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Superior Court of Washington.

AMALGAMATED TRANSIT UNION LOCAL 587 et al., Plaintiffs,
v.
THE STATE of Washington, Defendant;
VASHON-MAURY ISLAND COMMUNITY COUNCIL, Plaintiff,
v.
THE STATE of Washington, Defendant;
and
THE $30 LICENSE TAB INITIATIVE CAMPAIGN, Intervenor.
CITY OF BAINBRIDGE ISLAND, et al., Plaintiffs,
v.
STATE of Washington, Defendant;
Tacoma WATER, et al., Plaintiffs,
v.
STATE of Washington, Defendant;
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, Plaintiff,
v.
THE STATE of Washington, Defendant;
and
THE $30 LICENSE TAB INITIATIVE CAMPAIGN, Intervenor.
PORT OF WHITMAN COUNTY, et al., Plaintiffs,
v.
STATE of Washington, and the "$30 License TAB" Initiative Committee, Defendants.
PUGET SOUND CLEAN AIR AGENCY, Plaintiff,
v.
THE STATE of Washington, Defendant.

Nos. 99-2-27054-1 SEA, 00-2-00049-9 SEA, 00-2-02023-6 SEA, 99-2-27694-9 SEA, 00-2-01137-7 SEA, 00-2-00048-1 SEA, 00-2-01097-4 SEA. | March 14, 2000.

Opinion

MEMORANDUM RULING ON SUMMARY JUDGMENT; ORDER GRANTING DECLARATORY AND OTHER RELIEF

ALSDORF, J.

***1** Initiative 695 was affirmed in 1999 by a significant margin of the direct popular vote in virtually all areas of the State of Washington.

Its constitutional validity and its reach are now being vigorously questioned. These legal challenges, which raise questions fundamental to a democracy, were filed in several counties by citizens and by public and private entities alike. They have been consolidated in this Court for resolution.

NATURE OF THIS DECISION

The United States and its individual states have long been guided by the adage that we citizens have a government of laws and not of men. In accordance with this cherished principle, court rulings must be made by reference to law and not upon personal whim. A judicial ruling on the validity and reach of a legislative act passed by an elected legislature, or of an initiative or referendum passed directly by the citizenry, is controlled by constitutional law.

Wherever we citizens fall on the political spectrum and whatever our views on any given issue, we all agree that the touchstone is the Constitution. For example, one citizen may challenge a particular act or law on the grounds that it violates his or her right to bear arms under the Second Amendment. Another citizen may contest yet another act or law on the grounds that it violates his or her free speech rights under the First Amendment. As citizens, we may and frequently do disagree on specific policies. Nonetheless, our agreement as citizens on a single point of reference, the Constitution, keeps American democracy healthy and viable.

Depending upon the issue involved, courts are required to refer either to the United States Constitution or to the Constitution of their particular state, or to both.

Because this set of cases involves the structure of the democracy established in the State of Washington, the questions presented for decision today are governed by our State Constitution.

The Constitution of the State of Washington was drafted in keeping with the legal traditions of the United States, which find many of their origins in the American Revolution. One of the central cries leading to the American Revolution was "No taxation without representation!" Echoes of that revolutionary spirit are found in the passage of Initiative 695. However, there is a vital distinction which commands brief discussion. The early revolutionary slogan expressed the sentiment that citizens wanted no taxation unless they were *represented* in the body that imposed the taxes. That is, we were establishing a *representative* democracy. In a representative democracy, citizens delegate authority to their elected representatives-legislative, executive and judicial-to decide certain questions on behalf of the citizenry. A representative democracy does not contemplate, let alone necessitate, a direct vote of the citizens on every act of the government, whether it be an act imposing, enforcing or collecting a tax, or some other governmental act.

***2** In contrast to the representative democracies established after the Revolution, a *direct* democracy is one whose structure not only permits but requires a direct vote of the citizenry on every act of its government. No state has such a government in its purest form. However, in the early 1900's there was a strong populist movement in Washington and in other states which sought to permit direct participation in the government on those occasions when a sufficient number of citizens wanted such participation. These populist movements established the right of the citizenry in more than twenty states to more direct participation by passing constitutional amendments that permitted citizens to file and vote on initiatives and referenda. The State of Washington is one of those states. As a result, the State of Washington now has a democracy whose structure has both representative and direct elements. Both elements of our democracy, direct and representative, are established by and are subject to the terms of our State Constitution.

The government of the State of Washington remains primarily *representative.*The *direct* participation of citizens in legislative activity is contemplated on those occasions when the citizenry affirmatively so chooses, in keeping with either the Constitution's initiative process or its referendum process.

In order to deal properly with the constitutional challenges raised to Initiative 695, one must keep in mind the distinctions between the representative and the direct elements of our democracy, and the manner in which these two elements interact under our State Constitution.

Each of these constitutional challenges will be addressed in turn below.

DISCUSSION

A. A SUMMARY OF INITIATIVE 695

1. How was Initiative 695 Prepared?
Initiative 695 is composed of a legislative title and six sections. That title and all six sections were drafted by the proponents of the measure.

Before any initiative may be submitted to the voters, a formal Ballot Title must first be prepared by the Attorney General of the State of Washington, summarizing the proposed law in 25 or fewer words. The Attorney General must also prepare an explanatory statement of the proposed law. The Attorney General prepared both for Initiative 695.

If an Initiative receives enough signatures, the official Ballot Title and the explanatory statement are printed up in the Voters' pamphlet that is distributed to all voters in the State. They are accompanied not only by the text of the proposed legislation, but also by written arguments for and against the initiative prepared by proponents and opponents of the measure.

The full text of the Ballot Title, the explanatory statement, the arguments pro and con, as well as the legislative title and the full text of Initiative 695 are set forth as Appendix A to this ruling.

2. What is the Scope of Initiative 695?
The official Ballot Title of Initiative 695, prepared by the Attorney General, reads as follows:

> ***3** Shall voter approval be required for any tax increase, license tab fees be $30 per year for motor vehicles, and existing

vehicle taxes be repealed?

The legislative title for Initiative 695, prepared by its drafters, reads as follows:

> AN ACT Relating to limiting taxation by: limiting excessive license tab fees; limiting tax increases by requiring voter approval; repealing existing licensing fees: RCW 46.16.060, 46.16.061, and 46.16.650; repealing existing excise taxes: 82.44.010, 82.44.015, 82.44.020, 82.44.022, 82.44.023, 82.44.025, 82 .44.030, 82.44.041, 82.44.060, 82.44.065, 82.44.080, 82.44.090, 82.44 .100, 82.44.110, 82.44.120, 82.44.130, 82.44.140, 82.44.150, 82.44.155, 82.44.157, 82.44.160, 82.44.170, 82.44.180, 82.44.900, 82 .50.010, 82.50.060, 82.50.090, 82.50.170, 82.50.250, 82.50.400, 82.50 .405, 82.50.410, 82.50.425, 82.50.435, 82.50.440, 82.50.460, 82.50.510, 82.50.520, 82.50.530, 82.50.540, and 82.50.901; adding a new section to chapter 46.16 RCW; adding a new section to chapter 43 .135 RCW; creating a new section; and providing an effective date.

The text of the Initiative was divided by its drafters into six sections. Section 1 stated that it would add a new section to Washington laws to establish a $30 license tab fee, and included a definition of license tab fees. Section 2 stated it would add a new section to Washington laws to require voter approval of "any tax increase imposed by the state" and included definitions and related terms. Section 3 stated that it would repeal each of the "following acts or parts of acts that impose taxes and fees on vehicles" and set forth a list of section numbers of certain laws.

The final three sections of the law set forth administrative details that would apply if the law were approved by a majority of the voters. Section 4 stated that the provisions of the law are to be liberally construed to effectuate their purposes. Section 5 stated that if any provision or application of the act is held invalid, the remainder of the law and its application to others are not affected. Section 6 set January 1, 2000 as the effective date of the act.

3. What is the Meaning of the Word "Tax" in Section 2 of Initiative 695?

The parties do not have significant disagreements about the meaning of the words in Sections 1 or 3 of the Initiative. However, there is substantial disagreement over the meaning of the word "tax" as used in Section 2 of the Initiative. Because that definition affects the scope and constitutionality of the Initiative as a whole, it must be carefully analyzed. The pertinent portions of Section 2 read as follows:

> (1) Any tax increase imposed by the state shall require voter approval.
>
> (2) For the purposes of this section, "tax" includes, but is not necessarily limited to, sales and use taxes, property taxes, business and occupation taxes, excise taxes, fuel taxes, impact fees, license fees, permit fees, and any monetary charge by government.
>
> ***4** (3) For the purposes of this section, "tax" does not include:
>
> (a) Higher education tuition, and
>
> (b) Civil and criminal fines and other charges collected in cases of restitution or violation of law or contract.
>
> (4) For the purposes of this section, "tax increase" includes, but is not necessarily limited to, a new tax, a monetary increase in an existing tax, a tax rate increase, an expansion in the legal definition of a tax base, and an extension of an expiring tax.
>
> (5) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself and all its departments and agencies, any city, county special district, and other political subdivision or governmental instrumentality of or within the state. * * *

All parties agree on the basic rules of construction of statutes and laws. All agree that the law of this State requires the Court to read any statute in such a way as to

support its constitutionality, so long as that can be done without reaching an absurd result, so long as all words are given their normal meanings, and so long as no words are rendered meaningless. *See,* e.g., *State v. Ammons,* 136 Wn.2d 453, 457 (1998); *State v. Crediford,* 130 Wn.2d 747, 755 (1996).

(a) The Plaintiffs Propose a Narrow Reading of the Word "Tax"

Plaintiffs have proposed definitions based on customary usage of the word "tax." The word "tax", as argued by counsel for Tacoma Water, is generally understood to mean: (a) a charge, (b) imposed on a person, property or transaction, (c) for the general funding of government, (d) without any direct connection between the amount charged and the benefit received. Tacoma Water's Mot. for Judgment on the Interp. and Validity of I-695 (1/19/00), at 20-22; *See also,Covell v. Seattle,* 127 Wn.2d 874, 879-891 (1995). Plaintiffs have urged this Court to employ that definition or other definitions that vary in minor ways not relevant here.

When plaintiffs turn to the definition in Section 2, they argue that specific words in a series are to be read as having a common meaning. The common meaning is generally to be established by determining the unifying category in which they appear (an interpretive principle known by its Latin name, *ejusdem generis*).*Id.,* at 18.Plaintiffs use that principle to argue that the Court must limit the scope of the words "any monetary charge" to fit within the scope of the words that precede it. Plaintiffs assert that the general category for the series is "tax." As a result, the words "any monetary charge" would be read by plaintiffs to be "any *such* monetary charge." The word "charge" would then simply refer back to and become largely synonymous with the initial word "tax", which would then keep its traditional definition.

(b) The State's Interpretation of the Word "Tax" is Similar to Plaintiffs'

The State's reading of the word "tax" does not differ greatly from the plaintiffs' reading. The State agrees that the Court is to read a statute in such a way as to support its constitutionality, but properly emphasizes that such a reading may be made only if it is consistent with what the voters intended, citing *State v. Thorne,* 129 Wn.2d 736, 763 (1996). Relying largely on a standard dictionary definition, the State urges the Court to interpret the word "tax" as any compulsory charge for the support of government, and to exclude from that definition amounts charged for specific goods or services and any proprietary or commercial charges (such as utility charges and fees), and to exclude special assessments such as Local Improvement District (LID) assessments. *See,* State's Cross-Mot. for Sum. Jt. (2/9/00), at 15-23. The State asks this Court to conclude that of the challenged charges only Industrial Development District ("IDD") fees be considered to be taxes. State's Reply to Plfs. and Response to Amici Curiae (3/2/00), at 5.

(c) The Campaign Proposes a Broad Reading of the Word "Tax"

***5** The $30 License Tab Initiative Campaign drafted and campaigned for this Initiative. The Campaign argued in its briefing that Section 2 of the Initiative covers much more than what either plaintiffs or the State contend, and therefore much more than what would traditionally be covered by the term "tax." In order to define what it meant when drafting Initiative 695, the Campaign focused on the precise words of Section 2. The Campaign emphasized that "tax" was expressly defined as including but not being limited to a list of specified fees and taxes, *plus* "every monetary charge" imposed by government. Intervenor's Opp. To Defs. (sic) Mot. for Sum. Jt. and Mem. In Support of Intervenor's Mot. for Partial Sum. Jt. (2/9/00), at 61. The Campaign stated that this final phrase was clearly intended to cover fees and charges not normally thought of as taxes. *Id.,* at 66-67.

In its Reply In Support of Mot. for Sum. Jt. (3/3/00), at 15-17, the Campaign argued that its definition of taxes included not only payments for the general support of government, but also specific fees and charges for particular programs and services, as well as any other compulsory charge. The Campaign concluded, the phrase " 'any monetary charge' must include something more than specific types of taxes for that phrase to have significance."*Id.,* at 17.

In his oral argument, the Campaign's attorney stated explicitly that Initiative 695 had abandoned historical distinctions and was intended by its drafters to apply to fees that do not meet the traditional definition of a tax. (Transcript of oral argument, 3/6/00, at 177.)

This Court agrees that that is what the Campaign intended

as drafter of the legislation. The Court also agrees that that proposed reading is in fact a reasonable reading of the words in the text, standing alone. The intended scope of Section 2(2) is broad, not narrow. It sets forth a detailed list of specific and widely varied taxes and fees which will in the future require a referendum. These are, in order, sales taxes, use taxes, property taxes, business and occupation taxes, excise taxes, fuel taxes, impact fees, license fees and permit fees. Some are specific fees for specific benefits. Others are taxes for the general support of government. This list is preceded by the words "includes, but is not limited to."This list is followed by the words "and any monetary charge by government."

Section 4 of the Initiative states that the law is to be liberally construed in order to effectuate the policies and purposes of the act. If the Campaign's specifically defined word "tax" is redefined only to mean what citizens and the dictionary would traditionally consider to be a "tax", as plaintiffs have argued, it would render the Campaign's entire definition unnecessary. It would render the words "and any monetary charge by government" largely meaningless. It would conflict with a listing and a purpose which appears on its face to be expansive. It would mean that the Campaign did not mean what it said when drafting the law.

***6** Finally, if the meaning were as limited as plaintiffs and the State argue, there would have been no need for the Initiative to specifically exclude higher education tuition or criminal fines from the definition, for nobody in this case contends that tuition or fines have ever been considered taxes in the traditional use of that word. There would have been no need to exclude a topic from the definition if it had not been included in the first place.

As drafted, Section 2 of Initiative 695 can reasonably be read as intending to refer to more than traditional taxes, and therefore as including specific fees for commercial or proprietary products or services rendered or benefits received, fees and assessments other than taxes, and even utility charges by PUD's.

B. APPLICATION OF THE STATE CONSTITUTION TO INITIATIVE 695

1. The Citizens' Right to Call for Referenda is Both Established and Limited by the State Constitution

The first challenge to Initiative 695 addressed by the Court arises under Article II, Section 1 of the State Constitution. Plaintiffs contend that Section 2 of the Initiative establishes an unconstitutional referendum process, while defendants argue that it is an initiative which establishes conditional legislation and not referenda. In pertinent part, Article II, Section 1 of the Constitution reads as follows:

> Section 1. LEGISLATIVE POWER, WHERE VESTED
>
> The legislative authority of the state of Washington shall be vested in the legislature ... but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature.
>
> (a) Initiative: The first power reserved by the people is the initiative ...
>
> (b) Referendum. *The second power reserved by the people is the referendum,* and it may be ordered on any act, bill, law, or any part thereof passed by the legislature *...The number of valid signatures of registered voters required on a petition for referendum* of an act of the legislature or any part thereof, *shall be equal to or exceeding four percent* of the votes cast for the office of governor at the last gubernatorial election preceding the filing of the text of the referendum measure with the secretary of state.
>
> (Emphasis added.)

This portion of the State Constitution was amended during the populist movements of the early 1900's in order to establish the right of the citizens to propose and enact initiatives and referenda.

The right to submit initiatives is the right of citizens to propose specific legislation and vote it into law despite inaction or even opposition by their elected representatives in the legislature. An initiative is essentially an affirmative act. Initiatives may cover any legislative subject without any limitation as to subject matter except for the prohibition on amending the State Constitution by statute.

***7** In contrast, a referendum is a negative act, essentially a

citizens' veto. The referendum right permits citizens to challenge acts or laws that have been passed by their elected representatives. Citizens first identify a particular act or law to be challenged, and thereafter vote to specifically accept or reject that act or law. As a matter of procedure, when a referendum is called for in keeping with the Constitution, the act or law being challenged is immediately suspended until that public vote has been held.

(a) How Are the Sections of the Initiative Classified under Article II, Section 1?
Initiative 695 is an initiative.

The $30 limit proposed in Section 1, i.e., the limit on the State's portion of the Motor Vehicle Excise Tax (the "MVET") is proper subject matter for an initiative. It is a legislative subject. The repealers listed in Section 3 are likewise legislative subjects.

However, Section 2 of Initiative 695 performs a function different from that of Sections 1 or 3. Section 2, as drafted, would address every tax, fee or charge enacted, continued, expanded or reenacted by any government agency at any time in the future. In that capacity, it would automatically suspend in the future every such tax-related action of every level of government until the citizens have voted to approve or disapprove of the particular action. It would be universal. It would be a presumptive veto.

Section 2 is conceptually distinct from Section 1 of the Initiative.Section 1 suspended nothing, but immediately upon the effective date of the Act, affirmatively enacted specific changes in the amount, structure and distribution of one particular tax. Section 2 established a referendum.

(b) Section 2 of The Initiative Would Establish a Referendum Which Violates the Four Percent Rule
All referenda must comply with the Constitution. As Article I, Section 29 of the Constitution states, "The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise."

Article II, Section 1(b) of this State's Constitution explicitly provides that no referendum may be called except upon the signatures of four percent of the population voting for governor in the immediately preceding gubernatorial election: "The number of valid signatures *required* on a petition for referendum ...*shall be* equal to or exceeding four percent of the votes cast for the office of governor ..." Section 2 of I-695 directly conflicts with this specific provision of the constitution by mandating an up-or-down vote even though there may be no public opposition to or controversy over a particular tax-related action of the agency in question, and even without the four percent threshold being met.

A constitutional provision cannot be overruled or modified by a statute. Were it otherwise, neither the First Amendment nor the Second Amendment nor any other Amendment of the state or federal constitutions would be secure; each and every provision of the Constitution could be altered by simple majority vote. In such a setting, any constitution would be rendered useless. Without a constitutional framework, consistency and stability are removed.

***8** Arguments may be made that we have a runaway tax-and-spend government and that we need radical systemic change in taxation or in other areas in order to make our governmental entities responsive to the needs and the will of the citizens. Some citizens will agree. Some will not. Whatever the wisdom of a particular proposed fiscal policy, the fundamental structure or system of our government can be changed only by constitutional amendment.

The health and vigor of the American system of democratic government, both representative and direct, is due in large part to the stability provided by the constitutional framework, by the difficulty of modifying constitutional provisions except upon a super-majority vote within a careful and deliberate system of checks and balances. These procedures are purposefully difficult, in order to ensure that the fundamentals of governance are not subject to the whims of every passing political season but reflect a true consensus on fundamentals. No party contends that Initiative 695 conformed to the requirements established in the Twenty-third Amendment to the State Constitution for the means by which the Constitution may be amended.

Passage of a statute, whether by the legislature or by public initiative, is not enough to overcome constitutional limitations. Section 2's mandate of referenda on every future tax-related action conflicts with our constitutional four percent threshold, and therefore must be stricken as unconstitutional.

(c) Section 2 of the Initiative Would Violate the Prohibition on Referenda Concerning Acts or Laws Which are Necessary for the Support of State Government and its Existing Public Institutions

The next constitutional challenge also arises under Article II, Section 1, which states in pertinent part:

> (b) Referendum. The second power reserved by the people is the referendum, and it *may be ordered on any act, bill, law,* or any part thereof passed by the legislature, *except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions ...*
>
> * * *
>
> (c) The filing of a referendum petition against one or more items, sections, or parts of any act, law or bill shall not delay the remainder of the measure from becoming operative.
>
> (Emphasis added.)

Because the timely filing of a referendum with a sufficient number of signatures immediately suspends the operation of the challenged act or law, the Constitution exempts from the power of referenda all laws which are necessary to protect public health and safety (i.e., the police power) and those which are necessary for the support of the State and its existing public institutions.

The purpose of this portion of the Constitution is to assure that the government can continue functioning despite political differences of opinion. The reason for this limitation is rooted in history.

When the Constitution of the state was amended in 1912 to permit the filing of referenda, the State had before it the example of problems that had arisen in the state of Oregon where the constitutional right of referenda extended to every topic except police powers. Because the filing of a referendum would suspend the operation of any law until the next general election, it could quickly disable and even destroy a governmental entity or program even where a majority of the public supported a program. At that time, Oregon's general elections were as much as two years apart, and one group opposed to the operation of the University of Oregon filed successive referendum petitions that almost destroyed the University even though the petitions themselves were defeated at the polls each time.

***9** The Washington Supreme Court noted in *State ex rel. Blakeslee v.. Clausen,* 85 Wash. 260(1915), at 267, that "one of the state institutions [of Oregon] exercising an essential function of the state had been crippled and embarrassed and but for the pledge of private credit would have been destroyed, for a time, at least" and added:

> We may well assume that the people of this state had no intention of falling into the error that Oregon had made, and so framed their constitution that our government and its institutions should not be put to the embarrassments that might follow an agitation which could be suported and a vote compelled by a number of the electors so small that it may be said to be merely nominal-six per cent of the vote cast at a previous election.

Id. Washington's Constitution has since been amended to require a four percent vote rather than six.

The Supreme Court concluded that because of the problems Oregon had experienced, "It was clearly the intention of the people [of Washington] to except all ordinary appropriation bills [from the power of referendum]."*Id.,* at 272.

The need to protect support for the state government and its existing institutions is interpreted broadly by the Supreme Court. *State ex rel. Hoppe v. Meyers,* 58 Wn.2d 320, 327 (1961). It is that need that led the Supreme Court in 1983 to uphold the then newly adopted Lottery against *any* referendum. It stated that it was so ruling because moneys raised by the Lottery went into the general fund. The Lottery was deemed to be a law which was necessary for the support of state government, for the reason that the Constitution's use of the word support "is not limited to appropriation measures; if it generates revenue for the state, it is deemed support."*Farris v. Munro,* 99 Wn.2d 326, 336 (1983).

Defendants do not seriously dispute that if Section 2 is found to be a referendum requirement, it would violate Article II, Section 1. In oral argument, counsel for the Campaign agreed that referenda may not be held on tax or revenue measures, or laws which are necessary for the support of state government and its existing institutions. (Transcript of oral argument, 3/6/00, at 174.)

The State's definition of the word "tax" in Section 2 of the Initiative compounds the defendants' problem in defending Section 2's constitutionality. As has already been discussed, the State has argued that the word "tax" covers compulsory charges imposed for the support of government. By its own definition, because the word "tax" in Section 2 would mean those charges imposed *for the support of government,* Section 2's requirement of universal tax referenda would necessarily fall directly within the constitutional proscription of referenda being held on any law necessary for the "support of the state government and its existing public institutions."Article II, Section 1(b).

(d) Initiatives Are Not the Same as Referenda

***10** The submissions of plaintiffs in this case amply identify and describe the difficulties each governmental plaintiff perceives from I-695, whether or not their perceptions are accurate, and illustrate the consequent uncertainty of their planning, funding and operations. This situation reflects that contemplated by the *Blakeslee* Court when it described a state institution as having been "crippled and embarrassed" by the referendum power then available in Oregon. *Blakeslee,supra,* at 267.

Voters may, by properly drafted initiative, target for cancellation or limitation any specific program or tax they wish. Voters may not use referenda to suspend acts or laws which are necessary for the support of existing government institutions. An initiative cannot amend the Constitution to require the holding of referenda on terms different from those set forth in the Constitution.

(e) Legislative Submissions to the Citizenry Are Not the Same as Citizens' Referenda

Finally, defendants argue that the legislature has on various occasions passed discrete pieces of legislation that are conditional in form, and are subject to voter approval, and that the citizens should therefore have the same right.

Even assuming that defendants have properly characterized such legislative acts as conditional legislation, their analogy fails to recognize several key points. First, the legislation they have cited generally affected local and not State acts. Second, a request by elected representatives that citizens consent to or disapprove of a discrete law or action is effectively a request by our representatives (our agents) for direction from us as citizens (their principals). Such a legislative request is not a veto. Third, the extent of citizens' direct democratic rights are governed by the Constitution.

What both the Campaign and the State ignore is that Section 2 of I-695 would impose a structural change in our representative government. I-695 would permanently suspend all future tax-increase-related acts, no matter how urgent, for undefined periods until elections are held. It would indisputably affect the support of every level of state government and its existing institutions. It would establish a presumptive veto in contravention of the Constitution's four percent limitation.

If the Court redrafted Initiative 695 to require local referenda but prohibit State referenda, as both defendants have urged, the Court would have rewritten the Initiative and caused it to address a topic narrower than and distinct from the loss of statewide MVET funding. That sort of redrafting would be a legislative act, and not a proper judicial function.

2. A Single Law Must Deal With a Single Subject

The next challenge to the Initiative arises under Article II, Section 19 of the State Constitution. Section 19 sets forth the following requirements for all laws, whether they are proposed by the legislature or by the citizens:

No bill shall embrace more than one subject, and that shall be expressed in the title.

***11** The first clause of Section 19 is simple and direct. It requires that each proposed law deal with only one subject.

(a) Article II, Section 19 is Designed to Prevent Logrolling

The principal purpose of this clause is to prevent a

practice known as "logrolling." That practice is defined as the joining together of two separate laws either for the purpose of passing them both when neither one could pass standing alone, or for the purpose of attaching a less popular separate piece of legislation to a law that appears certain to pass:

> Logrolling is an even greater danger to the democratic exercise of power in the initiative process. What is to prevent an individual or group from including mildly objectionable legislation-that is, legislation which might benefit a small group and is mildly disfavored by the electorate as a whole-in an initiative measure which includes other legislation which has great popular appeal?... The legislature can delete parts of a proposal it disfavors; the electorate is faced with a Hobson's choice: reject what it likes or adopt what it dislikes. Only article 2, section 19 preserves the dignity of the initiative process.

Fritz v. Gorton, 83 Wn.2d 275, 333 (1974) (Rosselini, J., dissenting). The Supreme Court of the State of Washington has ruled that this State's constitutional limitation on the permissible scope of any one law applies to initiatives by the citizenry, and not just to laws proposed in the legislature. *Wash. St. Fed'n of St. Emp. v.. State,* 127 Wn.2d 544, 551-2 (1995), quoting from and adopting Justice Rosselini's dissent in *Fritz v. Gorton,* 83 Wn.2d 275, 328-42 (1974). Thus, Section 19 of Article II applies to both the representative and the direct elements of our State democracy.

The framers of the Constitution of the State of Washington wanted to assure that each law that is passed has actually been individually and knowingly approved by a majority either of the voters in this State or of their duly elected representatives. Therefore, each law is constitutionally required to be individually identified and described in the title and to deal with only one subject.

(b) There is a Single Subject When There Is Rational Unity

The central issue to be resolved in determining whether a proposed law covers more than one subject is whether there is a "rational unity" among the provisions of the proposed law. *Kueckelhan v. Federal Old Line Ins. Co.,* 69 Wn.2d 392, 403 (1966).

The stated topics of Sections 1 and 3 of the Initiative appear on their face to be generally related to each other. Section 1 would establish a $30 figure as the State's portion of the car tab. Section 3 states that it would repeal contrary laws imposing higher or other taxes. The last three sections of the Initiative, the construction provision (Section 4), the severability provision (Section 5), and the effective date (Section 6), are complementary administrative and/or clerical provisions, and are not independent topics.

***12** The question is, where does Section 2 of Initiative 695 fit?Sections 1, 3, 4, 5 and 6 appear to "embrace ... one subject." All seven cases now before this Court focus on this question of whether there is a link between Sections 1 and 2 of the Initiative and, if so, whether those two sections also evidence a rational unity.

That inquiry starts with the official Ballot title. The Ballot Title commences with the words "An Act Relating to limiting taxation by ..." When one examines the text of the Initiative, one finds that Section 1 deals with the Motor Vehicle Excise Tax by proposing to establish a new $30 figure for the state portion of a citizen's payment for license tabs, while Section 2 establishes an automatic referendum on any tax-related act of any state or local agency. Both Sections are related to taxation. There is, therefore, a link.

That is not the end of the inquiry. One must determine if there is rational unity. The courts, however, have not articulated a single test or set of rules for determining if there is rational unity. Three different tests have previously been applied by the courts of this State. Each will be examined here. An affirmative answer to any one will suffice.

(i) Is the Proposed Law A Comprehensive Redraft?

Perhaps the simplest inquiry is whether a proposed statute or initiative is designed to be a comprehensive rewrite of a particular area of law. In that situation, a single term or concept can cover a wide variety of related topics and establish the requisite rational unity. For example, in *Fritz*

v. Gorton, 83 Wn.2d 275 (1974), the Supreme Court upheld a public disclosure law which contained many subparts relating to elections, candidates, funding and reports as a unified campaign reform measure.

Initiative 695 does not rewrite the entire State tax code. If it had done so, the term "taxation" could easily serve to unite all elements of such a comprehensive redraft of the many provisions of general law. However, Initiative 695 does not claim to be an all-encompassing redraft. There is no rational unity under the first test.

(ii) Does the Law Cover a Single Subject?

There is a second possible inquiry, which is largely a matter of logic or common sense. Does one provision naturally imply the other? Is either provision naturally included within or subsumed by the other? In *Wash. Toll Bridge Auth. v. State,* 49 Wn.2d 520, 523-6 (1956), the Supreme Court held an entire act to be unconstitutional where it was to have involved the following two subjects: a permanent agency to establish and operate toll roads, and the construction of a specific toll road from Tacoma to Everett. *See also,State ex rel. Toll Bridge Auth. v. Yelle,* 32 Wn.2d 13, 27 (1948) (toll bridges and ferries are not a single subject even though both relate to a transportation system).

Sections 1 and 3 of Initiative 695 deal with *what* the State may charge for its portion of a car license. Section 2 deals with *how* any tax or fee of any nature whatsoever at any level of state government may become effective at any time in the future. A law limiting the dollar amount of the State's portion of the car tab does not, standing alone, logically imply or include, let alone require, an overhaul of the manner of imposing or avoiding future tax changes at every other level and for every other function of local, county and State government. Likewise, if one starts the analysis from the point of view of Section 2, passing a law setting new standards for the holding of tax-related referenda does not logically imply, include or require either a $30 or any other particular limit on car tab fees or other specific tax.

***13** Is there a rational link between these sections? Yes. Is there rational unity? No. A rational *link* is not the same as rational *unity.*Initiative 695 picked two particular aspects of the tax laws to address, out of many state tax laws. The Initiative relates to *two* distinct and specific subjects, first the *what* of a single tax (the MVET), and second the *how* of every other future tax, fee and charge by state government.

If the standard permitted these two topics to be considered as one, one could link almost any combination of otherwise disparate concepts by using a broad generalized term such as "taxation" or "governance" or "equity" or "fairness" even when there is no comprehensive rewrite of a particular areas of law. If that could be done, the constitutional requirement of a single subject would be reduced to a hollow exercise in semantics, a mockery of any real or effective constitutional standard. There is no rational unity under the second test.

(iii) Do the Law's Subsections Have a Single Purpose?

Another uniting principle may be found if there is a common purpose for the various subdivisions of the law. Do they serve a common purpose? *State ex rel. Washington Toll Bridge Auth. v. Yelle,* 61 Wn.2d 28, 36-7 (1962) (establishing revenue account system for various forms of transportation is a single subject).

The State and the Campaign both argue that setting a $30 limit on the State's portion of the car tab may appropriately be accompanied by a prohibition on the State thereafter raising other general taxes to make up for the loss of MVET funds. As support, they cite the Campaign's statement in the arguments portion of the Voters' Pamphlet, in which it stated "[W]e knew politicians would try to raise other taxes, so ..." By the Campaign's analysis, Sections 1 and 3 would impose a limit and Section 2 would serve to enforce that same limitation.

At first blush, that argument appears to be reasonable. The problem with that argument is that throughout this litigation the Campaign has vigorously argued for an interpretation of the law that makes the scope of Section 2's prohibition much broader than a simple ban on the State raising other taxes to make up for the loss of the MVET funding. For example, the Campaign argues in their Reply brief (3/3/00), at 1-9, that all future PUD rates and assessments, all future Tacoma Water rates and charges, as well as all manner of charges not known as taxes and even those charged by local or county agencies will be subject to the referendum requirements of Section 2. Yet even the Campaign does not argue that all these varied fees and charges are related to the State's loss of MVET funds.

Therefore, the purpose of the Section 2 referendum requirement is not reasonably read as being limited to that which is necessary to enforce the $30 license tab limitation. It is a far broader change. When the Court accepts the Campaign's reading of the word "tax" under Section 2 of the Initiative, it has no choice but to conclude that Section 2 of the Initiative does far more than prevent the State from making up for MVET reductions. Reading Section 2 in the broad manner sought by the Campaign prevents it from having rational *unity* with Section 1 and 3's new and specific limit on MVET funding.

***14** There is no rational unity under the third test.

(c) When There Is No Rational Unity, Courts Cannot Arbitrarily Pick One Portion of the Law to Be Effective

Various polls are referenced in the parties' briefs to the Court. Among these submissions, the Campaign provided evidence, *see,* Ex. O to Stephens Decl., cited in Intervenors' Opp. to Defs.' (sic) Mot. for Sum. Jt. (2/9/00), at 23, that polling had indicated that in certain districts the voter referendum provisions were more popular than the $30 license tab limit. If true, this fact would support a conclusion that voters viewed each topic as separate and evaluated them differently. Further, assuming the poll to be accurate, the Court is faced with the proposition that the $30 limitation might not have passed on its own, and that only the tax referendum provision would have passed. On the other hand, the Court is also faced with the possibility that perhaps neither would have passed if proposed alone, but the combination of supporters of a $30 limit and the supporters of general tax referenda pushed the combined proposal over the top. Or maybe both would have passed. In any event, it would be improper for the Court to make a ruling based on polling results if for no other reason than the fact that there is no showing that the persons polled were those who ultimately voted.

The Court is not empowered to arbitrarily pick and choose a single stated topic or portion of the Initiative to be sustained as valid and constitutional. There is not a sufficient factual basis submitted by any party on this record that would permit the Court to make a finding of fact in support of such a choice that is anything other than speculative. There is also no neutral rule of decision that would permit the Court to pick either Section 1 or Section 2 as a matter of law.

The inclusion of a voter referendum requirement in what everybody including the Campaign referred to simply as the $30 License Tab Initiative was fatal to the Initiative's constitutionality under the first clause of Article II, Section 19. If the Campaign had proposed two separate initiatives, the universal tax referendum proposal that is currently known as Section 2 of Initiative 695 would have had no impact on the $30 license tab limit under the single subject rule of Article II, Section 19. The Campaign sought too much for a single initiative. Its reach exceeded its grasp.

3. A Law Enacted by Initiative Must Express Its Subject in the Ballot Title

This next challenge to the Initiative arises under the second clause of Article II, Section 19 of the State Constitution:

No bill shall embrace more than one subject, and that shall be expressed in the title. That second clause requires that the subject of the law be directly and clearly expressed in its title, so that citizens will know what they are voting for.

(a) Does the Word "Tax" in the Ballot Title Give the Voters Fair Notice of the Content of Section 2 of the Initiative?

***15** The Ballot Title of an initiative must provide " '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." ' *Washington Federation of State Employees v. State,* 127 Wn.2d 544, 555 (1995), quoting *YMCA v. State,* 62 Wn.2d 504, 506 (1963). The Ballot Title is vitally important. The Supreme Court has noted, "[I]t is the ballot title with which voters are faced in the voting booth." *State v. Broadaway,* 133 Wn.2d 118, 125 (1997). The Supreme Court has even stated, "We can safely assume that not all voters will read the text of the initiative or the explanatory statement." *In re Ballot Title for Initiative 333,* 88 Wn.2d 192, 198 (1977).

While some may read such statements as condescending, they are not. The ultimate purpose of this clause of the Constitution is to assure both that citizens have been given fair notice and that when they vote they do know

what they are voting for. This requirement of full and fair disclosure is not different in purpose from statutory requirements that full disclosure be made in the sale of securities and other investments, even to sophisticated buyers. *See generally,* Securities Act of Washington, RCW 21.20.010*etseq*. Surely democratic elections are not less worthy of protection than citizens' investments.

The official Ballot Title of I-695, which as the Supreme Court noted is all the voters have in the voting booth, reads as follows:

> Shall voter approval be required for any *tax* increase, license tab fees be $30 per year for motor vehicles, and existing vehicle *taxes* be repealed?

The title set forth in the text of the initiative reads as follows:

> AN ACT Relating to *limiting taxation* by: limiting excessive license tab fees; limiting *tax* increases by requiring voter approval; repealing existing licensing fees ... repealing existing *excise taxes* ...

There are several questions the Court must ask with regard to the second clause of Section 19. The first question is whether the words "tax" or "taxation" do give the public fair notice of the scope of Section 2 of the Initiative.

As has already been discussed, the Court is willing to accept the Campaign's broad definition of the word "tax" in Section 2. However, that good news for the Campaign necessarily carries within it the following bad news: if Section 2 indeed covers a broader range of fees and charges than are normally understood to be covered by the term "tax" then neither the official Ballot Title nor the Initiative's own wordier title gave the public fair notice that the Initiative's provisions were designed to establish universal referenda on all fees and charges and not just taxes.

Using the Campaign's own definition, the Court must necessarily conclude that the subject of the initiative has not been properly set forth in its title. As a result, Section 2 of I-695 violates Article II, Section 19 of the Constitution and is void. In that event, the plaintiff utilities and cities and special districts would not be bound to submit water or other utility rates, charges or fees, LID assessments or any other of the challenged payment categories to public vote, because Section 2 would simply be stricken.

***16** On the other hand, there is an alternate ruling which can be reached if the Court instead were to adopt plaintiffs' proposed narrower reading of the word "tax." In that situation, the word "tax" reasonably would mean only those matters that are traditionally thought of as formal taxes, i.e., a payment whose primary purpose is to raise general revenue for the operation of government. *See,* e.g, *Covell v. Seattle,* 127 Wn.2d 874, 879-91 (1995). As so defined, the word "tax" would exclude the various commercial and proprietary fees and charges addressed by plaintiffs in their challenges, as well as payments for other services, products or benefits received. Only Industrial Development District charges can reasonably be characterized as taxes, that is, as providing general support for a governmental body separate and apart from payments for value received.

This narrower definition would allow Section 2 to be considered constitutional under Article II, Section 19, because it would mean that the real subject of Section 2 as limited to traditional "tax" has appeared in the Ballot Title. However, such a ruling would also not help the Campaign. By that narrow definition of "tax", the law would reach neither the various water and utility charges and proprietary charges as to which the municipalities, utilities and special districts have filed suit, nor the LID assessments, but only the IDD assessments. Thus, the only reading of Section 2 which allows it to be deemed constitutional would be one which generally results in those fees, assessments and other charges at issue in this case not being the proper subject of voter referenda.

The Court may not adopt the plaintiffs' narrower reading because it conflicts with the Initiative's intent. A Court must read an initiative in a manner reflecting the drafters' intent. This Court is not to engage in the legislative activity of rewriting the Initiative in an attempt to make an otherwise unconstitutional law constitutional. *See generally,State v. Thorne,* 129 Wn.2d 736, 763 (1996).

(b) Does Section 3 of the Initiative Include Subjects

Not Identified in the Ballot Title?
There is a further constitutional defect which arises when the Initiative is measured against the second clause of Article II, Section 19. Section 3 of the Initiative lists a series of laws that are to be repealed. These Acts and portions of Acts were listed by RCW section number only. Even in the full text, they were described as being repealed on the grounds that they "impose[d] taxes and fees on vehicles."Not all of those cited section imposed taxes or fees.

Sections such as RCW 82.44.110, 82.44.150, 82.44.155, 82.44.157, 82.44.160, 82.44.170, 82.44.180, 82.44.900 imposed no tax or fee at all. Instead, they allocated percentages of the proceeds of the license tab fees, whether $30 per car or a higher amount, and established certain accounts and funds for deposit and withdrawal of those moneys. These moneys were identified for allocation to police, fire and other public purposes. The repeal of these specific sections would operate to deprive the named programs and government agencies of their present share of this funding. This direct and necessary outcome of the Initiative was not identified in the Ballot Title.

***17** Other cited sections such as RCW 82.44.015, 82.44.022, 82.44.023 and 82.44.025 had had the purpose of exempting certain persons or entities from paying the motor vehicle excise tax. The repeal of their exemptions necessarily imposed anew a $30 fee and therefore by definition *increased* their tax. This tax increase was not identified in the Ballot Title.

The two preceding paragraphs simply listed the section numbers. That is the manner in which they were identified in the Initiative. Such a listing amply demonstrates that without a Ballot Title properly explaining those sections, and without the text of such sections being printed in the Initiative's text, there is no reasonable means by which a voter could readily understand those references or know specifically what is affected, modified or repealed.

The public did not have fair notice of the nature or content of the impact of those proposed changes, either in the Ballot Title or in the legislative title or in the text itself. Those defects are constitutional defects, rendering unconstitutional the proposed repeal of the sections cited above.

4. A Law Enacted by Initiative Must Set Forth the Text of All Laws that are to be Revised.
Despite the fact that the Court has concluded that a narrow reading of "tax" would permit Section 2 of I-695 to be ruled constitutional under the subject-in-title clause of Article II, Section 19, it does not avoid Section 2's other constitutional difficulties under Article II, Sections 1 or 19 or even under Article II, Section 37 of the State Constitution, under which the fourth challenge is made. Section 37 reads as follows:

> No 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.

Article II, Section 37 requires that the full text of any act or section being amended be set forth in full in order to avoid any confusion or ambiguity as to both the meaning of the new law and its impact on existing law, to identify the extent of revision contemplated or achieved by the amendment.*State v. Thorne,* 129 Wn.2d 736, 753 (1996). This is to remedy the practice of revising laws by alterations which were unintelligible without the presence of the original law. *Yelle v. Bishop,* 55 Wn.2d 286, 299 (1959).

The Initiative does not attempt to explain how existing state and local voter laws are to be modified or supplemented to deal with the following questions: On any particular tax, fee or monetary charge, what citizens are authorized to vote? Who or what defines the scope of the electorate? Who pays for the election? When is it set? On how much notice to the voters? What type of voters' pamphlet or circular is to be prepared? For ferry tickets and other fees and charges by an entity such as the Department of Transportation, who is to vote? Only those citizens in adjacent counties? Citizens in the entire state? If a utility district holds a referendum, who votes? What about users and/or purchasers outside the district? What is the minimum number of voters for an election to be valid? If a minimum number does not vote, what happens? Does the minimum number vary by district or by the number who voted in a prior election or by issue? How frequently can and/or must elections be held? What percentage of affirmative votes is required? Is it a simple majority? Is it sixty percent? The list of questions appears to be endless. Section 2 of the Initiative is, on its face, woefully incomplete, so much so as to be unworkable.

***18** The Initiative not only fails to include a full or clear text, it also fails to identify by number many other provisions of law that are necessarily directly affected and modified by the mandate in Section 2 that a referendum be held on each and every increase in "tax" or other "monetary charge by government."

Examples can be found of statutes that would be affected, even though they are nowhere specifically addressed in the Initiative. For example, the Ports are empowered to adopt Industrial Development District levies under RCW 53.36.100 for a period of up to twelve years, but voters are entitled to vote directly thereon only after six years. This Court has concluded that IDD's would be classified as a tax under any reading of Initiative 695, yet the Initiative is silent on the topic of how to resolve this conflict between the Initiative's suspension of any new or increased taxes pending a vote and the existing statutory 6-year period of taxation before citizens can act to reject the tax. Initiative 695 simply cannot be understood standing alone. It is not a complete act.

A similar problem arises with regard to municipalities. Current laws such as RCW 35A.11.090 prohibit non-charter code cities from conducting certain referenda. The repeal of this portion of the RCW was not mentioned by the Initiative, nor was the manner of how the newly authorized local referenda were to be conducted. The Initiative was likewise silent about how it would affect the detailed provisions governing Water Districts, their rates and operations under Title 57, RCW.

The Initiative is not a complete law in and of itself, and it renders existing statutes erroneous. This makes it unconstitutional under Article II, Section 37. *See generally,State v. Thorne,* 129 Wn.2d 736, 754 (1997), and *Washington Education Association v. State,* 93 Wn.2d 37, 40-41 (1980). Many questions essential to its operation are left unanswered. Section 2's voter referendum requirement creates a problem that no other section of the Initiative remedies. Section 2's defects are not remedied by the incomplete listing of purportedly repealed statutes in Section 3. The Initiative as a whole is therefore unconstitutional.

5. Other Constitutional Issues

There are additional challenges to I-695. These include detailed interpretive issues, further constitutional issues relating to gifts of public property, surrender of the legislative taxing powers, modification of municipal authority and impairment of contract, and issues such as federal preemption. These arguments are set forth in full in the parties' submittals to the Court, identified in Appendix B, all of which the Court has read.

In light of the Court's foregoing rulings, it is not necessary to address those additional challenges. Because the Initiative is unconstitutional, further rulings would be merely advisory.

CONCLUSIONS OF LAW

A law passed by the legislature or by citizens' initiative is presumed constitutional. Those who challenge the law have the burden of proof. Under even the strictest standard, plaintiffs have met their burden of proving the following:

***19** • Section 2 of the Initiative is unconstitutional because it mandates universal referenda without complying with the Constitution's four percent requirement.

• Section 2 of the Initiative is unconstitutional because it mandates universal referenda on laws and acts necessary for the support of the State government and its existing institutions.

• Section 2 of the Initiative is unconstitutional because it seeks to amend the Constitution without complying with the requirements of Amendment XXIII to the Constitution.

• The Initiative as a whole violates the Constitution because it covers more than one subject.

• Sections 2 and 3 of the Initiative violate the Constitution because not all subjects in their text are identified in the Ballot Title.

• The Initiative as a whole violates the Constitution because it is not a complete Act, and neither sets forth the text of those other laws that it necessarily amends nor explains how those amendments are worded or would be implemented.

DECLARATORY JUDGMENT AND OTHER RELIEF

When reviewing any law's constitutionality, a court is to interpret a law in such a way as to preserve its constitutionality, so long as that can be done without reaching absurd results. The only way Initiative 695 could be constitutional would be for the Court to arbitrarily eliminate one or more sections and redraft others. As the Court has already noted, courts are not to engage in the legislative activity of rewriting an initiative in an attempt to make an otherwise unconstitutional law constitutional.

Based on the conclusions of law set forth above, the Court now grants relief as follows in all seven of the cases captioned above:

1. This Court declares and orders that

(a) Section 2 of Initiative 695 is unconstitutional and void and therefore cannot be enforced; the State and its subdivisions are hereby enjoined from taking any action to implement or enforce Section 2; other statutes, codes and ordinances requiring, permitting or otherwise governing voter participation remain in place and are not affected by this order;

(b) Sections 1 and 3 of Initiative 695 are unconstitutional; injunctive relief is denied because the State has been implementing Sections 1 and 3 since January 1, 2000; it would be disruptive to enjoin their operation or enforcement before either the Supreme Court has issued its final rulings as to their constitutionality or a period of thirty days has passed from the date of this ruling without appeal; denying injunctive relief as to Sections 1 and 3 preserves the status quo pending completion of this litigation;

(c) Because the Initiative as a whole is unconstitutional, Section 5 does not function to save any individual section; and

(d) By virtue of the unconstitutionality of Sections 1, 2 and 3, and of the Initiative as a whole, the remainder of the Initiative is moot.

2. Because of the importance of the constitutional issues addressed herein, and the likelihood that resolution of those issues will render it unnecessary to address the other issues raised by the parties, and the importance of timely final rulings on the constitutionality of Initiative 695 in order to remove uncertainty at all levels of government in the State of Washington, and there otherwise being no just reason for delay, this Court certifies the foregoing rulings as final judgments under CR 54(b).