THE HON. MARY E. ROBERTS

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

WASHINGTON CITIZENS ACTION OF WASHINGTON, a Washington Non-Profit Corporation; WELFARE RIGHTS ORGANIZATION COALITION, a Washington Non-Profit Corporation; 1000 FRIENDS OF WASHINGTON, a Washington Non-Profit Organization; and WHITMAN COUNTY, Plaintiffs, v. THE STATE OF WASHINGTON, and WILLIAM RICE, Director of the State Department of Revenue, Defendants.	NO. 05-2-02052-1 SEA ORDER ON CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

In 1912, the citizens of this state amended our constitution to give the people the right to initiate laws. Const. art. 2, § 1(a) (amend. 72). They passed the amendment "because they had become impressed with a profound conviction that the legislature had ceased to be responsive to the popular will." *State ex rel. Mullen,* 107 Wash. 167, 172 (1919).

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This case involves a challenge to the constitutionality of Initiative Measure 747 (I-747)[1], passed by the voters on November 6, 2001. Initiative 747 purported to impose a one percent cap on property tax increases unless a greater increase is approved by the voters. The plaintiffs, Washington Citizens Action of Washington, Welfare Rights Organization Coalition, Futurewise[2], and Whitman County, claim the initiative is unconstitutional under article II, section 19, and article II, section 37 of the Washington State Constitution.

"[I]t is not the prerogative nor the function of the judiciary to substitute what they may deem to be their better judgment for that of the electorate in enacting initiatives … unless the errors in judgment clearly contravene state or federal constitutional provisions." *Amalgamated Transit Union Local 587 v. State,* 142 Wn. 2d 183, 206 (2000) (quoting *Fritz v. Gorton,* 83 Wn.2d 275, 287 (1974)). But nor may this court validate otherwise unconstitutional laws based upon public policy. *Id.; State ex rel. Wash. Toll Bridge Auth. v. Yelle,* 32 Wn.2d 13, 24-25 (1948). It is this court's conclusion that I-747 was passed in violation of the constitution.

In order to understand the unusual circumstances in place when I-747 was passed in November of 2001, we must look back before the 2000 general election, when an earlier initiative was passed.

Prior to November of 2000, local property tax increases were generally capped at six percent. On November 7, 2006, the people of Washington State passed Initiative Measure 722 (I-722), which purported to grant tax relief by, among other things, imposing a two percent cap

[1] Initiative 747 appears in the Sessions Laws as Laws of 2001, Chapter 1. The substantive portions of I-747 amend RCW 84.55.005 and RCW 84.55.010. The full text of I-747 is attached as Appendix A to this Order.

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on property tax increases. I-722 was immediately challenged as unconstitutional and on November 30, 2000, a superior court judge in Thurston County entered an order granting a preliminary injunction against the implementation or enforcement of I-722.

On January 11, 2001, after I-722's implementation was halted, I-747 was filed with the secretary of state. By its language, I-747 sought to amend I-722, by decreasing the cap on property taxes from two percent to one percent, unless the voters approved a higher cap.

Amendatory legislation such as I-747 is subject to article II, section 37 of the state constitution, which requires that,

> 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.

Wash. Const. art. 2, § 37. The purpose of article II, section 37 is to disclose the effect of the new legislation and its impact on **existing laws**. *State v. Thorne,* 129 Wn.2d 736,753 (1996) (citations omitted). Only by setting forth in an initiative the full language of the statute to be amended will voters be made aware of the nature and content of the law that is being amended, and the effect of the amendment upon it. *See, Flanders v. Morris,* 88 Wn.2d 183,189 (1977).

In compliance with the above constitutional requirement, the drafters of I-747 set forth in full I-722's language placing a two percent limit on property tax increases and showed how I-747 would change the two percent cap to one percent unless approved by the voters. For example, in section 3 of I-747, the change was shown as follows:

> Upon a finding of substantial need, the legislative authority of a taxing district other than the state may provide for the use of a limit factor under this chapter of

[2] 1000 Friends of Washington has changed its name to Futurewise since the commencement of this lawsuit.

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> one hundred (({- two -})) {+ one +} percent or less {+ unless an increase greater than this limit is approved by the voters….+}.

However, on February 23, 2001, nearly nine months before I-747 would be presented to the voters, the Pierce County Superior Court struck down I-722 as unconstitutional. On September 20, 2001, our State Supreme Court affirmed that ruling. *City of Burien v. Kiga,* 144 Wn.2d 819 (2001)[3].

Once a law has been found to be invalid, it becomes as inoperative as if it had never been passed. *The Boeing Company v. State,* 74 Wn.2d 82, 88 (1968) (citations omitted). Upon the invalidation of I-722, the cap on property tax increases was once again six percent, not two percent.

When I-747 went to the voters on November 6, 2001, the voters were incorrectly led to believe they were voting to amend I-722. They were incorrectly led to believe they were voting on a change in the tax increase cap from two percent to one percent. Instead, they were voting on a change from six percent to one percent. The voters were misled as to the nature and content of the law to be amended, and the effect of the amendment upon it. The constitution forbids this.

When the voters approve an initiative measure, they exercise their power just as the Legislature does when enacting a statute. *Amalgamated Transit Union,* 142 Wn.2d at 204 (citations omitted). Both the legislature and the people acting in their legislative capacity must act consistent with the constitution. *Id.* Any law is presumed constitutional unless its

[3] The Supreme Court invalidated I-722 solely on "double subject" grounds under article II, section 19 of the state constitution, an issue not present here.

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unconstitutionality appears "beyond a reasonable doubt." *Tunstall v. Bergeson,* 141 Wn.2d 201, 220 (2000); *City of Bellevue v. Miller,* 85 Wn.2d 539, 543-44 (1975); *Brower v. State,* 137 Wn.2d 44 (1998) (a statute enacted through the initiative process to be treated to the same presumption of constitutionality as one passed by the legislature). There can be no doubt that in this case, I-747 violates the constitution.

The plaintiffs also challenge I-747 on the ground that its title is constitutionally insufficient to meet the "subject in title," requirements of article II, section 19 of the state constitution. Given I-747's clear constitutional infirmity under article II, section 37, the court need not address this issue.

This matter came before the court upon the parties' cross motions for judgment on the pleadings. The court considered the arguments of counsel and the following:

- Complaint for Injunctive and Declaratory Relief for Violations of the Washington State Constitution;
- Answer of Defendants State of Washington and William N. Rice;
- Plaintiffs' Motion for Judgment on the Pleadings;
- Motion of Defendants for Judgment on the Pleadings and Memorandum in Support of Defendants' Motion and in Opposition to Plaintiffs' Motion for Judgment on the Pleadings;
- Plaintiffs' Combined Reply in Support of Plaintiffs' Motion for Judgment on the Pleadings and Response to Defendants' Motion for Judgment on the Pleadings; and
- Declaration of Knoll Lowney in Support of Plaintiffs' Motion for Judgment on the Pleadings and Response to Defendants' Motion for Judgment on the Pleadings.

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Having considered the above, the court hereby GRANTS Plaintiffs' Motion for Judgment on the Pleadings on the issue of violation of article II, section 37 of the Washington State Constitution, and ORDERS as follows:

1. I-747 is declared unconstitutional in its entirety and therefore is null and void; and

2. The State of Washington is enjoined from enforcement on any provision of I-747.

DATED this _____ day of June, 2006.

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MARY E. ROBERTS
Superior Court Judge

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