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SUPERIOR COURT OF WASHINGTON
FOR WHATCOM COUNTY

PEOPLE FOR PROGRESSIVE)	No. _____
TRANSPORTATION,)	
)	
Petitioner,)	PETITION
)	
v.)	Oral Argument Requested
)	
DAVID S. MCEACHRAN,)	
)	
Respondent.)	
_____)	

Pursuant to RCW 29A.36.090, People for Progressive Transportation (“Petitioner”) hereby appeals the Ballot Title for Proposition 1 scheduled for the April 2010 ballot.

I. PARTIES

1. Petitioner is an organization of Whatcom County voters opposed to Proposition 1.
2. Respondent, David S. McEachran is the Prosecuting Attorney for Whatcom County and has the responsibility for preparing the Ballot Title for Proposition 1 pursuant to RCW 29.36.071.

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1 If the local governmental unit is a county, the concise statement shall
2 be prepared by the prosecuting attorney. If the unit is a unit of local
3 government other than a city, town, or county, the concise statement
shall be prepared by the prosecuting attorney of the county within
which a majority area of the unit is located.

4 9. Although Exhibit B indicates that the ballot title was approved by a civil
5 prosecuting attorney, it is not clear that the prosecuting attorney prepared the concise
6 statement portion of the ballot title.

7 10. Given that the chosen ballot title is identical to that proposed by the Whatcom
8 Transportation Authority, it is apparent that the Prosecuting Attorney has abdicated his
9 responsibilities to prepare the Ballot Title in a way that is fair, accurate and impartial.

10 11. A significant number of voters form an opinion on a ballot measure based
11 solely upon the Ballot Title.

12 We can safely assume that not all voters will read the text of the
13 initiative or the explanatory statement. Some voters may cast their
14 votes based on the ballot title as it appears on their ballots. Thus, the
outcome of the vote may be affected by the tenor of the ballot title.

15 *Ballot Title for Initiative 333 v. Gorton*, 88 Wn.2d 192, 198, 558 P.2d 248 (1977). It is
16 therefore of great importance that the title accurately, clearly and impartially describe the
17 measure.

18 12. The current ballot title does not accurately describe the measure. For instance,
19 it leads with the implication that the tax increase the measure seeks to approve will maintain
20 and improve public transportation services. Exhibit A. The measure itself, however, says
21 nothing about improving public transportation services. The public will be easily be misled
22 by the ballot title into believing that this tax increase will improve services when the measure
23 itself makes no commitment to improving anything.

1 13. Similarly, while the measure references maintenance, there is nothing in the
2 measure that ensures that existing services will simply be maintained at existing levels.
3 Voters can be easily misled by the current ballot title into believing that this tax increase will
4 result in the maintaining of existing service levels when nothing in the measure guarantees
5 such a result. Or, voters could be misled into believing that the funds will be used for
6 maintenance, rather than operating expenses. The Court should be very hesitant to put its
7 stamp of approval on the description of the benefits of a tax increase when only time will tell
8 whether the supposed benefits are actually achieved.

9 14. The current ballot title for Proposition 1 should be changed to ensure that
10 prospective voters are alerted to and fully informed on the content and context of the measure.

11 15. Although ballot titles from the past are not dispositive, the Ballot Title for
12 Proposition 1 is inconsistent with the historical neutral and accurate descriptions of similar
13 measures. For instance, in 1994, the ballot title for Proposition 1 read as follows:

14 Shall the area comprised of Whatcom County voting precincts
15 [list] be annexed to the Whatcom Transportation Benefit Area
16 and shall the authority be authorized to impose a sales and use
 tax not to exceed three tenths of one percent (.003) for public
 transportation.

17 Exhibit C.

18 16. In 2003, the ballot title for Proposition 1 read as follows:

19 Shall Whatcom County be authorized to impose regular
20 property tax levies of \$.385 or less per thousand dollars of
21 assessed valuation for each of six consecutive years for the
 provision of countywide emergency medical services all as
 provided in Whatcom County Ordinance 2003-005?

22 Exhibit D.

23

1 17. In each of these situations, the ballot title follows a common format in
2 identifying the taxing agency, asking whether the agency should be authorized to impose a
3 particular tax, identifying the type (sales and use or property tax) and the rate of taxation and
4 the general purpose for the tax. Unlike the current Ballot Title for the current Proposition 1,
5 these Ballot Titles did not improperly suggest results or benefits resulting from the new tax.
6 In short, the current ballot title should not claim that the tax will improve or maintain
7 transportation. The ballot titles from these historical measures more closely track the
8 statutory language.

9 18. Petitioner alleges that The Ballot Title should be rewritten as follows:

10 Shall the Whatcom Transportation Authority be authorized to
11 impose an additional two-tenths of one percent (0.2%) sales and
 use tax effective October 1, 2010 for public transportation?

12 Yes []

13 No []

14 19. The language proposed by Petitioner is clearer than the current language but is
15 superior because it gives prospective voters a neutral view of the measure by avoiding terms
16 such as “improve” and” maintain”, when neither is necessarily a result of voting for the measure.
17 It is imperative, therefore, that this Court order the initiative title be the clearest, accurate and
18 neutral and as possible. The title proposed by Petitioner meets this requirement.

19 RCW 29A.090 provides that the Court must

20 examine the proposed measure, the ballot title filed, and the
21 objections to it and may hear arguments on it, and shall as soon
22 as possible render its decision and certify to and file with the
23 county auditor a ballot title that it determines will meet the
 requirements of this chapter. The decision of the superior court
 is final, and the ballot title or statement so certified will be the
 established ballot title.

1 **DECLARATION OF SERVICE**

2 I, Linda Hall, declare:

3 I am not a party in this action.

4 I reside in the State of Washington and am employed by Groen Stephens & Klinge
5 LLP in Bellevue, Washington.

6 On February 9, 2010 a true copy of the foregoing Petition was given to Security
7 Specialist Plus for Service of Process by February 10, 2010 on the following persons:

8 David S. McEachran, Prosecuting Attorney
9 Whatcom County Courthouse, Suite 201
10 311 Grand Avenue
11 Bellingham, WA 98225
12 (360) 676-6784

13 Shirley Forslof
14 Whatcom County Auditor
15 Whatcom County Auditor's Office
16 311 Grand Avenue, Suite 103
17 Bellingham WA 98225
18 (360) 676-6740

19 I declare under penalty of perjury that the foregoing is true and correct and that this
20 declaration was executed this 9th day of February, 2010 at Bellevue, Washington.

21 _____
22 Linda Hall
23