

NO. 76534-1

SUPREME COURT OF
THE STATE OF WASHINGTON

PERMANENT OFFENSE, SALISH VILLAGE HOMEOWNERS
ASSOCIATION, AND G. DENNIS VAUGHAN,

Appellants,

v.

PIERCE COUNTY et al.,

Respondents

DIRECT APPEAL FROM THE FINAL RULINGS OF THE SUPERIOR
COURT OF THE STATE OF WASHINGTON FOR KING COUNTY
AFTER REMAND BY THE STATE SUPREME COURT,

Honorable Mary Yu, Presiding, (King County Case No. 02-2-25125-5)

APPELLANTS' OPENING APPEAL BRIEF

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I. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR No. 1: The Trial Court erred by ruling, as a matter of law, that Initiative 776 (I-776) violated Washington Constitution Article One § 23 by impairing valid public bond contracts issued by Central Puget Sound Regional Transit Authority ("Sound Transit"):

Issue No. 1: Sound Transit did not prove, and could not prove, that it was a validly formed municipal corporation because voters did not approve its formation as required by RCW 81.112.030;

Issue No. 2: Sound Transit did not prove, and could not prove, that it was a validly formed municipal corporation because voters did not approve its formation as required by the Washington State and U.S. Constitution;

Issue No. 3: Sound Transit's bond contracts exceeded its statutory authority as limited by RCW 81.104.180;

Issue No. 4: The "financial framework" existing at the time Sound Transit's bond contracts were made was not frustrated nor otherwise impaired by I-776;

Issue No. 5: Important Public Policy considerations outweigh any hypothetical minuscule "impairment" that could be conceived;

Issue No. 6: The State of Washington has delegated additional revenue power which Sound Transit has already pledged in part, and is able to pledge in full, to more than compensate for the loss of Motor Vehicle Excise Tax ("MVET") taxing authority repealed by I-776; and

Issue No. 7: The Trial Court erred by ruling that the doctrine of "laches:"

- a. Relieves a plaintiff of its affirmative burden of proof;
- b. Acts as a bar to a defense to a plaintiff's affirmative claims;
- c. Acts as a bar to a challenge to the existence of a void municipal corporation or the validity of its putative "public contracts;" and
- d. Applies without the need to plead or to prove required elements.

ASSIGNMENT OF ERROR No. 2: The Trial Court erred by ruling that the MVET repealed by I-776 must be collected in full until the last Sound Transit bond is paid in the year 2028:

Issue No. 8: Where sufficient pledged revenues to fully pay all principal and all interest accruing during the 30-year life of the bonds has already been collected by Sound Transit since the December 5, 2002 effective date of I-776, no constitutionally recognized impairment continues beyond that date.

Issue No. 9: Even if collected pledged revenues were diverted and spent — with the acquiescence of bond purchasers — to uses other than bond retirement, the loss of revenue beyond that date creates no constitutionally prohibited impairment.

ASSIGNMENT OF ERROR No. 3: The Trial Court erred by refusing to enter judgments consistent with this Court's decision in *Pierce County, et al. v. The State of Washington, et al*, 150 Wn.2d 422, 78 P.3d 640 (2004).

Issue No. 10: The Trial Court erred by refusing to enter a judgment of dismissal of the claims of the Plaintiffs and Intervenor Plaintiffs rejected by this Court.

Issue No. 11: The Trial Court erred by refusing to require Plaintiffs King County and Pierce County to pay interest on MVET revenues illegally collected in violation of I-776 when refunding the illegally collected MVET.

ASSIGNMENT OF ERROR No. 4: Appellants Vaughn, Salish Village, and Permanent Offense should be reimbursed their actual and reasonable attorney fees and costs incurred both in the trial court and on appeal because the Attorney General of the State of Washington declined to defend I-776 against Sound Transit’s Washington Constitution Article One § 23 challenge and success by these Appellants will save affected taxpayers from the illegal collection and disbursement of between \$1,225,000,000.00 and \$1,380,000,000.00, depending on the Court’s ruling.

II. STATEMENT OF THE CASE

A. INTRODUCTION:

1. Procedural Background of Dispute: This appeal involves the *second* direct review by this Court of lower court decisions in this case — made by the same trial judge in the same case — finding Initiative 776 (“I-776” hereafter) unconstitutional.¹ This Court resolved the first appeal by reversing all decisions made by the trial court, and by rejecting additional arguments raised by the Respondents on appeal — but left undecided by the trial court. *Pierce County, et al. vs. The State of Washington, et al*, 150 Wn.2d 422, 78 P.3d 640 (2004).

¹ All trial court decisions were made by the honorable Mary Yu, King County Superior Court Judge.

This appeal, in the broadest sense, involves three general issues:

- (1) Did the trial court improperly decide the sole remaining undecided constitutional challenge to I-776, i.e., Sound Transit’s claim that I-776 unconstitutionally impaired its bond contracts in violation of Washington Constitution Article One § 23 (cited hereafter in abbreviated form as “Article One § 23”)?
- (2) Did the trial court improperly dispose of the claims rejected by this Court in *Pierce County, et al. v. State of Washington, et al*, supra?
- (3) Did the trial court improperly deny the request for attorney fees and costs made by the Appellants based on the taxpayer claim asserted by them, which is supported by the fact that then Attorney General Christine Gregoire should have, but did not, defend against the illegal continued collection and disbursement of taxes repealed by I-776.

Even before Sound Transit filed its December 16, 2002 Article One § 23 challenge to I-776 (CP 249-277), the Attorney General — then The Honorable Christine Gregoire—announced on the record on December 4, 2002 her intent to ignore I-776 and to continue collecting Sound Transit’s MVET taxes repealed by I-776.

“Trial Court:Specifically, I want to understand that the tax imposed by Sound Transit is not at issue today, since the State has agreed to continue collecting that tax and, again, I want to make sure you understand that.

Mr. Pharris: Yes, Your Honor, we have agreed to continue collecting that tax. I don’t see it as one of the issues before the Court in this case anyway. But, yes, *we do have an agreement with Sound Transit to keep collecting the tax and we have no intent of stopping.*” (12/04/02 VT, page 3, emphasis added)²

² This colloquy occurred between the State's counsel and the trial court prior to the time that Sound Transit or these Appellants had intervened in the case.

Accordingly, the preliminary injunction entered by the trial court on December 4, 2002 (CP 221-224) did not apply to Sound Transit's MVET revenues, whose continued collection was supported solely by the agreement of the State with Sound Transit to ignore the law. Subsequently, when Sound Transit intervened on December 16, 2002 to assert its Article One § 23 claim, the State never answered or otherwise defended I-776 against Sound Transit's claim. These Appellants then intervened to provide a complete defense, and to assure complete enforcement of I-776.³

Later, during the first round of summary judgment arguments in January 2003, the trial court struck these Appellants' cross-motion to dismiss Sound Transit's Article One § 23 challenge to I-776. That decision to strike the dismissal motion was, incredibly, based upon the agreement between the State AG and Sound Transit, even though Sound Transit's complaint had sought a declaratory ruling finding an Article One § 23 violation wholly independent of any agreement between it and the State Attorney General. The legal arguments made—and rejected and accepted by the trial court—make this abundantly clear:

“MR. ROWLEY (Appellants' attorney): ...And quite frankly, if they are saying that we're withdrawing our contract impairment claim, by that I mean Sound Transit, it's not in the lawsuit, then we don't have to defend against that claim. But so long as it's in the case, we do have to defend against it, and it's an appropriate defense.

And if that leads us to an inquiry into the validity of the statute that they claim in their pleadings justified or supports their existence as a legal entity, then that is a defense that's fairly within the pleadings of this case and must be decided. It cannot be ignored from the case.” (01/31/03 VT, page 11)

³ The great bulk of the taxes levied pursuant to the taxing authority repealed by I-776 were levied by Sound Transit, approximately \$60,000,000.00 of MVET revenue annually.

“MR. LAWRENCE (Sound Transit’s attorney):we don’t have a contract impairment dispute. The State is collecting our MVET money. There’s not a dispute about that. There’s no impairment of contracting going on. All we have asked is that declare [sic] section 7 of 776 is not mandatory, which everybody in this courtroom seems to agree.

It’s not a question of any impairment of contracts because that issue is simply not here. There is no impairment going on. There is no threatened impairment. There’s no impairment of any sort to resolve. King County has an issue with respect to the impairment of their bonds because the State and them have a different posture, but there’s no impairment issue with respect to Sound Transit’s bonds.....” (01/31/03 VT, page 13)

Put bluntly, the argument accepted by the trial court was that a state law (I-776) is unconstitutional if the State AG—by agreeing to not enforce it—presumes that it is unconstitutional. The result was that the most important constitutional question raised in Sound Transit’s complaint was not decided by the trial court at that time. (CP 249-277, CP 1710-1712, CP 1713-1750, CP 1763) At the same time, the trial court ruled favorably to King County on an identical Article One § 23 challenge raised by King County, a ruling later reversed by this Court in *Pierce County, et al. vs. State, et al*, supra. These Appellants strenuously objected to the trial court’s refusal to decide that claim or, at least, to enter CR 54(b) findings so that trial court proceedings to resolve that claim could continue while the balance of the case was up on appeal to this Court. (CP 90) The trial court denied that motion, leaving claims unresolved, and delaying progress to resolve those claims for nearly two years. (CP 94A) Though these Appellants assigned error to those trial court rulings and argued them in their brief to this Court, the Court’s decision in *Pierce County, et al. vs. State of Washington, et al*, did not decide the issues, leaving them to be decided following remand.

In this way, Sound Transit assured that the prior direct appeal to this Court would include a disposition of every issue it wished this Court to review, but would exclude this Court's timely direct review of the most important constitutional claim raised by Sound Transit—its Article One § 23 claim. It also assured that the defenses to its Article One § 23 claim would be excluded from that review. This Court rejected every claim relied upon by Sound Transit to avoid enforcement of I-776 at issue in the earlier appeal. *Pierce County, et al. vs. The State of Washington, et al*, supra.

On remand Sound Transit, having lost every other option, resurrected its “contract impairment” claim that it had disavowed on January 31, 2003 in order to avoid these Appellants’ (Intervenor Defendants below) cross-motion to dismiss. (01/31/03 VT) Cross motions for Summary Judgment were later filed following this Court’s remand on that Article One § 23 claim in the trial court in September 2004. (CP 2905-2928, CP 2929-2958) Not surprisingly, the Attorney General defended its agreement with Sound Transit by supporting Sound Transit’s Article One § 23 assault on I-776 and opposing these Appellant’s motion to dismiss that claim. (CP 2962-3016)

The trial court’s disposition of those cross motions and a Motion for Clarification/Reconsideration—finding I-776 to be repugnant to Article One § 23—supports this Request for Direct Review pursuant to RAP 4.2(a). The trial court’s failure following remand to properly dispose of claims previously rejected by this Court in *Pierce County, et al. vs. The State of Washington, et al*, supra, is also supported by RAP 12.9(a) in addition to RAP 4.2. Those five trial court orders were attached as attachments "A-E" to the Notice of Appeal.

2. Initiative 776: I-776, an initiative to the people, was approved by the voters at the November 2002 general election, and became effective on December 5, 2002. (CP 71-103) The purpose of I-776 was to establish uniform annual license fees statewide at \$30.00 for cars, recreational vehicles, motorcycles, and light trucks. To accomplish uniformity of license fees, I-776 repealed various state taxes. Because the State Legislature had previously delegated local option taxing authority to various local governments, I-776 repealed the delegation of a portion of that local option taxing power, to the extent necessary to assure the uniform \$30.00 license fee.⁴ I-776 repealed the delegation of MVET taxing power contained in RCW 81.104.160(1). Sound Transit was the only local government in the State of Washington exercising RCW 81.104.160(1) taxing authority at the time I-776 passed.

3. The Parties:

APPELLANTS:

Appellants Salish Village Homeowners Association, G. Dennis Vaughn, and Permanent Offense were “Intervenor Defendants” below, are joint Appellants herein, and will be referred to collectively hereafter singularly as “Permanent Offense.”

RESPONDENTS:

The Respondents in this case fell into three distinct groupings in the trial court proceedings below:

- Plaintiffs: Pierce and King Counties, the City of Tacoma, and citizens

⁴ The MVET is collected by the state at the time of licensing, and is based on vehicle value.

Gloria Thein, William LaBorde, and Karen Uffelman constituted the original Plaintiffs below. They have taken the same legal positions. References to this group of Respondents are made singularly in this brief in the name of “King County.”

- Intervenor Plaintiffs: Sound Transit, the Sierra Club, 1000 Friends of Washington, City of Kenmore, Transportation Choices Coalition, together with four (4) labor organizations—King County Labor Council, Washington State Labor Council, Amalgamated Transit Union Local 587, and Aerospace Machinist Union—intervened as additional plaintiffs. They have taken the same legal positions. References to this group of Respondents are made singularly in the name of “Sound Transit.”
- Defendant State of Washington: The original defendant named in the complaints filed by King County and by Sound Transit, the State of Washington was a joint appellant in *Pierce County, et al. vs. The State of Washington, et al*, supra, but on remand uniformly took legal positions supporting the King County and Sound Transit Plaintiffs. It is not clear what legal position the State Attorney General will argue in this appeal, so Permanent Offense designates the State as a Respondent, referred to herein as “State of Washington.”

4. The Record: The record is a bit confusing in this case given the disjointed trial court proceedings, divided by the intervening direct appeal to this Court, which culminated in its decision in *Pierce County, et al. vs. The State of Washington, et al*, supra. Those portions of the trial court proceeding predating the intervening appeal will be referred to as “Phase I.” The Phase

I Clerk's papers are indexed and organized in ten volumes numbered from pages 1-1825. In order to avoid unnecessary expense and duplication, the Clerk of this Court directed that the trial court Phase I Clerk's Papers already indexed and filed with this Court in the Phase I appeal—Supreme Court No. 73607-3—be utilized in this Phase II appeal.

“Phase II” of the trial court proceedings commenced with this Court's remand. The Phase II Clerk's papers are indexed beginning at CP 1826 picking up where the Phase I Index left off. Because reported hearings were spread over a span of two years, references to a verbatim transcript will be to the date of the hearing and the transcript page number.

B. SOUND TRANSIT'S BOND CONTRACTS

The trial court ruled that I-776 unconstitutionally impairs contractual obligations owed to purchasers of Sound Transit's 1999 Series bonds, which were sold in the aggregate amount of \$350,000,000.00 in a sale that closed on January 6, 1999. In order to understand the error of that ruling, close scrutiny of the transaction documents is required. The aggregate Series 1999 bond documents are attached to the September 27, 2004 supporting declaration of James J. Klauser (CP 3631-3902) Copies of the bond transaction documents are also attached hereto for the Court's convenience as follows:

Appendix A: The Bond Purchase Contract.

Appendix B: The Master Bond Resolution

Appendix C: The Series 1999 Bond Resolution.

Appendix D: The “Preliminary” Official Statement.

Appendix E: The “Final” Official Statement.

The lengthy material provisions can be summarized:

1. The Bond Contract: (copy attached at App. “A”)

This contract between Sound Transit and Underwriters (Goldman Sachs, DeLa Rosa & Co., Lehman Brothers and Salomon Smith Barney) is dated December 9, 1998, a sale that closed on January 6, 1999. The purchase agreement was for the entire \$350,000,000.00 of Sound Transit’ Series 1999 bond offering, purchased — after taking an “original issue” discount of \$2,307,016.95 and an “underwriter’s” discount of \$1,985,262.09 — for the discounted amount of \$345,707,720.96. Material provisions of the Bond Purchase Contract are:

- a. The bonds were being issued pursuant to RCW 81.104 and RCW 81.112, the Master Resolution and the 1999 Series Resolution;
- b. The requirement for a “Reserve Fund” was satisfied with the acquisition of a surety bond purchased from Financial Guarantee Insurance Co (FGIC);
- c. Miscellaneous warranties and representations, including that Sound Transit was duly formed and legally organized and had legal authority to levy, collect and pledge Local Option Taxes pursuant to the “Bond Resolution;”
- d. The contract borrowed provisions by reference from the Bond Resolutions, which included definitions and references to Sound Transit’s statutory authority contained in RCW 81.112 and RCW 81.104 “as they shall be amended from time to time“ (collectively “the Act”); and
- e. The contract required that it be interpreted and applied according to

the Laws of the State of Washington.

2. The Master Resolution: (copy attached at App. “B”)

Much of the apparent complexity of Sound Transit’s transactions dissolves when one reviews the November 12, 1998 “Master Resolution,” Sound Transit Resolution No. R98-47. The Master Resolution is the governing template for the incremental and successive issuance of *multiple series* of bonds, of which the 1999 Series is but the first. The Master Resolution requires that each series of Bonds issued be supported by its own “Series Resolution.” Provided that certain performance criteria are met, the additional bonds are contemplated to be secured on a *parity* basis with the Series 1999 bonds, notwithstanding the later issue date of subsequent series.

The Master Bond Resolution recognizes that Sound Transit’s statutory authority to issue bonds is contained in RCW 81.112.130 and .140, and that its statutory authority to pledge Local Option Taxes to *retire* bonds is contained in RCW 81.104.180. “Local Option Taxes” are defined as those authorized by RCW 81.104.160 and .170 “as such taxes may be levied from time to time by the Authority.”

Section 2 of the Master Resolution describes the nature of the “pledge” being made. It requires Sound Transit to deposit all local option taxes into its “Local Option Tax Account.” From that account, the Master Resolution describes the permitted flow of funds in the following order:

- (1) Make required deposits (sufficient to pay annual bond debt service) into a Bond Account;
- (2) Pay Reserve Account requirements (irrelevant because this require-

ment satisfied by purchase of an insurance policy);

- (3) Make payments into other bond accounts (none existed at the time of summary judgment argument below, but see footnote 5);⁵
- (4) Pay operating and maintenance costs; and
- (5) Spend on any other lawful purpose.

As of the effective date of I-776 — December 5, 2002 — the only enforceable bond retirement payment due from Sound Transit’s Local Option Taxes was to annually fund the Series 1999 bond account, which in 2002 required a deposit of \$17,163,887.55. (CP 2074-2364, Exhibit "A" to the 09/27/04 Klauser Declaration) Local Option Tax receipts by Sound Transit in 2002 were:

a. Sales and Use tax (sale + car rental)	\$206,717,540.00 ⁶	(78%)
b. MVET	<u>\$ 58,319,476.00</u>	(22%)
Total Local Option Taxes fiscal 2002	\$265,037,016.00	(100%)

At that time, the debt service owed Series 1999 bond purchasers was only 6% of total Sound Transit tax revenue, and Sound Transit was free to spend 94% of its total revenue on purposes other than on *bond retirement*. After the effective date of I-776, Sound Transit still retained 78% of its total pre-I-776 revenue (\$206,717,540.00), and the bond debt service require-

⁵ Permanent Offense asks this Court to judicially notice the March 2, 2005 Sound Transit Press Release announcing an additional Municipal Bond Sale by Sound Transit in the amount of \$423 million (copy attached hereto at Appendix “F”) a sale that occurred just days before Sound Transit filed its opposition to direct review in this case on March 8, 2005. The evidence of the additional bond sale should be considered as additional evidence not previously available, but which is relevant to (1) this Court’s decision to retain review, (2) debt limit questions raised and argued below, and (3) to the illusory nature of any claimed “impairment.”

⁶ Amounts rounded to nearest dollar.

ments were then 8% of revenues, leaving Sound Transit free to spend 92% of its total reduced revenue on purposes other than on *bond retirement*.

In 2002, Sound Transit spent \$17,163,888.00 (rounded) to meet its contractual obligations to 1999 Series bondholders and spent \$247,873,128.00 of Local Option Tax Revenue for its general purposes. In 2002 the ratio of revenue-to-debt service was 15.5-to-1. The “sufficiency test” contained in the Master Resolution requires only a 2-to-1 revenue-to-debt service ratio, and the Series 1999 bond account requires a 1-to-1 ratio. Even without the MVET authority eliminated by I-776, Sound Transit’s revenue-to-debt ratio in 2002 would have been an astonishing 12-to-1.

Interestingly, the Master Resolution doesn’t explicitly provide a lien against all Local Option Taxes. What it provides is a pledge that the bonds will be paid from the taxes (which is the only available source of funds to Sound Transit to pay anything). By contrast, Section 7 of the Master Resolution provides that the “bond account” exists to pay and to secure the payment of the bonds and constitutes a trust account specifically for the benefit of the Series 1999 bond holders. The only reference to Local Option Taxes generally in this protected account language is the promise to fund it from Local Option Tax revenues annually, by making equal monthly deposits, approximately \$1.5 million dollars monthly out of monthly receipts of approximately \$22 million dollars during that fiscal year. This “pledge” is consistent with the language of RCW 81.104.180, which delegates authority to pledge local option taxes to “retire” bonds, and the bond account is the sole portion of the pledged local option taxes actually intended for that purpose.

At Section 8 of the Master Resolution, Sound Transit included an interesting covenant. It pledged to utilize its RCW 81.104.160 & .170 local option authority to levy those taxes in a specified amount, even though:

- (a) that covenant provides revenue grossly disproportionate to the debt service owed on Series 1999 bonds;
- (b) the Master Bond Resolution contemplates that the totality of pledged revenue would be dissected into discrete “bond accounts” for future bond issues;
- (c) Sound Transit is actually free to spend the great bulk of “pledged” revenue free from the “pledge;” and
- (d) the Series 1999 bond purchasers understood that new bond issues would all be secured, on a parity basis, with the 1999 purchasers.

I-776 indisputably eliminates availability of MVET pledges as to any *future* bond series, but Sound Transit now hopes to recast the security designed for multiple aggregate future bond purchasers into an explicit promise enforceable only by Series 1999 bond holders for their exclusive, unanticipated, and windfall benefit. RCW 81.104.180, the Master Resolution and other bond documents do not provide for such an extraordinary and excessive pledge of taxing power for the benefit of Series 1999 bond purchasers, yet it is the 1999 series contracts that Sound Transit claims are improperly “impaired” by I-776 in violation of Article One § 23. The Series 1999 contracts cannot be understood separately or independently from the Master Bond Resolution, of which the 1999 Series sale constitutes but a single and relatively insignificant part.

The Master Resolution does refer to Sound Transit’s authority to “pledge” MVET as being based in the “Act, as it may be amended from time to time.” It also contains a “severability section, anticipating that some provisions of the Resolution may be found to be contrary to law, and if found to be unenforceable, preserving the validity of other provisions not inconsistent with legal requirements.

3. The 1999 Series Resolution: (copy at App. “C”)

The 1999 Series Resolution, Sound Transit Resolution No. R98-48 sets out various matters unique to the Series 1999 bond issue. It makes no promises regarding securing payment of the bonds from Local Option Tax Revenues not included in the Master Resolution.

4. The Official Statements: (copy at App. “D” and “E”)

A copy of both the preliminary and final “Official Statements” are attached hereto to demonstrate that a significant change occurred following issuance of the Preliminary Official Statement, namely, the decision to purchase bond insurance. This decision had two primary impacts upon the bond issue. First, it elevated the “unenhanced” bond rating of AA (without insurance) to an “enhanced” AAA rating; and second, it satisfied the requirement in the Master Resolution to maintain a Reserve Account.

C. THE CLAIMED UNCONSTITUTIONAL IMPAIRMENT

Sound Transit’s argument below on the “impairment” question was a two-pronged proposition, best understood when taken to its logical, but absurd, extreme. The essence of Sound Transit’s argument was:⁷

⁷ Setting aside momentarily the troublesome question of what its contracts did, and did not, provide.

- (1) *RCW 81.104.180 authorized Sound Transit to make a “pledge” to bond purchasers to levy MVET and sales taxes (all of its taxing power) at a fixed rate, without regard to the amount of the bond sale, without regard to the amount of revenue reasonably necessary to retire the bonds, without regard to amounts necessary to service the debt, and without regard to the reasonable contract expectations of the bond purchasers; and*
- (2) *Even though the bond purchasers agreed, in the same contract, that Sound Transit was contractually free to spend the great bulk of those tax revenues for purposes other than bond retirement, and was contractually free to make parity pledges of the excess revenues to future bond purchasers, Washington Constitution Article One § 23 prevents the State of Washington, or the voters, from repealing Sound Transit’s authority to levy taxes not intended or required to be used to retire the 1999 Series bonds.*

The trial court’s decision below recognizes no qualification nor limitation. By the trial court’s reckoning, a local government—by pledging all of its taxing power—absolutely trumps the Sovereign’s power to alter that taxing power. Moreover, such a contract trumps the Sovereign’s taxing power for the full duration of the contract. Taken to its logical but absurd extreme, the legal proposition embraced below—should it become the law of this State—empowers a local government to shield all of its taxing power from revision by the Sovereign for 30 years by issuing a single \$1,000.00 bond (a contract) maturing in thirty years, so long as it pledges in the contract

to levy and collect billions of tax dollars.

If a criteria exists—as Permanent Offense argues—to prevent such a farce, it was not acknowledged in the arguments of Sound Transit or the Attorney General in the proceedings below, and was not applied by the trial court. The facts in the record below are only slightly less absurd than the extreme example just given.

Sound Transit claims to have included in its “pledge” to purchasers of its 1999 Series bonds a promise to continue to levy the MVET (together with RCW 81.104.170 sales tax) at a fixed rate over the life of the bonds. Sound Transit “pledged” all of its tax revenues, but no project generated revenue, such as tolls or fares to be generated by the project to be developed from the bond sale. The bonds are not “revenue bonds” as that concept has previously existed in state law. The bond transaction documents show that over the 30-year life of the bonds, Sound Transit’s fixed obligation to bondholders is \$738 million (\$350 million principal + \$388 million interest). The record also shows that Sound Transit pledged to “levy,” over the 30-year life of the bonds (conservatively calculated in 2003 dollars unadjusted to reflect projected tax base growth and inflation) \$8.1 billion dollars in local option tax revenues (\$60 million MVET + \$210 million sales tax annually for thirty years). The resulting “revenue-to-debt ratio” is approximately 11-to-1. But Sound Transit did not agree to pay the entire revenue to retire the bonds. Stated differently, Sound Transit contractually retained the discretion to spend 92%, of its tax revenues for purposes other than Series 1999 bond retirement over the 30 year life of the bonds. The transaction documents show that most of

the bonds mature earlier than 30 years.

Elimination of MVET taxing authority by I-776 will reduce Sound Transit's local option tax revenues by approximately \$60 million dollars annually which, over the thirty-year life of the bonds (using the same 2003 assumptions) will reduce total Sound Transit taxes levied and collected to \$6.3 billion dollars (\$210 million sales tax for 30 years) resulting in a revenue to debt ratio of 8.5-to-1. In other words, even with loss of the power to levy the MVET, Sound Transit still generates revenues such that it will be able to spend approximately 88% of the collected taxes for purposes other than Series 1999 bond retirement [I-776 did not affect Sound Transit's ability to replace the MVET revenues with additional sales tax revenues, authority which Sound Transit has only partially utilized]. It is this reduced delegation of taxing power over 30 years — from \$8.1 billion to \$6.3 billion — which the trial court ruled to have unconstitutionally “impaired” the contractual rights of Series 1999 bond purchasers to receive their \$738 million contract entitlement.

The trial court reached its decision to enjoin enforcement of I-776 despite the undisputed fact that Sound Transit collects “pledged” local option tax revenues (in 2003 dollars) of \$22.5 million monthly (\$5 million MVET and \$17.5 million sales tax). At that rate, sufficient “pledged” local option taxes are collected by Sound Transit in just 33 months to have fully funded the entire gross \$738 million bond debt, both principal and interest owed over the entire 30 years. Using Sound Transit's own revenue projections, sufficient revenues would be collected in only 31 months.⁸ Had the trial court

required Sound Transit to deposit those “pledged” local option tax revenues into a fund account dedicated to retiring the entire 1999 Series bonds, the account would have accumulated by now the entire \$738 million needed to pay the entire 30-year debt owed the bond purchasers. And this mathematical fact assumes that, though “pledged funds” are collected and dedicated to bond retirement—as required by RCW 81.104.180—the bonds are not actually repaid until their later scheduled maturity dates. Interest on the dedicated funds would be available to off-set much of the interest expense, as would early redemption, a contract concession made by bond purchasers. The 31-month collection period posited above does not take into account these inherent debt service reduction factors, which would serve to shorten the period needed to eliminate any conceivable I-776 “impairment.”

If an impairment to the “rights” of bond purchasers exists, the “impairment” is not created by I-776. The bond purchasers created their own impairment when contractually bargaining away to Sound Transit the RCW 81.104.180 right to have all pledged revenues spent on bond retirement. Having contractually agreed to encumber only the small part of pledged revenues necessary to maintain an annual 2-to-1 revenue-to-debt ratio (1-to-1 with the acquisition of bond insurance) Sound Transit’s only obligation—and the bond purchaser’s only right—is not impaired by I-776.

This "Statement of the Case" emphasizes facts concerning the central issue in the case, the presence or absence of an unconstitutional contractual impairment. Other facts will be included in the legal argument that follows.

⁸ Only 31 months because the debt is fixed, but the actual tax revenues increase even though collected at a constant rate, due to growth and inflation.

III. LEGAL ARGUMENT

A. Standard of Review and Burden of Proof

1. **Standard of Review**— A grant of summary judgment is reviewed de novo, and the reviewing court engages in the same inquiry as the trial court. *Trimble v. Wash. State Univ.*, 140 Wn.2d 88, 92, 993 P.2d 259 (2000). Construction of a statute or the constitution is a question of law which is reviewed de novo. *State v. Ammons*, 136 Wn.2d 453, 456, 963 P.2d 812 (1998). Summary judgment is proper only when the pleadings, depositions, and admissions in the record, together with any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c) All facts and reasonable inferences are considered most favorably to the non-moving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Generally, questions of fact are properly left to the trier of fact; however, when reasonable minds could reach but one conclusion, questions of fact may be determined as a matter of law. *Trane Co. v. Brown-Johnson, Inc.*, 48 Wn.App. 511, 513-14, 739 P.2d 737 (1987).

2. **Burden of Proof**— A statute enacted through the initiative process — I-776 — is, as are other statutes, presumed constitutional. *State ex rel. O’Connell v. Meyers*, 51 Wn.2d 454, 458, 319 P.2d 828 (1957). A Washington Constitution Article I § 23 claim alleging the unconstitutionality of a state statute —I-776 in this case—must be proven beyond a reasonable doubt. *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998).

To support its “bond impairment” claim Sound Transit is required to

prove three general elements:

No. 1: that a valid contract exists;

No. 2: that the legislation substantially impairs its contract; and

No. 3: that if so, that there is no legitimate public purpose to justify the impairment.

Johanson v. Department of Social and Health Services, State of Wash., 91 Wn.App. 737, 959 P.2d 1166, review denied, 137 Wn.2d 1010, 978 P.2d 1099 (1998).

The first of these three elements requires Sound Transit to establish that it issued valid bonds. The question of validity of public contracts includes the burden to prove three elements:

- (1) Is there legislative or constitutional authority delegated to the municipality to issue the bonds for the particular purpose?
- (2) Was the statute authorizing the bond issue constitutionally enacted? If not constitutionally enacted or if unconstitutional for any other reason, the issue is void and recitals are of no effect.
- (3) Is the purpose for which the bonds are issued a public and corporate purpose, as distinguished from a private purpose?

15 *Eugene McQuillin, Municipal Corporations* § 43.04, at 575 (3d ed., 1995)

This statement from *McQuillen* was specifically adopted by this Court in *King County v. Taxpayers of King County, et al.*, 133 Wn.2d 584, 595, 949 P.2d 1260 (1997). Moreover, the Court in that case also recognized that the burden of proof on each of these elements rests with the party asserting the validity of the bonds, which in this case are Sound Transit and the State of Washington. *King Cy. v. Taxpayers*, *supra*, at page 595.

B. Sound Transit did not prove that I-776 impairs valid public contracts in violation of Washington Constitution Article One § 23. (Assignment of Error No. 1; Issues 1-7)

1. The doctrine of “Laches” does not bar Permanent Offense defenses to Sound Transit’s Article One § 23 challenge to I-776.

The trial court improperly applied the equitable doctrine of “Laches” to bar the defenses of Permanent Offense — a defense based on lack of Sound Transit bonding authority, and therefore to the “validity” of its bonds — to Sound Transit’s Article One § 23 challenge to I-776.

Laches is an affirmative defense which must be raised by the party relying upon the defense. CR 8(c) Neither the State nor Sound Transit raised this issue until filing their responsive briefs in the Summary Judgment proceeding below. Their pleadings were silent about laches. Nor did they include a laches issue in the Statement of Issues required by the trial court in May 2004. (CP 249-277, CP 1909-1911, CP 1916-1918, CP 1919-1921, CP 2952-3016, CP 3030-3137, CP 3138-3450) Moreover, laches is an equitable defense and the burden of proof is on the party asserting it. It must be shown by evidence that: (1) the plaintiff knew he had a cause of action, (2) the *plaintiff* unreasonably delayed in bringing suit, and (3) the *defendant* was prejudiced by that delay. *Buell v. Bremerton*, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972) [emphasis added]

Sound Transit and the State of Washington offered no evidence to support any of these three required elements. They simply assumed that the Intervenor Defendants [Appellants] had “knowledge” of a cause of action. Permanent Offense, on the other hand, provided evidence that none of the Intervenor Defendants had any knowledge of the existence of a cause of

action until after Sound Transit filed its Article One § 23 challenge to I-776. (CP 3540-3542, CP 3543-3545, CP 3546-3549) In fact, even had the principals of Permanent Offense—the Fagans, who reside in Spokane—had actual knowledge of a cause of action, they would have had no standing to bring it until after the initiative was challenged. Located 275 miles distant from Sound Transit, the organization of Sound Transit, the local option taxes it spent, and the validity of Sound Transit’s bonds did not affect them until Sound Transit sought to overturn the initiative measure they had sponsored. One has no standing to challenge the constitutionality of a statute unless and until he will be directly damaged, in person or property, by its enforcement. *De Grief v. Seattle*, 49 Wn.2d 912, 297 P.2d 940 (1956).

Sound Transit could not justifiably rely upon the failure of Permanent Offense to challenge the validity of its bonds, as the Legislature provided Sound Transit the exclusive remedy to bring such an action. RCW 7.25 creates a special “bond validation” declaratory judgment action that can only be commenced by an issuer of bonds (Sound Transit). This statute provides that a judgment entered in an RCW 7.25 declaratory action “shall be binding upon all taxpayers.” RCW 7.25.030. The reverse is necessarily true, that without resort to that procedure taxpayers are not “bound” on the question of validity of the bonds. It is equally clear that the Legislature intended that local governments seek their own “finality” through their affirmative act of bringing such a suit, and are not entitled to sit back, and win “finality” due to inaction by members of the public.

Similar equitable defenses were made by bond purchasers and were

rejected by this Court in *Chemical Bank v. Washington Public Power Supply System*, 102 Wn.2d 874, 691 P.2d 524 (1984). In that case — which also involved the question of the lack of authority to enter into public contracts — this Court rejected a claim of laches outright. On the question of “lack of authority” to make the contracts, the Court concluded that equitable defenses were not available. The Court noted that the equitable defenses require a showing of factual representations, and that an expression of opinion of law would not give rise to an equitable defense. *Chemical Bank* at page 905. The Court also found that questions of statutory authority could and should have been resolved in a declaratory judgment action, and the parties could not later complain of their own neglect. *Chemical Bank* at page 906. Though the *Chemical Bank* court rejected without discussion the defendants’ laches arguments, it is clear that it did so because the defense was not available.

The trial court’s application of laches to this case violates a number of other legal constraints. Permanent Offense defends a state statute (I-776) against a claim that it is unconstitutional, a defense for the benefit of the State, and no claim of right based upon the lapse of time is available. RCW 4.16.160. Moreover, defenses to a cause of action are not time barred. *Seattle First Nat. Bank, N.A. v. Siebol*, 64 Wash. App. 401, 824 P.2d 1252, rev. denied 119 Wn.2d 1010, 833 P.2d 386 (1992) [emphasis added]. A court is precluded from imposing a shorter period under the doctrine of laches than that of a relevant statute of limitations. *Brost v. L.A.N.D., Inc*, 37 Wn. App. 372, 680 P.2d 453 (1984). Just as no statute of limitations bar exists to such defenses, no laches bar could be imposed. Finally, a challenge asserting that a

municipal corporation's formation is "void" is never barred. *McQuillen, Municipal Corporations*, §§ 3.45-3.56 (3d. ed)

2. Sound Transit did not prove "valid" public contracts.

It will be useful at this point to reiterate the statement of Sound Transit's burden of proof on the "validity" question as articulated by *McQuillen, Municipal Corporations* and in *King County v. Taxpayers of King County, et al*, supra.

- (1) Is there legislative or constitutional authority delegated to the municipality to issue the bonds for the particular purpose?
- (2) Was the statute authorizing the bond issue constitutionally enacted? If not constitutionally enacted or if unconstitutional for any other reason, the issue is void and recitals are of no effect.
- (3) Is the purpose for which the bonds are issued a public and corporate purpose, as distinguished from a private purpose?

15 Eugene McQuillin, Municipal Corporations § 43.04, at 575 (3d ed., 1995)

Sound Transit did not—and cannot—satisfy its burden with respect to the first two required elements, which will be discussed in detail in paragraphs "a" and "b" immediately below:

a. Sound Transit's putative contract exceeds authority delegated by RCW 81.104.180.

A municipality's powers are limited to those conferred in express terms or those necessarily implied. *In re Seattle*, 96 Wn.2d 616, 629, 638 P.2d 549 (1981). If there is any doubt about a claimed grant of power it must be denied. *Port of Seattle v. State Utils. & Transp. Comm'n*, 92 Wn.2d 789, 794-95, 597 P.2d 383 (1979). The test for necessary or implied municipal powers

is legal necessity rather than practical necessity. *Hillis Homes, Inc. v. Snohomish Cy.*, 97 Wn.2d 804, 808, 650 P.2d 193 (1982), where this Court stated: “if the Legislature has not authorized the action in question, it is invalid no matter how necessary it may be.”

All of these principles were explicitly ratified, endorsed and applied by the State Supreme Court to reject claims of bond purchasers attempting to enforce bond contracts against Washington municipal corporations. *Chemical Bank v. Washington Public Power Supply System, et al*, 99 Wn. 2d 772, 666 P.2d 329 (1983) ("Chemical Bank I") and *Chemical Bank v. Washington Public Power Supply System, et al*, 102 Wn. 2d 874, 691 P.2d 524 (1984) ("Chemical Bank II") Private parties contracting with a government agency are charged with knowledge of the agency's authority, or lack of it. *Bain v. Clallam Cy. Bd. Of Cy. Comm'rs*, 77 Wn.2d 542, 549, 463 P.2d 617 (1970); *Noel v. Cole*, 98 Wn.2d 375, 655 P.2d 245 (1982), *Chemical Bank*, supra.

Regional Transit Agencies ("RTA"), when properly formed, are delegated two types of bonding authority.⁹ RCW 81.112.140 authorizes an RTA to issue *revenue* bonds, which by definition are repaid from pledged revenue generated from facilities constructed or improved with the proceeds of the bond sale. Sound Transit's bonds are not revenue bonds. RCW 81.112.130 authorizes *general obligation* bonds, which are subject to constitutional debt limits and are secured by the full faith and credit of the agency. Sound Transit's bonds purport to be general obligation bonds, but not simply general obligation bonds. Sound Transit apparently believed that it had

⁹ There is only one possible regional transit agency in the State, and Sound Transit is it. RCW 81.112.030.

statutory authority to issue a hybrid type of bond not specified in Ch. 81.112, pledging its full faith and credit and pledging Ch. 81.104 Local Option Taxes, and pledging its *tax rate*. It appears, from the transaction documents, that Sound Transit locates this presumed authority in RCW 81.104.180. That being the case, it is worthwhile to set out that statute in full:

“81.104.180. Pledge of revenues for bond retirement

Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and *regional transit authorities* are authorized to pledge revenues from the employer tax authorized by RCW 81.104.150, the special motor vehicle excise tax authorized by RCW 81.104.160, and the sales and use tax authorized by RCW 81.104.170 to retire bonds issued solely for the purpose of providing high capacity transportation service.” (emphasis added)

Sound Transit, and the trial court below, read this statute as authorizing Sound Transit to *pledge to levy* local option taxes at a rate to generate revenues far in excess of its actual pledge of local option tax revenue committed to retire the Series 1999 bonds. Where it contractually pledged annual *revenue* at 2-times annual debt service requirements, it pledged to annually *levy taxes* at nearly 16-times annual debt service requirements.¹⁰ The trial court apparently read this statute as authorizing Sound Transit to pledge its tax rate, without a concurrent and coextensive pledge to the bond purchasers to use all of the revenues raised to retire the Series 1999 bonds.

The local option taxes authorized by RCW 81.104.160 and .170 may,

¹⁰ A large part of the annual revenue requirement is satisfied with pre-paid bond insurance, leaving the revenue-to-debt ratio nearer 1-to-1. The actual annual revenue-to-debt service ratio fluctuates with growth and inflation (on the revenue side) and principal payments / reduced interest payments (on the debt side). However, the fluctuations are minimal, and do not materially change the ratio. At all times, all evidence shows that Sound Transit’s sales tax revenue, even after the elimination of the MVET, will produce actual revenues many times higher than the contracted revenue obligation.

but need not be, pledged to retire bonds. When a local government chooses to pledge the revenues, it must be done within the limitations and for the purposes defined in RCW 81.104.180. RCW 81.104.180 does not authorize Sound Transit to make a bare pledge of its tax rate. It expressly authorizes only a pledge of the revenue. That statute does not authorize Sound Transit to pledge the revenue for any purpose other than for bond retirement, yet Sound Transit argues that it “pledged” to use the grossly excess revenues for other purposes. It is clear that RCW 81.104.180 did not just create special purpose bonding power; that statute also limited the bonding power delegated.

The Legislature did not want Sound Transit to have the power to issue one \$1,000.00 bond maturing in 30 years, pledge its entire taxing power, and thereby “lock-in” billions of dollars of tax revenues not committed to retiring the bonds, and in the process surrendering the taxing power of future State and local legislators to alter tax policy. To contract to levy a tax whose revenues are contractually earmarked for bond retirement is constitutional, but to contract to levy a tax whose revenues are not contractually committed to bond retirement violates Washington Constitution Article Seven § 1. *Gruen v. State Tax Com.* 35 Wn.2d 1, 211 P.2d 651 (1949).

The contract Sound Transit claims to have been impaired by I-776 is not “valid” because it exceeds the statutory authority delegated by the State Legislature.

b. Sound Transit Failed to Secure Voter Ratification Required by RCW 81.112.030.

Sound Transit’s complaint (CP 249-277) alleges that Sound Transit is

a legal local government entity formed pursuant to RCW 81.112, as amended, with capacity to have entered into public contracts which it claims are “impaired,” and to bring this lawsuit. Permanent Offense denied these allegations. (CP 785-793, CP 1924-1932)

ESHB 2610 (titled “An Act Relating to regional transportation,”) was passed by the Washington State Legislature in 1992, laws 1992, Ch. 101, and was codified at Chapter 81.112 RCW. Section 3 of ESHB 2610 (codified at RCW 81.112.030) provided, in relevant part, as follows:

“(2) The legislative authorities of the counties within the service area shall decide by resolution whether to *participate* in the authority.....(italics added)

The authority shall place on the ballot within two years of the authority’s formation, *a single ballot proposition to ratify formation of the authority*, approve the system and financing plan, and authorize the imposition of the taxes to support the plan within its service area.....*If the vote is affirmative*, the authority shall begin implementation of the plan. (ESHB 2610, emphasis added)

In September 1993, King County passed Ordinance #10925, Pierce County passed Ordinance #93-75, and Snohomish County passed Motion 93-214, electing to “participate” in a regional transit agency (see Ex. “G” to Klauser Declaration, CP 2074-2364, copy attached at App. "G" hereto). However, Sound Transit never placed upon its ballot submitted to the voters a proposition to ratify formation of the authority or to approve the “System and Financing Plan.” (see Ex. “H” to Klauser Declaration CP 2074-2364, copy attached at App. "H" hereto) Voters within the service area never ratified the formation of the authority because the authority (RTA/Sound Transit) deprived them of the vote. Nonetheless, the authority has begun

implementation of the plan, and the validity of a portion of that implementation — bond contracts to finance implementation — is an issue in this case.

c. **RCW 81.112.030 “Amendments” relied upon by Sound Transit are unconstitutional and void.**

Sound Transit’s explanation for depriving voters of their right to vote on ratifying formation of the new municipal government is that the State Legislature “amended” RCW 81.112.030 to eliminate those valuable voting rights. Since those “amendments” are unconstitutional and therefore are void, the original statutory voter ratification requirement stands, and Sound Transit’s putative bond contracts are invalid because Sound Transit failed to meet the organizational prerequisites to exercising such authority. A closer look at those amendments is necessary. That legislative history is comprehensively provided in the 10/18/04 Second Klauser Declaration (CP _____):

1. 1992, ESHB 2610: a **substantive** bill titled “An Act Relating To Regional Transportation” included what would become RCW 81.112.030, and required voter ratification of Sound Transit. (copy at Ex. "I" to Klauser September 27, 2004 declaration, CP 2074-2364)
2. 1993, SB 5962: a **substantive** bill titled “An Act Relating to Transportation Funding” that added and altered numerous fee, tax, and organizational provisions of RCW pertaining to state and local transportation subjects, the relationship between the state and local transportation subjects, and High Capacity Transportation systems. Included within that substantive bill (at section 313) was a proposed **substantive amendment to RCW 81.112.030 to eliminate voter ratification of Sound Transit’s formation.** (copy at Exhibit “F” of 10/18/04 Second Klauser Declaration)
3. 1993, HB 2107: a **substantive** bill titled “An Act Relating to Transportation Funding” identical in all material parts to its Senate

companion bill, SB 5962. Included within that substantive bill (at section 313) was a proposed **substantive amendment to RCW 81.112.030 to eliminate voter ratification of Sound Transit's formation.** (copy at Ex. "I" to 10/18/04 Second Klauser Declaration)

4. 1993, ESSB 5972: an **appropriations** bill titled "An Act Relating to Transportation Appropriations," (copy at Ex. "K" to 10/18/04 Second Klauser Declaration). During the regular session, the bill contained no substantive amendment to RCW 81.112.030. At the outset of the 1993 First Special Session, the conference committee plucked section 313 from SB 5962 and HB 2107, inserting the substantive amendment into this appropriations bill as new section 62.
5. 1994, c 44, laws of 1994: a **substantive** law titled "An Act Relating to regional transit authorities" substantively amended RCW 81.112.030 by eliminating voter approval of Sound Transit's system and finance plan. (copy at Ex. "J" to 10/18/04 Second Klauser Declaration)

In the 1993 Regular Legislative Session, the Legislature was unable to agree upon, and therefore failed to pass, the two pending substantive bills (SB 5962 and HB 2107) which contained the proposed substantive amendments to eliminate statutory voter ratification of Sound Transit formation contained in RCW 81.112.030. The Legislature was also unable to pass — in the 1993 regular session — SSB 5972, a state transportation appropriations bill to fund the Washington State Department of Transportation. On April 25, 1993, then Governor Lowry issued Proclamation 93-03, which convened a special legislative session for the purpose of "addressing matters related to the 1993-1995 Operating, Capital and Transportation Budgets." (copy attached at Ex. "G" to Klauser Declaration at CP 885-1106).

Entitled "An Act Relating to transportation appropriations," SSB

5972 was then amended to add a section 62, (section 313 from the two failed substantive bills) which purported to substantively amend RCW 81.112.030 by eliminating the right of voters to ratify, or reject, the formation of Sound Transit. (copy of relevant parts are attached as Ex. “H” to CP 885-1106). The bill title was not amended to identify the addition of a second unrelated substantive amendment to RCW 81.112.030.

“(8) The authority shall place on the ballot within two years of the authority’s formation, a single ballot proposition to ((**ratify formation of the authority**),) approve the system and finance plan(,) and authorize the imposition of the taxes to support the plan within its service area.....” (2ndSSB 5972, relevant portion amended by deletion is indicated in bold)

Ultimately passed as “Second Substitute Senate Bill 5972” the amendment broadened the scope and object of the appropriations bill (whose original 61 sections were all State Department of Transportation “appropriations” provisions) to include amendments to unrelated substantive law regarding the formation of local governments and the elimination of voter ratification of the formation of the authority (Sound Transit), an amendment having nothing to do with the appropriation bill for the Washington Department of Transportation, in violation of the restrictions of Washington Constitution Two § 19 (one subject stated in title).

Washington Constitution Article Two § 19 requires that every bill contain a single subject which must be expressed in the title of the bill. Article Two § 19 requirements are particularly applicable to the 1993 amendment: to prevent logrolling, or pushing legislation through by attaching it to other necessary or desirable legislation, and to assure that the members of the

Legislature and the public are aware of what is contained in proposed new laws. *Flanders v. Morris*, 88 Wn.2d 183, 187, 558 P.2d 769 (1977); *Power Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173 (1951). The 1993 legislative amendment of RCW 81.112.030 violates that constitutional restriction. One subject is the funding of the State Department of Transportation while the other subject is delegation of legislative power to create local governments.

The inclusion in an appropriation bill of such provisions amending substantive law unrelated to the appropriations being made has consistently been struck down by this Court for violating the restrictions of Washington Constitution Article Two Section 19. *Flanders v. Morris*, supra; *Washington State Legislature v. State*, 139 Wn.2d 129, 985 P.2d 353 (1999). Article Two Section 19 has particular application to appropriation bills, and prohibits the attachment of substantive provisions to an appropriation bill. *State v. Acevedo*, 78 Wn.App. 886, 899 P.2d 31, review denied 128 Wn.2d 1014 (1995). Legislators are further deceived by the existence of a permanent amendment of substantive law in what purports to be an enactment of short and temporary duration, an appropriations bill. Legislators are thus less likely to mount effective resistance that may further impede desired and needed appropriations action to fund state-wide transportation needs.

Where a bill includes two subjects — (1) state transportation appropriations and (2) eliminating local voter rights, as in this case — only one of which is included in the ballot title, only the subject not included in the ballot title is void, but the subject both contained in the body of the act and expressed in the Ballot Title is valid. *State v. Cloud*, 95 Wn.App. 606, 976 P.2d 649 (1999).

Because the bulk of the appropriations bill was appropriately identified in the title of the bill, but the elimination of local voting rights was not identified at all, the appropriation provisions survive, but the purported amendment to RCW 81.112.030 is void, with the result that RCW 81.112.030 as originally existing prior to the invalid amendment controls the formation of Regional Transit Agencies, and the restrictions on its authority.

When scrutinizing legislation for Article Two § 19 compliance, the Court reviews legislative history to determine whether the legislature has historically treated a subject as a separate substantive subject requiring a separate substantive bill. *Washington State Legislature v. State*, supra. The legislative history identifies five (5) instances where the Legislature acted on RTA substantive legislation. In four (4) of those five (5) cases, it did so by separate substantive bills. The only time it deviated from that pattern was in 1993 when the Legislature blatantly log-rolled the elimination of local voting rights in the state appropriations bill — 2nd SSB 5972.

For reasons that are not entirely clear, the trial court ruled that the 1994 amendment to RCW 81.112.030 (ch 44, laws of 1994) “cured” the problem created in 1993, at least a tacit admission that unconstitutional logrolling had occurred in 1993. The problem with that trial court ruling is that the 1994 amendment was an “amendatory” provision, specifically amending a former statute, and as such it was required to set out the statute being amended in full pursuant to Washington Constitution Article Two § 37. It did not do so, and was itself unconstitutional. *Gruen v. State Tax Com.*, supra. Where a bill, purporting to amend another statute refers directly to, and specifically amends

a designated section in the revised code of Washington, but refers only indirectly to the original act and did not specifically amend it in compliance with Article Two § 37, the act in its original form must still be given effect as the law of this state. *Parosa v. City of Tacoma*, 57 Wn.2d 409, 357 P.2d 873 (1960).

As originally enacted, the delegation of authority in RCW 81.112.030 was relatively clear. The Legislature delegated power to the legislative bodies of the three counties to *participate* in a regional transportation *planning* effort as a prelude to the potential conversion of that entity into a local government with broad governmental powers by the voters exercising formation power delegated to them by that same statute. With the 1993 amendment (if it is validly enacted or cured), the statute no longer delegates the power of formation to anyone. No delegation of legislative power can occur unless a recipient governmental entity exists and is identified. *Matter of Powell* 92 Wn.2d 882, 602 P.2d 711 (1979). The original delegation of that power to the voters satisfied the due process requirements for an effective delegation, but the elimination of that delegation in 1993 without contemporaneously delegating the power to another legal entity left the delegation ineffective. In essence, Sound Transit claims that its conception was “immaculate,” appearing out of thin air by mere assemblage.

The fact of the matter is that the State Legislature was powerless to delegate the power of government formation to any but the affected voters. Just as the Legislature was powerless to create a municipal corporation by its own special law (Washington Constitution Article Eleven § 10), it was

powerless to delegate power it did not have to any local legislative body. As construed by the trial court, the Legislature delegated power it did not have, accomplishing indirectly that which the State Constitution prohibits it from doing directly.

The trial court erred in ruling that RCW 81.112.030, as amended, properly deprived citizens of a vote on the question of Sound Transit's formation. The proposition apparently embraced by the trial court is that county organization and consolidation (reorganization) can be constitutionally effected without a majority approval of voters as required by Washington Constitution Article Eleven §§ 4, 10, and 16. The trial court also necessarily ruled that de facto new (increased) debt limits can be spun off by existing elected leaders without voter approval as required by Washington Constitution Article Eight § 6.¹¹ The counties could not have jointly funded the transit debt without submitting a debt limit vote to voters, and so they contrived to expand available debt limits for that purpose without voter approval by creating their own independent local government.

The most fundamental duty of the courts is to preserve the basic republican form of our government against all manner of official efforts to subvert it. *Wheeler School Dist. v. Hawley*, 18 Wn.2d 37, 137 P.2d 1010 (1943). When scrutinizing governmental structure for compliance with such requirements as “one man/one vote” (equal protection), the courts must look

¹¹ Permanent Offense asks the Court to judicially notice the published debt limit tables included in the year end 2003 financial reports of Pierce, and Snohomish Counties attached hereto at App. "I." Its relevance is to demonstrate the importance of the debt limit issue. With the original \$350 million and the new \$423 million Sound Transit debts, both Snohomish and Pierce Counties would now—if they had not “created” a new debt limit—currently be exceeding their non-voted debt limits.

to the power which can be exercised by the local government, not that which has been exercised. *Cunningham vs. Municipality of Metropolitan Seattle*, 751 F. Supp. 885, 890 (WD Washington 1990). Accordingly, resolution of the question of the constitutional requirement for voter approval of the formation of Sound Transit cannot be divorced from the municipal corporation's powers and structure.

Washington Constitution Article One § 1 is not meaningless, and requires that the governed “consent” to be governed. Washington Constitution Article One § 29 instructs that the State Constitution is mandatory. Article One § 32 admonishes “a frequent recurrence to fundamental principles” to assure the “perpetuity of free government.” Sound Transit, like all other government, has no authority to govern without voter consent, and that consent has never been sought or received. A contrary proposition — that unconstitutional amendments will stand to eliminate voter consent — is especially untenable in a case such as this, where the State Legislature dictated that the broad governmental powers would be exercised, following formation, by an appointed board not elected by — and therefore not accountable to — the voters.

The State Legislature may delegate state legislative power to a local government only if the power delegated is to adopt policy of purely local concern, but due process requires that such a delegation of legislative power be made to popularly elected local representatives, who are themselves accountable to a local electorate. *Earle M. Jorgensen Co. v. Seattle*, 99 Wn2d 861, 665 P2d 2328 (1983). We find, from the record in this case, that the only

voter control of legislative acts of Sound Transit provided by the Legislature is the question of whether or not to initially authorize the local MVET and sales taxes. However, the record also demonstrates that the non-elected Sound Transit Board controls the most material aspects of the taxing power free from voter restraint. The statute does not provide local voters, for example, the right to change its mind and repeal the tax. The Board, through delegated bonding power, claims to have the right to dictate the duration of the tax, and to thereby shield it from either local or state voter power.

In lieu of a voter-approved charter to frame the organizational structure and limitations on Sound Transit's "representative" Board, the State statute provides the structure. RCW 81.112.040 The statutory scheme eliminates the voters' right to vote for elected representatives as is required by Washington Constitution Article One § 19 and the Fourteenth Amendment to the United States Constitution. The statutorily imposed structure also makes no provision for recall as contemplated by Washington Const. Article One § 33. RCW 81.112.040 provides for *appointment* of original and replacement representatives. Deprivation of the right to vote for representatives violates the most fundamental state and federal suffrage rights essential to a democratic society based upon republican principals. *Gold Bar Citizens for Good Government v. Whalen*, 99 Wn.2d 724, 665 P.2d 393 (1983); *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S.Ct. 1362, 1378, 12 L.Ed.2d 506 (1964). One of the "privileges" of citizenship guaranteed state citizens by the U.S. Constitution is contained in Article IV § 4: the right to a republican form of government. The deprivation of that right by the State of Washington

violates federal protections contained in the Fifth, Tenth, and Fourteenth Amendments to the United States Constitution. The Washington State Constitution goes further to safeguard the right to “free and equal” elections than does the Federal Constitution. *Foster v. Sunnyside Valley Irrigation Dist.*, 102 Wn.2d 395, 687 P.2d 841 (1984).

While RCW 81.112.040 provides that the Sound Transit Board will have a representative for each 145,000 population within the transit boundary, this provision serves solely to determine the number of representatives on the Board. This requirement does not satisfy either State or Federal Constitutional equal protection guarantees imposing apportionment (one man / one vote) requirements. *Reynolds v. Sims*, supra; *Gold Bar Citizens for Good Government v. Whalen*, supra. Inequality is built into this law. For example, RCW 81.112.040 requires that at least one representative shall be an elected official from the largest city in each county, assuring the Cities of Everett and Tacoma with greater representation than other areas. Where initial voters are denied a vote on whether or not to be governed by an RTA, voters in areas to be annexed are provided the right to vote. RCW 81.112.050(2).

It is not within the power of the Legislature to take from the people of counties, cities, and other municipal corporations the right of local self-government secured to them by our Constitution. *State Tax Commission v. Redd*, 166 Wash. 132, 6 P.2d 619 (1932). That right is violated in the Sound Transit structure provided by RCW 81.112.040, and was violated in the 1993 amendment that removed the voters’ choice to have—or not have—such a deviant local government. It was the fact of “voter consent” to its formation that this Court recently relied upon to save the existence of an independent

municipal corporation (with far fewer powers than Sound Transit). *Granite Falls Library Capital Facility Area v. Taxpayers*, 134 Wn.2d 825, 953 P.2d 1150 (1998). Government and taxation, without representation, is anathema to the basic republican principles guaranteed citizens by this State's constitution.

3. Sound Transit did not prove that I-776 "impaired" any contracts.

Quite apart from the fact that it cannot establish that it issued "valid" bonds, Sound Transit cannot prove that I-776 impairs any contract obligations within the meaning of Washington Constitution Article One § 23. In *Haberman v. WPPSS*, 109 Wn.2d 107, 744 P.2d 1032, 750 P.2d 750 (1987) this Court rejected its earlier view, enunciated in *Metropolitan Seattle v. O'Brien*, 86 Wn. 2d 339, 544 P.2d 729 (1976), that any diminishment in the value of underlying security for a public bond "impairs" the bond. Rejecting mere "value fluctuation" as the test, this Court required that it be shown that the challenged legislation "detrimentally affect the financial framework which induced the bondholders originally to purchase the bonds, without providing alternative or additional security." *Haberman*, at 146-147. The prohibition against any impairment of contracts is not absolute and is not to be read with literal exactness. *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S.398, 54 S.Ct. 231, 78 L.Ed. 413, 88 A.L.R. 1481 (1934).

Sound Transit's transaction documents did not include a pledge to use all local option taxes to retire the Series 1999 bonds, a good indicator of the "financial framework," which also includes the authorizing legislation, RCW 81.104.180. In addition to the illusory nature of the "pledge" provisions in the transaction documents, the trial court was provided expert opinion in the form of declarations from Thomas Rubin, who informed the trial court about the

standards applicable in the municipal bond market regarding expectations relating to pledged security and customary revenue/debt ratios relied upon in the market place. Mr. Rubin's testimony was that the "pledge" made by Sound Transit in its transaction documents was made within a financial framework quite different from that described by Sound Transit. His testimony is contained in two declarations (10/16/04 Rubin Declaration at CP _____) and (10/25/04 2nd Rubin Declaration at CP 3531-3539) and which is summarized here in relevant part:

1. Bond purchasers contract with knowledge of applicable law, which in this case is RCW 81.104.180.
2. No bond purchaser could have reviewed RCW 81.104.180 and reasonably understood that statute to authorize Sound Transit to give them a "pledge" on \$ billions in revenue, most of which the contracts provided would be spent on purposes other than Series 1999 bond retirement.
3. The "pledge" of local option taxes could not have been considered to be exclusive for the benefit of Series 1999 bond purchasers, and those purchasers would have understood that the great bulk of that pledge was intended for the benefit of *future* prospective bond purchasers, and was extraneous to the contracted revenue-to-debt ratio of 2-to-1 required by the contract to protect Series 1999 bond purchasers.
4. The contracted 2-to-1 1999 Series contractual revenue-to-debt ratio, considered alone, exceeds normal market standards, and would alone induce the purchase of the bonds.
5. Elimination of MVET revenues by I-776 still leaves Sound Transit's

1999 Series bond purchasers with their contracted security unimpaired, because Sound Transit's pledged sales tax revenue, standing alone, far exceeds both the contract obligations owed to 1999 Series bond purchasers and any reasonable expectations that purchasers within the market place would expect.

Mr. Rubin's testimony is independently confirmed by other portions of the record. For example, Sound Transit complained that bond purchasers, underwriters, and rating agencies all relied on the excessive pledge of both MVET and Sales Tax revenues to 1999 Series bond purchasers. It argued that the loss of MVET revenues would "impair" those expectations by violating the "financial framework" that induced those innocent persons to make the transaction. The record shows otherwise:

1. The record shows that bond rating agencies gave Sound Transit bonds the exact same rating *after* I-776 as *before* I-776, knowing that MVET would not be available as security for future bond buyers (CP 201, the 10/16/04 Rubin Declaration at CP _____, and 10/18/04 2nd Klauser Declaration at CP _____);
2. While arguing that Series 1999 bond purchasers could not have been induced *before* I-776 to purchase bonds worth \$350 million if the "financial framework" had not included a pledge of the MVET, Sound Transit induced new bond purchasers *after* I-776 to purchase \$423 million within a financial framework that necessarily excluded MVET revenues because they had been repealed by I-776 (see App. "F").

In order to contrive a shield against I-776, Sound Transit concocted

— and the trial court accepted — windfall rights putatively owed Series 1999 bond purchasers not found in their contracts and wildly at odds with market-place norms.

4. I-776 fits within “Public Policy” and “Additional Protection” exceptions to Article One § 23 impairment claims.

Washington Constitution Article Seven § 1 prohibits surrendering or contracting away of the power to tax, which is exactly what Sound Transit has attempted in this case. The power of the Sovereign, and the voters, to change tax policy far outweighs any minuscule impairment that may be conceived to have been created by I-776. In addition, *Haberman*, supra, recognizes that even a significant impairment can be cured if additional or substitute security is provided. Providing such additional security is unneeded in this case, as the Legislature has already provided to Sound Transit additional revenue options that Sound Transit has chosen not to provide to Series 1999 bond holders. Offering additional revenue options would be superfluous and wholly unnecessary.

C. If I-776 impairs valid public contracts, the impairment does not last until Year 2028. (Assignment of Error No. 2, Issues 8-9)

Even if the Court were to find the existence of an “impairment,” it could not do what the trial court did—simply ignore I-776 and allow Sound Transit to do what it wishes with MVET proceeds for as long as it has any 1999 Series bonds outstanding. The remedy where a contractual impairment claim is established is to enforce the law to the extent necessary to prevent the impairment, not to strike down the entire law. *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 901 P.2d 1028 (1995). If the Court finds that the MVET was properly pledged and must be applied to retiring the

1999 Series bonds, the Court must also recognize that the Sales and Use Tax was properly pledged and must be applied to retiring the 1999 Series bonds.

1. Sufficient pledged revenues have been collected since the effective date of I-776 to fully secure the retirement of all Series 1999 Bonds.

Since December 5, 2002—the effective date of I-776—Sound Transit has applied approximately \$34,000,000.00 toward retiring 1999 Series bonds by making two year’s deposits of roughly \$17,000,000.00 each to the bond account, during which time it has collected nearly \$120,000,000.00 in MVET and nearly \$420,000,000.00 in Sales/Use Tax collections. Those Local Option Taxes are either pledged to 1999 Series bond holders to retire their bonds — as required by RCW 81.104.180 and as claimed by Sound Transit when trying to shelter its MVET revenues from state law — or they are not. In the latter case, no impairment exists. In the former case, the impairment has already been cured.

2. I-776 cannot “Impair” a contract right conceded by the Bond Purchasers To Sound Transit.

Sound Transit would not be diverting “pledged” revenue from bond retirement unless it, and the bond purchasers, recognized that it had the right to do so. The bond purchasers might have negotiated the right to have all pledged revenues applied to bond retirement, as is required by RCW 81.104.180, but they did not do so. Having negotiated the right away, no bond purchasers’ rights exist for I-776 to impair.

D. The Trial Court did not dispose of claims consistently with this Court’s ruling in *Pierce County, et al. v. State of Washington, et al.* (Assignment of Error No. 3, Issues 10-11)

1. The Trial Court was required to dismiss all of Plaintiffs' claims rejected by this Court.

This Court rejected every claim made by all Plaintiffs in *Pierce County, et al. v. The State of Washington, et al*, supra, except for Sound Transit's bond impairment claim which was not before it. It remanded to the trial court for disposition consistent with that decision. CR 54 requires that cases be resolved with a final determination in the form of a judgment. The trial court refused to do that, despite a demand from Permanent Offense that judgment be entered. (CP 4066-4074) This Court must remand with instructions to enter final judgments of dismissal.

2. Taxpayers from whom local option taxes were illegally collected, and to whom refunds were required by this Court, were entitled to interest.

The trial court rarely articulated a rationale for its decisions, and the decision to deny interest to taxpayers was no exception. It is important to understand that, in Phase I, the State of Washington was a prevailing party, together with these Appellants, who also represented the State's interest in defending I-776. Permanent Offense did not argue that the State of Washington should pay interest on the Gross Vehicle Fees collected, but was still resisted by the State. Permanent Offense sought an interest award against the local governments who lost their lawsuit.

Local governments are not entitled to the shield of "sovereign immunity" as is the State, which is the repository of sovereign immunity. Local governments enjoy immunity only in so far as they partake of the State's immunity, and only in the exercise of those governmental powers and duties imposed upon them as representing the State. *Carrillo v. City of Ocean*

Shores, 122 Wn.App. 592, 94 P.3d 961 (2004). The local governments were not representing the State by challenging the constitutionality of a State statute.

This State has long recognized the propriety of both pre-judgment and post-judgment interest awards in illegal tax refund cases against local governments. *Doric v. King Co.*, 59 Wn.2d 741, 370 P.2d 254 (1962); *Lone Star Cement Corp. v. Seattle*, 71 Wn.2d 564, 429 P.2d 909 (1967); *Carrillo*, supra. RCW 4.56.110(3) provides that judgment interest shall be the maximum rate permitted under RCW 19.52.020. The latter statute provides currently for a 12% interest rate.

E. Appellants are entitled to an award of reasonable attorney fees pursuant to their taxpayer claim. (Assignment of Error No. 4)

Under this Court's equitable powers as expressed in *Weiss v. Bruno*, 83 Wn.2d 911, 523 P.2d 915 (1974), *McCready v. Marshall*, 131 Wn.2d 266, 931 P.2d 156 (1997), and *Pierce County et al v. State of Washington et al.*, 150 Wn.2d 422, 78 P.3d 640 (2004), Permanent Offense is entitled to an award of its attorney fees in this case under the "common fund" equitable doctrine.

In its decision in *Pierce County v. State*, supra at 441-442, this Court recognized four requirements for such an award: (1) a successful suit, (2) challenging the expenditure of public funds, (3) made pursuant to patently unconstitutional legislative and administrative actions, (4) following refusal by the appropriate official and agency to maintain such a challenge. The Court went on to deny an award of attorney fees in that case to the prevailing private litigants on four grounds: First, no showing that "expenditures" were unconstitutional; second, the State challenged the agency action; third, the "collections" were sanctioned by a temporary injunction issued by a court,

and fourth, the “constitutional” questions involving Sound Transit’s formation were beyond the scope of trial court proceedings being reviewed by the Supreme Court in that case.

Permanent Offense is confident that its appeal will be successful, satisfying the first requirement. The appropriate official and agency to maintain the action was the Attorney General who, though present in the action, agreed to the continuation of Sound Transit’s MVET expenditures and declined to raise the claims necessary to defend I-776, satisfying the fourth requirement. Continued collection and expenditure of repealed MVET taxes from its effective date on December 5, 2002 was not required by any court order. The pretext for continuing to collect and spend MVET taxes repealed by I-776 constituted patent unconstitutional and administrative action, especially considering that the MVET being spent by Sound Transit was being spent for other purposes than the 1999 Series bond retirement, the State AG’s sole justification for ignoring I-776 relative to Sound Transit’s MVET.

The State Legislature has recognized, as a matter of public policy, that bond validity actions — when brought by the issuing public agency — require representation of the public, whose legal fees must be paid regardless of their success or failure in that “bond validity” litigation. RCW 7.25.020.¹² *Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls*, supra, at page 842-843. Had Sound Transit brought such an action it would have been responsible for the citizen’s attorney fees, regardless of outcome.

Here, Sound Transit declined to bring the RCW 7.25 bond validity

¹² The issuing agency is the only person with standing to bring an action under that statute.

action, issued the bonds, ignored the repeal by I-776 of its taxing authority, collected and spent public money for purposes other than bond retirement, and has declared its intent to do so for an additional twenty-three (23) years.¹³ Permanent Offense must be compensated for its success in preventing the illegal expenditure of at least \$60,000,000.00 of the public's money in each of the next 23 years — approximately \$1,380,000,000.00.

This is a classic case for application of this Court's "common fund" equitable exception to the "American Rule" on attorney fee awards. The Legislature provided for attorney fee reimbursement regardless of outcome. The American Rule — when applicable — provides no attorney fee reimbursement regardless of outcome. The Court should apply its "Common Fund" equitable doctrine to reimburse *prevailing* litigants, a small step toward consistency with the more generous legislative policy.

IV. CONCLUSION

The record clearly shows that Sound Transit struck a deal with the State of Washington to ignore enforcement of I-776 relating to Sound Transit's illegal yet ongoing MVET collections. Statutes, including initiatives, are presumed to be constitutional and government lawyers are not empowered to agree otherwise.

The best measure of the merits of an appeal is the extraordinary steps a Respondent is prepared to take to avoid swift and ultimate review. The trial court in Phase I simply declined — at the request of Sound Transit — to decide Sound Transit's bond impairment claim leaving that claim in limbo. Having

¹³ 23 years measured from oral argument in this case, but 26 years from the effective date of I-776.

ruled on some, but not all, constitutional claims, the trial court — again at Sound Transit’s urging — declined to make CR 54 or CR 56 findings that would have allowed litigation of Sound Transit’s bond impairment claim to proceed. While on Phase I review in this Court—but before a decision— Sound Transit pled “urgency” to support an extraordinary request that this Court issue a Ruling without written Opinion. Following remand in Phase II, Sound Transit (1) failed to file a statement of remaining “issues;” (2) subsequently raised a “laches” argument for the first time in a CR 56 motion, and (3) again resisted Appellants' efforts for entry of a final judgment disposing of all issues.

Sound Transit has continued to collect \$5 million monthly of MVET under authority repealed by I-776, and to spend it as it wishes.

Sound Transit and the counties favor local government creation without voter ratification, debt limit growth without voter approval, insulation of local taxing authority from the Sovereign, and contracting the taxing power while reserving full access to the revenue. Sound Transit has even warned this Court that its review may send an "unwanted signal" to the bond community. The only signals this Court should send are swift and ultimate review on the merits and another complete reversal of the trial court.

DATED this 8th day of July 2005.

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Co-counsel to Appellants Permanent Offense, Salish, and Vaughan

**APPENDIX INDEX TO
APPELLANT PERMANENT OFFENSE'S / SALISH'S /
VAUGHAN'S OPENING APPEAL BRIEF**

- A. Sound Transit's 12/ 9/98 “ **Bond Purchase Contract**” claimed by Sound Transit to be impaired by I-776, which was provided by Sound Transit in its response to Appellants' Request for Production No. “C.” (Bates Nos. ST 00158 -00174) [Klauser Ex. "B" at CP 2074-2364]

- B. Sound Transit's 11/12/98 “**Master Bond Resolution**” (Resolution No. R-98-4) which by its terms constitutes part of the contract which Sound Transit claims is “impaired” by I-776, and which was provided by Sound Transit in its response to Appellants' Request for Production No. “C.” (Bates Nos. ST 00189 - 00224 plus two pages not Bates stamped by Sound Transit) [Klauser Ex. "C" at CP 2074-2364]

- C. Sound Transit's 11/12/98 “**1999 Series Bond Resolution**” (Resolution No. R-98-48) which by its terms constitutes part of the contract which Sound Transit claims is “impaired” by I-776, and which was provided by Sound Transit in its response to Appellants' Request for Production No. “C.” (Bates Nos. ST 00225 - 00243) [Klauser Ex. "D" at CP 2074-2364]

- D. Sound Transit’s 11/25/98 “**Preliminary Official Statement**” (exclusive of Appendices) which describes material bond contract provisions and makes disclosures to potential bond purchasers, and which was provided by Sound Transit in its response to Appellants' Request for Production No. “B.” (Bates Nos. ST 00086 - 00123 plus one page not Bates stamped by Sound Transit) [Klauser Ex. "E" at CP 2074-2364]

- E. Sound Transit’s 12/9/98 “**Final Official Statement**” (exclusive of Appendices) which describes material bond contract provisions and makes disclosures to potential bond purchasers, and which was provided by Sound Transit in its response to Appellants' Request for Production No. “B.” (Bates Nos. ST 00001 - 00047) [Klauser Ex. "F" at CP 2074-2364]

- F. Sound Transit's 3/2/05 "**Press Release**" announcing an additional Municipal Bond sale in the amount of \$423 million [in its Opening Brief, Appellant requests judicial notice of this appendix].

- G. **King County Ordinance #10925, Pierce County Ordinance # 93-75, and Snohomish County Motion 93-214**, electing to "participate" in a regional transit agency. These ordinances were provided by Sound Transit in its response to Appellants' Request for Production No. "Q." (Bates Nos. ST 01463 - 01469 for the Pierce and Snohomish County documents and no Bates stamps on King County's document) [Klauser Ex. "G" at CP 2074-2364]

- H. The **1995 Local Voters Pamphlet** and the 1996 State Voter's Pamphlet relating to Sound Transit votes in those respective years, which were provided by Sound Transit in its response to Appellants' Request for Production No. "R." (Bates Nos. ST 01471 - 01477) [Klauser Ex. "H" at CP 2074-2364]

- I. 2003 year end published **Debt Limit Analysis** for Snohomish and Pierce Counties taken from year end Financial Reports [In its Opening Brief, Appellant requests judicial notice of this appendix].

APPENDIX ("A")

Sound Transit's 12/ 9/98 “ **Bond Purchase Contract**” claimed by Sound Transit to be impaired by I-776, which was provided by Sound Transit in its response to Appellants' Request for Production No. “C.” (Bates Nos. ST 00158 -00174) [Klauser Ex. "B" at CP 2074-2364]

APPENDIX ("B")

Sound Transit's 11/12/98 "**Master Bond Resolution**" (Resolution No. R-98-4) which by its terms constitutes part of the contract which Sound Transit claims is "impaired" by I-776, and which was provided by Sound Transit in its response to Appellants' Request for Production No. "C." (Bates Nos. ST 00189 - 00224 plus two pages not Bates stamped by Sound Transit) [Klauser Ex. "C" at CP 2074-2364]

APPENDIX ("C")

Sound Transit's 11/12/98 **"1999 Series Bond Resolution"** (Resolution No. R-98-48) which by its terms constitutes part of the contract which Sound Transit claims is "impaired" by I-776, and which was provided by Sound Transit in its response to Appellants' Request for Production No. "C." (Bates Nos. ST 00225 - 00243) [Klauser Ex. "D" at CP 2074-2364]

APPENDIX ("D")

Sound Transit's 11/25/98 **"Preliminary Official Statement"** (exclusive of Appendices) which describes material bond contract provisions and makes disclosures to potential bond purchasers, and which was provided by Sound Transit in its response to Appellants' Request for Production No. "B." (Bates Nos. ST 00086 - 00123 plus one page not Bates stamped by Sound Transit) [Klauser Ex. "E" at CP 2074-2364]

APPENDIX ("E")

Sound Transit's 12/9/98 "**Final Official Statement**" (exclusive of Appendices) which describes material bond contract provisions and makes disclosures to potential bond purchasers, and which was provided by Sound Transit in its response to Appellants' Request for Production No. "B." (Bates Nos. ST 00001 - 00047) [Klauser Ex. "F" at CP 2074-2364]

APPENDIX ("F")

Sound Transit's 3/2/05 "**Press Release**" announcing an additional Municipal Bond sale in the amount of \$423 million [in its Opening Brief, Appellant requests judicial notice of this appendix].

APPENDIX ("G")

King County Ordinance #10925, Pierce County Ordinance # 93-75, and Snohomish County Motion 93-214, electing to “participate” in a regional transit agency. These ordinances were provided by Sound Transit in its response to Appellants' Request for Production No. “Q.” (Bates Nos. ST 01463 - 01469 for the Pierce and Snohomish County documents and no Bates stamps on King County's document) [Klauser Ex. "G" at CP 2074-2364]

APPENDIX ("H")

The **1995 Local Voters Pamphlet** and the 1996 State Voter's Pamphlet relating to Sound Transit votes in those respective years, which were provided by Sound Transit in its response to Appellants' Request for Production No. "R." (Bates Nos. ST 01471 - 01477) [Klauser Ex. "H" at CP 2074-2364]

APPENDIX ("I")

2003 year end published **Debt Limit Analysis** for Snohomish and Pierce Counties taken from year end Financial Reports [In its Opening Brief, Appellant requests judicial notice of this appendix].