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Batting Two-for-Eleven: Tim Eyman's Initiatives and the Washington Supreme Court

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Tim Eyman is a watch salesman by trade.[1] He has worn a gorilla suit in public outside the Halloween season.[2] For a time, he was known to shout "hoo-ha" without prompting.[3] Nevertheless, Eyman claims to have saved Washingtonians $54.864 billion in taxes since 1999.[4] How? Via initiatives. Over the last twenty or so years, voters have approved Eyman-sponsored initiatives to cut car tabs and cap property taxes. But in so doing, they have also approved a host of other provisions in those initiatives, from requiring a referendum on any tax by the legislature to tying the state's tax calculations to the Kelley Blue Book.

These initiatives—and those tax "savings"—have caused some distress among good government proponents.[5] But the merits of Eyman's ideas aside, this much is clear after two decades: As drafted in initiative form, his ideas usually run afoul of Washington's Constitution. Most of his initiatives have found their way to the Washington State Supreme Court, and once there, the Court has usually struck them down. But there are some lessons in his losses about how to draft a focused initiative, one limited in its purpose to what the courts will find acceptable. What follows is an overview of those initiative cases, and how Washington's law of initiatives developed as a result.

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[1] Tomas Alex Tizon, *Taking the Initiative Too Far?*, Los Angeles Times, Apr. 22, 2003, https://www.latimes.com/archives/la-xpm-2003-apr-22-na-ballotguy22-story.html.
[2] Joel Connelly, *Why Tim Eyman Should, at Last, Run for Public Office*, Seattle Post-Intelligencer, Mar. 5, 2013, http://www.seattlepi.com/local/connelly/article/Why-Tim-Eyman-should-at-last-run-for-public-4327758.php
[3] Tizon. For an example of this utterance, *see Scent of a Woman* (Universal Pictures 1992).
[4] About Us – Permanent Offense, Permanent Offense, https://permanentoffense.com/about-us/.
[5] *See generally*, Brewster C. Denny, *Initiatives—Enemy of the Republic*, 24 Seattle L. Rev. 1025 (2001).

I. The Initiative Process

A. A Brief History of the Initiative in Washington

Washington, like other western states, adopted the initiative and referendum during the Progressive Era of the early 20th Century.[6] Oregon adopted the initiative and referendum in 1902[7]; California in 1911.[8] And in 1912, Washington's voters approved an amendment to Article II, § 1 of their State Constitution, "reserv[ing]" for themselves the initiative and referendum.[9] It was not a close contest: The amendment passed by more than two-to-one.[10]

And the initiative seems here to stay. In the years leading up to the 1912 amendment vote, the liquor industry had fought direct democracy bitterly, arguing it would lead to a "dry" Washington.[11] Sure enough, in 1914, Washington passed (among others measures) an initiative "prohibiting the manufacture, sale or other disposition of intoxicating liquors."[12] The legislature responded by attempting to make signature gathering for initiatives far more onerous, but the voters rejected that measure—by a forty-point margin—in Referendum 3.[13] And since 1912, Washingtonians have voted on no less than 28 initiatives to the legislature[14] and 155 initiatives

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[6] *See generally* David S. Broder, Democracy Derailed: Initiative Campaigns and the Power of Money 23–42 (2000). For a contemporary discussion of the initiative at the turn of the last century, *see generally* James William Sullivan, Direct Legislation by the Citizenship Through the Initiative and Referendum (1892).
[7] Or. Const. art. IV, § I (1902).
[8] Cal. Const. art. IV, § 1 (1911).
[9] Wash. Off. of the Sec'y of State, Elections Search Results: November 1912 General, https://www.sos.wa.gov/elections/results_report.aspx?e=125&c=&c2=&t=&t2=5&p=&p2=&y=.
[10] *Id*. (For: 110,110; Against: 43,905). *See also Belas v. Kiga*, 135 Wn.2d 913, 920, 959 P.2d 1037 (1998); *Wash. Fed'n of State Emp. v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995) (holding the people essentially act as the legislature when they approve an initiative).
[11] Norman Clark, *"The Hell-Soaked Institution" and the Washington Prohibition Initiative of 1914*, 56 Pac. Nw. Q. 1, 6 (1965). Liquor interests also opposed women's suffrage for the same reason. *See* T.A. Larson, *The Woman Suffrage Movement in Washington*, 67 Pac. Nw. Q. 49, 53 (1976).
[12] Wash. Off. of the Sec'y of State, Elections Search Results: November 1914 General, https://www.sos.wa.gov/elections/results_report.aspx?e=123&c=&c2=&t=&t2=&p=&p2=&y=.
[13] Wash. Off. of the Sec'y of State, Elections Search Results: November 1916 General, https://www.sos.wa.gov/elections/results_report.aspx?e=120&c=&c2=&t=&t2=5&p=&p2=&y= (For: 62,117; Against: 196, 363). For the full text of Referendum 3, *see* Office of the Secretary of State, State of Washington, 1916 Voters' Pamphlet, pp. 14–20, https://www2.sos.wa.gov/_assets/elections/voters'%20pamphlet%201916.pdf.
[14] Wash. Off. of the Sec'y of State, Yearly Summary of Initiatives to the Legislature, https://www.sos.wa.gov/elections/initiatives/yearly-summary-of-initiatives-to-the-legislature.aspx.

to the people[15]. . . and approved, almost a century after the experiment with prohibition, an initiative ending the state monopoly on the sale of hard liquor.[16]

B. Signatures, Ballot Titles, and the Voters

Washington recognizes two kinds of initiatives: initiatives to the legislature and initiatives to the people.[17] The latter are straightforward in theory: If a petitioner has drafted a law he would like adopted, and gathers enough signatures, it goes to the voters.[18] Initiatives to the legislature, as the name suggests, are sent to the legislature first (if, again, the petitioner has the requisite signatures). The legislature may then adopt the initiative as written, reject it and place it on the ballot for the voters, or adopt an alternative statute, in which case both the original initiative and the legislature's alternative are presented to the voters in the next election.[19]

In practice, of course, the process is more involved. To begin, an initiative's sponsor—a registered Washington voter—must file a copy of the proposed measure with the Secretary of State and pay a filing fee.[20] The proposed language is then sent to the office of the Code Reviser, who may recommend revisions to the sponsor.[21] Whether or not the sponsor accepts those recommendations, the Code Reviser certifies it has reviewed the measure, and if the sponsor still wishes to proceed, he must send the measure (with any revisions) and certificate back to the Secretary of State to receive a serial number.[22]

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[15] Wash. Off. of the Sec'y of State, Yearly Summary of Initiatives to the People, https://www.sos.wa.gov/elections/initiatives/yearly-summary-of-initiatives-to-the-people.aspx.
[16] Wash. Off. of the Sec'y of State, November 08, 2011 General Election Results, https://results.vote.wa.gov/results/20111108/initiative-measure-1183-concerning-liquor--beer-wine-and-spirits-hard-liquor.html.
[17] Wash. Const. art. II, § 1.
[18] "[T]he number of valid signatures of legal voters required shall be equal to eight percent of the votes cast for the office of governor at the last gubernatorial election . . . ." *Id*.
[19] *Id*.
[20] RCW 29A.72.010. For an initiative to the people, this filing must be within ten months of the next general election. RCW 29A.72.030.
[21] RCW 29A.72.020.
[22] *Id*.

Next, the Office of Financial Management (OFM) prepares a fiscal impact statement for the initiative.[23] Additionally, as of this past June, initiatives that modify taxes or fees, or, based on OFM's assessment of the fiscal impact, "would cause a net change in state revenue," are subject to an additional "public investment impact disclosure" drafted by the Attorney General's Office (AGO).[24] This disclosure is then embedded in the ballot title, also drafted by AGO.[25] In Washington, the format for a ballot title—the short explanation of the initiative given to prospective signatories and, if there are enough of those, voters—is very prescriptive as of 2003: "Initiative Measure No. . . . concerns (statement of subject). This measure would (concise description). (Public investment impact disclosure, if applicable.) Should this measure be enacted into law?"[26]

After OFM, AGO, and the Code Reviser have discharged their duties, the sponsor is free to gather signatures, provided his petitions are formatted properly.[27] He may even pay others to gather signatures on his behalf.[28] If he gathers enough, and submits them to the Secretary of State within four months of the next election (assuming an initiative to the people), the Secretary of State will issue a certificate of sufficiency, and the measure will appear on the ballot.[29]

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[23] RCW 29A.72.025.
[24] RCW 29A.72.027. "The legislature finds that when exercising this right, the people are entitled to know the fiscal impact that their vote will have on public investments at the time they cast their ballots. The legislature further finds that when a ballot measure will affect funding for public investments, a neutral, nonprejudicial disclosure of the public investments affected will provide greater transparency and necessary information for voters." Wash. H.R. Leg. Findings, Laws of 2022 Ch. 114.
[25] RCW 29A.72.027; RCW 29A.72.060.
[26] RCW 29A.72.050.
[27] RCW 29A.72.100; RCW 29A.72.120. The size of and composition of the paper matters.
[28] Washington's prior ban on paid signature gatherers was struck down in *Limit v. Maleng*, 874 F. Supp. 1138 (W.D. Wash. 1994). A legislative finding that the practice "encourages the introduction of fraud" remains on the books as RCW 29A.84.280.
[29] RCW 29A.72.160; RCW 29A.72.170; RCW 29A.72.250.

C. Litigating Ballot Measures (and their Titles)

That process does court controversy from time to time, however. At several steps along the way, the initiative sponsor and others can appeal a decision made by the state office responsible for that step. Under the new public investment impact disclosure regime, a sponsor who objects to the disclosure's content has three days to make a direct appeal to the Thurston County Superior Court.[30] That court's decision is final.[31] If he objects to the content of the ballot title and summary more broadly, he (or any other person) has five days to file an appeal in Thurston County, where, again, the decision is final.[32] If his signature petitions are later rejected, he has ten days to appeal in Thurston County.[33] If the grounds for rejection was an insufficient number of signatures, *any* Washingtonian has five days to appeal . . . in Thurston County Superior Court.[34] With respect to signature petitions only, if the Thurston County judge refuses to grant a writ of mandate ordering the Secretary of State to accept the petitions, the Supreme Court may review the case.[35] But for the most part, initiative litigation is a battle fought after the initiative has passed, at which point the courts are "the sole institutional check on the initiative process . . . ."—the legislature's and governor's hands are tied, at least for a few years after the initiative is passed.[36]

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[30] RCW 29A.72.028. One of Eyman's chief objections to the original bill—which did not include an appeal mechanism—is it would provide the Attorney General "the ability to influence voters and sabotage an initiative without any recourse." Wash. H.R. Bill Report, HB 1876, 4 (2022).
[31] *Id.*
[32] RCW 29A.72.080.
[33] RCW 29A.72.180.
[34] RCW 29A.72.240.
[35] RCW 29A.72.200. "The review must be considered an emergency matter of public concern . . . ."
[36] Kenneth P. Miller, *Courts as Watchdogs of the Washington State Initiative Process*, 24 Seattle L. Rev. 1053, 1055 (2001).

II. Tim Eyman's Initiatives

Seventeen Eyman-sponsored initiatives have appeared on a Washington State general election ballot.[37] Six were rejected at the polls; two were approved with relatively little follow-up litigation; the rest made their way to the Washington Supreme Court. Although a few provisions of those nine remaining initiatives are still good law,[38] the Supreme Court overturned them all. These overturned initiatives (with a few a few exceptions or additional wrinkles in the court's reasoning) fall largely into two categories: initiatives that ran afoul of the State Constitution's single subject and subject-in-title requirements,[39] and a series of initiatives attempting to impose an unconstitutional supermajority requirement on legislative tax increases.[40] First, though, it is worth discussing Eyman's two most durable initiatives.

A. Two Successes

1. 1998's I-200 and Affirmative Action

Eyman's first initiative was Initiative 200 (I-200) in 1998, pitched to voters as the "Washington Civil Rights Act."[41] Modeled after a similar measure California adopted a few years prior, I-200 was designed to eliminate affirmative action in government hiring and public university admissions.[42] After a hard-fought campaign, in which opponents from Governor Gary

[37] *See* Appendix for a complete list, including the full text of ballot titles. Eyman has also sponsored numerous initiatives that were either withdrawn or failed to secure enough signatures, as well as some local ballot measures. The Washington Secretary of State maintains a record of every measure that receives a serial number.
[38] *See, e.g.*, Initiative 960 (I-960), requiring a nonbinding advisory vote on legislative tax increases, codified as RCW 29.A.72.983 and discussed *supra* pp. [n].
[39] Wash. Const. art. II, § 19.
[40] Wash. Const. art. II, § 22.
[41] *See* I-200 PAC, Washington Civil Rights Act—Equality for all, https://i200.org/.
[42] Broder, 173–82. Broder attributed I-200's success to Seattle radio host John Carlson, as well as the California source material (Proposition 209) originally developed by businessman Ward Connerly in 1996.

Locke to the Boeing Company spent over $1.5 million (to the "Yes" campaign's $500,000),[43] I-200 passed with roughly 58% of the vote.[44]

I-200 was not challenged in the courts, apart from a failed attempt by the American Civil Liberties Union to modify the ballot title.[45] And it remains the law in Washington in substantially the form approved in 1998, with some adjustments dating to 2013 to account for tribal compact schools.[46] That is not likely to change least the next few years—in 2019, voters rejected a referendum to repeal I-200, though margin was just 20,000 votes.[47]

2. 2005's I-900 and Performance Audits

Initiative 900 (I-900) "direct[ed] the State Auditor to conduct performance audits of state and local governments."[48] It passed with 56% of the vote, and since 2007, the Washington State Auditor has published annual status reports.[49] Although legally uncontroversial, it may have had an adverse effect on education funding, at least initially.[50]

B. The Article II, § 19 Cases

1. The First Overturned Initiative: I-695 and *Amalgamated Transit Union*

"No bill shall embrace more than one subject, and that shall be expressed in the title."[51] Just sixteen words, the Washington Constitution's Article II, § 19 has given the Supreme Court

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[43] *Id*.
[44] Wash. Off. of the Sec'y of State, Elections Search Results: November 1998 General, https://www.sos.wa.gov/elections/results_report.aspx?e=10&c=&c2=&t=&t2=&p=&p2=&y=.
[45] Permanent Offense, Baptism of Fire: My first initiative wasn't $30 tabs, it was limiting affirmative action, https://permanentoffense.com/baptism-of-fire-my-first-initiative-wasnt-30-tabs-it-was-limiting-affirmative-action/, July 6, 2022.
[46] RCW 49.60.400.
[47] Wash. Off. of the Sec'y of State, November 5, 2019 General Election Results, https://results.vote.wa.gov/results/20191105/state-measures-referendum-measure-no-88.html.
[48] Wash. Off. of the Sec'y of State, Elections Search Results: November 2005 General, https://www.sos.wa.gov/elections/results_report.aspx?e=4&c=&c2=&t=&t2=&p=&p2=&y=.
[49] Wash. Leg., I-900 SAO Reports & Public Hearings, https://leg.wa.gov/jlarc/I-900.
[50] Kristen Millares Young, *Bill Aims at Paying Audit Costs*, Seattle Post-Intelligencer, Mar. 3, 2008, https://www.seattlepi.com/local/article/Bill-aims-at-paying-audit-costs-1266212.php.
[51] Wash. Const. art. II, § 19.

reason to strike down five of Eyman's initiatives, beginning with 1999's Initiative 695 (I-695) and *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000) (*ATU 587*).[52] The ballot title in question read: "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?"[53] "Tax," as defined by the initiative, included "license fees, permit fees, and any monetary charge by government."[54] Still, voters approved the measure, seven separate parties challenged it, and those cases were consolidated (or linked) in King County Superior Court.[55] Judge Robert Alsdorf granted the challengers summary judgement on six grounds, including violation of Article II, § 19.[56]

The State and I-695's supporters (as intervenors) appealed directly to the Supreme Court.[57] After dispensing with several motions to dismiss filed by the I-695 campaign as untimely and not fully briefed, Justice Barbara Madsen noted initiatives are subject to the same presumption of constitutionality—but also the same constitutional requirements and rules of statutory construction—as any other law.[58] Consequently, Article II, § 19's reference to "bill[s]" applies to initiatives, as does the Court's rule that the article "is to be liberally construed in favor of the legislation."[59]

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[52] *Corrected*, *Amalgamated Transit Union Loc. 587 v. State*, 27 P.3d 608 (Mem. 2001).
[53] Wash. Off. of the Sec'y of State, Elections Search Results: November 1999 General, https://www.sos.wa.gov/elections/results_report.aspx?e=8&c=&c2=&t=&t2=5&p=&p2=&y=. Eyman's "$30 car tab guy" sobriquet dates to this initiative.
[54] *ATU 587*, 142 Wn.2d at 193 (citing Laws of 2000, Ch. 1, § 2(2)).
[55] 142 Wn.2d at 195, 198.
[56] *Id.* at 198–99.
[57] *Id.* at 199.
[58] *Id.* at 205 (citing *Brower v. State*, 137 Wn.2d 44, 52, 969 P.2d 42 (1998); *Seeber v. Wash. State Pub. Disclosure Comm'n*, 96 Wn.2d 135, 139, 634 P.2d 303 (1981). Curiously, Washington has imposed a "burden of proof," on the challenger from the world of criminal law: beyond a reasonable doubt. *ATU 587*, 142 Wn.2d at 205.
[59] *Id.* at 206.

However, those favorable presumptions were not enough to save I-695. To begin, eight members of the Court found I-695 did embrace more than one subject.[60] The single subject requirement protects legislators (or here, voters) from "logrolling": securing votes for an otherwise unpopular proposal by tying it to an unrelated but popular one.[61] But how the courts tally the subjects depends on whether the measure's title is broad or narrow. When a bill or initiative has a "very broad and comprehensive title"—sometimes called a "general subject"—the court may find it is constitutional, "even if [the] general subject contains several incidental subjects or subdivisions."[62] And "[w]here a general title is used, all that is required is rational unity between the general subject and the incidental subjects."[63] By contrast, a "restrictive title," i.e. "'one where a particular part or branch of a subject is carved out and selected as the subject . . .' will not be regard as liberally as a general title."[64] The difference between the two, then, might be just "a few well-chosen words."[65]

Justice Madsen concluded that I-695's title was general, based on its plain text. She was unpersuaded by the defendants' argument that courts should consider the broader legislative history and intent but ruled that there was no rational unity between the $30 license fee provision and the voter tax approval provision.[66] The court analogized I-695 to the toll road act examined in *Wash. Toll Bridge Auth. v. State*.[67] There, the title was referred to two provisions in the act: construction of a specific new toll highway from Seattle to Everett, and procedures for the

[60] *Id.* at 217.
[61] *Id.* at 207.
[62] *Id.* at 207–08 (citing numerous examples of general titles from the 1940s to the 1990s).
[63] *Id.* at 209 (*citing Kueckelhan*, v. Fed. Old Line Ins. Co. (Mut.), 69 Wn.2d 392, 403, 418 P.2d 443 (1966) (superseded on other grounds by *State v. WWJ Corp.*, 138 Wn.2d 595, 980 P.2d 1257 (1999)).
[64] *Id.* at 210 (quoting *State v. Broadaway*, 133 Wn.2d 118, 127, 942 P.2d 363 (1997).
[65] *Id.* at 209.
[66] *Id.* at 217.
[67] *Id.* at 216 (citing 49 Wn.2d 520, 523–24, 304 P.2d 676 (1956)).

construction of other future toll roads.[68] And though the title may have been general, it was nevertheless ruled unconstitutional.[69] The two purposes described were held not "germane" to each other because, references to "toll roads" aside, one was "subject to accomplishment" and one was "continuing in character."[70] Similarly, I-695's two provisions were not germane to one another—one was a "continuing method"; the other was not.[71] "Further, neither subject [was] necessary to implement the other."[72]

Next, I-695 also failed on subject-in-title grounds, the second prong of Article II, § 19.[73] "The title of an act complies with art. II, § 19 if it gives notice which would lead to an inquiry into the body of the act or indicates the scope and purpose of the law to an inquiring mind."[74] And after examining I-695's peculiar definition of a "tax," the court found an average voter may not understand the content of the measure just based on the title.[75] Indeed, "I-695 specifically define[d] the term tax. It would be unnecessary to define the term if it had its common meaning . . . ."[76] And because that definition was not made clear in the title itself, the title was unconstitutional.[77] The "tax" approval section of I-695 was held severable, however.[78]

Third, I-695 created an unconstitutional referendum.[79] Article II, § 1(b) of the Washington Constitution requires a petition signed by four percent of the voters to place a referendum on the ballot. And Justice Madsen agreed with Judge Alsdorf's reasoning that I-695,

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[68] 49 Wn.2d at 521.
[69] *Id.* at 523–24.
[70] *Id.*
[71] 142 Wn.2d at 217.
[72] *Id.*
[73] *Id.*
[74] *Id.* (citing *Wash. Fed'n of State Emp.*, 127 Wn.2d at 555).
[75] *Id.* at 220.
[76] *Id.*
[77] *Id.* at 226 (citing *DeCano v. State*, 7 Wn.2d 613, 624, 110 P.2d 627 (1941) (striking down an anti-alien land law employing a definition of "alien" that was not the "common understanding" of the term)).
[78] 142 Wn.2d at 229.
[79] *Id.* at 231.

by subjecting every new tax, fee, etc. to voter approval, "constitute[d] a presumptive veto, and establishes a referendum."[80] Moreover, "[t]he initiative process cannot be used to amend the constitution" and create a new *referendum* process.[81] That the legislative power may ultimately derive from the people was of no consequence, given the people delegated that power to the legislature in a particular manner described in the constitution.[82]

Finally, I-695 ran afoul of Article II, § 37 as well. "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."[83] Washington courts use two tests to determine a violation of this section: First the act must "stand alone" as a complete act and be fully understood "without referring to any other statute or enactment."[84] Second, the act must not "render erroneous" a "straightforward determination of the scope of rights or duties under existing statutes"—as Justice Madsen observed, legislators need to know what they are voting for.[85] The court did recognize some room for a complete act to "modify, and thus render erroneous, an existing statute," but in so doing it cannot deceive the legislators.[86] And here, the voter approval requirement of I-695 was deceptive, or at least difficult to understand fully as drafted.[87] By way of example, the court

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[80] *Id.*
[81] *Id.* at 232 (citing *Gerberding v. Munro*, 134 Wn.2d 188, 210 n. 11, P.2d 1366 (1998)). The *ATU 587* court also contrasted I-695 universal requirement with one-time statewide voter approval provisions in, *e.g.*, Alabama (*In re Opinions of the Justices*, 232 Ala. 60, 166 So. 710 (1936)), New Jersey (*Hudspeth v. Swayze*, 85 N.J.L. 592, 89 A. 780 (1914)), and Oregon (*Marr v. Fisher*, 182 Or. 383, 187 P.2d 966 (1947)). 142 Wn.2d at 235.
[82] *Id.* at 239.
[83] Wash. Const. art. II, § 37.
[84] *ATU 587*, 142 Wn.2d at 246 (citing *State ex rel. Living Servs., Inc. v. Thompson*, 95 Wn.2d 753, 756, 630 P.2d 925 (1981); *Wash. Educ. Ass'n v. State*, 93 Wn.2d 37, 40, 604 P.2d 950 (1980)).
[85] 142 Wn.2d at 246.
[86] *Id.* at 248, 251 (rejecting the plaintiffs' broad reading of *Weyerhaeuser Co. v. King Cnty.*, 91 Wn.2d 721, 731, 592 P.2d 1108 (1979), that an act must set forth in full any prior statute that is changed in scope and effect.)
[87] 142 Wn.2d at 253–54. The remaining sections, repealing statutes and implementing $30 car tabs, did satisfy art. II, § 37. *Id.* at 255.

compared RCW 53.36.100, "requir[ing] a public vote" for some—but not all—port district assessments (a tax under I-695), to the sweeping public approval requirement in I-695.[88]

The court invalidated I-695 in its entirety due to its numerous constitutional violations, though Justice Gerry Alexander noted in his concurrence that it could have struck down the initiative on the single-subject violation alone.[89] Still, $30 tabs lived on, at least for a time. Even before voters approved I-695, Governor Gary Locke promised to convince the legislature to lower car tabs.[90] And the legislature did just that in the months before the *ATU 587* decision.[91] Eyman, then, secured at least a partial political victory.

2. Single-Subject and Property Taxes: I-722 and *City of Burien v. Kiga*

The next Eyman initiative to pass was 2000's Initiative 722 (I-722): "Shall certain 1999 tax and fee increases be nullified, vehicles exempted from property taxes, and property tax increases (except new construction) limited to 2% annually?"[92] Eyman marketed I-722 to voters as "Son of 695," an effort to implement the tax regime struck down the year before in *ATU 587*.[93] Again, numerous plaintiffs (mostly cities and municipal corporations) challenged the measure, and again the cases were consolidated, this time in Thurston County in *City of Burien v. Kiga*.[94] After oral argument, the trial court granted summary judgment for the plaintiffs, finding

[88] *Id.* at 253–54.
[89] *Id.* at 257.
[90] Jim Lynch, *Locke Vows a Car-Tax Overhaul*, Seattle Times, Oct. 15, 1999, at A1.
[91] 142 Wn.2d at 200; David Postman, Dionne Searcey, and Jim Brunner, *I-695 Ruling Saves $30 Tabs, Sets Off Scramble in Olympia*, Seattle Times, Mar. 15, 2000, at A1.
[92] Wash. Off. of the Sec'y of State, Elections Search Results: November 2000 General, https://www.sos.wa.gov/elections/results_report.aspx?e=20&c=&c2=&t=&t2=&p=&p2=&y=.
[93] *No on I-722 — Times Editorial Endorsements*, Seattle Times, October 16, 2000, at B6.
[94] 144 Wn.2d 819, 823, 31 P.3d 659 (2001).

I-722 unconstitutional, but *not* on the primary grounds raised by the plaintiffs: Article II, § 19.[95] Both the state and initiative sponsors appealed.[96]

The court began as, it did in *ATU 587*, with a ballot title analysis, again noting that initiatives are bound by the same rules as any other legislation.[97] And like I-695, I-722's title was general: "While there are some parts of the title that may appear restrictive, when read in its entirety the title broadly encompasses the topic of tax relief."[98] Since the title was general, the next step under *ATU 587* was to examine the rational unity of any subdivisions, i.e. "whether the matters within the body of the initiative are germane to the general title and whether they are germane to one another."[99] Much like I-695, I-722 failed this test. Justice Charles Johnson found "at least two purposes" in the text of the initiative: (1) a repeal of property tax hikes in 1999, and (2) a new property tax assessment mechanism.[100] Although both were germane to the general topic, they were not germane to each other—a one-time repeal and refund of a tax does not bear one way or the other on "permanent, systemic changes in property tax assessments."[101] Indeed, Justice Johnson called out I-722's flaws more explicitly than *ATU 587*'s criticism of I-695, writing, "The kind of logrolling of unrelated measures embodied in I-722 violates the fundamental principle embedded in article II, section 19 . . . ."[102] In effect, I-722 denied voters "an opportunity to cast a vote that clearly demonstrated their support for either or both subjects."[103]

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[95] *Id.* at 824. The Superior Court ruled that I-722 was an unconstitutional tax exemption under Wash. Const. art. VIII, § 1, and an unconstitutional gift of public funds or property under art. VIII, §§ 5 and 7. Appellant's Br. 10.
[96] *Id.* This is the first time Eyman relied entirely on the state to defend an initiative before the Supreme Court ("citing financial hardship" as the reason for withdrawal).
[97] *Id*. at 824–25.
[98] *Id.* at 825.
[99] *Id.* at 826 (citing *ATU 587*, 142 Wn.2d at 209–10).
[100] *Id.* at 827.
[101] *Id.*
[102] *Id.* at 827–28.
[103] *Id.* at 828.

Justice Johnson did not reach any other issues, following Justice Alexander's recommendation in his *ATU 587* concurrence that single-subject grounds alone invalidate an initiative.[104] Perhaps the court suspected it would not be the last time it would have to rule on Eyman's work, and saw good reason to streamline the process. Months before the court struck down I-722 in *City of Burien* (in November of 2001), Eyman had secured a spot for another property tax initiative on that year's ballot, Initiative 747 (I-747).[105] And other branches of state government were suspicious of Eyman's work as well: The state Department of Revenue advised county assessors to "ignore" I-722 in December of 2000.[106] If when he wrote *City of Burien* Justice Johnson suspected the court would revisit § 19 as applied to an Eyman initiative. . . he was right.

3. $30 Tabs Return: I-776, the *Pierce County* Cases, and an Impairment of Contracts Wrinkle

The state legislature may have reduced car tabs in response to I-695, but Sound Transit continued to collect its own local voter-approved motor vehicle excise tax to fund, among other things, light rail construction.[107] Eyman expressed his displeasure by sponsoring Initiative 776 (I-776), passed by the voters in 2002.[108] As the ballot title suggested, I-776 was a more pointed attack on regional transit authorities: "Initiative Measure No. 776 concerns state and local government charges on motor vehicles. This measure would require license tab fees to be $30

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[104] *Id.*
[105] *Justices Toss Out Eyman Tax Initiative*, Seattle Times, Sep. 21, 2001, at B1. *See* discussion of I-747 *supra* pp. [n].
[106] Rebecca Cook, *Counties Told to Ignore 722*, Seattle Times, Dec. 5, 2000, at B1.
[107] David Ammons, *Eyman Is Now Going After Road and Transit Taxes*, Seattle Times, Nov. 19, 2001, at B3.
[108] Wash. Off. of the Sec'y of State, Elections Search Results: November 2002 General, https://www.sos.wa.gov/elections/results_report.aspx?e=4&c=&c2=&t=&t2=&p=&p2=&y=.

per year for motor vehicles, including light trucks. Certain local-option vehicle excise taxes and fees used for roads and transit would be repealed."[109]

Pierce County and others sued in King County Superior Court, where then-Judge Mary Yu granted summary judgment for the plaintiffs on two grounds: "(1) that I–776 violated article II, section 19 of the state constitution . . . ; and (2) that I–776 violated article I, section 23 of the state constitution because I–776's repeal of a $15 motor vehicle fee impaired King County's obligations to its bondholders."[110] The Supreme Court considered the ballot title issue in "*Pierce County I*."[111] And on that issue, for the first time with an Eyman-backed initiative, the defendants prevailed.[112] Justice Susan Owens did not draw any general versus restrictive distinction, instead moving directly to the rational unity test.[113] But with I-776, the court faced an issue of first impression: whether "precatory provision[s]" expressing a policy goal can create separate subjects or are mere "fluff."[114] Writing for the six-justice majority, Justice Owens concluded that "policy expressions in a bill or initiative do not contribute additional 'subjects' within the meaning of article II, section 19."[115] "'A law is a rule of action. An argument is not. . . .'"[116] Because the remaining language in I-776 was all rationally related to lowering car tabs to $30, it satisfied Article II, § 19's single-subject requirement.[117]

Next, the court considered the subject-in-title requirement. Unlike I-695 and I-722, I-776's title was drafted according to statutory guidelines substantially similar to today's RCW

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[109] *Id.*
[110] *Pierce Cnty. v. State*, 150 Wn.2d 422, 428, 78 P.3d 640 (2003) (*Pierce County I*).
[111] *Id.*
[112] *Id.* at 431.
[113] *Id*.
[114] *Id.* at 433, 435. *See* app'x A and B, at 447–48, for the text of the precatory sections in question, which objected to rising car tab fees and "dramatic changes to transportation plans and programs," *i.e.* Sound Transit's Link light rail system.
[115] *Id.* at 433.
[116] *Id.* at 434 (quoting *State ex. rel. Berry. V. Sup. Ct. for Thurston Cnty.*, 92 Wash. 16, 30–32, 159 P. 92 (1916)).
[117] *Pierce County I*, 160 Wn.2d at 435–36.

29.A.72.050. The clear expression of the subject required in the first sentence, followed by the second sentence's description of the initiative's operative sections, had "no constitutional defect."[118] Given the precatory sections were not subjects, it did not matter that the title made no mention of them.[119]

The court also found for the defendants against King County on an impairment of contracts issue. "No . . . law impairing the obligations of contracts shall ever be passed."[120] Justice Owens granted that the county had pledged its $15 vehicle excise tax when issuing its bonds, but also noted that it had pledged its "full faith and credit."[121] In other words, King County had promised to make good on its debts regardless of the effects of I-776.[122] Thus, I-776 could not impair its contracting ability.[123] The court then remanded the case to Superior Court, for further proceedings, including a challenge by Sound Transit that had been postponed pending the outcome of the Article II, § 19 challenge.[124]

Sound Transit was renewed its challenge on remand, arguing that the initiative impaired *its* ability to contract.[125]And they were confident of its odds of success: Sound Transit Chair (and King County Executive) Ron Sims announced the transit authority would continue to collect its fees, at which point Eyman started what observers described as a "shouting match."[126] Sure

[118] *Id.* at 436–37.
[119] *Id.*
[120] Wash. Const. art. I, § 23.
[121] *Id.* at 437.
[122] *Id.* at 438.
[123] *Id.*
[124] *Id.* at 442. The court gave short shrift to several other arguments brought by the plaintiffs, including: (1) that I-776 violated local home rule; (2) that it "exceeded the scope of the initiative power"; and (3) that it constituted a due process violation with respect to the property rights of people within Sound Transit's boundaries. *Id.* at 440–41.
[125] *Pierce Cnty. v. State*, 159 Wn.2d 16, 22, 148 P.3d 1002 (2006) (*Pierce County II*).
[126] Mike Lindblom, *State Supreme Court Upholds $30 Car Tabs*, Seattle Times, Oct. 31, 2003 at A1.

enough, the trial court found for Sound Transit, and the Supreme Court reviewed I-776 once more in *Pierce County II*.[127]

Laws interfering with public contracts, like Sound Transit's, are subject to greater scrutiny than laws interfering with private contracts.[128] "[The Washington Supreme Court] uses a three-part test to determine if there has been an impairment of public contract: (1) does a contractual relationship exist, (2) does the legislation substantially impair the contractual relationship, and (3) if there is substantial impairment, is it reasonable and necessary to serve a legitimate public purpose."[129]

There was no question the bonds Sound Transit had issued in 1998 to fund its mass transit projects were contracts.[130] And I-776 impaired those contracts: They were secured in large part by Sound Transit's ability to levy a motor vehicle excise tax.[131] Justice Madsen compared I-776 to *Ruano*, in which an initiative targeting repealing a hotel tax was held unconstitutional because it would have impaired King County's ability to honor the bonds issued to build the Kingdome.[132] Finally, "[the] impairment is substantial because it detrimentally affects the financial framework which induced the bondholders to purchase the bonds, without providing alternative or additional security."[133] Even if Sound Transit had alternative revenue streams, and even if the market for those bonds remained strong, repealing the excise tax was a substantial change in circumstances from the ones under which the bondholders bought the

[127] *Id.* at 22, 27.
[128] *Id.* at 28 (citing *Tyrpak v. Daniels*, 124 Wn.2d 146, 151, 874 P.2d 1374 (1994).
[129] *Pierce County II*, 159 Wn.2d at 28 (citing *Tyrpak*, 124 Wn.2d at 152; *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973)).
[130] *Pierce County II*, 159 Wn.2d at 25, 29.
[131] *Id.* at 34.
[132] *Id.* at 33; *Ruano*, 81 Wn.2d at 825–26.
[133] *Pierce County II*, 159 Wn.2d at 34.

bonds.[134] And there is no balancing the public's desire for an initiative against the contract clause—whether it was popular or not I-776 was unconstitutional.[135]

The intervening defendants (homeowners within Sound Transit's boundaries and Permanent Offense, Eyman's political action committee) made a last-ditch argument that the bonds themselves were invalid.[136] Ironically enough, it was a single-subject argument that the statutory amendment authorizing the formation of Sound Transit without a referendum—part of a 1993 appropriations bill—was a separate subject.[137] But the intervening appellants, a homeowners association within Sound Transit's boundaries, "fail[ed] to recognize that the legislature's 1994 amendment . . . superseded the 1993 act."[138] Because that 1994 bill was uncontested under Article II, § 19, there was no constitutional issue with the 1998 bonds.[139] Justice Madsen had still less patience for the intervenors' argument that the 1994 act violated Article II, § 37 by including the full text of the 1993 statute rather than the 1992 statute: "Since the 1994 legislature was entitled to assume that the 1993 act was constitutional, the legislature properly complied with article II, section 37."[140]

Additional claims brought by the intervenors and rejected by the court included:

(1) That, like a city or county, Sound Transit's formation required a vote of the public under Wash. Const. art. XI, § 10;[141]

(2) That Sound Transit is somehow is an attempt by the state to legislate indirectly mass transit;[142]

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[134] *Id.* at 35–37 (citing *U.S. Trust Co. of N.Y. v. N.J.*, 431 U.S. 1, 18, 97 S.Ct. 1505, 52 L. Ed. 2d 92 (1977)).
[135] *Pierce County II*, 159 Wn.2d at 38.
[136] *Id.* at 39.
[137] *Id.* at 39–40.
[138] *Id.* at 40 ().
[139] *Id.* at 41.
[140] *Id.*
[141] *Id.* at 41.
[142] *Id.* at 41–42.

(3) That the Sound Transit Board's existence interferes with the right to vote under Wash. Const. art I, § 19;[143]

(4) That Sound Transit is an improper delegation of state taxing power;[144] and

(5) That ordering Sound Transit to retire its bonds prematurely was an appropriate remedy for I-776's impairment of contracting.[145]

With that, I-776's attempt to cripple Sound Transit failed. Eyman may have demonstrated he could draft an initiative that was confined to a single subject, but if anything, the effort may have further entrenched Sound Transit's taxing power—Attorney General Rob McKenna had argued the court should only permit the repealed tax to the extent it paid off the bonds, but the court went further.[146] After *Pierce County II*, the prospects for Eyman's $30 tabs were much grimmer.

4. The Sales Tax: I-1366 and *Lee v. State*

Roughly a decade after I-776 was overturned, Eyman tried his hand at a sales tax initiative. Its ballot title read as follows:

> Initiative Measure No. 1366 [I-1366] concerns state taxes and fees. This measure would decrease the sales tax rate unless the legislature refers to voters a constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes, and legislative approval for fee increases."[147]

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[143] *Id.* at 42–43.

[144] *Id.* at 43–45 ("Initially, we observe that intervenors do not even mention our lengthy discussion in *Larson v. Seattle Popular Monoral Auth.*, 156 Wn.2d 752, 756–64, 131 P.3d 892 (2006) . . . that the legislature may delegate local taxing authority to municipalities."; and finding that the legislature adequately defined the scope of Sound Transit's authority and established "sufficient procedural safeguards").

[145] *Id.* at 46–47, 49 ("[S]uch unprecedented judicial intervention would result in an end run around other constitutional prohibitions. . . . Accordingly . . . we reject the intervenors' invitation to rewrite the bond contract and ignore the constitution").

[146] *Sound Transit Case Leaves Bad Tax Rule*, Seattle Times, Dec. 13, 2006, at B6.

[147] Wash. Off. Of the Sec'y of State, Voters' Guide – 2015 General Election, https://eledataweb.votewa.gov/OVG/onlinevotersguide/Measures?language=en&electionId=58&countyCode=xx&ismyVote=False&electionTitle=2015%20General%20Election%20#ososTop.

That is, I-1366 included a sales tax reduction contingent on the legislature not proposing a constitutional amendment. After a failed attempt to keep I-1366 off the ballot,[148] the measure passed with about 52% of the vote.[149]

I-1366 was then challenged in King County, where Judge William Downing held that it violated Article II, § 19.[150] In Judge Downing's words, "It is impossible to determine how many people voted for this initiative because they desired adoption of the constitutional amendment at its heart and how many voted for it because they desired the short-term relief of the immediate reduction in the sales tax."[151] The Supreme Court affirmed on appeal.[152] While there was no dispute that I-1366 had a general title, but, as with I-695 in *ATU 587* and I-722 in *City of Burien*, that was of no moment: whether the general subject was "taxes" or "fiscal restraint," the specific sales tax provision was wholly unrelated to the constitutional amendment provision, both because the amendment would have affected all future taxes and because it was a *constitutional* amendment.[153] The state argued the constitutional amendment provision was mere "policy fluff" under *Pierce County I*, but Chief Justice Madsen was quick to point out that the language was contingent, and the sales tax reduction incentivized the legislature to act on the proposed amendment.[154]

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[148] *See Huff v. Wyman*, 184 Wn.2d 643, 655, 361 P.3d 727 (2015) (holding the plaintiffs had not established an invasion of a clear right warranting an injunction).
[149] Wash. Off. Of the Sec'y of State, November 3, 2015 General Election Results: Measures – All Results, https://results.vote.wa.gov/results/20151103/measures-all.html.
[150] *Lee v. State*, 185 Wn.2d 608, 612, 374 P.3d 157 (2016).
[151] *Id.*
[152] *Id.* at 613.
[153] *Id.* at 622–23 (rejecting the sponsors' argument that I-1366 was more akin to *Wash. Ass'n for Substance Abuse and Violence Prevention v. State*, 174 WN.2d 642, 656–58, 278 P.3d 632) (2012) (upholding a statute that privatized liquor sales and earmarked funds for public safety), because a sales tax was not necessary to implement a constitutional amendment).
[154] *Lee*, 185 Wn.2d at 624.

Nor was I-1366 valid contingent legislation. When the court had upheld contingent legislation in the past, the legislation was contingent on "an operative set of facts outside the legislation itself," and those facts were "closely related to the proposed law."[155] By contrast, I-1366 created a legislative contingency immediately—the sales tax reduction—and that contingency had "no nexus" to the constitutional amendment.[156] "[C]alling [I-1366] 'contingent legislation' does nothing to cure its constitutional defects."[157]

Finally, the court also found I-1366 an improper constitutional amendment under Article XXIII of the Washington Constitution.

> "Any amendment or amendments to this Constitution may be proposed in either branch of the legislature; and if the same shall be agreed to by two-thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be . . . submitted to the qualified electors of the state for their approval . . . ."[158]

By forcing the legislature to propose a particular amendment—a "'do this or else' structure," as Chief Justice Madsen phrased it—I-1366 created a new amendment process.[159] The initiative was thus struck down without a single dissenting justice, but Justice Gonzalez did write a concurrence (joined by Justices Gordon McCloud and Yu) arguing that the court did not need to reach the single-subject issue—Article XXIII was "[t]he most direct, simple and clear way" to strike down I-1366.[160] Still, the court covered all its bases.

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[155] *Id.* at 625–26 (citing *State v. Storey*, 51 Wash. 630, 631 P. 878 (1909) (upholding a livestock statute contingent on 10 people petitioning the county commissioner); *Brower v. State* (137 Wn.2d 44, 969 P.2d 42 (1998) (upholding a stadium financing bill contingent on a contract with the Seahawks).
[156] *Id.* at 626.
[157] *Id.* at 627.
[158] Wash. Const. art. XXIII, § 1.
[159] *Lee*, 185 Wn.2d at 629.
[160] *Id.*at 630.

5. Still More Car Tabs: I-976 and *Garfield County*

Eyman presented $30 car tabs to the voters one more time with 2019's Initiative 976 (I-976). This time, the wrinkle was how car tabs would be calculated going forward:

> "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 changes; and base vehicle taxes on Kelly Blue Book value."[161]

It passed.[162] It was challenged.[163] And on direct review by the Supreme Court, it was struck down for violating Article II, § 19.[164]

Justice Steven Gonzalez summarized the court's twenty years of § 19 jurisprudence, returning to *ATU 587*'s general-restrictive and rational unity framework.[165] One section of I-976, "requir[ing] Sound transit to retire, defease, or refinance bonds," was unambiguously a second subject, unrelated to the general subject of "limiting vehicle taxes and fees."[166] The title was also misleading.[167] Rather than preserve previously approved fees, as the "average-informed voter" would read the ballot title, I-976 actually eliminated them.[168] The second subject and misleading ballot title were sufficient to strike down the initiative in its entirety, without reaching any other issues.[169]

Despite some rumblings from Republican legislators about a new $30 car tab bill, the concept has not gained the traction it had in 1999.[170] Sound Transit's excise tax seems here to

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[161] Wash. Off. Of the Sec'y of State, State Measures – Initiative Measure No. 976, https://voter.votewa.gov/GenericVoterGuide.aspx?e=566&c=99#/measure/4216.
[162] Wash. Off. Of the Sec'y of State, Nov. 2019 General Election Results: Measures – All Results, https://results.vote.wa.gov/results/20191105/measures-all.html.
[163] *Garfield Cnty. Transp. Auth. v. State*, 196 Wn.2d 378, 385, 473 P.3d 1205 (2020) (*Garfield County*).
[164] *Id.* at 382.
[165] *Id.* at 390 (citing *ATU 587*, 142 Wn.2d at 209–11.
[166] *Garfield County*, 196 Wn.2d at 393, 397.
[167] *Id.* at 398, 402 (citing *De Cano v. State*, 7 Wn.2d 613, 110 P.2d 627 (1941); *ATU 587*, 142 Wn.2d at 762).
[168] 196 Wn.2d at 402 (quoting *Amicus Curiae Br. Of Leage of Women Voters of Wash.* at 12).
[169] 196 Wn.2d at 403.
[170] Heidi Groover, Joseph O'Sullivan, and Mike Lindblom, *State Supreme Court Strikes Down $30 Car-Tab Fee Measure*, Seattle Times, Oct. 16, 2020, at A1.

stay, at least through 2028.[171] And so too does the Supreme Court's insistence that initiative sponsors follow Article II, § 19.

C. The Supermajority Initiatives and *League of Educ. Voters*

Three related initiatives over five years—Initiatives 960 (I-960), 1053 (I-1053), and 1185 (I-1185)—all addressed the same supermajority requirement for tax increases, and all were struck down in *League of Education Voters v. State*.[172]

In 2007, the voters approved I-960,[173] which "require[d] two-thirds legislative approval or voter approval for tax increases, legislative approval of fee increases, certain published information on tax-increasing bills, and advisory votes on taxes enacted without voter approval."[174] A local nonprofit and union had tried to keep I-960 off the ballot entirely, but the Supreme Court unanimously held "[s]uch a challenge is not subject to preelection review."[175] After it passed, State Senator Lisa Brown tried to rein in the scope of I-960 by challenging the Lieutenant Governor's finding that a bill was subject to the new two-thirds majority; that too failed on ripeness grounds.[176] Finally, in 2010, the legislature voted (along party lines with Democrats in favor) to suspend I-960 for sixteen months.[177]

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[171] Sound Transit, ST3 Funding Background, Sep. 29, 2016, https://st32.blob.core.windows.net/media/Default/Document%20Library%20Featured/Sept_2016/Factsheet_ST3_Funding_092816.pdf.
[172] 176 Wn.2d 808, 295 P.3d 743 (2013).
[173] Wash. Off. Of the Sec'y of State, November 6, 2007 General Election Results: Measures – All Results, https://results.vote.wa.gov/results/20071106/measures-all.html.
[174] Wash. Off. Of the Sec'y of State, Voters' Guide – 2007 General Election, https://eledataweb.votewa.gov/OVG/onlinevotersguide/Measures?language=en&electionId=2&countyCode=xx&ismyVote=False&electionTitle=2007%20General%20Election%20#ososTop.
[175] *Futurewise v. Reed*, 161 Wn.2d 407, 415, 166 P.3d 708 (2007); *see also Coppernoll v. Reed*, 155 Wn.2d 290, 297, 119 P.3d 318 (2005) (holding substantive challenges to initiatives are "not allowed in this state because of the constitutional preeminence of the right of initiative"); *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 911 P.2d 389 (1996).
[176] *Brown v. Owen*, 165 Wn.2d 706, 719, 206 P.3d 310 (2009) ("A writ of mandamus ordering the president of the senate to forward [a bill] would violate the separation of powers doctrine[.]").
[177] *League of Educ. Voters*, 176 Wn.2d at 814; *Gregoire Signs I-960 Suspension*, The Spokesman Review, Feb. 24, 2010, https://www.spokesman.com/blogs/spincontrol/2010/feb/24/gregoire-signs-i960-suspension/.

In response, Eyman and his allies leveraged Article II, § 1 of the State Constitution, and placed I-1053 on the 2010 ballot.[178] I-1053—essentially a new vote on I-960's supermajority requirement—restarted the two-year clock during which initiatives can only be amended or repealed by a two-thirds majority of the legislature, which meant it could not be suspended like I-960.[179] The vote was overwhelming: 64% to 36%. Of course, had the legislature just waited two years, it could have suspended I-1053 as well. So two years later, Eyman reset the clock again with I-1185; it passed with 64% approval as well.[180]

When an education funding bill failed to pass by a bare majority, the League of Education Voters and several legislators challenged all three initiatives.[181] The key constitutional issue was whether the supermajority requirement was at odds with Article II, § 22: "No bill shall become a law unless on its final passage . . . a majority of the members elected to each house be recorded thereon as voting in its favor."[182] In defending the initiatives, the State argued § 22, because it is phrased in the negative, merely sets the floor, but Justice Owens (writing for five of her colleagues) rejected that reasoning—the phrasing must be placed in context.[183]

And the context did not favor the state. For one, "[t]he seven supermajority requirements in the original constitution were all relegated to special circumstances, not the passage of ordinary legislation."[184] For another, a review of the historical record—the framers debated the

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[178] Wash. Off. of the Sec'y of State, Voters' Guide – 2010 General Election, https://eledataweb.votewa.gov/OVG/onlinevotersguide/Measures?language=en&electionId=37&countyCode=xx&ismyVote=False&electionTitle=2010%20General%20Election%20#ososTop.
[179] Wash. Off. of the Sec'y of State, November 2, 2010 General Election Results: Measures – All Results, https://results.vote.wa.gov/results/20101102/measures-all.html.
[180] Wash. Off. of the Sec'y of State, November 6, 2012 General Election Results: Measures – All Results, https://results.vote.wa.gov/results/20121106/measures-all.html.
[181] 176 Wn.2d at 817 (finding the failure of the bill was a justiciable controversy and the legislators "'ha[d] a plain, direct and adequate interest in maintaining the effectiveness of their votes.'" (quoting *Coleman v. Miller*, 307 U.S. 433, 438, 59 S.Ct. 972, 83 L.Ed. 1385 (1939)).
[182] *Id.* at 821.
[183] *Id.* (citing *Gerberding v. Munro*, 134 Wn.2d 188, 207–11, 949 P.2d 1366 (1998).
[184] *Id.* at 823.

language of § 22 and chose to include the majority requirement, but exclude any phrase that would give the legislature more discretion—suggests a bare majority was intended to be both the floor and the ceiling for ordinary legislation.[185] And other states have read similar provisions in their constitution to be restrictive as well, from Alaska to California.[186] The supermajority requirement was therefore unconstitutional, though the court did make a point of not criticizing the initiatives on the merits.[187]

In his dissent, though, Justice Charles Johnson expressed concern that the majority was too quick to "embroil itself in the political arena" and should have found the controversy nonjusticiable.[188] For his part, Justice James Johnson was concerned that "a court of nine people (actually only six votes) is imposing their policy preference over that of the 1,575,655 voters . . . ."[189] And he questioned the majority's view of the historical record, arguing that the supermajority requirements present in the constitution did open the door to additional restrictions via initiative, not the other way around.[190] But a political ruling or not, it is no longer constitutional to mandate a legislative supermajority absent a constitutional amendment.

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[185] *Id.* at 824.
[186] *Alaskans for Efficient Gov't, Inc. v. State*, 153 P.3d 296 (Alaska 2007); *Howard Jarvis Taxpayers Ass'n v. City of San Diego*, 120 Cal. App. 4th 374, 392, (2004).
[187] *League of Educ. Voters*, 176 Wn.2d at 828–29. The court severed the remaining section of I-960 from the supermajority requirement, which is why Washington voters today are still confronted with a nonbinding "advisory vote" on any tax increase. For more on advisory votes, *see Eyman v. Ferguson*, 7 Wn. App. 2d 312, 433 P.3d 863 (2019) (discussing how short descriptions of advisory votes are phrased); Tim Eyman, *Voters Will Vote on Capital Gains Tax*, Permanent Offense, Oct. 5, 2021, https://permanentoffense.com/voters-will-vote-on-capital-gains-tax/ (Eyman's own argument in favor of advisory votes); *The Truth About "Advisory Votes": They're Really Push Polls*, Permanent Defense, https://www.permanentdefense.org/research/tim-eymans-advisory-votes-are-really-costly-deceptive-and-unconstitutional-push-polls/ (an argument against advisory votes).
[188] 176 Wn.2d at 829, 831 (arguing the bill in question was eventually enacted in a different form, and therefore there was no actual dispute).
[189] *Id.*
[190] *Id.* at 836.

D. The Court Revisits § 37: I-747 and *Wash. Citizens Action*

The court's internal disagreements over political optics in initiative cases also spilled over in *Washington Citizens Action of Washington v. State*, in which it struck down 2001's I-747.[191] Just a few weeks after the preliminary injunction against I-722 taking effect,[192] Eyman sponsored a new property tax initiative: I-747.[193] But in incorporating the statute it sought to amend—as required by Article II, § 37—I-747 referenced I-722's two-percent cap on property tax increases, not the six-percent cap in place prior to the approval of I-722.[194] Thurston County Superior Court's "permanent injunction [of I-722] took effect more than four months before voter signatures [for I-747] were due to the secretary of state."[195] On September 20, 2001, the Supreme Court struck down I-722 in *City of Burien*; on November 6, 2001, the voters approved I-747.[196]

In a five-to-four decision (with Justice Bridge writing for the majority), the court concluded that because I-747 incorporated a law ruled unconstitutional before election day, the initiative text did not "accurately set forth the law to be amended."[197] Refining *Pierce County II*, the court set the "legislative action at which compliance with article II, section 37 is required" at the time of voting, not the time of filing.[198] Putting the voters on notice that I-747 might amend the law as it stood before I-722 was not enough—because "many voters do not read the Voters'

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[191] 162 Wn.2d 142, 171 P.3d 486 (2007) (*Wash. Citizens Action*).
[192] *Wash. Citizens Action*, 162 Wn.2d at 148.
[193] "This measure would require state and local governments to limit property tax levy increases to 1% per year, unless an increase greater than this limit is approved by the voters at an election." Wash. Off. of the Sec'y of State, Elections Search Results: November 2001 General, https://www.sos.wa.gov/elections/results_report.aspx?e=21&c=&c2=&t=&t2=&p=&p2=&y=.
[194] *Id.* at 148–49.
[195] *Id.* at 150.
[196] *Id.*
[197] *Id.* at 162.
[198] *Id.* at 154–55.

Pamphlet," the law itself must be "'set forth at full length.'"[199] Conceding that there is no amendment process after an initiative is filed, Justice Bridge proposed that initiative sponsors should refile if there is a need to amend the text based on a post-filing court decision.[200] Although onerous, in the rare cases where that would be required, the majority thought it worthwhile to "protect the electorate . . . from being misled."[201]

Justice Charles Johnson (and three others) were not convinced. "No reasonable argument can be sustained that voters were in any way misled or confused by the effect of I–747, which expressly and was specifically aimed at lowering the tax growth to one percent"; to suggest otherwise insulted the voters' intelligence.[202] A reference to a two-percent cap rather than a six-percent cap, when I-747 was proposing a one-percent cap on property taxes regardless, was not misleading.[203] In essence, the court split over how astute the average Washington voter is more than the text of the constitution itself: five thought voters required more information, while four did not.

III. Takeaways from Twenty Years of Initiatives

Whether Eyman will sponsor another initiative is an open question—he has other concerns now.[204] But his initiatives have left something of a constitutional legacy. First, stick to one subject. Whether or not Mr Eyman himself has learned (or wishes to learn) that lesson, others have: "Let's Go Washington," a Redmond-based political action committee, has sponsored eleven separate initiatives for the next election cycle, rather than trying to consolidate

[199] *Id.* at 155 (quoting Wash. Const. art. II, § 37).
[200] *Id.* at 157.
[201] *Id.* at 162.
[202] *Id.* at 163.
[203] *Id.* at 163–64.
[204] David Gutman, *WA Appeals Court Largely Upholds Eyman Campaign Finance Violations*, Seattle Times, Dec. 6, 2022, https://www.seattletimes.com/seattle-news/politics/wa-appeals-court-largely-upholds-eyman-campaign-finance-violations/.

their policy proposals into one or two.[205] Second, the legislature itself responded to the spike in initiatives by refining the law on ballot titles—today's requirements are much more prescriptive, and therefore more consistent, than they were in 1999.[206]

Eyman might say his legacy is revealing "corruption" on the Supreme Court.[207] But there is little evidence of that. I-200 and I-900 are still on the books, as are some sections of his other initiatives. More broadly, jurists nationwide seem to rule on single-subject cases based on how many subjects are included in the law regardless of the law's substance.[208] True, Washington's court has sometimes been at loggerheads over how much respect to grant the average voter, as in *League of Educ. Voters* and *Wash. Citizens Action*, or on how many grounds it should rule. But it did not draft the initiatives it struck down—Eyman did.

Despite not sponsoring any recent initiatives (and now owing the state millions), Eyman still looms large over the initiative process, and still inspires editorials both for and against his work.[209] But if aspiring initiative sponsors stay focused—and read the Constitution—they can, as many Washingtonians have in the past whose names never made the papers, not just sway the voters, but effect lasting change in state law.

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[205] Let's Go Washington, The Initiatives, https://letsgowashington.com/initiatives/. Let's Go Washington's legislative drafting skills may never be tested, however, given it failed to qualify any of its initiatives for the 2022 ballot. Wash. Off. of the Sec'y of State, November 8, 2022 General Election Results, https://results.vote.wa.gov/results/20221108/measures.html.

[206] RCW 29A.72.050.

[207] Tim Eyman, *Email All 9 Corrupt Judges On Seattle Supreme Court & Tell Em "I Know You Robbed Us Of Our $30 Tabs"*, Permanent Offense, Nov. 4, 2020, https://permanentoffense.com/email-all-9-corrupt-judges-on-seattle-supreme-court-tell-em-i-know-you-robbed-us-of-our-30-tabs/.

[208] *See generally* Michael D. Gilbert, *Does Law Matter? Theory and Evidence From Single-Subject Adjudication*, 40 J. Legal Stud. 333 (2011).

[209] Bruce Ramsay, *The Shutdown of Tim Eyman*, Post Alley, Dec. 5, 2022, https://www.postalley.org/2022/12/05/the-shutdown-of-tim-eyman/; Andrew Villeneuve, *Rebuttal: The Real Reasons Tim Eyman is Shut Down*, Post Alley, Dec. 7, 2022, https://www.postalley.org/2022/12/07/rebuttal-the-real-reasons-tim-eyman-is-shut-down/.

Appendix: Eyman-Sponsored Initiatives that Qualified for the Ballot

Year		Ballot Title	Election Result	Subsequent History
1998	**I-200**	*Shall government be prohibited from discriminating or granting preferential treatment based on race, sex, color, ethnicity, or national origin in public employment, education and contracting?*	Approved	Codified as RCW 49.60.400
1999	**I-695**	*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?*	Approved	Overturned in *Amalgamated Transit Union Loc. 587 v. State*, 142 W.2d 183, 11 P.3d 762 (2000)
2000	**I-722**	*Shall certain 1999 tax and fee increases be nullified, vehicles exempted from property taxes, and property tax increases (except new construction) limited to 2% annually?*	Approved	Overturned in *City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001)
2000	**I-745**	*Shall 90% of transportation funds, including transit taxes, be spent for roads; transportation agency performance audits required; and road construction and maintenance be sales tax-exempt?*	Rejected	
2001	**I-747**	*Initiative Measure No. 747 concerns limiting property tax increases. This measure would require state and local governments to limit property tax levy increases to 1% per year, unless an increase greater than this limit is approved by the voters at an election.*	Approved	Overturned in *Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142, 171 P.3d 486 (2007)
2002	**I-776**	*Initiative Measure No. 776 concerns state and local government charges on motor vehicles. This measure would require license tab fees to be $30 per year for motor vehicles, including light trucks. Certain local-option vehicle excise taxes and fees used for roads and transit would be repealed.*	Approved	Overturned in *Pierce County v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006) (*Pierce County II*)
2004	**I-892**	*Initiative Measure No. 892 concerns authorizing additional "electronic scratch ticket machines" to reduce property taxes. This measure would authorize licensed non-tribal gambling establishments to operate the same type and number of machines as tribal governments, with a portion of tax revenue generated used to reduce state property taxes.*	Rejected	
2005	**I-900**	*Initiative Measure No. 900 concerns performance audits of governmental entities. This measure would direct the State Auditor to conduct performance audits of state and local governments, and dedicate 0.16% of the state's portion of sales and use tax collections to fund these audits.*	Approved	Codified as RCW 43.09.470

Year		Ballot Title	Election Result	Subsequent History
2007	**I-960**	*Initiative Measure No. 960 concerns tax and fee increases imposed by state government. This measure would require two-thirds legislative approval or voter approval for tax increases, legislative approval of fee increases, certain published information on tax-increasing bills, and advisory votes on taxes enacted without voter approval.*	Approved	Suspended by the state legislature, then largely overturned in *League of Educ. Voters v. State*, 176 Wn.2d 808, 295 P.3d 743 (2013)
2008	**I-985**	*Initiative Measure No. 985 concerns transportation. This measure would open high-occupancy vehicle lanes to all traffic during specified hours, require traffic light synchronization, increase roadside assistance funding, and dedicate certain taxes, fines, tolls and other revenues to traffic-flow purposes.*	Rejected	
2009	**I-1033**	*Initiative Measure No. 1033 concerns state, county and city revenue. Initiative Measure No. 1033 concerns state, county and city revenue. This measure would limit growth of certain state, county and city revenue to annual inflation and population growth, not including voter-approved revenue increases. Revenue collected above the limit would reduce property tax levies.*	Rejected	
2010	**I-1053**	*Initiative Measure No. 1053 concerns tax and fee increases imposed by state government. This measure would restate existing statutory requirements that legislative actions raising taxes must be approved by two-thirds legislative majorities or receive voter approval, and that new or increased fees require majority legislative approval.*	Approved	Overturned in *League of Educ. Voters*, 176 Wn.2d
2011	**I-1125**	*Initiative Measure No. 1125 concerns state expenditures on transportation. This measure would prohibit the use of motor vehicle fund revenue and vehicle toll revenue for non-transportation purposes, and require that road and bridge tolls be set by the legislature and be project-specific.*	Rejected	
2012	**I-1185**	*Initiative Measure No. 1185 concerns tax and fee increases imposed by state government. This measure would restate existing statutory requirements that legislative actions raising taxes must be approved by two-thirds legislative majorities or receive voter approval, and that new or increased fees require majority legislative approval.*	Approved	Overturned in *League of Educ. Voters*, 176 Wn.2d

Year		Ballot Title	Election Result	Subsequent History
2013	**I-517**	*Initiative Measure No. 517 concerns initiative and referendum measures. This measure would set penalties for interfering with or retaliating against signature-gatherers and petition-signers; require that all measures receiving sufficient signatures appear on the ballot; and extend time for gathering initiative petition signatures.*	Rejected	
2015	**I-1366**	*Initiative Measure No. 1366 concerns state taxes and fees. This measure would decrease the sales tax rate unless the legislature refers to voters a constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes, and legislative approval for fee increases.*	Approved	Overturned in *Lee v. State*, 185 Wn.2d 608, 374 P.3d 157 (2016)
2019	**I-976**	*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.*	Approved	Overturned in *Garfield Cnty. Transp. Auth. v. State*, 196 Wn.2d 378, 473 P.3d 1205 (2020)