The Honorable Marshall Ferguson
Noted for Hearing: November 26, 2019 at 9:00 AM
With Oral Argument

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

KING COUNTY; GARFIELD COUNTY TRANSPORTATION AUTHORITY; 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 DEFENDANT STATE OF WASHINGTON'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

When over 1 million Washington voters approved Initiative 976 to reduce vehicle fees and taxes, they were exercising "[t]he first power reserved by the people" in Washington's Constitution, Const. art. II, § 1(a). Plaintiffs ask this Court to overturn the people's decision, but "it 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." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2001) (*ATU*). Rather, the Court's

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role is limited: the initiative is "presumed to be constitutional," and the Court should invalidate it only if there is "no reasonable doubt that the statute violates the constitution." *Id.* at 205. The Court should be especially cautious here, because Plaintiffs seek the "'extraordinary remedy'" of a preliminary injunction, "which should not be lightly indulged in, but should be used sparingly and only in a clear and plain case." *Kucera v. State, Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000) (quoting 42 Am.Jur.2d Injunctions § 2, at 728 (1969)).

Plaintiffs claim that this is one of the rare "clear and plain cases" where the Court should issue an injunction because "the initiative is unconstitutional and its implementation would cause immediate, devastating, and irreparable impacts." PI Mot. at 1. These claims are false. Plaintiffs cannot demonstrate beyond a reasonable doubt that I-976 is unconstitutional, and they have failed to show that the measure would cause "immediate, devastating, and irreparable" impacts that would justify an injunction during the short time it would take to resolve the merits of this case, which could likely be done on summary judgment in a matter of weeks.

As an initial matter, Plaintiffs cannot show that I-976 is unconstitutional beyond a reasonable doubt because our Supreme Court already rejected nearly all of their arguments as to a very similar measure. Initiative 776, enacted by the voters in 2002, adopted many of the same policies embodied in I-976: limiting state vehicle license fees to $30 and repealing authority for local governments to impose certain vehicle fees and taxes. *Pierce Cty. v. State*, 150 Wn.2d 422, 431-32, 78 P.3d 640 (2003) (*Pierce Cty. I*). Multiple plaintiffs, including one of the Plaintiffs here—King County—sued, raising nearly every claim presented here: that the measure violated Article II, section 19; exceeded the initiative power; improperly infringed on local authority; and impaired certain bonds. *Id.* at 428-29. The Supreme Court rejected all of these arguments, *id.* at 430-31, just as this Court should. While the Supreme Court later held that one section of I-776 impaired bonds issued by Sound Transit, *Pierce County v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006) (*Pierce Cty. II*), here I-976 specifically avoided that concern by delaying the effective date of certain sections affecting Sound Transit until bonds are retired.

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Even if there were no precedent so directly on point, Plaintiffs could not meet their burden of proving I-976 unconstitutional on any of the grounds they claim. Plaintiffs cannot demonstrate that I-976 contains multiple subjects, because all parts of the Initiative relate to one general subject: "motor vehicle taxes and fees." I-976 Ballot Title. They cannot show that the title misrepresented the subject of the measure, because the title accurately described the measure and gave "notice that would lead to an inquiry into the body of the act." *Pierce Cty. I*, 150 Wn.2d at 436. They cannot show that it amended statutes without setting them forth in full, because it set forth the statutes it amended, and there is no requirement to set forth statutes that are repealed. *ATU*, 142 Wn.2d at 254-55. They cannot show that it impermissibly infringes local authority because local governments can only impose taxes specifically allowed by the State, and the State can always revoke taxing authority previously granted. *See Pierce Cty. I*, 150 Wn.2d at 440. They cannot show that it exceeds the scope of the initiative power, because their argument turns entirely on inapposite cases about the much narrower local initiative power. *See Protect Pub. Health v. Freed*, 192 Wn.2d 477, 430 P.2d 640 (2018). And they cannot show that it impairs contracts because they offer no tangible evidence of any impairment.

Plaintiffs' requested injunction is inappropriate for an independent reason: they have failed to show immediate and substantial injury or that the equities favor injunctive relief. Plaintiffs claim that I-976 will lead to immediate losses of transit service, PI Mot. at 2, but Plaintiffs have not shown that this consequence is immediate or inevitable. For example, Plaintiffs claim that Seattle will lose $2.6 million in the first month of I-976's implementation, "which over time could lead to approximately 175,000 annual transit hours of King County Metro service being cut." *Id.* But the City's transportation budget has increased by over $200 million in just the last two years, Declaration of Alan Copsey (Copsey Decl.), Ex. A at 404, and the City recently sold a single property for nearly $150 million, with much of the money available for transportation uses, *see* Copsey Decl., Ex. B at 17, so the notion that Seattle inevitably must immediately cut bus service is untenable. Even Plaintiffs' own declaration offered in support of

this claim makes clear that no changes in bus service would actually occur until March, Gannon Decl. ¶ 9, by which time this Court could resolve the merits of this case.

More broadly, the whole premise of Plaintiffs' harm argument is that I-976 should be enjoined to prevent them from losing money, but enjoining I-976 will simply mean that others—Washington taxpayers—lose that same amount of money, money they will save if I-976 is allowed to take effect. Given that Washington voters approved I-976 and the policy consequence of reducing taxes and fees flowing from taxpayers to public agencies, this consequence cannot be seen as a "harm," but rather precisely what the people voted to adopt. The equities thus tip strongly against granting injunctive relief.

For these reasons, the Court should decline Plaintiffs' request to overturn the will of the voters. Plaintiffs' weak constitutional claims and evidence of harm make this far from a "clear and plain case" for injunctive relief. *Kucera*, 140 Wn.2d at 209.

II. STATEMENT OF FACTS

A. I-976 Passed at the November 5, 2019 General Election

Initiative Measure No. 976 was approved with 52.97% of the vote in the November 5, 2019 General Election. Copsey Decl., Ex. C. More than one million Washingtonians voted in favor of the initiative. *Id.* I-976 passed in 33 of Washington's 39 counties, Copsey Decl., Ex. D, including Garfield County, where Plaintiff Garfield County Transportation Authority is located. Compl. ¶ 1.

B. Operation of I-976

I-976 was passed by Washington voters to reduce motor vehicle taxes and fees. Copsey Decl., Ex. E, § 1. The initiative generally repeals, reduces, and removes state and local authority to impose certain motor vehicle fees and taxes. *Id.*

Sections 2 through 4 of the Initiative amend RCW 46.17 and address "motor vehicle license fees" imposed in that chapter. Section 2 limits "[s]tate and local motor vehicle license fees" to "$30 per year." *Id.*, § 2. Section 2 defines "state and local motor vehicle license fees" as

"the general license tab fees paid annually for licensing motor vehicles," but not including "charges approved by voters after the effective date of this section." *Id.*

Section 3 amends RCW 46.17.350, which sets forth "vehicle license fee by vehicle type." *Id.* § 3(1). Under this section, the snowmobile license fee is reduced from $50 to $30, and commercial trailer fees are reduced from $100 to $30. *Id.* This section further states that the "vehicle license fee" required under this subsection is in addition to other filing fees and any other fee or tax required by law. *Id.* § 3(2).

Section 4 amends RCW 46.17.355, which sets forth "license fee by weight." *Id.* § 4(1)(b). This section, which generally applies to trucks, reduces license fees to $30 per year for vehicles under 10,000 pounds. *Id.* §§ 4(1)(b), 4(5). This section further states that "license fees" and "the freight project fee" in this section are in addition to other filing fees and any other fee or tax required by law. *Id.* § 4(4).

Section 5 reduces the electric vehicle fee from $100 to $30 and eliminates an additional $50 electric vehicle fee. *Id.* §§ 5(1), 5(4)(a).

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 to support passenger-only ferries. *Id.* § 6. Section 6 also repeals RCW 46.68.415, which addressed how the passenger weight fee would be used.

Section 7 removes the provision in RCW 82.08.020 that imposed an additional 0.3% sales tax for each retail sale of a motor vehicle. *Id.* § 7(3).

Section 8 adds a new section to the motor vehicle excise tax chapter to require that any motor vehicle excise tax use "base model Kelley Blue book value" of a vehicle. *Id.* § 8.

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Section 9 amends RCW 82.44.065 to incorporate the Kelley Blue book method for valuing a vehicle when persons paying state or locally imposed taxes appeal the valuation to the Department of Licensing. *Id.* § 9.

Section 10 amends RCW 81.04.140 to eliminate the special motor vehicle excise tax (MVET) that a regional transit authority is allowed to impose as provided in RCW 81.104.160. *Id.* § 10. Pursuant to Section 16, Section 10 only takes effect after "the regional transit authority complies with section 12 of this act and retires, defeases, or refinances its outstanding bonds." *Id.* § 16(1).

Section 11 repeals RCW 82.44.035 and RCW 81.104.160. *Id.* § 11. Pursuant to Section 16, Section 11 only takes effect after "the regional transit authority complies with section 12 of this act and retires, defeases, or refinances its outstanding bonds." *Id.* § 16(1).

Section 12 states that "[i]n order to effectuate the policies, purposes, and intent of this act to ensure that the motor vehicle excise tax repealed by this act are no longer collected, an authority that imposes a motor vehicle excise tax under RCW 81.104.160 must fully retire, defease, or refinance any outstanding bonds" if "[a]ny revenue collected prior to the effective date of this section from the motor vehicle excise tax imposed under RCW 81.104.160 has been pledged to such bonds" and "[t]he bonds, by virtue of the terms of the bond contract, covenants, or similar terms, may be retired or defeased early or refinanced." *Id.* § 12.

Section 13 amends RCW 81.104.160 to reduce the authority for voter-approved excise taxes for regional transit authorities from eight-tenths to two-tenths of one percent on the value of every motor vehicle owned by a resident of the taxing district. *Id.* § 13. Pursuant to Section 16, Section 13 takes effect on April 1, 2020, if sections 10 and 11 have not taken effect by March 31, 2020. *Id.* § 16(2).

Section 14 requires that the provisions of the act be liberally construed to effectuate its intent, policies, and purposes. *Id.* § 14.

Section 15 provides a severability clause. *Id.* § 15.

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

Section 17 provides the title of the Act. *Id.* § 17.

C. Effect of I-976 on Taxpayers

The repeal, reduction, and removal of motor vehicle taxes and fees will result in substantial savings to Washington vehicle owners. All vehicles in Washington, unless exempt, must be registered yearly with the Department of Licensing (Department). RCW 46.16A.030, RCW 46.16A.040, RCW 46.16A.110. At registration, all applicable fees and taxes must be paid. RCW 46.16A.040(3), RCW 46.16A.110(1). This currently includes TBD fees authorized under RCW 82.80.140, which allows TBDs to impose additional vehicle fees by vote of the district board (generally the city or county council) or by the public. According to the Municipal Research Service Center, while many TBDs around the State have imposed vehicle fees, only one of these (Seattle's) was actually approved by voters—the rest were all approved by the TBD board, without a vote of the people. *See* Copsey Decl., Ex. F.

A vehicle owner may renew their registration up to six months in advance of its expiration. Declaration of Jaime Grantham (Grantham Decl.) ¶ 6. Sixty days in advance of the registration expiration, DOL generates a registration renewal notice, which includes the amount of fees and taxes due to renew the vehicle's registration. *Id*. The Department sends the renewal notice to vehicle owners 45 days in advance of the registration expiration. *Id*.

During the 13-month period from October 1, 2018, through October 31, 2019, there were approximately 7.9 million motor vehicle original or renewal registration transactions for the classes of vehicles affected by I-976. Declaration of George Price (Price Decl.) ¶ 4. That is approximately 600,000 vehicle registrations per month for classes of vehicles affected by I-976. *Id*. Following the implementation of I-976, owners of those vehicles will no longer pay numerous vehicle taxes and fees, including the passenger weight fee, Copsey Decl., Ex. E, § 6; the motorhome weight fee, *id.*; and any TBD fees, *id*; *see also* Grantham Decl., Ex. C. In addition, the following fees are all lowered to $30: vehicle weight fee for vehicles under 10,000 pounds,

Copsey Decl., Ex. E § 4; electric vehicle fee, *id.* § 5; snowmobile registration, *id.* § 3; and commercial trailer fee, *id.* § 3; *see also* Grantham Decl., Ex. C. And Washington residents who purchase cars will no longer have to pay the additional 0.3% sales tax on the selling price of the car. Copsey Decl., Ex. E, § 7.

As a result of I-976, Washington motor vehicle owners are expected to save roughly $300 million annually in state motor vehicle taxes and fees. Copsey Decl., Ex. G at 2. Motor vehicle owners in the 62 municipalities across the state that impose TBD vehicle fees will save an additional $58 million annually. Copsey Decl., Ex. G at 3. These TBD vehicle fees currently range between $20 - $80 per vehicle. Copsey Decl., Ex. H.

D. Local Transportation Revenue Sources

Local governments in Washington have a variety of revenue sources available to fund transportation needs, from a wide range of taxes to state and federal grants. *See, e.g.*, RCW 36.73.040 (sales and use tax); 82.80.010 (special fuel tax), 82.80.030 (commercial parking tax). These sources can generate substantial amounts of revenue. For example, Plaintiff City of Seattle has an annual transportation budget of approximately $634 million. Copsey Decl., Ex. A at 404. The City's transportation budget has increased by almost $200 million over the last two years. *See id.* The City also has received "additional resources to support some new spending in 2020." Copsey Decl., Ex. B at 17. "For example, the sale of the Mercer Megablock properties and payments to the City associated with the expansion of the Washington State Convention Center have provided significant resources for both housing and transportation investments." *Id.*

Similarly, King County Metro Transit Department (Metro), which provides public transportation services in King County, has an annual operating budget of more than $949 million. Gannon Decl. ¶¶ 3-4. The City of Seattle contracts with Metro to provide transportation services in the Seattle metropolitan area. *See id.* ¶ 7 and Ex. 1 (Transit Service Funding Agreement between King County and the City of Seattle).

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E. Department of Licensing Implementation of Initiative

Since the November 5, 2019, General Election, the Department of Licensing has dedicated extensive time and resources to prepare for I-976's impact on its collection of motor vehicle fees and taxes. Declaration of Jill Johnson (Johnson Decl.) ¶ 5. In just the last two weeks, Department programmers, contractors, and other staff have spent more than 350 business hours preparing for implementation of I-976. *Id.* ¶¶ 6, 8. Such preparation is primarily to program and test the Department's vehicle and driver technology system (DRIVES) so that the fees and taxes due upon original or renewal motor vehicle registration are consistent with I-976. The projected cost for the DRIVES programming and development changes is $116,500. *Id*. ¶ 11. As a result of its significant efforts and expenditures, the Department believes that it will be prepared to implement the provisions of I-976 that take effect December 5, 2019. *Id.* ¶ 9.

F. Background on the Ballot Title Process Generally and for I-976

Because some of Plaintiffs' arguments turn on I-976's ballot title, the State provides this brief overview of the laws governing the preparation and content of ballot titles, as well as the preparation of the ballot title for I-976.

The process for creating a ballot title for an initiative is established by statute. After the sponsor files a proposed initiative with the Secretary of State, RCW 29A.72.010, the Attorney General's Office must create a ballot title within five business days. RCW 29A.72.050. There are three parts to a ballot title: "(a) A statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form prescribed in this section for the ballot measure in question." RCW 29A.72.050(1).

The first two parts of the ballot title are limited to a set number of words. The statement of the subject may "not exceed ten words." *Id.* This ten-word statement "must be sufficiently broad to reflect the subject of the measure [and] sufficiently precise to give notice of the measure's subject matter." *Id.* The concise description may not exceed 30 words. *Id.* This 30-word description must "be a true and impartial description of the measure's essential contents,

clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure." *Id.* Once completed, the Attorney General's Office files the ballot title with the Secretary of State, RCW 29A.72.060, and the Secretary of State notifies the sponsor and other officials and individuals who have requested notice, RCW 29A.72.070.

Any person may challenge a ballot title prepared by the Attorney General's Office. RCW 29A.72.080. An appeal must be filed in the Superior Court for Thurston County within five business days of the ballot title being filed with the Secretary of State. *Id.* The Superior Court may re-write the ballot title in a manner that "it determines will meet the requirements of RCW 29A.72.060." *Id.* The superior court's decision is final and may not be appealed. *Id.*

I-976 was filed on March 19, 2018. Copsey Decl., Ex. I. I-976 was one of four similarly-titled initiatives submitted by the same proponents during the month of March. *Id.* (Initiatives 967, 969, 975, 976). The Attorney General's Office filed the ballot title for I-976 on March 26, 2018. Declaration of Matthew Segal (Segal Decl.), Ex. B.

The sponsor timely challenged the ballot title's concise description but voluntarily dismissed his challenge before the superior court ruled on the challenge. *Id.* at Ex. D. The sponsor subsequently gathered the requisite number of signatures to qualify I-976 for consideration, and the Secretary of State referred the initiative to the people in November 2019. *See* Wash. Const. art. II, § 1(a).

III. STATEMENT OF ISSUES

Should this Court decline to enjoin I-976 from taking effect where Plaintiffs have not met their burden to show a well-grounded fear of immediate invasion of a clear legal right that will result in actual and substantial injury?

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IV. EVIDENCE RELIED UPON

Defendant's Opposition relies upon the supporting Declarations of Alan Copsey, Jaime Grantham, George Price, and Jill Johnson, the exhibits attached thereto, and the pleadings and records on file in this matter.

V. ARGUMENT

To obtain an order enjoining I-976 from taking effect, Plaintiffs "must establish (a) a clear legal or equitable right, (b) a well-grounded fear of immediate invasion of that right, and (c) that the act complained of will result in actual and substantial injury." *Huff v. Wyman*, 184 Wn.2d 643, 651, 361 P.3d 727 (2015). "Failure to establish any one of these requirements results in a denial of the injunction." *Id*. The court should evaluate these criteria "'in light of equity, including the balancing of the relative interests of the parties and the interests of the public, if appropriate.'" *Id.* (quoting *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998)). When "determining whether there is a clear legal or equitable right, 'the court examines the likelihood that the moving party will prevail on the merits.'" *Id*. at 652 (quoting *Rabon*, 135 Wn.2d at 285). "A doubtful case will not warrant an injunction." *Id.* Here, Plaintiffs have not met their burden to show that they are likely to prevail on the merits of their constitutional claims, nor that I-976 will cause *immediate* actual and substantial injuries. Moreover, the will of the voters is a substantial interest that weighs heavily against issuing a preliminary injunction pending a determination on the merits.

A. Plaintiffs Are Unlikely to Prevail on the Merits Because They Have Not Shown a Likelihood That I-976 is Unconstitutional Beyond a Reasonable Doubt

A law enacted through initiative is presumed constitutional. *ATU*, 142 Wn.2d at 205. A party challenging the constitutionality of an initiative "bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt." *Id*. "It 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." *Id*. at 206. Plaintiffs raise multiple constitutional challenges to I-976 but, as explained below, none of them are likely to succeed.

1. Plaintiffs have not met their burden of showing that I-976 violates Article II, Section 19

Plaintiffs' first challenge is that I-976 violates article II, section 19, which provides that "[n]o bill shall embrace more than one subject, and that shall be expressed in the title." Const. art. II, § 19. This provision applies to initiatives in the same way it applies to bills enacted by the legislature. *Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 654, 278 P.3d 632 (2012) (*WASAVP*). There are "two distinct prohibitions" within article II, section 19, both of which Plaintiffs allege are implicated here: (1) the single-subject rule, which precludes an initiative from covering more than one subject; and (2) the subject-in-title rule, which requires that the title of an initiative inform voters of the subject matter of the measure they are voting on. *See ATU*, 142 Wn.2d at 207. Both requirements are to be "'liberally construed in favor of the legislation.'" *Pierce Cty. I*, 150 Wn.2d at 436 (quoting *Wash. Fed'n of State Emps. v. State*, 127 Wn.2d 544, 555, 901 P.2d 1028 (1995)). I-976 complies with article II, section 19, because, as expressed in its title, I-976 generally concerns motor vehicle related taxes and fees, and all of its provisions relate to that subject and to each other.

a. Initiative 976 complies with the single-subject rule

The single-subject requirement of article II, section 19 requires that "no bill shall embrace more than one subject." *Pierce Cty. I*, 150 Wn.2d at 436. The purpose of this rule is "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.

The Supreme Court has made clear that this rule does not require legislative bills or initiatives to be narrowly focused, and has upheld initiatives with multiple far-reaching effects. For example, when Washington voters enacted Initiative 1183, they "dramatically changed the

State's approach to regulating the distribution and sale of liquor in Washington," *WASAVP*, 174 Wn.2d at 649, including authorizing the private sale of liquor, directing the state to auction off state liquor retail and distribution facilities, modifying the wine distribution system, imposing a variety of new fees on liquor retailers and distributors, changing laws regulating liquor advertising, and providing a $10 million public safety earmark that was not directly linked to any liquor-related issues, *id.* at 649-51. The Supreme Court concluded that all of these provisions were "germane to the general topic of I-1183, whether that is liquor or the narrower subject of liquor privatization." *Id.* at 656, 660. Similarly, when Washington voters enacted Initiative 276 in 1972, they adopted the Public Records Act, financial disclosure requirements for elected officials, registration requirements and regulations for lobbyists, and campaign finance reporting requirements. *Fritz v. Gorton*, 83 Wn.2d 275, 290, 517 P.2d 911 (1974). Although these requirements were "new, novel, . . . most extensive and very, very detailed," *id.* at 286, they all related to one overarching topic: "openness in government," *id.* at 290.

(1) The title is general

The starting point for analyzing a single-subject challenge is the title of the measure. *Id*. "A ballot title consists of a statement of the subject of the measure, a concise description of the measure, and the question of whether or not the measure should be enacted into law." *Id.* (citing RCW 29A.72.050). Here, the ballot title for I-976 read:

> Statement of Subject: Initiative Measure No. 976 concerns motor vehicle taxes and fees.
>
> Concise Description: 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 [ ]

Segal Decl., Ex. B.

"When a ballot title 'suggests a general, overarching subject matter for the initiative,' *Wash. Ass'n of Neigh. Stores v. State*, 149 Wn.2d 359, 369, 70 P.3d 920 (2003), it is considered

general, and "'great liberality will be indulged to hold that any subject reasonably germane to such title may be embraced.'" *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 782, 357 P.3d 1040 (2015) (quoting *ATU*, 142 Wn.2d at 207 (quoting *DeCano v. State*, 7 Wn.2d 613, 627, 110 P.2d 627 (1941))). For such measures, "[o]nly rational unity must exist" among the matters included within the measure. *Id*. "Rational unity exists when the matters within the body of the initiative are germane to the general title and to one another." *Id*. at 782-83. There is no violation just because a "general subject contains several incidental subjects or subdivisions." *ATU*, 142 Wn.2d at 207.

Here, the ballot title of I-976 is general. The Statement of Subject broadly identifies the subject of the initiative as "concern[ing] motor vehicle taxes and fees." This broad description is akin to initiative titles the Supreme Court has previously recognized as general, such as Initiative 1183 ("concern[ing] liquor: beer, wine, and spirits") and SeaTac Proposition 1 ("concern[ing] labor standards for certain employers"). *See WASAVP*, 174 Wn.2d at 655 (finding I-1183 title general); *Filo Foods*, 183 Wn.2d at 784 (same as to SeaTac Proposition 1).

Contrary to Plaintiffs' argument, the ballot title for I-976 is not restrictive just because it identifies a particular category of taxes and fees ("motor vehicle taxes and fees") or includes in the Concise Description a summary of some of the provisions in the initiative that relate to that overarching topic (such as a "specific cap on motor vehicle license fees" or "a particular index of value"). *See* PI Mot. at 17. The "breadth of topics" covered by I-976 and the "structure of its title" are "not appreciably different from the scope and structure" of the initiatives upheld by the Supreme Court in *Filo Foods* and *WASAVP*. *See Filo Foods, LLC*, 183 Wn.2d at 784 (discussing

initiatives upheld in that case[1] and in *WASAVP*[2]). The titles of those initiatives "indicated a general topic and then listed some *but not all* of [their] substantive measures." *Id.* (emphasis added). The fact that the ballot titles at issue in those cases listed "various provisions" did not make them restrictive, where they also indicated a more overarching topic. *Id*. Likewise, the overarching topic of I-976 is "motor vehicle taxes and fees," and the fact that the ballot title lists some of the initiative's various provisions does not make it restrictive. *Id.*

(2) There is rational unity between the title of I-976 and its provisions

Because I-976 generally "concerns motor vehicle taxes and fees," its various substantive provisions need only be "germane" to that subject "and to one another" to survive single-subject scrutiny. *Filo Foods, LLC*, 183 Wn.2d at 782-83. This is known as the "rational unity" test. *Id*. As explained by the Supreme Court, the necessary "unity" is found "in the general purpose of the act and the practical problems of efficient administration." *ATU*, 142 Wn.2d at 209-10 (quoting *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 61 Wn.2d 28, 33, 377 P.2d 466 (1962) (further citations and internal quotation marks omitted)). Subjects "are not absolute existences

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[1] The ballot title for the measure at issue in *Filo Foods* stated:

> Proposition No. 1 concerns labor standards for certain employers. This Ordinance requires certain hospitality and transportation employers to pay specified employees a $15.00 hourly minimum wage, adjusted annually for inflation, and pay sick and safe time of 1 hour per 40 hours worked. Tips shall be retained by workers who performed the services. Employers must offer additional hours to existing part-time employees before hiring from the outside. SeaTac must establish auditing procedures to monitor and ensure compliance. Other labor standards are established.
>
> Should this Ordinance be enacted into law?

183 Wn.2d at 783.

[2] The ballot title for the Initiative at issue in *WASAVP* stated:

> 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?

Id. at 784.

to be discovered by some sort of *a priori* reasoning, but are the result of classification for convenience for treatment and for greater effectiveness in attaining the general purpose of the particular legislative act." *Id*. Here, all of the substantive provisions in I-976 rationally relate to "motor vehicle taxes and fees" and, additionally, to each other.

Plaintiffs claim that the various sections of I-976 do not relate to the topics of limiting motor vehicle license fees to $30 and requiring motor vehicle value to be determined by the Kelley Blue Book, but, in doing so, they misconstrue the title of the measure. *See* PI Mot. at 17-18, 20, 22-23. As explained above, I-976 broadly pertains to "motor vehicle taxes and fees," and each of the provisions contained within it relate to that topic. The fact that some provisions address license fees (§§ 2-4), some address electric vehicle fees (§ 5), some address MVETs (§§ 8-13), some address other fees such as TBD vehicle fees or weight fees (§ 6), and some address sales and use taxes (§§ 7, 11, 16) is of no consequence when all of the provisions relate to "motor vehicle taxes and fees."

Plaintiffs place special emphasis on Section 12, which requires Sound Transit to retire, defease, or refinance its bonds issued under chapter 81.112 RCW, to the extent possible, and claim that Section 12 is not rationally related to the rest of the measure, because it does not reduce, limit, or eliminate taxes or fees. PI Mot. at 20. But Section 12 is rationally related to the overarching purpose of I-976 and to Sections 10 and 11, which eliminate Sound Transit's authority to levy and collect MVETs contingent on Sound Transit's ability to retire, defease, or refinance its outstanding bonds. It is entirely rational to include this limitation based on the Supreme Court's decision in *Pierce County II*, which held that by limiting MVETs that Sound Transit could collect, I-776 unconstitutionally impaired contracts between Sound Transit and its bondholders. 159 Wn.2d at 39. The Supreme Court has recognized that one way (but not the only way) of determining whether subjects are germane to one another and to the general title is to determine whether they are necessary to implement one another. *See Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 637-38, 71 P.3d 644 (2003). Here, inclusion of Section

12 was necessary to implement Sections 10 and 11. Thus, it is rationally related to the general topic of the measure and to the other provisions in I-976.

Plaintiffs also claim I-976 violates the single-subject rule because it combines a law of general application that is continuing in nature with a more specific law, citing to *ATU*, *Kiga*, and *Washington Toll Bridge Authority*. *See* PI Mot. at 22. But I-976 is unlike the measures at issue in those cases, which were invalidated because they contained "dual subjects" where neither subject was "necessary to implement the other," and, rather, "were so disjointed as to bear no relation to each other." *See Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 637-38 (distinguishing those cases). In those cases, the Court found incongruent a "broad, long term and continuing" provision with a provision having a more specific impact. *Id*.; *see also ATU*, 142 Wn.2d at 191 (I-695 contained dual subjects of setting license tab fees at $30 and requiring voter approval of all future state and local tax increases); *Kiga*, 144 Wn.2d at 827 (I-722 contained dual subjects of nullifying specific tax increases and changing future method of assessing property taxes); *Wash. Toll Bridge Auth.*, 49 Wn.2d at 523-25 (Act embraced two subjects because it granted continuing power to build toll roads and provided for construction of a particular toll road). The Supreme Court readily distinguished those cases in the *WASAVP* decision, where it held there was a "closer nexus" amongst I-1183's provisions "affecting spirits and wine," which did not "combine a specific impact of a law with a general measure for the future." 174 Wn.2d at 658-59. Similarly here, except as necessary to implement its provisions, I-976 does not combine laws providing "one-time" specific impacts with those providing longer term, broader changes.

Plaintiffs are also incorrect in suggesting that I-976 "now presents the precise scenario the *Pierce County I* Court had in mind where article II, section 19 is violated." *See* PI Mot. at 21. The Court in *Pierce County I* declined to consider a single-subject challenge based on language included in I-776 which had no legal effect (mere "precatory" language). 150 Wn.2d 435-36. As a result, the Court did not have reason to decide whether the inclusion of a provision

that would have *actually* required Sound Transit to retire its bonds in that initiative would have been consistent with the single-subject rule. *Id*. As explained earlier, it makes sense that I-976 includes a provision requiring Sound Transit to retire, refinance, or defease its bonds to avoid a constitutional impairment issue. Including Section 12 furthered I-976's overarching purpose to decrease, limit, or eliminate vehicle taxes and fees.

b. Initiative 976 complies with the subject-in-title rule

Plaintiffs also claim I-976 violates the subject-in-title rule because it supposedly "misleads voters on the provisions of I-976 and fails to disclose its multiple subjects." PI Mot. at 23. They are incorrect, and their arguments rely on misunderstanding I-976 itself and its ballot title.

The subject-in-title requirement of article II, section 19 requires that "no bill shall have a subject which is not expressed in its title." *ATU*, 142 Wn.2d at 207. The purpose of this rule is to ensure that members of the voting public are put on proper notice "of the subject matter of the measure." *Id*. "To be constitutionally adequate, 'the title need not be an index to the contents, nor must it provide details of the measure.'" *Pierce Cty. I*, 150 Wn.2d at 436 (quoting *ATU*, 142 Wn.2d at 217)). Rather, a title is sufficient "'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.'" *Id.* (quoting *YMCA v. State*, 62 Wn.2d 504, 506, 383 P.2d 497 (1963)). The "material representations in the title must not be misleading or false," but "[a]ny objections to the title must be grave and the conflict between it and the constitution palpable" before the Court will "hold an act unconstitutional." *WASAVP*, 174 Wn.2d at 661 (quotations omitted).

Here, the ballot title to I-976 appropriately notifies the public that it "concerns motor vehicle taxes and fees," and, generally, 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." I-976 Ballot Title. This was sufficient to "give notice that would lead to an inquiry into the body of the act," like the

initiative at issue in *Pierce Cty*. *I*, 150 Wn.2d at 436. As the Supreme Court has held numerous times, a ballot title can be "broad and general," and "need not be an index to the contents, nor must it provide details of the measure." *WASAVP*, 174 Wn.2d at 660 (collecting cases).

Plaintiffs argue that I-976's ballot title is similar to that which was struck down for I-695, but the ballot titles are distinguishable. *See* PI Mot. at 26. The ballot title to I-695 only put voters on notice of its impact on taxes, not other charges. *ATU*, 142 Wn.2d at 227. In contrast, I-976's ballot title broadly identifies "taxes and fees." Moreover, the Supreme Court in *WASAVP* cautioned that it "will not void a law duly enacted by voters" based on "nuances between terms." 174 Wn.2d at 665. *See also id.* at 661-65 (rejecting challenge that I-1183 should have used the word "tax" instead of "fee" because the challenged portion of the ballot title was "not palpably misleading or false").

Nor is the ballot title misleading or false. Plaintiffs claim that the title misled voters into thinking that any "voter-approved charges in excess of $30 would be retained, or that at least voters would retain the authority to approve such vehicle charges." PI Mot. at 24. But that is not what the title said. The title first clearly informs voters that the measure would broadly "repeal, reduce, or remove authority to impose certain vehicle taxes and fees," without mentioning or exempting voter-approved charges. In a separate clause, the title then explains that one specific type of vehicle fee, "annual motor-vehicle-license fees," would be limited "to $30, except voter-approved charges." The title thus did not say that all existing vehicle taxes and fees above $30 would continue if voter approved, nor that voters in the future could broadly increase vehicle taxes or fees beyond $30; both the limit and the voter-approval option are specific to the fee mentioned in that clause, "motor-vehicle-license fees." Although space limitations did not permit the ballot title to detail how a "motor-vehicle-license fee" is defined, or how and when this exception for "voter-approved charges" might arise, it was sufficient to give notice that would lead to an inquiry into the text of the initiative. *See Pierce Cty. I*, 150 Wn.2d at 436-37 (noting that state law imposes a "10-word limit on the 'statement of the subject,' and a 30-word limit on

the 'concise description,'" in concluding that a ballot title "was sufficiently detailed to prompt an inquiring mind to read the initiative for further details" (quoting RCW 29.79.035(1)).

Plaintiffs specifically complain that the title references "voter-approved charges," while the initiative defines those charges as ones "approved by voters after the effective date of this section." But the title need not (and could not have, given space constraints) detail exactly which "voter-approved charges" would be exempted, so long as it alerts voters of a topic as to which they could look to the text of the initiative if they wished to know more. *See, e.g.*, *Pierce Cty. I*, 150 Wn.2d at 436 (a title is sufficient "'if it gives notice that would lead to an inquiry into the body of the act'") (quoting *YMCA v. State*, 62 Wn.2d at 506). Here, 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. *See* I-976 § 2. Section 2 further defines "motor vehicle license fees" as "general license tab fees paid annually for licensing motor vehicles," which specifically "do not include charges approved by voters after the effective date of this section." I-976 § 2. Thus, while the ballot title does not describe the temporal limitations of voter-approved changes, Section 2 clearly does. And the ballot title clearly informs voters that I-976 would "repeal, reduce, or remove authority to impose certain vehicle taxes and fees," regardless of whether they were voter-approved or otherwise imposed, which would reasonably prompt a voter to "read the initiative for further details." *See Pierce Cty. I*, 150 Wn.2d at 436-37.

Plaintiffs claim that it was misleading for Sections 1 and 2 of the Initiative, and, as a result, the ballot title, to inform voters that the $30 cap was subject to "voter-approved" increases, when, at the same time, Section 6 repealed the authority for TBDs to levy voter-approved vehicle fees. *See* PI Mot. at 24 (referring to Section 6's repeal of RCW 82.80.140, which refers to RCW 36.73.067(6)). But Plaintiffs incorrectly conflate the TBD vehicle fees authorized in RCW 82.80.140 with the motor-vehicle-license fees imposed in RCW 46.17.350 and .355. By its own language, RCW 82.80.140 distinguishes the TBD "vehicle fees" authorized in that section from the "vehicle license fees" authorized under RCW 46.17.350 and .355. RCW 82.80.140

(authorizing the imposition of an "annual vehicle fee" to be imposed on vehicles "subject to vehicle license fees"). Similarly, RCW 46.04.671, which defines "vehicle license fees" for purposes of Title 46, makes clear that the term "does not include . . . taxes and fees collected by the department [of licensing] for other jurisdictions," such as TBDs. In short, although motor-vehicle-license fees under chapter 46.17 RCW and TBD vehicle fees approved under RCW 82.80.140 are collected together, they are two separate fees. Notifying voters, as the ballot title did, that the measure limited "motor-vehicle-license fees to $30, except voter-approved charges," was not misleading or false given that TBD fees are separate and would not be subject to the voter-approval exception.[3]

For the same reason, the repeal of the authority to submit MVETs to voters is not in conflict with the reference to voter-approved charges for motor-vehicle-license fees. *See* PI Mot. at 25 (discussing Section 6's repeal of RCW 82.80.130 and 81.104.160). MVETs are taxes that are separate and distinct from motor-vehicle-license fees. The title describing the $30 cap and voter approval exception for "motor-vehicle-license fees" did not mean that they would also apply to distinct taxes.

Finally, while I-976 does not specify how voters could approve charges above the $30 cap on motor-vehicle-license fees in the future, that does not make the ballot title misleading. There are several ways that voters in the future could approve such charges, including by statewide initiative, Const. art. II, § 1(a), by voting on charges referred to the people by the legislature, Const. art. II, § 1(b), or if the legislature or people subsequently approved legislation allowing public votes at the local level to increase motor vehicle license fees. Thus, Plaintiffs

[3] The distinction between "vehicle license fees" collected under chapter 46.17 RCW and "vehicle fees" collected by TBDs is also constitutionally important. Article II, section 40 of the Constitution requires that: "All fees collected by the State of Washington as *license fees* for motor vehicles … shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes" (emphasis added). But state law allows "vehicle fees" collected by TBDs to be used for non-highway purposes. *See, e.g.*, RCW 36.73.020 and 36.73.015(6) (together allowing TBDs to fund "high capacity transportation, public transportation, and other transportation projects and programs"). Thus, if "vehicle fees" under RCW 82.80.140 were not distinct from "vehicle license fees," it would call into question the constitutionality of using the fees for non-highway purposes.

are simply incorrect to assert that "I-976 actually eliminates any possibility of" a future public vote to impose motor-vehicle-license fees beyond $30. PI Mot. at 24.

In sum, I-976's ballot title accurately informs voters as to the general impacts of the measure (to "repeal, reduce, or remove authority to impose certain vehicle taxes and fees,"), and, more specifically, that one type of fee ("motor-vehicle-license fees") would be limited to $30, absent voter-approved charges regarding that fee. This is neither deceitful nor misleading.

2. Plaintiffs have not met their burden of showing that I-976 violates Article II, Section 37

I-976 complies with the Washington Constitution's requirement that a law must "set forth at full length" an "act revised or the section amended." Wash. Const. art. II, § 37. Plaintiffs' arguments rely on reasoning rejected by the supreme court and on an erroneous reading of I-976.

Specifically, repeal of a statute is outside the scope of article II, section 37, and any impacts of that repeal do not implicate article II, section 37 so long as those impacts are "clear." *ATU*, 142 Wn.2d at 254-55. I-976 repealed the authority of TBDs to impose a vehicle fee. I-976, § 6(4). From this repeal, it was clear that exceptions in RCW 36.73.040 and RCW 36.73.065 involving "the vehicle fee authorized in RCW 82.80.140" would no longer apply. There was no "fraud or deceit" that would implicate article II, section 37. *See Retired Pub. Emps. Council of Wash. v. Charles*, 148 Wn.2d 602, 634, 62 P.3d 470 (2003).

Additionally, Plaintiffs simply misread I-976 when they contend that it repeals fees in chapter 46.17 RCW. I-976 clearly identifies the fees that its repeals. Under the plain language of I-976, the additional fees in chapter 46.17 RCW remain in effect, except as repealed by other provisions of I-976. *See, e.g.,* I-976 at § 3(2) (retaining language that "[t]he vehicle license fee required in subsection (1) of this section is *in addition to* . . . any other fee or tax required by law"). The state supreme court rejected an argument based on an almost identical misreading of a prior initiative. *ATU*, 142 Wn.2d at 255.

For these reasons, Plaintiffs cannot show a likelihood of success on their claims that I-976 violates article II, section 37 of the Washington Constitution.

a. I-976's repeal of RCW 82.80.140 complies with Article II, Section 37

Plaintiffs' argument related to I-976's repeal of RCW 82.80.140 lacks merit. In essence, Plaintiffs contend that the repeal of RCW 82.80.140 affects RCW 36.73.040 and RCW 36.73.065 and, therefore, I-976 was required to set those provisions out in full. The supreme court rejected this reasoning in *ATU*.

The supreme court's decision in *ATU* disposes of Plaintiffs' argument concerning the effect of the repeal of RCW 82.80.140. In *ATU*, the court first held that "repealers are not within art. II, § 37 whether the act is complete or not." *Id.* at 254. So Plaintiffs cannot—and do not—argue that I-976 was required to set out the text of the repealed statute, RCW 82.80.140. Plaintiffs do argue, however, that the repeal of RCW 82.80.140 has an impact on RCW 36.73.040 and RCW 36.73.065, and the non-disclosure of that impact in the text of I-976 violates article II, section 37. *ATU* rejected a nearly identical argument. In *ATU*, the challengers argued that the repealer had "an enormous impact on existing laws which is not disclosed in violation of art. II, § 37." *Id.* The supreme court rejected this argument on the basis that the consequence of the repeal was "clear" and the initiative was therefore complete. *Id.* at 255.

Similarly here, the impact of the repeal of RCW 82.80.140 on RCW 36.73.040 is clear. In setting out the general powers of TBDs, RCW 36.73.040 provides that "a district is authorized to impose" three types of "taxes, fees, charges, and tolls." One of those is "[a] vehicle fee in accordance with RCW 82.80.140." RCW 36.73.040(3)(b). The repeal of RCW 82.80.140 makes it apparent that, following implementation of I-976, no such vehicle fee is authorized.

The impact of the repeal of RCW 82.80.140 on RCW 36.73.065 is also clear. The operative provision of RCW 36.73.065 requires majority approval of "taxes, fees, charges, and tolls" imposed by a TBD. RCW 36.73.065(1). The statute provides certain limited exceptions. Three of those exceptions allow, in limited circumstances, a TBD's governing board to impose

a "vehicle fee authorized in RCW 82.80.140." RCW 36.73.065(4)(a)(i)-(iii). Additionally, RCW 36.73.065(3) prohibits increases in taxes, fees, charges, or tolls with certain exceptions. Two of those exceptions relate to "the vehicle fee authorized by RCW 82.80.140." RCW 36.73.065(3). Just as in *ATU*, "[i]t is clear . . . that with the repeal of" RCW 82.80.140, the authority of a TBD to impose the vehicle fee authorized by RCW 82.80.140 "would be affected." 142 Wn.2d at 255.

It is further clear that the impacts on RCW 36.73.040 and RCW 36.73.065 do not implicate the purposes underlying article II, § 37. The purposes of the constitutional provision are, among other things, "to make sure that the effect of the new legislation is clear," to "ensure[] that the legislature is aware of the legislation's impact on existing laws," and "to ensure that '[c]itizens or legislatures must not be required to search out amended statutes to know the law on the subject treated in a new statute.'" *El Centro de la Raza v. State*, 192 Wn.2d 103, 129, 131, 428 P.3d 1143 (2018) (citations omitted). Here, voters reading I-976 would have seen that it removes a TBD's authority to impose vehicle fees. *See* I-976, § 6(4). As a result, the references to such fees in other laws, such as RCW 36.73.040 and RCW 36.73.065, would no longer apply. Anyone reading RCW 36.73.040 and RCW 36.73.065 will not "be required to search out amended statutes"; they need only consult the express references included in those statutes to know that the exceptions referencing RCW 82.80.140 no longer apply. *El Centro de la Raza*, 192 Wn.2d at 131. No "thorough search" is required. *Id.*

In short, the repeal of RCW 82.80.140 and any incidental impact on RCW 36.73.040 and RCW 36.73.065 is consistent with article II, section 37, the purposes underlying that provision, and the supreme court's jurisprudence.

b. I-976 does not affect the additional fees in RCW 46.17, so Article II, Section 37 is not implicated

Plaintiffs' second argument related to article II, section 37 is based on a misreading of I-976. Plaintiffs assert that I-976 "effectively repeals" numerous fees established in chapter 46.17 RCW "without even a reference." PI Mot. at 29-30. The premise of this argument is incorrect. I-

976 does not repeal the fees identified in Plaintiffs' motion. The fees that I-976 does repeal are set forth in full in compliance with article II, section 37.

The fees required by various provisions in chapter 46.17 RCW remain in effect, except for those repealed or amended by I-976. Section 2 of I-976 adds a section to chapter 46.17 RCW that provides that "motor vehicle license fees may not exceed $30 per year for motor vehicles." This refers to the "vehicle license fee" under chapter 46.17 RCW, such as in RCW 46.17.350, as reflected in Section 3 of I-976. Section 3 makes reductions such that no "vehicle license fee by type" exceeds $30. Section 3 sets forth RCW 46.17.350 in full, including subsection (2), which provides that "the vehicle license fee required in . . . this section is *in addition to* . . . any other fee or tax required by law." (Emphasis added.) I-976 does not amend subsection (2). The result is that other fees or taxes required by law—including the provisions identified in Plaintiffs' motion—remain in effect.

Plaintiffs' argument was rejected in *ATU*. In *ATU*, "[a]micus League of Women Voters" argued "that persons considering I-695 alone would conclude that they would have to pay only a $30 license fee, but in fact some other fees would have to be paid." 142 Wn.2d at 255. Based on that, the amicus curiae argued that the initiative was unconstitutional because "I-695 neither repealed these fees nor disclosed them to voters." *Id.* The supreme court rejected this argument, stating that "[t]he fees identified by Amicus League of Women Voters are not affected by I-695." *Id.* at 255. That same reasoning applies here. Plaintiffs' argument regarding the fees in chapter 46.17 RCW lacks merit because those fees are not affected by I-976. Because they were not affected, article II, section 37 did not require that they be set out in I-976.

3. Plaintiffs have not met their burden of showing that I-976 unconstitutionally infringes on local authority

By enacting I-976, the people exercised their constitutional power to rescind some of the taxing authority of TBDs. The state supreme court expressly recognized the people's power to do this in *Pierce County I*. 150 Wn.2d at 440. A TBD cannot, by obtaining approval from the

local electorate, deprive the State of its constitutionally-granted legislative power. Plaintiffs' argument is contrary to fundamental principles in the Washington Constitution. As such, they have not shown a likelihood of success on this argument.

The relationship between the State and municipalities, such as TBDs, is set forth in the Washington Constitution and statutes. *See, e.g.,* Wash. Const. art. XI, §§ 4, 11, 12; ch. 36.73 RCW. It is firmly established that "[m]unicipal corporations have no inherent power to tax." *Watson v. City of Seattle*, 189 Wn.2d 149, 166, 401 P.3d 1 (2017). Instead, they are "dependent upon legislative grant for their enjoyment of such power." *City of Wenatchee v. Chelan Cty. Pub. Util. Dist. No. 1*, 181 Wn. App. 326, 335, 325 P.3d 419 (2014) (quoting Alfred Harsch, *The Washington Tax System—How It Grew*, 39 Wash. L. Rev. 944, 950 (1965)). "The legislature—or the people legislating by initiative—may rescind by general laws the authority previously granted." *Pierce County I*, 150 Wn.2d at 440.

I-976 permissibly rescinds some of the taxing authority previously granted to TBDs. By repealing RCW 82.80.140, the people rescinded the previously-granted authority for TBDs to "fix and impose an annual vehicle fee." RCW 82.80.140(1). As the state supreme court recognized in *Pierce County I*, this power is inherent in article XI, section 12 of the Washington Constitution. 150 Wn.2d at 440.

Plaintiffs would turn the constitutional relationship between the State and municipal corporations on its head. Under Plaintiffs' theory, the electorate of a local TBD could deprive the legislature—or the people legislating by initiative—of their constitutional power to rescind a municipal corporation's taxing authority. That is inconsistent with Washington's constitutional structure. Indeed, under Plaintiffs' logic, the State would presumably be unable to preempt local ordinances that were approved by the local electorate. This, too, would be a novel proposition unsupported by case law.

Plaintiffs' reliance on article I, section 19 of the Washington Constitution is misplaced. The provision 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." Wash. Const., art. I, § 19. As its text indicates, this provision is concerned with the manner in which elections are conducted—they must be "free and equal." Article I, section 19 does not guarantee that a measure receiving local voter approval will remain in effect. The only article I, section 19 case cited by Plaintiffs reflects this principle.[4] In *Foster v. Sunnyside Valley Irrigation Dist.*, 102 Wn.2d 395, 403-10, 687 P.2d 841 (1984), the article I, section 19 issue concerned *who* is permitted to vote in irrigation district elections. The *Foster* case did not address whether article I, section 19 requires that the results of such an election stand in perpetuity, regardless of state law.

This Court should decline Plaintiffs' invitation to upset Washington's constitutional structure. Under the Washington Constitution, the people have the power to rescind taxing authority that was previously granted to municipal corporations. *Pierce Cty. I*, 150 Wn.2d at 440. The people's action in rescinding the authority of TBDs to impose vehicle fees falls squarely within the people's constitutionally-granted power.

4. Plaintiffs have not met their burden of showing that I-976 unconstitutionally violates separation of powers principles

I-976 is consistent with both of the legal principles that Plaintiffs categorize as separation of powers principles. First, Plaintiffs contend that I-976 is inconsistent with three cases addressing the scope of the local initiative power. But the scope of the *local* initiative power is irrelevant to this challenge to a *state* initiative. The supreme court has unambiguously held that the two are distinct and the state initiative power is far broader. *Protect Public Health*, 192 Wn.2d at 477. I-976 is well within the state initiative power. Second, Plaintiffs contend that I-976 improperly delegates the effective date of certain provisions to "an entity other than the legislature . . . based on [that entity's] judgment." PI Mot. at 36. But it is well-established that legislation may be conditional on the actions of third parties, even if the underlying act involves

[4] Plaintiffs also cite *City of Seattle v. State*, 103 Wn.2d 663, 670, 694 P.2d 641 (1985). That case does not involve article I, section 19.

judgment on the part of the third party. *E.g.*, *Brower v. State*, 137 Wn.2d 44, 54-55, 969 P.2d 42 (1998). I-976 contains a valid contingency regarding the effective dates of certain sections. Plaintiffs thus have not shown a likelihood of success on their separation of powers arguments.

a. I-976 is within the scope of the initiative power

The scope of the state legislative power is very broad, and "the people's legislative power is coextensive with the legislature's." *Coppernoll v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 290 (2005). "[T]he state constitution is not a grant, but a restriction on the law-making power." *Auto. United Trades Org. v. State*, 175 Wn.2d 537, 545, 286 P.3d 377 (2012) (quoting *Clark v. Dwyer*, 56 Wn.2d 425, 431, 353 P.2d 941 (1960)). It follows that the law-making power extends to all matters other than those "prohibited by the state and federal constitution." *Id.*

As a threshold matter, Plaintiffs' contentions fail because their motion does not specifically identify any provision in I-976 that allegedly violates separation of powers principles. Do they contend that the legislature cannot impose a cap on vehicle license fees? That it cannot amend existing statutory license fees? That it cannot repeal statutes or parts of statutes that it previously enacted? To articulate each proposition is to refute it; each action is clearly within the scope of the authority vested in the legislature and reserved to the people. *See* Wash. Const. art. II, § 1. Plaintiffs cannot meet their "heavy burden of establishing" a provision's unconstitutionality when they fail to even identify the allegedly unconstitutional provision. *ATU*, 142 Wn.2d at 205.

Plaintiffs' reliance on cases involving *local* initiatives is misplaced. The scope of the local initiative power is dramatically narrower than the scope of the state initiative power. While the state initiative power is limited only by the federal and state constitutions, *Auto. United Trades Org.*, 175 Wn.2d at 545, there are "multiple limits on the local initiative power," *Protect Public Health*, 192 Wn.2d at 482 (quoting *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution*, 185 Wn.2d 97, 107, 369 P.3d 140 (2016)). One limit on the local initiative power is that a local initiative cannot be "'administrative' in nature." *Glob. Neighborhood v.*

Respect Wash., 7 Wn. App. 2d 354, 392, 434 P.3d 1024 (2019), *rev. denied*, 193 Wn. App. 1019, *cert. pet. docketed*, No. 19-474. This limitation is based on considerations unique to the local context. *Id.* at 392-93 (citations omitted). Each of the three cases that Plaintiffs rely on involves a challenge to a *local* initiative. *See City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 10, 239 P.3d 589 (2010) (reviewing City of Port Angeles initiative); *Bidwell v. City of Bellevue*, 65 Wn. App. 43, 46, 827 P.2d 339 (1992) (reviewing City of Bellevue initiative); *Ruano v. Spellman*, 81 Wn.2d 820, 822-23, 505 P.2d 447 (1973) (reviewing King County initiative). That limitation simply does not apply to statewide initiatives.

Plaintiffs have not demonstrated that I-976 violates the separation of powers by exceeding the scope of the state initiative power.

b. I-976 contains a valid contingency regarding the effective date of sections 10 and 11

I-976 is valid contingent legislation. It conditions certain provisions on specified future events. Specifically, the challenged effective dates are conditioned on action by a regional transit authority. I-976, § 16. The 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. *E.g.*, *Brower*, 137 Wn.2d at 54-55; *Diversified Inv. P'ship v. Dep't of Social & Health Servs.*, 113 Wn.2d 19, 28, 775 P.2d 947 (1989); *State v. Storey*, 51 Wash. 630, 631-32, 99 P. 878 (1909). Plaintiffs thus cannot show a likelihood of success on their non-delegation argument.

"The power to enact contingent legislation has been clearly recognized." *Brower*, 137 Wn.2d at 55. The people "may condition the effectiveness of legislation on the acts of a" third party. *Id.*

Contrary to Plaintiffs' suggestion, a contingency is valid even where the third party's action or inaction is the product of an exercise of judgment. For example, in *Storey*, the legislation was conditional upon "10 or more freeholders" making an application for enforcement. 51 Wash. at 631. It was within the judgment of the freeholders to make or not make

such an application. *See id.* In *Diversified Investment Partnership*, the continued effectiveness of a state statute was conditioned upon the federal government not finding state law to be in conflict with federal law. 113 Wn.2d at 22. The federal government necessarily exercised judgment in determining whether state law conflicted with federal law. *See id.*at 22-23. In *Brower*, the legislation was contingent on a private party entering into an agreement with the Secretary of State to reimburse the state and counties for the cost of a special election. 137 Wn.2d at 51. Whether to enter into such an agreement involved an exercise of judgment on the part of the third party. Despite the underlying exercise of judgment, the supreme court upheld the legislation in each of these cases against a non-delegation challenge. *Id.* at 56; *Diversified Inv. P'ship*, 113 Wn.2d at 31; *Storey*, 51 Wash. at 632.

The contingency in Section 16 of I-976 is an unremarkable example of the people conditioning the effectiveness of a provision upon a specified future event. The relevant specified future event is the regional transit authority's retirement, defeasement, or refinancing of outstanding bonds. I-976 addresses both contingencies—what happens if the regional transit authority does so and what happens if the regional transit authority does not do so. When the regional transit authority complies with the requirement that it "fully retire, defease, or refinance any outstanding bonds issued under" chapter 81.112,[5] then Sections 10 and 11 will take effect. I-976, § 16(1). Alternatively, if the regional transit authority is not able to comply with the requirement by the deadline, then Section 13 will take effect. I-976, § 16(2). The people, in enacting I-976, exercised their legislative judgment and determined that the provisions "would be expedient only in certain circumstances." *Diversified Inv. P'ship*, 113 Wn.2d at 28. I-976 defines the circumstances under which the provisions will become operative.

Under *Brower*, *Diversified Investment Partnership*, and *Storey*, Section 16 of I-976 is a valid contingency and does not improperly delegate legislative authority. Plaintiffs' argument lacks merit and is not likely to succeed.

[5] This requirement applies only if two conditions are met. I-976, § 12.

5. Plaintiffs have not met their burden of showing that I-976 unconstitutionally impairs contracts

Plaintiffs also contend that I-976 "raises significant claims regarding impairment of existing contracts across the state." PI Mot. at 36. Instead of providing specific argument on this issue, however, Plaintiffs generally allege that "I-976 is likely to impair a wide range of contracts statewide, the full extent of which cannot be known at this early stage." *Id.* at 37. Such conclusory assertions cannot support the issuance of a preliminary injunction. It is well established that to be entitled to a preliminary injunction, plaintiffs must show "*in a factually specific way* that the criteria for injunctive relief have been met" as to them. *Kucera*, 140 Wn.2d at 219 (emphasis added). Plaintiffs have wholly failed to do so here.

While Plaintiffs do attach portions of two bond agreements to one of their declarations, King Decl., Exs. D, F, they make no attempt to explain how I-976 impairs these existing contracts in violation of the Contracts Clause. *See* PI Mot. at 37. Presumably that is because both contracts are "double-barreled," meaning that the contracts identified by Plaintiffs were pledged with the "full faith and credit" of the cities issuing them; this is just like the bonds at issue in *Pierce County I*, where the supreme court held that the bonds were not impaired because, among other reasons, the bonds at issue were "double-barreled" and the county had made an "express commitment to the bondholders that they could rely entirely on the full faith and credit pledge." *Pierce Cty. I*, 150 Wn.2d at 437-38; *see also* King Decl., Ex. D, at cover page ("The full faith, credit and resources of the City have been pledged irrevocably for the prompt payment of the principal and interest of the Bonds and such pledge is enforceable in mandamus against the City."); King Decl., Ex. F, at cover page ("The full faith, credit and resources of the City have been pledged irrevocably for the annual levy and collection of such taxes and the prompt payment of such principal and interest.").

Accordingly, Plaintiffs have not met their burden of showing that I-976 unconstitutionally impairs contracts.

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B. Plaintiffs Have Failed to Show an Immediate Invasion of Any Constitutional Right

Plaintiffs' motion also should be denied because they have failed to demonstrate that a "substantial and immediate harm will occur statewide" if the voter-approved I-976 is not enjoined while this Court decides the case on the merits. PI Mot. at 37-38.

First, as a threshold matter, what Plaintiffs' allege as harm in the form of "revenue loss" to themselves, *id.* at 38, is simply money that Washington motor vehicle owners will keep. While Plaintiffs complain that the majority of Washington voters decided to reduce certain motor vehicle fees and taxes, their alleged "harm" must be seen for what it is: a policy disagreement with the Washington electorate.

Second, Plaintiffs' assertions of harm improperly focus on the *long-term loss* of revenues that they will purportedly suffer over the next several years as a result of I-976. *See, e.g.*, PI Mot. at 38 (discussing losses to the state over "the next six years"); *id.* (highlighting reduction in transit grants "in the 2019-2021 biennium"). The pertinent inquiry for purposes of a preliminary injunction, however, is whether Plaintiffs will suffer substantial injury during the limited time it will take this Court to resolve this case on the merits – *i.e.*, *in the next few months* while summary judgment briefing could occur. In this regard, Plaintiffs have *not* shown that they will suffer a substantial injury from the loss of revenue during this limited timeframe.

For instance, while Plaintiffs allege harm associated with decreased funding to the Multimodal Account, PI Mot. at 38, they acknowledge elsewhere in their brief that there are numerous other funding sources for that account, including "motor vehicle fuel taxes," "driver-related fees and charges," and "user charges (ferry fares, tolls)." PI Mot. at 3. I-976 would have no impact on those other funding sources. The same is true with respect to the local government plaintiffs, which likewise have multiple funding sources. *See, e.g.*, Declaration of John Taylor (Taylor Decl.) ¶ 6 (explaining that "[p]roperty taxes make up about 79 percent of [King] County's road funding"); Copsey Decl., Ex. A at 404 (providing a budget snapshot and details of the City of Seattle's $634,015,266 transportation budget for 2019).

Elsewhere in their brief, Plaintiffs contend that "[i]f I-976 is implemented, by December 9, 2019, Metro must eliminate 110,000 hours of service due to the loss of some $32 million in funding." PI Mot. at 9-10 (relying on Declaration of Rob Gannon). But this claim of harm also lacks force. This contention appears to be based on a contract provision governing "routinely implement[ed] transit service changes" between King County and the City of Seattle, *see* Ex. 1 to Gannon Decl., 2015 Transit Service Agreement at §2.7. Troublingly, this statement ignores other provisions of the contract that allow for "changes and modifications," including to the scope of transit service, *see id.* § 10. Thus, nothing in the contract would appear to prevent Seattle from using funds from other sources—such as its recent receipt of nearly $150 million from the sale of a single city-owned property, *see* Copsey Decl., Ex. B—to pay King County to continue services at current levels while this case is litigated. In any event, as Mr. Gannon's declaration makes clear, none of Metro's service changes will actually take place until March 2020, *see* Gannon Decl. ¶ 9, by which time this Court could resolve the case on the merits.

In sum, while Plaintiffs rattle off a laundry list of harms that will allegedly befall them if this Court allows the voter-approved initiative to be implemented, they have not proven that they will be "substantially injured" in the limited timeframe it will take this Court to decide the case on the merits. Accordingly, this Court should order expedited briefing on the merits – not a preliminary injunction.

C. The Equities Tip Strongly Against Plaintiffs

Denial of Plaintiffs' motion for preliminary injunction is also warranted because the equities tip strongly against Plaintiffs. *See Tyler Pipe Indus., Inc. v. State Dep't of Revenue*, 96 Wn.2d 785, 792, 683 P.2d 1213 (1982) ("[T]he listed criteria [for issuing an injunction] must be examined in light of equity including balancing the relative interests of the parties, and, if appropriate, *the interests of the public*.").

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First, enjoining a state-wide initiative is strongly against the interests of the public. "Adopted in 1911, the right of initiative is nearly as old as our constitution itself, deeply ingrained in our state's history, and widely revered as a powerful check and balance on the other branches of government." *Coppernoll*, 155 Wn.2d at 297. Here, a majority of Washington voters passed I-976, thereby choosing to reduce or eliminate certain motor vehicle fees and taxes. The public, therefore, has a strong interest in having its "powerful check and balance" implemented as enacted. *Id.*

Second, approximately 500,000 motor vehicle registrations are due for renewal in December 2019. *See* Grantham Decl. ¶ 8. Pursuant to I-976, Washington residents who register or renew their vehicles after December 5, 2019, should no longer pay the motor vehicle fees and taxes that are reduced or eliminated by I-976 on that date. *See supra* at 7-8. Plaintiffs, however, attempt to minimize the interest of Washington residents in paying lower motor vehicle fees and taxes, arguing instead about "'society's strong interest in efficient tax collection.'" PI Mot. at 40. But that maxim does not apply in a situation like this one, where the taxes at issue have been repealed by a majority of Washington voters in a statewide initiative. Instead, the public has a strong interest in not being forced to be pay the very taxes and fees that a majority of Washington voters just repealed.

Third, there has already been an extensive outlay of government resources to allow I-976 to be implemented on its effective date. The Department of Licensing, for instance, has already spent hundreds of business hours preparing for the implementation of I-976, and anticipates that the Department will be fully prepared to implement the effective provisions of the initiative by December 5, 2019. *See* Johnson Decl. ¶¶ 5-14 (discussing the Department's extensive compliance efforts).

Fourth, Plaintiffs argue that there would be no harm to the public if an injunction is issued and later vacated because "members of the public will be entitled to automatic refunds for any overpayments made during the pendency of the injunction." PI Mot. at 40. But this argument

completely ignores the harm to the public of having to wait for a refund, and the significant costs associated with issuing those refunds. As the Department of Licensing explains, "processing refunds is a time-intensive process involving multiple layers of Department staff review." Price Decl. ¶ 6. Each refund "take approximately 5 minutes for data entry and calculation and 30 seconds to review/approve." *Id.* Because the Department would need to process approximately 500,000-600,000 vehicle registrations each month, it would take at least 45,000 business hours to issue refunds for each month that an injunction was in place. *See id.* ¶¶ 5-7. The Department estimates it would need an additional 41.5 full time employees to process such a large amount of refunds. *Id* at 7. These significant public expenditures also weigh heavily against an injunction.

Finally, Plaintiffs plead with the Court that "the 'detriment to the public' that would result from even a temporary loss of the revenues at issue cannot be overstated.'" PI Mot. at 41. But this argument lacks force in light of the outcome of the November 5, 2019 General Election. Countless sources informed Washington voters of the impacts of enacting I-976 throughout the election season.[6] Armed with this information, a majority of Washington voters decided to forego the benefits associated with the fees and taxes collected by Plaintiffs in order to pay lower motor vehicle taxes and fees. Ultimately, therefore, because "this potent vestige of our progressive era past must be vigilantly protected by our courts," *Coppernoll*, 155 Wn.2d 290 at 296-97, this Court should deny plaintiff's motion for preliminary injunction, allow I-976 to be implemented, and order expedited briefing on the merits in this case.

[6] *See, e.g.*, Copsey Decl., Ex. J, James Drew, *Latest Eyman Initiative Cuts Cost of Car Tabs but Hits Transportation Projects Statewide*, The News Tribune (Oct. 4, 2019); Copsey Decl., Ex. K, Nicholas Deshais, *Tim Eyman-backed Initiative Would Upend State Transportation Funding,* The Spokesman Review (Oct. 7, 2019); Copsey Decl., Ex. L, Association of Washington Cities, Logan Bahr & Shannon McClelland, *What is Initiative 976 and How Would It Impact Local and State Transportation Systems?*; Copsey Decl., Ex. M, Heidi Groover, *Cities Try to Prepare for Potential 'Massive Impact' if Car-tab Fees Slashed by Initiative 976*, The Seattle Times (Oct. 21, 2019); Copsey Decl., Ex. N, Heidi Groover, *Car-tab Initiative Fallout: 'Hunger Games-style' Budget Fight or 'Rethink' of Spending Priorities?* The Seattle Times (Oct. 30, 2019).

VI. CONCLUSION

For the foregoing reasons, Plaintiffs' motion for preliminary injunction should be denied.

DATED this 22nd day of November 2019.

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I certify that this memorandum contains 12,496 words, in compliance with the Local Civil Rules and Order Granting Plaintiffs' Motion to File Overlength Motion for Preliminary Injunction.

DECLARATION OF SERVICE

I hereby declare that on this day true copies of the foregoing document were filed with the Court and served via CM/ECF and by email upon the following parties:

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DATED this 22nd day of November, 2019, at Seattle, Washington.

s/Morgan Mills
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