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Mailed

Permanent Offense
ATTN: Tim Eyman
PO Box 6151
Olympia, WA 98507

Re: Legal and constitutional analysis of Initiative 1082

Dear Mr. Eyman:

I'm pleased to notify you that I've completed my legal and constitutional analysis of Initiative 1082.

The opinion below is based on my 50 years of legal practice in this state which has included well over 100 arguments on appeal as a private practitioner, hundreds of trials in state and federal courts, and 15 years as an elected justice on the Washington State Supreme Court. While there, I was called upon to sit in judgment on numerous challenges to various ballot measures.

I have thoroughly reviewed the policies and provisions in I-1082, researched the legal and constitutional issues affected by them, and examined the legal precedents established by this court. It is clear to me that I-1082 complies with the Constitution and laws of the State of Washington.

On July 19, the Attorney General assigned a ballot title to the initiative that gives the voters full disclosure and complete notice of the initiative's policies:

Statement of Subject: Initiative Measure No. 1082 concerns state taxes.

Concise Description: This measure would require state tax increases to expire after one year unless approved by a majority vote of the people, and terminate tax increases imposed in 2019 or 2020 without such approval.

I begin my analysis with the text of the initiative itself. True to the ballot title, all of its provisions concern state taxes:

Section 1: Describes the initiative's intent

Section 2: Amends an existing statute (which imposes an expiration date on new tax preferences) and imposes an expiration date on new tax increases subject to section 3.

Section 3: Adds a new section requiring new tax increases to expire after one year unless approved by a majority vote of the people. It also prohibits the department of revenue from collecting revenue from any expired tax increase. And the provision makes clear that the Legislature retains its authority to reenact any expired tax increase at the next session.

Section 4: Adds a new section requiring 2019 and 2020 tax increases to expire on the effective date of the initiative unless approved by a majority vote of the people. It also prohibits the department of revenue from collecting revenue from any expired tax increase. The provision makes clear that the Legislature retains its authority to reenact any expired tax increase at the next session.

Section 5: Amends existing statute defining the term "raises taxes" to define the term "tax increase" the same way.

Section 6: Clarifies that the Legislature may refer a tax increase to the ballot for voter approval in order to exempt it from the one-year expiration date.

Section 7: Amends an existing statute that uses the term "raises taxes" to include the term "tax increase."

Section 8: Provides a construction clause (requires the provisions of the initiative to be liberally construed to "effectuate the intent, policies, and purposes of this act.")

Section 9: Provides a severability clause.

Section 10: Entitles it the "Taxpayer Protection Act."

The initiative's Statement of Subject written by the Attorney General reads: "Initiative Measure No. 1082 concerns state taxes." All sections of the measure concern those, and only those.

Whether they are enacted by the Legislature or passed by the people through the initiative process, statutes are presumed constitutional. *Amalgamated Transit Union v. State*, 142 Wn.2d 183, 204-05, 11 P.3d 762 (2000), as amended, opinion corrected 27 P.3d 608 (citing *Brower v. State*, 137 Wn.2d 44, 52, 969 P.2d 42 (1998), and other authority).

A party challenging any statute's constitutionality bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt. *Id.* (citing *State ex rel Heavy v. Murphy*, 138 Wn.2d 800, 808, 982 P.2d 611 (1999)).

With this high presumption of constitutionality in mind, we will consider some issues which frequently arise under our state Constitution.

- 1) Does the Attorney General's ballot title for Initiative 1082 comply with the subject-in-title requirement of Article II, Section 19 of the Washington Constitution?

Const. Art. II, Sec. 19 provides:

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

The rule requires the legislation's subject to be embraced in the title. For initiatives, the title is prepared by the Attorney General. The courts have been extremely reluctant to find a voter-approved initiative invalid under this requirement.

The purpose of the subject-in-title rule is to notify members of the legislature and the public of the subject matter of a measure..."[A] title complies with the constitution if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law."... The title need not be an index to the contents, nor must it provide details of the measure.

Washington Ass'n for Substance Abuse and Violence Prevention v. State, 174 Wn.2d 642, 660 (2012) (citations omitted).

Although a measure's title can be broad and general—without any particular expressions or words required—the material representations in the title must not be misleading or false, which would thwart the underlying purpose of ensuring that “no person may be deceived as to what matters are being legislated upon.”... (“[A] title which is misleading or false is not constitutionally framed.”) Any “objections to the title must be grave and the conflict between it and the constitution palpable before we will hold an act unconstitutional.”

Id. (citations omitted). I-1082's reference to state taxes is general and certainly not misleading or false. It states the general topic and gives notice to the “inquiring mind” of any voter. There is no reason the courts would find fault with this ballot title. In sum, I don't see a valid argument that the subject of this initiative is not adequately embraced by the Attorney General's ballot title.

- 2) Do the policies in I-1082 have rational unity to satisfy the single subject requirement?

Yes, they do. In addition to the subject-in-title requirements, Art. II, Sec. 19 has been construed to require initiatives, like bills in the legislature, have a single subject.

Once an initiative ballot is identified as being general, we look to the body of the initiative to determine whether a rational unity among the matters addressed in the initiative exists. An initiative can embrace several incidental subjects or subdivisions and not violate article II, section 19, so long as they are related. In order to survive, however, rational unity must exist among all matters included within the measure and the general topic expressed in the title.

City of Burien v. Kiga, 144 Wn.2d 819, 825-26 (2001)

In 2000, the Supreme Court held Initiative 695 violated the single subject rule because the court did not find rational unity between setting vehicle registration fees at \$30 and requiring voter approval for any tax or fee increase (*Amalgamated*).

In 2016, the Supreme Court held Initiative 1366 had multiple subjects because the court did not find rational unity between lowering the sales tax and a constitutional amendment regarding raising taxes. (*Lee v. State*, 185 Wn.2d 608, 374 P.3d 157 (2016)).

I-1082 is much different. Here, the initiative presents a united and rational theme: the expiration of tax increases after a certain period. Future tax increases must expire after one year unless approved by a majority vote of the people or reenacted by the Legislature. 2019 and 2020 tax increases must expire when the initiative takes effect. I-1082's other provisions, such as requiring the department of revenue to cease collecting revenue from expired tax increases, clearly supports the initiative's proposed expiration policy. All the provisions in the initiative are germane to one another.

Initiative 1082's policies are rationally related to one another and constitute a single subject for the purpose of Const. Art. II, Sec. 19.

3) Can a statute require legislation to expire?

I see no constitutional provision precluding the Legislature, or the people by initiative, from providing a law cease to be effective after a date certain. There are numerous examples of the Legislature putting sunset clauses or expiration dates on bills. For instance, the Legislature in 2010 imposed temporary taxes on certain businesses and items, requiring them to expire in 2013 (2ESSB 6143).

Putting a time limit on legislation happens all the time. The 2013 Legislature passed RCW 82.32.805 which puts an automatic expiration date on "every new tax preference." Section 2 of I-1082 amends this existing statute and sets forth an automatic expiration date on any "new tax increase." If the legislature is within its legislative authority to sunset tax preferences, then the people by initiative are equally within their prerogative to sunset tax increases.

4) Does a statute that sunsets tax increases bind future Legislatures?

All laws are legally binding. The Legislature must follow the law as long as that law is in effect. Should I-1082 qualify and be approved by voters in 2020, it would create a statutory requirement that tax increases expire after one year. Nothing in the initiative interferes with the legislature's constitutional prerogative to pass a bill by a simple majority thus avoiding the pitfall represented by *League of Education Voters v. State*, 176 Wn.2d 808, 295 P.3d 743 (2013). No alteration of constitutional procedure is involved. If the Legislature in 2021 has the votes to impose a tax increase, I-1082 would not restrict it. Should the Legislature wish to have its tax increase have a longer duration than one year, it will have two options:

- 1) Section 6 of I-1082 clarifies that the Legislature may refer their tax increase to the ballot and have the duration last as long as the Legislature wants. The Supreme Court has held that the Legislature does not unconstitutionally delegate or exceed its legislative power where it refers a measure to the people. *Brower v. State*, 137 Wn.2d 44, 56, 969 P.2d 42 (1998) The power of the legislature to refer a law to the electorate is independent of, and in addition to, the people's power of initiative or referendum. *Id.* at 57, See *Const. Art. II, Sec. 1(b)*
Or
- 2) Exempt their tax increase from the one-year expiration date by amending the initiative (the Constitution requires a two-thirds legislative vote to modify or repeal initiatives for two years after voter passage).

There's nothing in the Constitution that mandates legislation to last forever. It is the prerogative of the Legislature, and the people through the initiative power, to limit the duration of legislation. And there's voluminous precedent that limiting the duration of taxation is perfectly legal and constitutional.

- 5) Initiative 1082 requires that 2019 and 2020 tax increases expire when the initiative takes effect – the Attorney General's ballot title clearly discloses this – does this provide sufficient notice to the voters to comply with the Constitution?

Const. Art 2, Sec. 37 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 provision, much like the subject-in-title requirements in Article 2, Sec. 19, is to protect members of the Legislature and public against fraud and deception. Here, section 4(2) of I-1082 reads: "Any new tax increase imposed in 2019 must expire on the effective date of this act." and section 4(3) of I-1082 reads: "Any new tax increase imposed in 2020 must expire on the effective date of this act."

This is clear and unambiguous.

The 2019 tax increases have already been identified. Under RCW 43.135.031, the office of financial management was required to identify all tax increase bills and do a ten-year cost projection for them. Under RCW 43.135.041, the Attorney General was required to identify "any tax increase" and notify the Secretary of State that each of them will be subject to an advisory vote. The same procedure will occur in 2020. So, by the time the voters vote on I-1082, the tax increases will not only be identified, but they will have been on the ballot, in the voters' pamphlet, and voted on by the people.

I-1082 does not amend these tax increase statutes, it instead sets forth a stand-alone sunset provision (just as the 2013 Legislature did for tax preferences – see above). Those statutes remain unchanged on their face and amendment is not required.

Nearly every legislative act of a general nature changes or modifies some existing statute, either directly or indirectly or by implication. But this, alone, does not inexorably violate the purposes of this constitutional provision. *Citizens for Responsible Wildlife Management v. State*, 149 Wn.2d 622, 71 P.3d 644 (2003). Although a complete act may modify, and thus render erroneous, an existing statute, this does not contravene the purpose of the constitutional requirement. *Amalgamated* The purpose of this provision is to require disclosure, not to trammel or hamper the Legislature from enacting laws. *Spokane Grain & Fuel Co., v. Lyttaker*, 59 Wash. 76, 109 P. 316 (1910) Here, the initiative's policies are so clearly defined in the statute which is generic in nature that any claim of fraud or deception is untenable, especially in light of the disclosure provided in the ballot title.

In *Sane Transit v. Sound Transit*, 151 Wn.2d 60, 85 P.3d 346 (2004) the court ruled adequate notice was provided to voters by referencing "Resolution 75."

The ballot title for Proposition 1 on the November 5, 1996, general election ballot stated: To implement a regional rail and express bus system linking Tacoma, Seattle, Bellevue, Everett, other cities, and Sea-Tac airport, shall the Regional Transit Authority impose a sales and use tax of up to four-tenths of one percent and a motor vehicle excise tax of three-tenths of one percent to provide the local share of funding towards the \$3.9 billion estimated cost of the system, *as provided in Resolution 75* and the "Ten-Year Regional Transit Plan"?

(italics added) Ibid. 65-66 The text of Resolution 75 was not even printed in the voters' pamphlet. Nonetheless, the court ruled that voters were given sufficient notice:

We have previously indicated that where the ballot title would lead to an inquiry into the body of the act, proper notice, as required by article II, section 19 of the Washington Constitution, has been given to the voter about what he or she is deciding. *Wash. Fed'n of State Employees v. State*, 127 Wash.2d 544, 555, 901 P.2d 1028 (1995). *Similarly in this case, although Sane Transit claims that the voters did not realize which proposal they were voting on, the ballot title informed the voters that Resolution 75 was the proposal to be enacted, and the resolution was available for consideration by request to the office identified in the voters' pamphlet.*

(italics added) Ibid. 71-71 As stated by the court in *Amalgamated*, 142 Wash.2d at 205 "... inquiry into the voters' intent will not occur where the text of an initiative is unambiguous."

There is nothing ambiguous about I-1082. The voters are being given full notice as to the initiative's policies. Moreover, and most importantly as previously stated, by operation of law no amendment to existing legislation is contemplated.

6) Does initiative I-1082 contravene any other constitutional provision?

No, it does not. The people's power of initiative is as broad as the legislature's power to legislate. Const. Art. II, Sec. 1. Precedent holds the Constitution is not a grant of legislative power but a restriction on that power. This is to say the power of the Legislature to enact all

reasonable laws is unrestrained except where, expressly or by fair inference, it is prohibited by the state or federal Constitution. *Pacific American Realty Trust v. Lonctot*, 62 Wn.2d 91, 381 P.2d 123 (1963) The Legislature, and therefore the people acting through their power of initiative, may enact any law not expressly or inferentially prohibited by the Constitution. *Overlake Homes, Inc., v. Seattle-First Nat. Bank*, 57 Wn.2d 881, 360 P.2d 570 (1961) Courts have characterized the legislative power as "plenary." *Distilled Spirits Institute, Inc. v. Kinnear*, 80 Wn.2d 175, 492 P.2d 1012 (1972)

Since legislation and initiatives are presumed constitutional unless proven otherwise beyond a reasonable doubt, it is up to the challenger to identify some constitutional provision with which it conflicts. I see none.

After carefully examining the initiative's policies and text, previous court rulings, and legal precedents, I find no legal or constitutional infirmities in it. I conclude I-1082 passes constitutional muster.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard B. Sanders", with a stylized flourish at the end.

Richard B. Sanders

RBS/dkp