The Honorable Marshall Ferguson
Hearing Date: Friday, February 7, 2020 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; 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

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KING COUNTY SUPERIOR COURT
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SEATTLE WA 98104
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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-

[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 any 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 all "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

[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, and 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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