Honorable Marshall Ferguson
Noted for Hearing: November 26, 2019 at 9:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

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

I. INTRODUCTION AND REQUESTED RELIEF

Plaintiffs respectfully request an injunction preventing Initiative No. 976 ("I-976") from taking effect, because the initiative is unconstitutional and its implementation would cause immediate, devastating, and irreparable impacts statewide. Plaintiffs are a broad coalition from across the state that will suffer substantial and irreversible harm should I-976 be allowed to take

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effect as scheduled. Specifically, the loss of hundreds of millions of dollars in revenue, grants, and resources that would result under I-976 would hobble the ability of government entities to complete vital infrastructure projects, fix dangerous highways, retrofit bridges, fund transit, expand light rail, maintain ferries, and improve the freight corridors that are the lifeblood of our economy.

Whether the communities are large or small, rural or urban, the damage will be pervasive, and there is no corner of Washington that avoids harm. That harm will only deepen and spread with time. For example, the City of Seattle alone faces the loss of $2,680,000 in revenue in just the first twenty-seven days of I-976's implementation, which over time could lead to approximately 175,000 annual transit hours of King County Metro service being cut. Plaintiff Garfield County Transportation Authority ("GCTA"), providing essential "lifeline" support to the State's smallest county, would face a cut of more than half its services. Localities from Bainbridge to Zillah would lose a combined nearly $60 million in annual revenue for their Transportation Benefit Districts ("TBDs"). Individuals such as Plaintiff Michael Rogers, who has cerebral palsy and uses a wheelchair, will face ever-increasing restrictions on their basic mobility as their public transit options shrink or disappear in inevitable service cuts. All of this harm is actual, undeniable and cannot be undone by subsequent relief.

An injunction is warranted because Plaintiffs are likely to prevail on the merits of their constitutional claims. Washingtonians were not presented with one clear and constitutional choice at the ballot box. Instead, as with prior unconstitutional initiatives by the same sponsor, I-976 is a poorly drafted hodge-podge that violates multiple constitutional provisions. One particularly startling illustration of this (admitted publicly by the Initiative's sponsor) is that the Initiative promises the option of voter-approved charges, but instead bars them – a clear violation of multiple

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provisions of article II, section 19. By combining one seemingly popular subject with other unrelated ones, the Initiative is also a textbook example of logrolling, a separate violation of article II, section 19's requirement of a single subject initiative. Additionally, I-976 violates article II, section 37 by amending numerous statutes without disclosing those amendments to voters. I-976 further ignores a number of fundamental Constitutional requirements – such as separation of powers and the assurance that every vote will count. For all these reasons, a preliminary injunction is necessary so that the Court may fully and fairly consider the substantial issues raised by this case.

II. STATEMENT OF FACTS

A. Local Governments Receive Significant State Funding for Transportation and Transit Through the Multimodal Account and Other Accounts Impacted by I-976.

Washington municipalities have limited revenue source options, which are insufficient to fund fully transit and transportation improvements. To make up some of the difference, the State funds the Multimodal Account, among others, to provide support for all types of transportation projects and programs including highway preservation and public transportation. *See* RCW 47.66.070. This critical account funds local programs such as: Regional Mobility Grant Program, Rural Mobility Grant Program, Highway Safety, Puget Sound Ferry Operating and Capital Programs, Washington State Patrol, Rail Capital and Operating, Transportation Improvement Board, Safe Routes to School, and direct allocations to counties and cities. *See* Declaration of Matthew Segal ("Segal Decl."), Ex. E.

The major sources contributing to the Multimodal Account include motor vehicle fuel taxes (the "gas tax"); vehicle-related licenses, fees and permits; driver-related fees and charges; user charges (ferry fares, tolls); and sales and use tax. *Id.* The Office of Financial Management ("OFM") estimates I-976 will have a $1.5 billion impact over the next six years to this account.

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That estimate does not include any costs for project delays, restructured or delayed financing, and importantly, the loss of the .3% motor vehicle sales tax revenue. Declaration of Peter King ("King Decl."), Ex. B.

Beyond the Multimodal Account, the State has a variety of other accounts it funds to support transit and transportation improvements. Segal Decl., Ex. E. In the 2017-19 transportation budget, vehicle license, permits and fees accounted for 15% of the revenue for these other accounts. *Id.* Overall, if allowed to take effect, I-976 will eliminate substantial sources of funding for these accounts and impact local communities. *See* Declaration of John Taylor ("Taylor Decl."), ¶ 9.

B. More than 60 Transportation Benefit Districts Stand to Lose a Vital Source of Direct Funding for Local Transportation Projects: Local Vehicle Licensing Fees.

Washington cities, towns, and counties are authorized to establish TBDs to generate revenue for specific transportation projects. *See generally* ch. 36.73 RCW. TBDs utilize factors including improved safety, air quality, and accessibility for persons with special transportation needs when selecting transportation improvements. RCW 36.73.020(1). The Legislature has granted TBDs independent taxing authority, which includes a voted sales tax and local vehicle license fees. RCW 36.73.040. In Fiscal Year 2018, The State Department of Licensing ("DOL") and its agents collected $58,186,839 in Vehicle License Fee ("VLF") revenue for local TBDs.[1] *See* Segal Decl., Ex. F at 6.[2]

[1] DOL collects revenues and processes applications for all vehicle title and registration transactions statewide. *See* ch. 46.01 RCW. DOL collects all vehicle related fees, including VLFs implemented by TBDs; taxes, including the motor vehicle excise tax; other general fees and charges, including filing fees, service fees, registration fees, tab reflectivity fee, license plate technology fee, license service fee; special fees such as outstanding parking surcharge fee, license plate transfer fee, electrification fee, and personalized license plate fee; and any sales or use tax due. *See generally* ch. 46.16A RCW (vehicle registration); ch. 46.17 RCW (vehicle fees). A single registration or renewal payment is, therefore, actually a payment for multiple types of charges.

[2] Available at https://fortress.wa.gov/FNSPublicSearch/GetPDF?packageID=56612.

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Local VLF revenue can be initiated in either of two ways: RCW 82.80.140 confers authority for TBD governing bodies to enact local VLFs of up to $50 (non-voted), and voter-approved charges may bring the total up to $100. TBD-enacted VLFs begin at $20 and may increase over time through various mechanisms to $50. *Id.* More than sixty Washington cities currently utilize local TBD authority to collect VLFs ranging from $20 to $40 per vehicle registration.[3] As explained below, I-976 would eliminate this funding option.

Voter approved charges also provide additional revenue for transportation and transit services and projects. In 2014, City of Seattle voters chose to increase their own VLFs. In July 2014, the Seattle TBD passed Resolution 12, which resolved to place on the ballot a funding measure seeking voter authorization for a $60 VLF and 0.1% sales tax increase to generate over $50 million annually to improve transit service and access for six years. Declaration of Rachel VerBoort ("VerBoort Decl."), ¶ 3. In November 2014, 62.43 percent of Seattle voters approved STBD Proposition 1, which funds the purchase of increased Metro service and additional transit programs for Seattle residents. *Id.* About 45% of the Proposition 1 revenue comes from a $60 VLF, meaning these voter-approved fees result in revenue of $24 million per year. *Id.*, ¶ 5.

C. I-976 Purports to Cap Vehicle License Tabs at $30 – But Does Much More.

The self-proclaimed title of the I-976 is "Bring Back Our $30 Car Tabs." I-976, §17. The following operative ballot title 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.

Segal Decl., Ex. B.

[3] https://www.dol.wa.gov/vehicleregistration/localfees.html

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The stated purpose of I-976 based upon its text is to "limit state and local taxes, fees, and other charges relating to motor vehicles." Segal Decl., Ex. A at § 1. Specifically, I-976 "limit[s] annual motor vehicle fees to $30, except voter approved charges." *Id.* I-976 adds a new section to chapter 46.17 RCW that imposes a hard cap on vehicle registration and annual renewal fees: "State and local motor vehicle license fees may not exceed $30 per year for motor vehicles, regardless of year, value, make or model." *Id*. at § 2(1). The term "'state and motor vehicle license fees' means **the general license tab fees** paid annually for licensing motor vehicles . . . and **do not (sic) include charges approved by voters after the effective date of this section**." *Id.* at § 2(2) (emphasis added). The $30 motor vehicle license fee restriction applies to "initial" registration and each annual "renewal vehicle registration." *Id.*

Sections 3 and 4 of I-976 set the vehicle license fee at $30 for many non-commercial vehicles. *Id*. at §§ 3, 4. Although I-976 directly addresses some general license registration fees in chapter 46.17 RCW, it is silent on others. In addition to limiting the vehicle license fee to $30 for many vehicles, I-976 also eliminates the electric vehicle mitigation fee established by RCW 46.17.323. *Id*. at § 5. Under existing law, this mitigation fee was imposed to address "the impact of vehicles on state roads and highways and for the purpose of evaluating the feasibility of transitioning from a revenue collection system based on fuel taxes to a road user assessment system." RCW 46.17.323 (3)(a). It is "separate and distinct from other vehicle license fees." *Id.*

Under the heading, "Repeal and Remove Authority to Impose Certain Vehicle Taxes and Charges," section 6 of I-976 repeals a number of statutes in total. Segal Decl., Ex. A at § 6. I-976 repeals RCW 46.17.365 and .415, which required payment of a "weight fee in addition to all other taxes and fees required by law" and authorized WSDOT to adopt rules for determining the weight of certain vehicles. *Id.* at § 6(1), (2). I-976 also repeals RCW 82.80.130, which

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allowed Public Transportation Benefit Areas to submit a proposed motor vehicle excise tax ("MVET") of .4% to voters for passenger ferry service. *Id*. at § 6(3).

For TBDs, I-976 repeals RCW 82.80.140, which authorized a TBD to impose an "annual vehicle fee" not to exceed $100 for each vehicle. *Id*. at § 6(4). Contrary to claims in the ballot title and the I-976 text, the complete repeal of RCW 82.80.140 leaves TBDs *without* the option to collect any VLF and thus, voters have no means to choose to exceed the I-976 $30 license fee cap through a majority vote imposing a higher VLF. Under RCW 36.73.040, a TBD is authorized only to impose a sales tax under RCW 36.73.065, a vehicle fee under RCW 82.80.140, fees or charges under RCW 36.73.120 (building fees), and vehicle tolls on roads. Because I-976 repeals RCW 82.80.140, there is no longer any authorization for the TBD to obtain funding through vehicle fees, regardless of a public vote.

Section 7 amends RCW 82.08.020. The amendment would eliminate an additional .3% sales tax on vehicle sales. Segal Decl., Ex. A at § 7. Section 8 adds a new section to chapter 82.44 RCW, which states that "any motor vehicle excise tax" must be calculated using the "base model Kelley Blue book value." *Id*. at § 8. Section 9 amends RCW 82.44.065 to implement the use of this new Kelley Blue Book valuation method. *Id*. at § 9.

Section 10 amends RCW 81.104.140, which addresses dedicated funding sources for high capacity transportation services. *Id*. at § 10. The amendments purport to preclude regional transit authorities ("RTAs") from levying and collecting the special MVET authorized by RCW 81.104.160. Section 11 then purports to repeal RCW 82.44.035, which established the current method of valuing vehicles, and RCW 81.104.160, which authorized RTAs covering counties with populations exceeding 1.5 million people to collect an excise tax of up to .8% when approved by voters. *Id*. at § 11. Section 12 adds a new section to chapter 81.112 RCW,

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which states that any RTA collecting taxes under RCW 81.104.160 "must fully retire, defease or refinance any outstanding bonds" if RCW 81.104.160 revenues are pledged, and defeasement or retirement is possible under the bond terms. *Id*. at § 12. Although repealed under section 11, RCW 81.104.160 is also **amended** by section 13 to purportedly reduce the authorized MVET to .2%. *Id*. at § 13. The question of which section prevails over the other is not clear.

Section 14 requires liberal construction "to effectuate the intent, policies, and purposes of this act." *Id*. at § 14. Section 15 provides for severability. *Id*. at § 15. Section 16 establishes an effective date for certain sections of the Initiative. *Id*. at § 16. Under this section, sections 10 and 11 take effect on the date that the RTA complies with section 12 of I-976. *Id*. But section 13 takes effect April 1, 2020, if sections 10 and 11 have not taken effect by March 31, 2020. The RTA is supposed to inform authorities on effective dates. *Id*.

D. Most Sections of I-976 Will Be Implemented December 5, 2019.

Under article II, section 1(d) of the Constitution, initiatives adopted by the voters "shall be in operation on and after the thirtieth day after the election at which [they are] approved." I-976 was approved on November 5, 2019. Except for sections with special effective dates set forth in section 16, I-976 is scheduled to take effect on December 5, 2019. The State already has informed one Plaintiff that it intends to stop collecting local VLF revenues upon certification. *See* Segal Decl., Ex. G. Additionally, in light of the pending implementation of I-976, Governor Inslee has advised WSDOT of the need to postpone all projects not yet underway. Segal Decl., Ex. H. With respect to other state agencies that receive transportation funding, including the Washington State Patrol and Department of Licensing, this will also include deferring all non-essential spending. *Id*. According to the Governor, it is "clear that this vote [in favor of I-976] means there will be adverse impacts on our state transportation system." *Id*.

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On November 8, 2019, Plaintiffs made a demand upon Attorney General Bob Ferguson to investigate the constitutional violations arising from I-976 and to initiate legal proceedings on behalf of all Washington taxpayers. A copy of this demand is Exhibit A to the Complaint. Attorney General Ferguson has declined to do so. Segal Decl., Ex. I.

DOL is currently re-programming its computers to cease the collection of taxes and fees impacted by I-976. The "go/no go" date for these changes is December 3, 2019. Declaration of Dwight Dively ("Dively Dec.), ¶8. Reversing the effects of the initiative is problematic if an injunction is issued after this date. *Id.*

E. Plaintiffs Are Governments, Organizations, and Individuals That Provide, and/or Rely on, Crucial Transit and Transportation Services I-976 Puts at Risk.

Plaintiff GCTA provides transit services in Garfield County and relies heavily on state grants for operations and capital improvements, a revenue source that I-976 eliminates. Decl. of Justin Dixon in Supp. Pls.' Mot. Prelim. Inj. ("Dixon Decl."), ¶¶ 3-4. Without this funding, GCTA will reduce at least 50 percent of the lifeline transportation services it provides to seniors, the disabled, and disadvantaged persons, including transporting individuals to and from healthcare appointments, senior services, among other essential services. *Id.*, ¶¶ 5, 7.

Plaintiff King County is a home rule charter county that will be substantially impacted by I-976, even though it was resoundingly defeated in King County. The County's Metro Transit Department ("Metro") operates the 10th largest transit system in the nation with fixed route bus, light rail, streetcar, Access paratransit and vanpool services. Decl. of Rob Gannon ("Gannon Decl."). ¶ 3. In 2018, through its budget of almost $1 billion, Metro provided 122 million passenger trips, including about 1 million Access trips. *Id.*, ¶ 4. Through TBD voter approved VLFs from Seattle, Metro is able to offer an additional 350,000 service hours to its customers. *Id.*, ¶¶ 7-8. If I-976 is implemented, by December 9, 2019, Metro must eliminate 110,000

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service hours of service due to the loss of some $32 million in funding; **such a drastic reduction in service hours could not be reversed until September 2020 at the earliest**. *Id.*, ¶ 9. Metro also will lose additional federal funds ($2 million). *Id.*, ¶ 10. In addition, due to I-976, Metro stands to lose an additional $63 million in state grants and investments in its system. *Id.*, ¶11. King County also faces significant loses to its Roads Department and its Parks Department, as well as disruption of its licensing activities. Taylor Decl., ¶ 9; Decl. of Kathryn Terry in Supp. Pls.' Mot. Prelim. Inj. ("Terry Decl."), ¶¶8-17; Dively Decl., ¶ 7. Like transit, the projects King County undertakes are for the direct and substantial benefit of the public.

Plaintiff City of Seattle is a municipal corporation that stands to lose millions of dollars in direct revenue through local VLFs, as well as likely losses of state grants and funding, with the resulting myriad service, project and program cuts to transit and transportation in Seattle. If I-976 is implemented, Seattle will lose $2,680,000 in VLF revenue for the remainder of 2019 alone. Decl. of David Hennes in Supp. Pls.' Mot. Prelim. Inj. ("Hennes Decl."), ¶ 5-6. Two million dollars of that amount is revenue directly approved by Seattle voters in the 2014 election. *Id.*; VerBoort Decl., ¶ 3. Not only would the City of Seattle have monetary losses, but I-976 would retroactively overturn the results of a local election, a unique type of harm that impacts a fundamental right. Seattle's direct losses of revenue only increase in 2020, with more than $32.8 million in lost revenue. Losing this funding will affect people every single day in how they choose to move to, through, and around Seattle, by severely limiting those choices. VerBoort Decl., ¶ 5. For example, STDB Proposition 1 revenue allows for 8,000 more weekly trips on King County Metro routes serving Seattle and funds 8 percent of King County Metro's network. *Id.*, ¶ 6. Moreover, that revenue provides free ORCA cards to 14,000 students, seniors and low income housing residents. Eighty-nine percent of the funding for Seattle's pothole program is

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also from a different Seattle VLF revenue source. Decl. of Khieng Lo in Supp. Pls.' Mot. Prelim. Inj. ("Lo Decl."), Exs, C, D. The list of programs and projects that are impacted is extensive, and outlined more fully in the Declarations of Lo, VerBoort, Hennes, Canete, and Wilkes.

Plaintiff Washington State Transit Association ("WSTA") is a nonprofit corporation that represents 31 public transit systems in the state that serve rural, small urban, urban, and regional areas. Decl. of Justin Leighton in Supp. Pls.' Mot. Prelim. Inj. ("Leighton Decl."), ¶¶ 3-4. Like GCTA, many of WSTA's members rely on state grants to operate their transit systems, including fixed-route buses, paratransit (door-to-door or shared-ride service), vanpools, light rail, and commuter rail. *Id.*, ¶¶ 4, 6. I-976, if allowed to take effect, will substantially harm WSTA and its members by eliminating essential funding necessary for WSTA's members to provide these critical transit services. *Id.*, ¶¶ 6-15.

Plaintiff Association of Washington Cities ("AWC") is a nonprofit corporation that represents Washington's 281 cities and towns, sixty-two of which have formed their own TBDs to collect VLFs in order to fund local transportation programs and projects. Decl. of Peter King in Supp. Pls.' Mot. Prelim. Inj. ("King Decl."), ¶¶ 3-4. I-976 will substantially harm AWC and its members by removing the authority of TBDs to impose these vehicle fees. *Id.*, ¶¶ 7-15.

Plaintiff the Port of Seattle ("Port") has invested nearly $500 million in transportation improvements in King County over the past 20 years and works in collaboration with other partner agencies to leverage investments, develop transportation systems, and maintain freight mobility. Decl. of Geraldine Poor in Supp. Pls.' Mot. Prelim. Inj. ("Poor Decl."), ¶ 5. I-976 will cause reductions in transit services and road improvement projects, which will impair the Port's

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ability to move people, freight, and cargo in the region, across the country, and around the world. *Id.*, ¶ 6.

Plaintiff Intercity Transit ("IT") provides public transportation in Lacey, Olympia, Tumwater, Yelm, and their surrounding urban growth areas. Decl. of Ann Freeman-Manzanares in Supp. Pls.' Mot. Prelim. Inj. ("Freeman-Manzanares Decl."), ¶ 3. I-976 will substantially harm IT's programs and services because it will significantly reduce, if not totally eliminate, inter-county bus service and reduce capital funding for Special Needs Transportation, fixed route, vanpool, and much needed capital construction projects. *Id.*, ¶¶ 4-9.

Plaintiff Amalgamated Transit Union Legislative Council of Washington ("ATULC") is a part of Amalgamated Transit Union International ("ATU"), which is the largest labor union in the United States and Canada representing employees in the public transit industry. Decl. of Rick Swartz in Supp. Pls.' Mot. Prelim. Inj. ("Swartz Decl."), ¶ 3. The impact of I-976 on ATU and its members will be significant because the loss of transit funding will result in cuts in existing services and thus a loss in hours and/or wages for ATU members, including paratransit, light rail, subway, streetcar, and ferry boat operators, among others. *Id.*, ¶¶ 3, 5-7.

Plaintiff Michael Rogers is an individual with cerebral palsy who resides in Lacey, Washington. Decl. of Michael Rogers in Supp. Pls.' Mot. Prelim. Inj. ("Rogers Decl."), ¶¶ 1-2. Mr. Rogers, who uses a wheelchair, relies on paratransit and transit services to travel to his full-time and his part-time seasonal jobs, medical appointments, grocery shopping, community activities, volunteer undertakings, and to visit friends and family. *Id.*, ¶¶ 2-5, 8. The reduction in transit and paratransit services and service delays due to increased congestion caused by I-976 will have an extremely negative impact on his life. *Id.*, ¶ 10.

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F. The State Will Incur I-976 Implementation Costs.

According to the State's Fiscal Impact Statement for I-976, the State will incur substantial immediate administrative costs in implementing I-976:

> The Department of Revenue (DOR) will experience temporary, higher administrative costs to implement this initiative. The DOR will have costs for computer updates and administrative costs for rule making, accounting services to issue refunds and developing new forms. Biennial costs for the agency are **$105,900** for computer updates and administrative items in the 2019–21 biennium.

Decl. of Peter King in Supp. Pls.' Mot. Prelim. Inj. ("King Decl."), ¶ 6, Ex. B.

III. STATEMENT OF ISSUES

Should this Court enter a preliminary injunction enjoining I-976 from taking effect, or otherwise being enforced, because I-976 is unconstitutional on multiple grounds?

IV. EVIDENCE RELIED UPON

Plaintiffs' Motion relies upon the Washington State Constitution, the supporting Declarations of Rob Gannon, Dwight Dively, John Taylor, Kathryn Terry, David Hennes, Ken Canete, Chloe Wilkes, Khieng Lo, Rachel VerBoort, Justin Leighton, Peter King, Geraldine H. Poor, Justin Dixon, Ann Freeman Manzanares, Michael Rogers, and Matthew J. Segal, the exhibits to the Declarations, and the pleadings, papers, and records on file in this matter.

V. ARGUMENT AND AUTHORITY

Plaintiffs are entitled to preliminary injunctive relief that prevents I-976 from taking effect until the Court can conduct a full hearing on the merits of Plaintiffs' claims. I-976 violates multiple clauses of the Washington Constitution because, among other reasons, it was written in a way misleading and confusing to the voters and without regard to fundamental requirements for drafting legislation. Immediate implementation of I-976 would take away hundreds of millions of dollars committed to myriad transportation projects from road to public transportation to ferry

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projects – funding that could not be replaced if an injunction is not granted and I-976 is later found to be unconstitutional.

The purpose of a preliminary injunction is to "preserve the status quo" until a hearing on the merits. *Nw. Gas Ass'n v. Wash. Utils. & Transp. Comm'n*, 141 Wn. App. 98, 115-16, 168 P.3d 443 (2007). "A party seeking relief through a temporary injunction must show [1] a clear legal or equitable right, [2] that there is a well-grounded fear of immediate invasion of that right, and [3] that the acts complained of have or will result in actual and substantial injury." *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998). Injunctions are addressed to the equitable powers of the court and the listed criteria must be examined in light of competing equities, including "balancing [] the relative interests of the parties and the interests of the public[.]" *Id.* at 284. Courts have previously enjoined initiatives to address their constitutionality. *See City of Burien v. Kiga*, 144 Wn.2d 819, 823-24, 828, 31 P.3d 659 (2001) (addressing constitutionality of I-722, which had been enjoined); *Pierce Cty. v. State*, 150 Wn.2d 422, 427-29, 78 P.3d 640 (2003) ("*Pierce Cty.* I") (addressing constitutionality of I-776, which had been enjoined).

Here, Plaintiffs satisfy all of the required elements of a preliminary injunction and the equities weigh in favor of enjoining I-976 until the Court can fully evaluate whether it violates the Constitution.

A. Plaintiffs Will Prevail on the Merits Because I-976 Is Unconstitutional.

Plaintiffs satisfy the first element for injunctive relief because they have clear legal rights that are jeopardized by I-976. Under this prong, courts examine the "likelihood that the moving party will prevail on the merits." *Rabon*, 135 Wn.2d at 285. Initiatives, like other legislative acts, must comply with the Washington Constitution. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 204, 11 P.3d 762 (2000) ("*ATU*"). Thus, even if "an initiative passes by

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the majority of voters, it will be struck down if it runs afoul of Washington's constitution." *Kiga*, 144 Wn.2d at 822.

In terms of the likelihood of prevailing on the merits, this Court should take note that the Washington Supreme Court has previously struck down multiple initiatives from the same sponsor as I-976 on the basis that they violated the Constitution. The Court has struck down Initiative 695 ("I-695"), *ATU*, 142 Wn.2d at 191-92; I-722 and I-747 (regarding state and local property taxes), *Kiga*, 144 Wn.2d at 822, and *Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142, 162, 171 P.3d 486 (2007); and I-1053 and I-1185 (requiring 2/3 Legislature majority to raise taxes), *League of Educ. Voters v. State*, 176 Wn.2d 808, 828, 295 P.3d 743 (2013).[4] I-976 is equally if not more flawed than these prior initiatives. Plaintiffs are likely to prevail on the merits because I-976, on its face, violates multiple requirements of the Washington Constitution. Indeed, the violations are blatant.

B. I-976 Violates Article II, Section 19 of the Constitution Because It Is Not Limited to a Single Subject and Does Not Comply with the Subject-in-Title Rule.

I-976 violates both components of article II, section 19 of the Constitution. Article II, section 19 provides that "[n]o bill shall embrace more than one subject, and that shall be expressed in the title." Article II, section 19 applies to initiatives. *In re Estate of Thompson*, 103 Wn.2d 292, 294, 692 P.2d 807 (1984). This directive contains "two prohibitions: (1) no bill shall embrace more than one subject" (the "single-subject rule") and (2) "that subject shall be expressed in the title of the bill" (the "subject-in-title rule"). *Retired Pub. Emps. Council of Wash. v. Charles*, 148 Wn.2d 602, 628, 62 P.3d 470 (2003). These prohibitions serve "dual purpose[s]: (1) to prevent 'logrolling,' or pushing legislation through by attaching it to other

[4] The Court also held that I-776 was unconstitutional as applied to Sound Transit because it violated the Contract Clause, Const. art. I section 23. *Pierce Cty. v. State*, 159 Wn.2d 16, 39, 148 P.3d 1002 (2006) ("*Pierce Cty.* II").

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necessary or desirable legislation, and (2) to assure that the members of the legislature and public are generally aware of what is contained in proposed new laws." *Id.* I-976 fails to satisfy either component of article II, section 19.

1. I-976 Violates the Single-Subject Rule.

a. The Ballot Title Is Restrictive and Specifies Capping License Fees at $30 and Valuing Vehicles Using Kelley Blue Book Values.

The first step in assessing compliance with article II, section 19's single subject rule is to determine if the "ballot title" for the initiative is "general or restrictive." *Kiga*, 144 Wn.2d at 825. "A general title is broad, comprehensive, and generic as opposed to a restrictive title that is specific and narrow." *Id.* Where a general title is used, the single-subject rule is violated if the general subject and incidental subjects lack "rational unity." *ATU*, 142 Wn.2d at 209. Where a restrictive title is used, violations of the single-subject rule are "readily found" where an initiative's provisions are "not fairly within" the ballot title. *Id.* at 210-11.

The "ballot title" of a state initiative has three components: "(a) A statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form prescribed in this section for the ballot measure in question." RCW 29A.72.050.[5] Here, the ballot title for I-976 provides:

> 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?

[5] "Within five days after the receipt of an initiative or referendum the attorney general shall formulate the ballot title, or portion of the ballot title that the legislature has not provided, required by RCW 29A.72.050 and a summary of the measure, not to exceed seventy-five words, and transmit the serial number for the measure, complete ballot title, and summary to the secretary of state." RCW 29A.72.060.

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See Segal Decl., Ex. B. This ballot title is restrictive because it is limited to a particular type of charge ("motor vehicle taxes and fees"), a specific cap on motor vehicle license fees ($30) unless approved by voters, and a particular index of value ("Kelley Blue Book"). *See State v. Broadaway*, 133 Wn.2d 118, 127-28, 942 P.2d 363 (1997) (title was restrictive where it "carve[d] out an area of criminal offenses, **armed** crime, and limit[ed] its scope to increasing penalties for armed crime" (emphasis in original)); *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 27, 200 P.2d 467 (1948) (title referred to the specific subject of toll bridges, rather than the general subject of a transportation system, and thus title was restrictive).

Although the title is restrictive, the body of I-976 contains other very significant subjects outside the purview of the title, most notably:

- The **repeal** of the authority for local voters to approve vehicle charges, in direct contradiction of an express statement in the ballot title that "voter-approved charges" are excepted (§§; 6, 10, 11)[6];
- A specific provision, not mentioned in the ballot title, stating that a regional transit "authority that imposes a motor vehicle excise tax under RCW 81.104.160 must fully retire, defease, or refinance any outstanding bonds" under certain specified conditions, which by its terms is and can only be specifically directed at Sound Transit (§12);
- The repeal of an additional .3% **sales tax** on vehicle sales (§7);
- The contingent repeal of an additional 2.172% **sales and use tax** on retail vehicle sales (§§11, 16); and

[6] This also creates a separate "subject-in-title" violation of article II, section 19. *See* section V.B.2, *infra*.

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- The repeal of the electric vehicle "mitigation fee," which addresses the impact of electric vehicles on state roads and highways given decreased gas tax revenues and evaluates the feasibility of collecting revenues based on mileage (§5).

None of these subjects are "fairly within" the ballot title, rendering them impermissible additional subjects. First, the title purports to preserve voter approved fees, but it does not disclose that I-976 actually repeals the authority for voters to approve fees. Second, there is nothing in the ballot title that reflects the attempt to require a local entity to address its outstanding bonds; neither RTAs nor bonds are referenced at all. Third, nothing in the ballot title discloses that the initiative affects Washington's sales tax, which is a distinct category from VLFs or MVETs. Finally, the title fails to disclose that it is eliminating a road use mitigation fee applicable to electric vehicles and completely unrelated to VLFs or MVETs. On any of these grounds alone, I-976 violates article II, section 19. *See Yelle*, 32 Wn.2d at 27 (single-subject rule violated where subject of ferries did not come fairly within restrictive title related to toll bridges); *ATU*, 142 Wn.2d at 210-11 (listing cases).

Even if this Court determines that the ballot title for I-976 is general, however, the Initiative still violates the single-subject rule because it concerns multiple, distinct identifiable subjects not germane to each other as discussed below.

b. I-976 Contains Multiple Subjects That Are Not Germane to One Another.

An initiative with a general ballot title also violates the single-subject rule unless "rational unity" exists among "all matters" addressed in the initiative and expressed "in the title." *Kiga*, 144 Wn.2d at 825-26. "Rational unity" means "the matters within the body of the initiative are germane to the general title" and "they are germane to one another." *Id.* at 826.

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This inquiry focuses solely on "the measure itself[.]" *ATU*, 142 Wn.2d at 212. I-976 lacks rational unity because it concerns multiple vastly different subjects.

In *ATU*, the ballot title for Tim Eyman's first car tab initiative, I-695, asked whether "voter approval [should] be required for any tax increase," whether "license tab fees [should] be $30 per year for motor vehicles," and whether "existing vehicle taxes [should] be repealed[.]" 142 Wn.2d at 212. The Court invalidated I-695 because, while the initiative's "two subjects" (capping license fees at $30 and requiring voter approval of all future tax increases) ostensibly fell under the general topic of "limiting taxation," there was no rational unity between the two subjects. *Id.* at 216-17.

Similarly, the Court in *Kiga* held that Initiative 722 had a general title pertaining to tax relief but the measure embraced "at least two purposes": (1) to "nullify various 1999 tax increases" and issue a "onetime refund of those taxes," and (2) to "change the method of assessing the property taxes[.]" 144 Wn.2d at 827. Although both "the tax refund provision and the property tax assessment provision" related to the "general topic of tax relief," the "retroactive refund" of "utility charges, hospital charges, housing authority rents," and "numerous other 'monetary charges'" was "unrelated to the systematic, ongoing changes in property tax assessments contemplated in the remainder of the initiative." *Id.* The Court thus held that the initiative's subjects were "not germane to one another" and invalidated the initiative in its entirety because it was impossible to determine whether "either subject" would have "garnered popular support standing alone." *Id.* at 827-28; *see also Wash. Toll Bridge Auth. v. State*, 49 Wn.2d 520, 523-25, 304 P.2d 676 (1956) (single-subject rule violated where initiative's first purpose was long-term and "continuing" in nature, i.e., authorization of a state agency to operate

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all toll roads, whereas second purpose involved a onetime event, i.e., construction of a specific toll road (emphasis omitted)).

Like the measures in *ATU* and *Kiga*, I-976 contains at least two (and in fact more than two) unrelated subjects. Section 2 of I-976 expressly identifies the first subject of the Initiative: "State and local motor vehicle license fees may not exceed $30 per year for motor vehicles, regardless of year, value, make, or model." I-976, § 2; *see also ATU*, 142 Wn.2d at 217 (capping license fees at $30 is standalone subject); *Pierce Cty.* I, 150 Wn.2d at 431-32 (same). The idea of "motor vehicle license fees" is straightforward – there is an entire chapter in the Revised Code (chapter 46.17 RCW) that lists over a dozen VLFs due upon initial registration and annual renewal. But I-976 is not limited to capping VLFs at $30.

As noted above, section 12 of I-976 contains at least one impermissible separate subject: the early retirement of bonds secured by revenue from a local MVET. The Washington Supreme Court's decision in *Pierce Cty.* I confirms this subject is not rationally related to the $30 ceiling on license tab fees contained in section 2 of I-976. In *Pierce Cty.* I, plaintiffs brought a single-subject challenge to Eyman's Initiative 776 ("I-776"). 150 Wn.2d at 427-28. The trial court struck down I-776 as violating the single-subject rule because it both placed a $30 limit on license fees and addressed retirement of bonds to which license fees were pledged. The Supreme Court agreed with the trial court that, like I-976, one of the subjects of I-776 was the placement of a $30 ceiling on license fees. *Id.* at 432. It disagreed that Section 7 of I-776 addressing retirement of bonds was an unconstitutional second subject because of its wording, which is different than the wording of I-976. I-776 provided:

> If the repeal of taxes in section 6 of this act affects any bonds previously issued for any purpose relating to light rail, the people **expect** transit agencies to retire these bonds using reserve funds including accrued interest, sale of property or equipment, new voter approved tax revenues, or any combination of these sources of revenue.

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> Taxing districts **should** abstain from further bond sales for any purpose relating to light rail until voters decide this measure. The people **encourage** transit agencies to put another tax revenue measure before voters if they want to continue with a light rail system dramatically changed from that previously represented to and approved by voters.

150 Wn.2d at 448 (emphasis added). This language was contained in a general intent section of I-776, entitled "Legislative Intent Relating to Outstanding Bonds." *Id*.

The Court held this was not an unlawful second subject, but **only** because it was located in an intent section that was not operational and used words like "expect," "should" and "encourage" that were merely "precatory" (without any legal effect):

> Our decision today . . . forecloses the possibility that a bill or initiative could be declared unconstitutional **solely** on the grounds that its policy expressions raise other topics. Having determined that precatory language cannot yield additional 'subjects' for article II, section 19 purposes, we conclude that [the plaintiffs] ha[ve] failed to show beyond a reasonable doubt that I-776 required the people to cast a single vote on two unrelated, proposed laws.

150 Wn.2d at 435-36 (emphasis added).

Section 12 of I-976 now presents the precise scenario the *Pierce Cty.* I Court had in mind where article II, section 19 is violated. Like section 7 of I-776, section 12 of I-976 also pertains to transit agencies retiring bonds secured by revenue from an MVET. Critically, however, I-976 is worded differently:

> In order to effectuate the policies, purposes, and intent of this act and to ensure that the motor vehicle excise taxes repealed by this act are no longer imposed or collected, an authority that imposes a motor vehicle excise tax under RCW 81.104.160 **must** fully retire, defease, or refinance any outstanding bonds issued under this chapter if:
>
> (1) Any revenue collected prior to the effective date of this section from the motor vehicle excise tax imposed under RCW 81.104.160 has been pledged to such bonds; and
> (2) The bonds, by virtue of the terms of the bond contract, covenants, or similar terms, may be retired or defeased early or refinanced.

I-976, § 12 (emphasis added).

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In determining the meaning of an initiative, the Court "focuses on the language as the average informed voter" would read it. *ATU*, 142 Wn.2d at 205. The average informed voter would consider the use of "must" regarding retiring bonds in I-976 to be legally operative, not precatory. Thus, unlike I-776, I-976 presents at least two subjects for voter approval: perpetual $30 license tab fees and a purported directive for the retirement of specific outstanding bonds. Section 12 of I-976 is, therefore, an unlawful additional subject.

Additionally, like the initiative in *Kiga*, I-976 is invalid because it joins a law of general application that is continuing in nature ($30 license fees) with a more specific law (retirement of bonds). *See* 144 Wn.2d at 827; *see also Wash. Toll Bridge Auth.*, 49 Wn.2d at 523-25 (initiative impermissibly joined dual subjects, one of which was more broad, long term, and continuing than the other); *Flanders v. Morris*, 88 Wn.2d 183, 188, 558 P.2d 769 (1977) (inclusion of a new limitation on public assistance eligibility in budget bill was improper logrolling).

But this is not all. Section 7 of I-976 contains yet another impermissible additional subject unrelated to the prior subjects: elimination of the State's authority to collect a tax on the retail sale of a motor vehicle under RCW 82.08.020. While the other sections of I-976 relate to fees and taxes imposed at the time of vehicle licensing, section 7 is the only provision relating to a tax imposed on vehicle sales. There is no rational relationship between taxes paid at the time of vehicle purchase and taxes and fees paid at the time of vehicle licensing.

Finally, section 8 contains yet another impermissible subject requiring that the Kelley Blue Book be used as the valuation mechanism for any vehicle tax in the state.[7] This has

[7] Section 11 also repeals an existing vehicle valuation schedule set out in RCW 82.44.035.

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nothing to do with capping VLFs at $30. Simply put, if vehicle fees are capped at $30, vehicle valuation is irrelevant.[8]

In sum, multiple sections of I-976 present additional subjects that are not germane to the other sections of I-976. The initiative contains a host of unrelated subjects, in an unabashed exercise of illegal "[l]ogrolling or hodge-podge legislation." *Wash. Fed'n of State Employees v. State*, 127 Wn.2d 544, 554, 901 P.2d 1028 (1995). Voters were forced to vote on the entire initiative, and all of its subjects, in order to approve any one of its subjects. This is exactly what the single-subject clause is designed to prevent. *ATU*, 142 Wn.2d at 207. I-976 violates the single-subject requirement of article II, section 19 on multiple alternative grounds, and the remedy is that I-976 is invalid in its entirety. *See, e.g.*, *Kiga*, 144 Wn.2d at 827-28; *ATU*, 142 Wn.2d at 216. The Court should enjoin enforcement of I-976 on this basis alone.

2. I-976 Violates the Subject-in-Title Rule Because the Ballot Title Incorrectly States That Voter-Approved Fees Are Not Affected and Does Not Disclose All of the Initiative's Additional Subjects.

I-976 also violates the independent, subject-in-title requirement of article II, section 19 because the ballot title substantially misleads voters on the provisions of I-976 and fails to disclose its multiple subjects.

The "purpose" of the subject-in-title requirement is to "notify members of the Legislature and the public of the subject matter of the measure." *ATU*, 142 Wn.2d at 207. The "particular importance" of this requirement in the "context of an initiative" is that voters often do not reach the "text of a measure or the explanatory statement," but "instead cast their votes based upon the ballot title." *Id.* at 217. To survive constitutional scrutiny, the ballot title must give "notice

[8] To the contrary, the issue of vehicle valuation as applied to RTAs has been the subject of separate legislation. *See* Laws of 2015 3rd sp. s. c 44 § 319.

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which would lead to an inquiry into the body of the act" or indicate "the scope and purpose of the law to an inquiring mind." *Id.*

In *ATU*, the Washington Supreme Court struck down a section of I-695 under the subject-in-title rule because the ballot title failed to notify voters that the term "tax" as used in the offending section did "not have its traditional meaning." *Id.* at 220-29. The Court explained: "Nothing about this ballot title gives any notice [that] would indicate to the voters that the contents of the initiative would include voter approval for charges other than taxes or suggest inquiry into the act be made to learn the broad meaning of tax." *Id.* at 227.

I-976's ballot title contains a far more deceitful deficiency that affirmatively misleads voters on the nature of the act. It expressly states that voter-approved charges in excess of $30 would be retained, or that at least voters would retain the authority to approve such vehicle charges: "This measure would . . . limit annual motor-vehicle-license fees to $30, **except voter-approved charges**[.]" Segal Decl., Ex. B (emphasis added). There is an important variation from the ballot title in Section 2 of I-976, which allows "state and local motor vehicle license fees" in excess of $30 only when such "charges [are] approved by voters **after** the effective date of this section." But a voter would not know from reading the ballot title that existing local votes to exceed $30 were no longer effective. This is patently misleading in violation of article II, section 19.

The deceit in I-976 does not end here. Despite a ballot title and initiative language affirmatively telling voters that they will retain the right to vote to exceed $30 after the effective date of the initiative, **I-976 actually eliminates any possibility of such a vote by entirely repealing multiple statutes that provide for a public vote.** Section 6 of I-976 repeals portions of RCW 82.80.140, which refer to RCW 36.73.065(6). RCW 36.73.065(6), in turn, establishes

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the authority to adopt a voter-approved vehicle fee. By repealing RCW 82.80.140, I-976 eliminates the voter-approved vehicle fees that may be adopted through RCW 36.73.065. Similarly, section 6 of I-976 repeals RCW 82.80.130, which authorizes public transportation benefit areas to submit a proposal for an MVET to voters to support passenger-only ferry service. Likewise, section 10 of I-976 purports to eliminate the "[s]pecial [MVET] as provided in RCW 81.104.160" and section 11 purports to repeal RCW 81.104.160, which also provide for a voter-approved MVET. A voter who cast his or her vote based on the ballot title would have no notice of the broad repeal of local voter control and authority, and would instead have been affirmatively misled to believe that voters retained their authority. This is not only unconscionable, it is unconstitutional under article II, section 19.

The sponsor of I-976 freely acknowledges this deceit and fatal problem with I-976. In an interview after the election, Tim Eyman said the clear intent of his measure was to get rid of all car taxes and fees above $30, including voter-approved ones. He confirmed, for example, that it cancels Seattle's $60 voter-approved car tab (discussed above) that pays for increased bus service, that it also bars the city from asking voters to approve any car fees in the future, and also (attempts) to repeal Sound Transit's authority to collect voter-approved vehicle taxes. Eyman's excuse: **"I didn't write the ballot title," he said. "The attorney general's office did. The attorney general chose to describe it that way."** *Was the language voters saw on their ballots for Initiative 976 wrong? Sure seems like it*, Seattle Times, Nov 16, 2019 (emphasis added), attached to Segal Decl., Ex. C.

This excuse is equally misleading though, as the offending language in the ballot title is simply drawn from section 1 of the I-976: "This measure would limit annual motor vehicle license fees to $30, except voter-approved charges…" And the draft ballot title is sent by the

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attorney general to the initiative sponsor in time for a ballot title challenge to be made to fix any errors. *See* RCW 29A.72.080. Here, Tim Eyman actually challenged the ballot title, but accepted this wording. *See* Segal Decl., Ex. D (Eyman's petition was dismissed before hearing). The use of the language of I-976, as written and accepted by its sponsor, confirms that I-976 was written in a deceptive way that was then incorporated into the ballot title. Thus, the ballot title violates its basic constitutional purpose and function of notifying the electorate on exactly what it is voting upon. The title fails not only to provide notice, but also is misleading to the general public. By itself, this justifies invalidating I-976 in its entirety.

Compounding this subject-in-title violation, there is no reference whatsoever in the I-976 ballot title to the retirement of bonds or a specific tax on vehicle sales or the other subjects that pollute the initiative. Rather, the I-976 ballot title gives notice only that the initiative would limit license fees to $30, repeal certain vehicle taxes and fees, and base vehicle taxes on Kelley Blue Book value. The title does not mention the words "bond" or "vehicle sales," or even prompt inquiry into these topics, and violates the subject-in-title requirement for this additional reason. *See ATU*, 142 Wn.2d at 220-29 (subject-in-title rule violated even where title referenced the word "tax" because that term did not carry its ordinary meaning); *see also Yelle*, 32 Wn.2d at 27-28 (term "ferry connections" in title of the act was "not sufficient to put a reasonably intelligent person on notice that the" act empowered the state toll bridge authority to "acquire and operate a general water transportation system").

While the presence of a severability clause may in some instances allow portions of an initiative to survive when there is solely a single subject-in-title violation, here the violations of both requirements of article II, section 19 are so pervasive that severability is simply impossible. Even as to the subject-in-title violations standing alone, "a severability clause is not necessarily

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dispositive on the question of whether the legislative body would have enacted the remainder of the act." *ATU*, 142 Wn.2d at 228 A court cannot sever when "it could not be believed that the legislature would have passed one without the other; or where the part eliminated is so intimately connected with the balance of the act as to make it useless to accomplish the purposes of the legislature." *State v. Abrams*, 163 Wn.2d 277, 285-86, 178 P.3d 1021 (2008). Here, the foremost issue is that the title affirmatively dupes voters into the premise that their authority to adopt vehicle charges is retained, where the opposite is true. Since voters are understood to often cast their vote based on the ballot title, *ATU*, 142 Wn.2d at 217, there is no way to cure this violation by severance. Thus, the remedy for the subject-in-title violations here should be invalidation. Plaintiffs are likely to prevail on the merits for this additional, independent reason.

C. I-976 Violates Article II, Section 37 of the Washington Constitution Because It Does Not Fully Set Forth All Amendments to Existing Statutes, as Required.

I-976 is also unconstitutional because it amends existing statutes without setting them forth in full, contravening article II, section 37 of the Washington Constitution. That constitutional mandate provides, "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." The purpose of this requirement 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 (internal quotations and alterations omitted). Like article II, section 19, article II, section 37 "applies to initiatives." *ATU*, 142 Wn.2d at 247.

The Supreme Court recently considered article II, section 37 and the two-prong test for determining whether legislation violates the clause. *El Centro De La Raza v. State*, 192 Wn.2d 103, 128-29, 428 P.3d 1143 (2018). Under the first prong, the Court examined "whether the new enactment [is] such a complete act that the scope of the rights or duties created or affected by the

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legislative action can be determined without referring to any other statute or enactment." *Id.* at 129 (internal quotations omitted). Under the second prong, the Court asked whether "a straightforward determination of the scope of rights or duties under the existing statutes [would] be rendered erroneous by the new enactment." *Id.* "This prong of the test ensures that the legislature [or here, the people, are] aware of the legislation's impact on existing laws." *Id.*

In *ATU*, the Court held that a section of I-695 providing that "any tax increase imposed by the state [would] require voter approval" violated article II, section 37. 142 Wn.2d at 193, 253 (internal quotations and alterations omitted). The section was "not complete" because other statutes, such as one authorizing port districts to levy taxes for industrial development purposes, contained a "voter approval requirement, which specifically describe[d] how and when a special election is to be held, and what percentage of voters must approve." *Id.* at 253-54. The Court held that I-695 "clearly" impacted these existing statutes "since [I-695] encompasse[d] voter approval for all taxes," and yet the "impact [wa]s not at all clear" because I-695 did "not set forth the existing statute which [wa]s affected." *Id.* at 253-54. Thus, because I-695 did not "disclose its effect" on, let alone "repeal or mention," the existing statute, the Court invalidated the offending section. *Id.* at 253-54, 256. Along the same lines, in *El Centro*, 192 Wn.2d at 132, the Court held that a new act greatly restricting the existing bargaining rights of public school employees violated article II, section 37 because it did not "explicitly show how [the new act] relates to statutes it amends."

I-976 similarly violates article II, section 37 because it is not a complete act, it amends other statutes, and its effect cannot be understood without reference to other statutes, which it fails to identify. For example, Section 6 of I-976 completely repeals RCW 82.80.140 regarding vehicle fees imposed by TBDs. RCW 82.80.140, however, states that it is subject to

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RCW 36.73.065. *See* RCW 82.80.140(1) ("Subject to the provisions of RCW 36.73.065 . . ."). [9] RCW 36.73.065 also grants TBDs the authority to impose vehicle fees, in addition to other charges, taxes, and tolls. *See also* RCW 36.73.040 (authorizing districts to impose vehicle fees). I-976, however, fails to set out RCW 36.73.065 or RCW 36.73.040 in full or disclose its amendment of these statutes. Like I-695, I-976's impact on TBDs' ability to impose vehicle fees is not clear because I-976 fails even to mention RCW 36.73.065 or RCW 36.73.040. *See ATU*, 142 Wn.2d at 253-54.

I-976 also seemingly amends but fails to disclose its effect on many provisions of chapter 46.17 RCW. Again, section 2 of I-976 purports to cap vehicle license fees at $30 by adding a new section to chapter 46.17 RCW. The language of section 2 suggests that $30 means $30 (except for the illusory promise of public elections to exceed the $30 cap). Yet, chapter 46.17 RCW imposes numerous additional vehicle fees that are not specifically referenced in sections 2, 3, 4, or 5 of I-976, but are apparently capped by Section 2. For example, RCW 46.17.015 imposes a $.25 license plate technology fee and RCW 46.17.030 imposes a $15 outstanding parking ticket surcharge. Indeed, more than 15 other vehicle fees are found in RCW 46.17. [10] To

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[9] A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district may impose by a majority vote of the governing board of the district the following fees and charges:

(i) Up to twenty dollars of the vehicle fee authorized in RCW 82.80.140;

(ii) Up to forty dollars of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of twenty dollars has been imposed for at least twenty-four months;

(iii) Up to fifty dollars of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of forty dollars has been imposed for at least twenty-four months and a district has met the requirements of subsection (6) of this section; or

(iv) A fee or charge in accordance with RCW 36.73.120.

RCW 36.73.065(4)(a).

[10] RCW 46.17.025 ($.50 license service fee), RCW 46.17.040(1)(b) (agent or subagent fee of $8), RCW 46.17.200 (initial registration and licensing fees of $10 (original issue fee), $2 (reflectivity), $20 (license plate retention fee), $10 (license plate transfer fee)), RCW 46.17.210 (personalized license plate fees of $52 initially, and $42 for renewal), RCW 46.17.220 (specialized license plate fees of $5-40 for initial registration, and $0-30 for renewals), RCW 46.17.250 ($36 fee for initial combination trailer registration), RCW 46.17.305 ($3 boat trailer aquatic weed fee due on registration), RCW 46.17.310 ($1 change of class fee), RCW 46.17.315 ($16 commercial vehicle safety enforcement fee), RCW 46.17.320 ($1.25 duplicate registration fee), RCW 46.17.324 ($75 electrification fee), RCW 46.17.325 ($5 farm exempt decal fee), RCW 46.17.340 ($15 vehicle-for-hire seating capacity fee), RCW 46.17.375

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effectuate the $30 cap, I-976 effectively repeals these fees, but without even a reference. Moreover, to the extent the Initiative preserves any of these various fees, such as the $4.50 filing fee under RCW 46.17.005, the initiative's promise of capping license fees at $30 is misleading and raises other constitutional issues. *See* section V.B.1, *supra*.

Finally, I-976 violates article II, section 37 as it is unclear whether voters still have authority to enact vehicle fees in excess of the $30 cap. *See* section V.B.2, *supra*. In the same way that I-695 created confusion about how voters could approve taxes and fees and thus violated article II, section 37, I-976 creates confusion by purporting to allow voter enacted vehicle fees, while at the same time repealing the authority for local voters to impose such fees.

As with the article II, section 19 violations above, there is also no basis for severability of I-976 under article II, section 37. Given that the above provisions either seek to eliminate taxes or fees that facilitate the $30 ceiling on car tabs or relate to the contingent application of other sections of I-976, the sections are not severable. Thus, the entirety of I-976 is invalid on this alternative ground. *See ATU*, 142 Wn.2d at 256 (invalidating I-695 in full under article II, section 37); *Abrams*, 163 Wn.2d at 285-86.

D. A Statewide Election Cannot Undo Local Election Results.

As described above, I-976 would negate locally voted VLFs. Thus, I-976 presents the unique situation of a statewide vote overturning an earlier local election. This is wrong.

In November 2014, Seattle voters overwhelmingly decided to impose additional VLFs on themselves to fund additional bus service and other transportation needs through 2021. VerBoot Decl., ¶ 3. This vote is consistent with the deep respect accorded local government by our

($3 recreational vehicle sanitary disposal fee), RCW 46.17.380 ($6 abandoned RV disposal fee), RCW 46.17.410 ($5 off-road vehicle registration transfer fee), and RCW 46.17.420 ($5 snowmobile registration transfer fee).

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constitution, which encourages local citizens to determine local solutions to their own problems. I-976 would retroactively invalidate the results of this vote and infringe the self-determination rights of Seattle residents. Specifically, by repealing RCW 82.80.140, local TBDs (such as Seattle's) would no longer have the authority to collect voter-approved VLF revenue, which would nullify the vote cast by 139,222 Seattle residents in favor of an additional $60 VLF for a six-year period (through December 31, 2020).[11] These types of decisions are intended to be left to local voters, as the Legislature found that "respond[ing] to the need for transportation improvements on state highways, county roads, and city streets […] can be better achieved by allowing cities, towns and counties to establish" TBDs to allow for necessary improvements to the transportation system and to improve performance of the existing system. RCW 36.73.010.

The Washington Constitution "specifically confers upon its citizens the right to "free and equal elections" without state interference, which means that our state constitution "goes further to safeguard this right" than the federal constitution, although both recognize voting as a fundamental right. *Foster v. Sunnyside Valley Irrigation Dist.*, 102 Wn.2d 395, 405, 687 P.2d 841 (1984). The embrace of local control of local issues is also enshrined in the Constitution. For example, local voters have the right to create their own form of local home rule, through their own locally elected legislature and executive. *See, e.g.*, Const. art. XI, § 4 (providing for county home rule charters); art. XI, § 10 (providing for incorporation of municipalities).[12] Additionally, the Washington Constitution prevents the state Legislature from **imposing** local taxes for local matters. Const., art. XI, § 12 ("The legislature shall have no power to impose taxes upon counties, cities, [or] towns ... or upon the inhabitants or property thereof, for county, city, [or]

[11] The Initiative sponsor was well-aware of the option to have delayed effective dates for portions of the Initiative, yet chose not to delay effectiveness of the repeal of RCW 82.80.140 (the statute authorizing the voter-approved VLF charges) until January 1, 2021, when the mandate of the 2014 Seattle vote would have expired per the terms of the vote.

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town ... purposes."). Instead, the Legislature "may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes." *Id*. In other words, the Legislature can authorize local taxes, but it cannot impose them directly and it cannot interfere with a locally imposed tax. Here, local voters made the choice to impose local taxes for a six-year period, *which has not yet elapsed,* and the results of that vote must be honored in compliance with the dictates of article I, section 19.

There are mechanisms for allowing voters to take up a previously decided issue before the next prescribed period for considering the issue and none of those mechanisms apply or were used here. For example, the Constitution offers ways to nullify an election through recall in article 1, sections 33 and 34. Importantly, the recall provisions acknowledge the necessity of having the same set of voters weigh in on the issue, by requiring that the recall petition contain signatures of a percentage of qualified electors, and that percentage is "required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election." Const. art. I, § 33. Similarly, the right to a referendum established in article II, section 1, allows for those governed by an act of the state Legislature to challenge that law. Again, the size of the impacted class remains the same. Nowhere does our law provide for an election whereby the voters of the state get to override the election results of a locality prior to the time those election results are up for reconsideration at the ballot box. If anything, the Court has allowed for the reverse. *Foster*, 102 Wn.2d at 405-11 (under article I, section 19, owners of subdivided land could not be excluded entirely from irrigation district board elections, although residents who bore a greater burden of the district's assessments could be given more voting power).

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Finally, it should be noted that any statute that infringes on or burdens the fundamental right to vote is subject to strict scrutiny, meaning it must be narrowly tailored to further a compelling state interest. *City of Seattle v. State*, 103 Wn.2d 663, 670, 694 P.2d 641 (1985). As amply demonstrated above, I-976 is anything but narrowly tailored. Nor does the initiative identify any compelling **state** interest to invalidate a **local** vote to address purely local issues with an entirely local fee.

I-976 impairs the rights of local voters. A preliminary injunction is necessary to allow full consideration of this issue.

E. I-976 Violates Separation of Powers Principles By Intruding on Administrative Matters.

The Washington Constitution incorporates foundational separation of powers principles. *Zylstra v. Piva*, 85 Wn.2d 743, 754, 539 P.2d 823 (1975) (Utter, J. concurring; cited with approval by *Matter of Salary of Juvenile Dir.*, 87 Wn.2d 232, 240, 552 P.2d 163 (1976)). Separation of powers is violated when "'the activity of one branch threatens the independence or integrity or invades the prerogatives of another.'" *Auto. United Trades Org. v. State*, 183 Wn.2d 842, 859, 357 P.3d 615 (2015). In addition, "[t]he Legislature is prohibited from delegating its purely legislative functions" to other branches of government. *Id*. Through initiatives, the people have reserved the right to legislate subject to the same constitutional restrictions that confine the Legislature. *ATU*, 142 Wn.2d at 241. "The people in exercising their reserved powers must conform to the constitution, just as the Legislature must do when enacting legislation." *Id.* at 232. Here, I-976 violates the separation of powers by addressing administrative matters properly left for the executive branch and by improperly delegating legislative powers on effective dates to the executive of local agencies.

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An action is administrative "if it furthers (or hinders) a plan the local government or some power superior to it has previously adopted." *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 10, 239 P.3d 589 (2010). A key question is "whether the proposition is one to make new law or declare a new policy, or merely to carry out and execute law or policy already in existence." *Id*. (internal quotations omitted). In *Bidwell v. City of Bellevue*, 65 Wn. App. 43, 46-47, 827 P.2d 339 (1992), Division One further pointed out that "[a]ctions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative."

I-976 violates separation of powers principles by intruding on multiple local legislatively approved projects that are in the administrative stage and forcing the executive branch of local government to address the consequences of each intrusion. Three cases illustrate the point. In *Ruano*, 81 Wn.2d at 825, an initiative provision sought to halt the Kingdome Stadium project. The project had been approved legislatively and was ongoing. The initiative purported to direct the executive to take necessary action to halt the project and any ongoing financial commitments. The Supreme Court held that this initiative was invalid because it exceeded the legislative function of the initiative power: "We hold that, under the facts of this case, only administrative decisions remained in connection with the stadium project, decisions not subject to the initiative process." *Id*. Prior legislative enactments had determined to build a stadium, finance its bonds, and repay those bonds, but the execution of those laws, including the repayment of bonds, was an administrative action outside the proper scope of an initiative. *Id.* at 824-25.

Similarly, in *City of Port Angeles*, the Supreme Court rejected an initiative that sought to block fluoridation of the city water supply. Because laws related to fluoridation were well established, it was beyond the initiative power to dictate how those laws were to be executed.

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See 170 Wn.2d at 14 ("These are not details of a new policy or plan, indicative of a legislative act; these are modifications of a plan already adopted by the legislative body itself, or some power superior to it, indicative of an administrative act." (internal quotations omitted)).

Finally, in *Bidwell*, 65 Wn. App. at 45-46, the city adopted four ordinances that established the framework for building a convention center, including financing and the issuance of bonds. An initiative filed with the city sought an amendment to the city charter that would require voter approval prior to issuance of any negotiable bonds or notes. *Id.* The court held that the proposed initiative exceeded the scope of the initiative power because it addressed administrative matters. *Id.* at 48.

Not only does I-976 violate separation of powers concerns related to interfering with administrative matters, it also violates separation of powers by unconstitutionally delegating legislative authority on effective dates for certain sections of I-976. It is unconstitutional to delegate or transfer legislative authority to others. *Brower v. State*, 137 Wn.2d 44, 54, 969 P.2d 42 (1998). Determining the effective date of an act is part of the legislative authority. The Legislature is free to make the effective date of an enactment contingent on "a future event *specified by the Legislature*," even when the event arises at the discretion of others. *Diversified Inv. Partnership v. Department of Soc. & Health Servs.*, 113 Wash.2d 19, 28, 775 P.2d 947 (1989) (emphasis added). However, for purposes of determining an unconstitutional delegation of legislative authority, the Supreme Court has distinguished between "conditioning the operative effect of a statute upon the happening of a future specified event" versus "transfer[ring] the power to render *judgement* on an issue to a federal legislative or administrative body." 113 Wn.2d at 28 (emphasis added). The Legislature cannot "delegate the power to repeal a statute" because in such a circumstance it "necessarily transfers its power to render judgment as to the

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continued expediency of the statute." *Id.* at 30. The convoluted effective dates set forth in I-976 section 16 represent an unconstitutional delegation of legislative authority because an entity other than the Legislature is granted the ability to set the timing of compliance based on its judgment, rather than on the happening of a future event specified in the initiative. The exercise of such judgment has significant impacts on the specified statutes. Separation of powers does not permit such an unconstitutional delegation of legislative authority.

Plaintiffs' declarations demonstrate that numerous ongoing projects that are presently being administered statewide will be eliminated or impacted by I-976. Such action is beyond the scope of the initiative power and a fundamental intrusion on separation of powers.

F. I-976 Impairs Existing Contracts in Violation of the Contracts Clause.

I-976 also raises significant claims regarding impairment of existing contracts across the state. The Washington Constitution provides: "no law…impairing the obligation of contracts shall ever be passed." Const. art. I, § 23. The test for contract 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." *Tyrpak v. Daniels*, 124 Wn.2d 146, 152, 874 P.2d 1374 (1994); *Caritas Services, Inc. v. Dept. of Social and Health Srvs.*, 123 Wn.2d 391, 403, 869 P.2d 28 (1994). Where legislation impairs a government's own bond contracts, the law will "face more stringent examination under the Contract Clause than would laws regulating contractual relationships between private parties." *Tyrpak*, 124 Wn.2d at 151 (internal quotations omitted).

In *Pierce Cty.* II, the Washington Supreme Court held that previous Eyman initiative I-776 unconstitutionally impaired bond contracts. 159 Wn.2d at 39; *see also, e.g.*, *Bidwell*, 65 Wn.

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App. at 44-45 (initiative requiring public vote on revenue bonds to finance convention center impaired preexisting operations and lease agreements); *Continental Illinois Nat'l Bank & Trust Co. of Chicago v. State of Wash.*, 696 F.2d 692, 694 (9th Cir. 1983) (initiative "unconstitutionally impaired existing contractual obligations to finance and complete nuclear power plants"); *United States v. Manning*, 434 F. Supp. 2d 988, 1023 (E.D. Wash. 2006) (impairment of federal contracts by Initiative 297), *aff'd*, 527 F.3d 828 (9th Cir. 2008). *Tyrpak* further emphasizes that outstanding bonds are impaired by the reduction of a pledged tax even where the remaining security might be sufficient for repayment. *Tyrpak*, 124 Wn.2d at 154-55; *see also Pierce Cty.* II, 159 Wn.2d at 36; *Muni. of Metro. Seattle v. O'Brien*, 86 Wn.2d 339, 351, 544 P.2d 729 (1976) (although contracted-for security substantially exceeded municipality's debt service requirements, the excess was an important reason for favorable bond ratings and thus an important factor in bondholders' decision to purchase the bonds).

Here, I-976 is likely to impair a wide range of contracts statewide, the full extent of which cannot be known at this early stage. To the extent, for example, that it removes revenue pledged to existing bonds, which would be a substantial impairment. *See, e.g.*, King Decl., ¶¶ 13, 15 & Exs. D, F. There is also no justification offered for these impairments other than a purported "change in tax policy," which the Court held "has been soundly rejected for over a century." *Pierce Cty.* II, 159 Wn.2d at 37-38.

G. Plaintiffs Will Suffer Immediate and Irreparable Harm if I-976 Is Allowed to Take Effect as Scheduled.

Virtually all of I-976 is scheduled to take effect on December 5. *See* section II.C., *supra*. As noted above, the State has also confirmed it intends to change its collection procedures once the initiative takes effect. *See* Segal Decl., Ex. G. Thus, once the initiative takes effect,

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substantial and immediate harm will occur statewide. Plaintiffs, therefore, also satisfy the second and third prongs of the injunction test.

Cities, towns, counties, and transit agencies will experience major reductions in funding for transit services, roads, and other transportation projects, as detailed in the declarations submitted with this motion. I-976 will cause a total revenue loss of $1.9 billion to the state in the next six years, of which $1.4 billion would come from the state's Multimodal Transportation Account. Leighton Decl., ¶ 6. This account funds all modes of transportation projects including public transportation, rail, and bicycle/pedestrian projects, through grant programs including the Regional Mobility Grant, Tiered Project List, Special Needs Transportation Grant, and Consolidated Grant Programs. *Id.* This significant reduction in the Multimodal Account likely will substantially reduce the transit grants provided to local governments and transit agencies by the State, totaling nearly $250 million in the 2019-2021 biennium. *Id.* Plaintiffs GCTA, IT, King County, the City of Seattle, and many of AWC's and WSTA's members depend on these grants to operate their transit systems. Dixon Decl., ¶ 4; Freeman-Manzanares Decl., ¶¶ 4, 7-9; Gannon Decl., ¶ 11; Canete Decl., Exs. A, B; King Decl., ¶ 16; Leighton Decl., ¶ 6. The harmful impacts on Plaintiffs will vary, ranging from the need to defer or completely eliminate major capital projects to potential service cuts upwards of 75 percent to the elimination of lifeline transportation services and paratransit and vanpool programs utilized by disadvantaged populations of individuals. Dixon Decl., ¶¶ 4-8; Freeman-Manzanares Decl., ¶¶ 4, 7-9; Gannon Decl., ¶ 11; King Decl., ¶ 16; Leighton Decl., ¶¶ 6-15.

I-976 will also substantially harm Plaintiffs King County, City of Seattle, and AWC's members by removing the authority of TBDs to impose vehicle fees that provide vital funding for critical transportation improvements, as well as expansions and access to transit services.

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Gannon Decl., ¶ 11; King Decl., ¶ 7. In 2018, TBDs using vehicle fees across the state collected more than $58 million. King Decl., ¶ 7. This revenue would be eliminated as soon as I-976 takes effect. King Decl., ¶ 7. In addition to the $60 VLF Seattle's TBD sought and received via voter authorization, an existing $20 VLF brings in revenue totaling $32.8 million a year. Hennes Decl., ¶¶ 7-8. Revenue from TBD vehicle fees is dedicated to local transportation needs, including directly funding transit projects, meeting the state transportation funding local program match requirements, and pledging repayment of debt on local transportation projects. King Decl., ¶ 5. This loss of revenue resulting from I-976 will harm cities of all sizes statewide. King Decl., ¶¶ 8-15.

Further, I-976 will harm many other individuals, governments, and organizations who rely on transit services and efficient and effective transportation to conduct their daily business. For instance, due to the significant reduction in funding for services that Plaintiff Rogers relies on, his basic mobility in his daily life will be rendered extremely difficult if not impossible. Rogers Decl., ¶ 10; Freeman-Manzanares Decl., ¶ 4. Other individuals with special needs will also be unable to continue to live independently as a result of I-976's effect and resulting reduction in services. *See, e.g.*, Dixon Decl., ¶¶ 5-8. Lower income individuals will also be hit hard by the loss of transit options. *See generally* VerBoort Decl. Additionally, the reduction or complete elimination of services will lead to a corresponding loss in pay for the 8,000 members of Plaintiff ATU that work for various transit agencies. Swartz Decl., ¶¶ 3, 5-6. It will harm parks and alternate methods of regional mobility. *See generally* Terry Decl. Finally, because of the reductions in transit services and road improvement projects, I-976 will impair Plaintiff the Port's ability to move people, freight, and cargo in the region, across the country, and around the

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world. Poor Decl., ¶ 6. These are just a sampling of the impacts that will commence and worsen absent an injunction as this case remains pending.

In sum, there is an extensive and indisputable record before this Court showing Plaintiffs have a well-grounded fear that there will be an extraordinary disruption of funding and resulting services, as of December 5, and that immediate and substantial harm will occur as a result.

H. The Balance of Equities Weighs Heavily in Favor of Granting Injunctive Relief

Finally, the Court should consider the balance of the equities at stake here, including the equities as they apply to the public. *See Rabon*, 135 Wn.2d at 284. As discussed in the previous section and in the Plaintiffs' declarations, if this Court fails to enter a preliminary injunction, transportation projects and transit services would face devastating cuts harming communities across the state, and critical revenues would be irretrievably lost. In contrast, if the Court grants a preliminary injunction and I-976 is ultimately upheld, members of the public will be entitled to automatic refunds for any overpayments made during the pendency of the injunction. S*ee* RCW 46.68.010(1) ("A person who has paid all or part of a vehicle license fee under this title is entitled to a refund if the amount was paid in error…"); RCW 4.68.010(2) ("The department [of licensing] **shall** refund overpayments of vehicle license fees and motor vehicle excise taxes under Title 82 RCW that are ten dollars or more. A request for a refund is not required." (emphasis added)).

In balancing the equities in determining whether or not to enter an injunction, courts also consider "society's strong interest in efficient tax collection." *Tyler Pipe Indus., Inc. v. State Department of Revenue*, 96 Wn.2d 785, 797, 638 P.2d 1213 (1982). In *Tyler Pipe*, a taxpayer challenged the assessment of a tax and sought a preliminary injunction rather than pre-paying the tax and litigating its claims in a refund action. *Id.* at 787-87. The Supreme Court held that the taxpayer was not entitled to injunctive relief in light of "[s]ociety's strong interest in the collection

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of taxes." *Id*. at 796. The Court cited the value in allowing "revenue collection to continue during litigation so that essential public services dependent on the funds are not unnecessarily interrupted" and recognized that "[a]ny delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public." *Id.* at 797 (internal quotation omitted). That reasoning applies here in favor of granting an injunction, as the "detriment to the public" that would result from even a temporary loss of the revenues at issue cannot be overstated. *See id.*

Moreover, if the Court grants a preliminary injunction and I-976 is subsequently invalidated, a preliminary injunction will save the State considerable administrative expenses by allowing the State to avoid implementation altogether. *See* section II.F., *supra* (describing administrative costs outlined in Fiscal Impact Statement for I-976). At the same time, if the Court grants a preliminary injunction and I-976 is ultimately implemented, the State will be in no worse a position than if no injunction had been entered; it will simply incur the administrative costs associated with implementation at a later date. Accordingly, equitable considerations, including the relative interests of the parties and the public, weigh heavily in favor of a preliminary injunction.

VI. CONCLUSION

Plaintiffs are likely to prevail on the merits of their claims that I-976 violates the Washington Constitution in multiple, alternative ways. Plaintiffs have shown that absent an injunction, they and the public will suffer immediate, substantial and irreparable harm. The balance of the equities favors an injunction where a monetary refund remedy exists in the event the injunction is later dissolved. Plaintiffs respectfully request that the Court grant their motion

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and temporarily enjoin implementation of I-976 to allow a full and fair consideration of its constitutionality.

DATED this 18th day of November, 2019.

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CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, over the age of 21 years and not a party to this action. On the 18th day of November, 2019, I caused to be served, via the King County E-Service filing system, and via electronic mail per agreement of the parties, a true copy of the foregoing document upon the parties listed below:

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DATED this 18th day of November, 2019.

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