOCIATION; ASSOCIATION OF WASHINGTON CITIES; PORT OF SEATTLE; INTERCITY TRANSIT; AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHINGTON; MICHAEL ROGERS; CITY OF BURIEN; and MICHAEL CAMARATA, Plaintiffs, and WASHINGTON ADAPT; TRANSIT RIDERS UNIION; and CLIMATE SOLUTIONS, Intervenor-Plaintiffs, v. STATE OF WASHINGTON, Defendant, and CLINT DIDIER; PERMANENT OFFENSE; TIMOTHY D. EYMAN; MICHAEL FAGAN; JACK FAGAN; and PIERCE COUNTY, Intervenor-Defendants.	NO. 19-2-30171-6 SEA ORDER ON MOTION FOR RECONSIDERATION, AND REQUEST FOR RESPONSE

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This matter came before the Court on the motion to reconsider the Court' Order on Cross-Motions for Summary Judgment dated February 12, 2020. The Court considered the motion and now authorizes a Response by any party or intervenor which shall be due by noon Thursday, February 27, 2020. Any such response shall be filed and served on all parties and their counsel of record, with a copy provided by email to the Bailiff, together with proof of mailing or delivery to the moving party. The moving party, Intervenor-Defendant Didier, may file and serve a Reply, which shall be due by noon, Tuesday, March 3, 2020.

DATED this 20th day of February, 2020.

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STEPHEN PIDGEON, ATTORNEY AT LAW

November 04, 2020 - 4:40 PM

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