NO. 73413-5

SUPREME COURT OF THE STATE OF WASHINGTON

SANE TRANSIT, a Washington non-profit corporation, and MARK BAERWALDT, for themselves and on behalf of taxpayers,

Appellants,

v.

SOUND TRANSIT, officially known as the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a Washington municipal corporation,

Respondent.

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

Sound Transit argues that it has no obligation to return to the voters for approval of its substantially revised light-rail plan. It argues that the voters must be *presumed* to know that they granted the agency discretion to change its plan, even though the discretion-granting provision on which it relies was not sent to the voters or summarized for them as required by law. Sound Transit calls this presumption a "fundamental principle underlying the voter approval process." Response Brief at 1. It argues that the presumption is so strong the Court should ignore the materials actually seen by the voters if they conflict with the undisclosed provision.

Sound Transit is mistaken: under Washington law an initiative passed by the people means what the "average informed voter" thinks it means.[1] The voters are not *presumed* to know the contents of documents hidden from them in defiance of full disclosure laws; hidden documents are not properly part of the measure enacted. For this reason, Sane Transit has argued and

[1] *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 97, 758 P.2d 480 (1988) (initiative should be interpreted "as the average informed lay voter would read it") (quoting *In re Estate of Hitchman*, 100 Wn.2d 464, 467, 670 P.2d 655 (1983)).

will continue to argue that the meaning of Sound Transit's Proposition 1 must be found in an examination of the two documents sent to the voters in advance of the election – the eight-page proposal, called by the agency the "Ten Year Regional Transit System Plan," and the voters' pamphlet.

The Court need not reach this claim, however, because the contentions made by Sound Transit in its brief demonstrate that the trial court must be reversed even if the Court presumes that the average voter had knowledge of the terms of the hidden measure. Resolution 75, as Sound Transit describes it in its brief, unequivocally promised the voters that the agency's light-rail line would be completed in ten years. Consequently, Sound Transit's plan to take nineteen years or more constructing the line is a substantial deviation of the measure approved by the voters, even as Sound Transit characterizes the measure.

Before turning to the argument section, Sane must refute several misleading or plainly erroneous factual assertions in Sound Transit's brief. First, the agency makes the disingenuous statement that light-rail is only one of 70 projects approved by the voters in Sound Move. Response Brief at 6, 16, 18. The inference Sound Transit wants the Court to draw is that light-rail is just one

of many equal projects and that the changes to it are not significant in the context of the project as a whole. This is highly misleading. Sound Transit ignores that a full 60% of all riders in the entire Sound Move project were to be carried by the light-rail line that was to run from Seattle's University District to a park and ride station south of SeaTac Airport. Earl Decl., Ex. B (Sound Move, App. C at C-6 and C-19). The other "69 projects" (by the agency's count) were to carry collectively only 40% of the riders. So, when Sound Transit truncated its light-rail plan and cut out two-thirds of its riders, it eliminated 40% of the riders projected for the whole plan (2/3 times 60%). In other words, the changes to the light-rail project have the same effect on ridership as would eliminating all 69 of the "other projects" combined.

Second, Sound Transit says that the Sound Move transit plan originally contemplated constructing light-rail north from Downtown "only if it was affordable." Response Brief at 28. This statement is just plain false. Sound Move assures voters that it will go to the University District with the funds approved by the voters. Earl Decl., Ex. B at 18. The 1996 transit plan never even hints that this portion of the line might not be built. The

statement cited by Sound Transit is referring to the extension of the line from the University District to Northgate. *Id.* at 30.

Third, Sound Transit misrepresents the cost of the truncated light-rail line it now plans to build. It states without any citation to authority that its light-rail line is now projected to cost $2.07 billion and that the $2.86 billion cost given by Sane in its opening brief is a misreading of Sound Transit's financial summary. Response Brief at 12, n.6. The difference between the two numbers, as can be seen from Sound Transit's own budget report to the federal government, is that the lower number quoted by Sound Transit omits the cost of debt service during construction ($351 million) and the project's contingency reserve ($253 million). CP 391. The correct cost is $2.86 billion.

II. REPLY ARGUMENT

A. By Taking More than Ten Years to Complete Light-Rail, Sound Transit Is Substantially Deviating from the Project Approved by the Voters.

In its brief, Sound Transit admits to facts conclusively establishing that it made an unqualified promise to complete its light-rail project in ten years. Since the agency also admits that it will take at least 13 years to build the truncated line it now plans to build, and 19 years or longer to get to the University District

and SeaTac Airport (if, indeed it can find funds to build these parts of the voter-approved line), the agency has admitted that its current project substantially deviates from the project the voters approved. Under the clear case law established by this Court, construction of Sound Transit's non-conforming light-rail line must be enjoined.[2]

1. The Resolution as Construed by Sound Transit Expressly Requires the Completion of All Light-Rail Construction by 2006.

Sound Transit claims in its brief that Resolution 75, which it argues is the measure approved by the voters, consists of "over 100 pages including attachments," and it directs the Court to Exhibits B and C of Joni Earl's Declaration in support of that statement. Response Brief at 9. Exhibit C to Ms. Earl's declaration is what plaintiffs have called Resolution 75 (see ¶ 9 of Ms. Earl's declaration and her index to exhibits), while Exhibit B is the 93-page document titled "Sound Move -- The Ten-Year Regional Transit System Plan," with all its addenda. Sound Transit's lawyers lump the two together and call the combination

[2] *See, e.g., O'Byrne v. Spokane*, 67 Wn.2d 132, 406 P.2d 595 (1965); *George v. City of Anacortes*, 147 Wash. 242, 265 P. 477 (1928); *Hayes v. City of Seattle*, 120 Wash. 372, 207 P. 607 (1922); *Thompson v. Pierce County*, 113 Wash. 237, 193 P. 706 (1920).

"Resolution 75" as a rhetorical device, so they can infer that the resolution is too lengthy to print in full in the voters' pamphlet. *See* Response Brief at 29, 35. This argument is neatly refuted by the March 1995 voters' pamphlet, which printed the "complete text" of Sound Transit's first proposition. CP 150-151. In any event, it matters little whether the 93-page Sound Move document was "part of" the resolution, as Sound Transit urges for purposes of its "too-lengthy-to-print" argument, because it was clearly "incorporated by" the resolution, as Sound Transit states elsewhere in its brief. Response Brief at 6 ("Resolution 75 . . . incorporates the 93-page *Sound Move* transit plan . . . .").

Consistent with its designation as the "Ten-Year Regional Transit System Plan" (emphasis added), Sound Move unequivocally commits Sound Transit to completing all improvements within ten years. Sound Transit made this commitment, naturally enough, under the heading of "Principles and commitments." Earl Decl., Ex. B at 5 (relevant excerpts of Sound Move are attached hereto as App. D). Sound Transit's promise to the voters reads as follows:

> System completion within ten years – different parts and segments of the plan will be implemented in stages and be operational as soon as possible; the

> entire system will be completed and operational within ten years.

Earl Decl., Ex. B at 6, App. D (emphasis in original). Later on under a heading labeled "Keeping on track and within budget" Sound Transit unequivocally states that "the RTA has adopted strict cost management control principles to make certain Sound Move stays on schedule and within budget." *Id.* at 31 (emphasis supplied). Again, to emphasize the point, according to Sound Transit's brief filed in this Court, the promise to complete the project in ten years and the pledge to stay "on schedule and within budget" are part of Resolution 75. Response Brief at 9.

Sound Transit made the promise to complete the line in ten years for one reason: to win the election. As Sane explained in its opening brief, Sound Transit's own documents prove that the agency reduced the duration of the project from the sixteen years to ten years because the longer duration of the 1995 project was a principal reason voters rejected it: "[W]e had the benefit of a "reality check" in March, 1995 which caused the RTA . . . to listen very carefully to what voters in the RTA District had to say. . . . In response, the RTA is proposing a shorter program – 10 years instead of 16 . . . ." CP 181 (emphasis in original); Sane's Opening

Brief at 41-42. In its brief, Sound Transit does not dispute that it made these promises to win the election.

Sound Transit did not contradict these promises in any other section of Sound Move, in Resolution 75,[3] or in any of the materials sent to voters in advance of the election. Indeed, in attempting to rebut Sane's contention that it promised voters to complete the project in ten years, Sound Transit concedes that the eight-page proposal "committed" the agency to complete the project in ten years. Response Brief at 33. All that Sound Transit says in its defense is that the eight-page proposal does not "guarantee" that the project will be completed in ten years. *Id*. But the eight-page proposal, which Sound Transit called the "Ten-Year Regional Transit System Plan," the same name it gave the full 93-page transit-system plan, clearly led voters to believe the plan would be completed in ten years, consistent with the unambiguous promise of completion in ten years that the agency made in the full Sound Move transit-system plan.

[3] The only mention of the time to build the project in Resolution 75 strongly suggests a ten-year construction limit: "To ensure that the ten-year development and implementation program occurs within the framework and intent of the financial policies . . . ." App. C, CP 415 at §5 (emphasis added).

2. The Law Requires Sound Transit to Complete the Project Within the Time Limits Set Forth in the Measure Approved by the Voters.

Sound Transit admits "Washington courts have limited the power to spend voter-approved taxes to the authority granted by the language in the ballot measure adopted by the voters."[4] Response Brief at 17. As Sound Transit puts it, "the key issue before the court is whether the change in the light-rail line was authorized by the voter-approved ballot measure." *Id.* at 22. As set forth above, the measure at issue here, even as Sound Transit characterizes it, plainly requires that the light-rail project be completed by 2006. To date, not one shovel full of dirt has been turned.[5]

[4] Sound Transit cites *Thompson v. Pierce County*, 113 Wash. 237, 193 P. 706 (1920).

[5] The fact that this project hasn't started distinguishes this case from those where courts have refused to require the completion of projects underway. *See Citizens v. Public Hosp. Distr. 304*, 78 Wn.App. 333, 987 P.2d 1267 (1995) and *Hayes v. Seattle*, 120 Wash. 372, 207 P. 607 (1922). In *State ex rel. Traeger v. Carleton*, 242 Minn. 296, 64 N.W.2d 776, 779 (1954), cited with approval by this Court in *O'Byrne, supra*, 67 Wn.2d at 136) and in *Davis v. City of Seattle*, 56 Wn.2d 785, 789-90, 355 P.2d 354 (1960). The Minnesota Court, relying on *Hayes*, refused to order a municipality to build part of a project approved by voters because it lacked funds to do so. But, the court stated in no uncertain terms that construction of the project would have been enjoined if the *Traeger* plaintiff had sued before the project was substantially completed, as Sane has here.

3. Sound Transit Admits It Will Take Substantially Longer than Ten Years to Complete the Light-Rail Project.

Sound Transit does not plan on completing even its truncated 14-mile Downtown to Tukwila light-rail line until 2009, at the earliest, thirteen years after the start of the "Ten-Year Plan."[6] CP 380. After 2009, it plans to keep on collecting the sales and motor vehicle excise taxes voted in 1996 to fund additional portions of the line. The agency expects to take until 2015, nineteen years after the start of the Ten-Year Plan, to get to the University District, if it can find the funding it will need, and it does not know when it might start construction on the extension to SeaTac Airport. CP 574, 575-76 (Sound Transit's Answers to Interrogatories).

Plainly the agency's current plan – to take up to nineteen years to complete the line to the University District and still longer to get to SeaTac Airport – is a substantial change to the ten-year construction period approved by the voters. As Sound Transit admits, substantial changes to the project approved by the

[6] This deadline was premised on the agency breaking ground "as soon as reasonably practicable in 2002." CP 380, ¶ 2. As of this writing in April 2003, construction still has not commenced nor has Sound Transit set a firm date for it to begin, making it very unlikely the agency will complete even the truncated 14-mile line by the end of 2009.

voters are not allowed. For this reason, if for no other, this Court should reverse the trial court and instruct it to enter an order enjoining construction of the light-rail project unless and until this substantial change is approved by the voters.

B. The Voters Did Not Give Sound Transit the Discretion to Substantially Change the Project.

1. The Court Should Not Presume the Voters Have Knowledge of a Provision Kept From Them in Defiance of Constitutional and Statutory Requirements that They Receive Notice.

Sound Transit is in effect asking this Court to authorize governmental agencies to mislead the voting public. The agency was required by statute to explain to the voters the proposition it was asking them to approve. RCW 81.104.140(8). The legislature further required that the text of Sound Transit's proposed measure be printed in the voters' pamphlet. RCW 29.81A.040(3). Both statutes are consistent with the constitutional requirement that the legislature "provide methods of publicity of all laws or parts of laws . . . referred to the people . . . ." Wash. Const., Art. II, § 1(e).[7] Full compliance with either of these statutes would have resulted

[7] Without any citation to authority, Sound Transit claims that the constitution does not apply to laws unless they are enacted on a statewide basis. Response Brief at 39. No such limitation appears in the language of the constitution or in any case decided by this or any other court.

in the voters being informed of Sound Transit's claimed discretion to substantially change the length of line, its construction schedule and its cost. But the voters were not given a realistic opportunity to discover this provision or to consider whether to vest Sound Transit with the power to substantially change the plan.

The record is silent on whether these omissions were accidental. The agency could have easily informed the voters fully by disclosing in the eight-page proposal that it reserved the right to truncate the light-rail line after the vote. Instead, the agency told the voters that it would build the whole line, and it assured voters that there was a "cushion in case there are unforeseen expenses" and that it would stay "on schedule and within budget." CP 303 (eight-page proposal). The agency never mentioned the possibility that it would fail to build the whole project on time in the materials it sent to the voters. The reason for this strategy is easy to understand – having lost in 1995, Sound Transit was convinced it had to promise substantial benefits to win the vote in 1996. Publicly claiming the right to truncate the project in a mailer sent to all voters would have given the plan's opponents one more argument to use against the project, and

would have put an election on which Sound Transit's very existence depended in serious doubt.

The agency blames the failure to give the text of its proposition to the voters on the various counties responsible for printing the voters' pamphlet. The record below does not tell us who is to blame for this omission, or why the agency's 1996 proposition was treated differently than its 1995 proposition that was printed in full in the prior year's voters' pamphlet. All that is certain, and all that matters here, is that the voters were never informed that Sound Transit was purporting to reserve the right to make substantial changes to the project.

To now presume that the voters knew of terms contained in the undisclosed text and not described in the eight-page proposal would be to encourage voter misrepresentation. Such a finding would not only set bad precedent for future elections, it also would run directly contrary to our state's long history of strong legislation to ensure that the public is fully informed of measures for which their consent is sought.

Sound Transit is, of course, correct when it says that voters, like legislators, are *generally* presumed to know the text of laws that they enact. Statutory interpretation would be an impossibly

murky process if courts were required to examine the subjective understanding of each individual legislator to ascertain the meaning of what was enacted. But what Sound Transit glosses over is that this presumption is built upon the assumption that voters, like legislators, have had a fair opportunity to review and understand the provision upon which they are voting.

Taking Sound Transit's argument one more step will help to expose its fallacy. Suppose that instead of filing Resolution 75 in county elections office, Sound Transit stamped it "confidential" and locked it up in its safe to ensure that no voter could discover its terms until the election was over. Would it be reasonable to presume that the voters knew of and enacted terms of the resolution, even though the terms were not summarized or otherwise described in the materials sent to voters? Of course not; such a holding would turn our proud heritage of free elections into a cruel hoax. Yet, as a practical matter, that is exactly what Sound Transit did. There is little difference between filing the document in a county's elections office and locking it up in a safe; either way, the average voter will never see it.

The voters should be presumed to know something only if they have had a reasonable opportunity to learn of it. What a

reasonable opportunity is in this case has been defined by statute. RCW 29.81A.040, RCW 29.81A.060, RCW 81.104.140(8), (9). The voters must be given the text of the measure and a detailed summary of it. *Id*. If a voter who receives this information fails to read it, so be it, he will be presumed to know it whether he actually reads what was given to him or not. But if the voter is not given the text of the measure and if the provision at issue is not described in the summary, it is unreasonable and unfair to presume that the voter knew of it and consented to its adoption.

a) Text means text.

Sound Transit argues that when the legislature used the word "text" it meant "ballot title." This argument only makes sense in the land on the other side of the looking glass where Alice, who had been taught "one can't believe impossible things," was corrected by the White Queen:

> "I daresay you haven't had much practice," said the Queen. "When I was your age, I always did it for half-an-hour a day. Why, sometimes I've believed as many as six impossible things before breakfast."

Lewis Carroll, *Through the Looking Glass*, 166 (Everyman ed. 1993) (1872).

The solitary foundation for Sound Transit's argument that "text means ballot title" is that the statute applicable to statewide initiatives requires the printing of the "full" text in the voters' pamphlet. In its search for some significance to the omission of the adjective "full" from the statute applicable to local initiatives, Sound Transit takes Alice's hand to follow her through the looking glass into the backwards world behind the mirror. But, in the real world of Washington courtrooms, the language used by the legislature is given its usual and ordinary meaning. *Strenge v. Clarke*, 89 Wn.2d 23, 28, 569 P.2d 60 (1977). On our side of the looking glass, "text" means "text," not "ballot title." In our world, the legislature requires that the text of a ballot measure be mailed to the voters in advance of an election where the measure is to be considered. By giving the voters just the ballot title and withholding the text of the measure, Sound Transit violated the statute.

b. Sound Transit's failure to disclose the discretion-granting provision in the eight-page proposal means it is unreasonable to presume voters knew of it.

Sound Transit prepared the eight-page proposal in fulfillment of the requirement that it prepare a detailed

description of its "system plan" and submit it to the voters for their consideration in advance of the vote. RCW 81.104.140(8). Among other items, the description was required to contain:

> (iii) Identification of route alignments and station locations with sufficient specificity to permit calculation of costs, ridership, and system impacts;
>
> (v) Patronage forecasts;
>
> (vi) A financing plan describing . . . cost-effectiveness represented by a total cost per system rider . . . .

RCW 81.104.100(2)(d).

The eight-page proposal contained a description of each of these items, but it failed to say that each could be dramatically altered after the vote at the sole discretion of the agency. Sound Transit could have readily disclosed the discretion it claimed in the eight-page proposal. The agency could have told voters:

- We are planning on a 21-mile light-rail line, but we may shorten it to 14 miles or less;
- We think it will go north to the University District, and serve First Hill, and Capitol Hill, but perhaps we won't build north from Downtown at all;
- We think it will take 10 years to build, but it might take 13 years or maybe 19 years or maybe even longer, and we will keep taxing you for as long as it takes; and

- We think 127,000 people will use it each day, but perhaps we will eliminate so much of the line that only 42,000 people will find it useful. You will still be charged full price though, even if we cut the line's utility by two-thirds or more.

Sound Transit did not say any of these things in the eight-page proposal.

The agency's failure to disclose the discretion it now seeks in the statutorily mandated eight-page proposal means it is unreasonable to presume the voters approved that discretion. The legislature has told us what the voters are presumed to know: they are presumed to have read and to know what the agency was required to show them. Since Sound Transit failed to disclose the discretion-granting provision in the documents it was required to give them, it is unreasonable to presume the voters granted that discretion to the agency.

2. The Laws Requiring that Voters Be Informed Are Not Optional.

Sound Transit extensively cites the language of a century-old case, *State ex rel. Mullen v. Doherty*, 16 Wash. 382, 47 Pac. 958 (1897), for the proposition that its failure to provide voters with the text of its measure is harmless. Response Brief at 39-40. Sound Transit's argument is not well taken; Washington courts

have uniformly recognized that adequate notice of the details of a ballot measure must be given to voters. In *Mullen*, for example, the city clerk published a full copy of the proposed city charter amendments at issue in the newspaper, the newspaper clippings were posted in the polling places, and the people discussed the amendments "in their homes, from the platform and from the pulpit . . . ." 16 Wash. at 387-88. In fact, in every case cited by Sound Transit on this point, the voters were fully informed of the provision for which their consent was sought.[8] None of these cases excuse Sound Transit's failure to inform the voters of the discretion-granting provision of its proposal.

[8] *See* Response Brief at 40, citing *School Dist. No. 81 of Spokane County v. Taxpayers of Spokane County*, 37 Wn.2d 669, 670-71, 225 P.2d 1063 (1950) (wide publicity was given to election matter, including the distribution by mail of 13,000 pamphlets and the personal delivery of 75,000 pamphlets explaining the bond proposition); *Davies v. Krueger, et al*., 36 Wn.2d 649, 651, 219 P.2d 969 (1950) (entire water district resolution was printed in newspaper, pamphlets describing resolution were hand delivered to every house in district, and complete copies of resolution were distributed throughout the district and available at "practically all the business firms and stores" within the district); *Vickers v. Schultz*, 195 Wash. 651, 651-52, 81 P.2d 808 (1938) (notices of election were posted in court house, post office and on a public street, and details of ballot measure was discussed at public meetings and in the newspaper); *Rands v. Clark County*, 79 Wash. 152, 139 Pac. 1080 (1914) (full resolution was distributed at public meetings, published in county newspaper and "generally circulated among the electors of the county").

3. Sane's Claim Is Not Barred by Laches or by the Statute of Limitations.

Sane, as the trial court recognized (CP 862), is not asking the Court to set aside the results of the 1996 election. Sane asks only that the measure be interpreted as the average informed lay voter would interpret it based on a review of the materials provided to the voters. *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 97, 758 P.2d 480 (1988). Sound Transit's contention that Sane is challenging the validity of the measure is a straw man erected to permit the agency to argue that Sane's action is untimely. The understandably short limitations period applicable to election challenges does not apply here because Sane accepts the election results and seeks to hold Sound Transit to what the voters actually decided.

Sane also does not challenge the ballot title. By statute, the ballot title can only be 75 words long. RCW 29.27.066(1). Given its brevity, Sane does not claim the ballot title should have included the text of the measure or even a description of the discretion-granting language. Since Sane is not challenging the ballot title, the cases cited by Sound Transit in support of its laches defense and its argument that Sane should have brought

suit within 10 days of the filing of the proposed ballot title, are off the point.[9] Response Brief at 41-42, 44-45.

Sound Transit's reliance on RCW 4.16.030, the two-year "catch-all" statute of limitations, also is misplaced. A statute of limitations generally runs from the time an action accrues. *Malnar v. Carlson*, 128 Wn.2d 521, 529, 910 P.2d 455 (1996). An action accrues when a party first has the right to apply to a court for relief. *Id*. at 529. Sane's action against Sound Transit accrued on November 29, 2001, when the Sound Transit Board approved radical changes to the light-rail system approved by the voters. CP 379-87. Sane sent letters on February 4, 2002 to both Sound Transit and to the Attorney General (a necessary predicate to a taxpayer challenge) objecting to the substantial deviation from the voter-approved plan, and it filed suit on May 17, 2002, after the

[9] *See* Response Brief at 41-42, citing *State ex rel. Peninsula Neighborhood Ass'n v. Washington State Dept. of Transp.*, 142 Wn.2d 328, 340, 12 P.3d 134 (2000) (plaintiffs waited two years after passage of disputed amendment to challenge its validity, unlike present suit); *Lopp v. Peninsula School District No. 401*, 90 Wn.2d 754, 585 P.2d 801 (1978) (action objecting to amended ballot title); *LaVergne v. Boysen*, 82 Wn.2d 718, 721, 513 P.2d 547 (1973) ("Delay and the lapse of time alone do not constitute laches. Its application depends upon the equities of a particular case which would render the maintenance of the action inequitable."); *see also* Response Brief at 44-45, citing *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000) (challenge to ballot title and validity of initiative, not interpretation and implementation of ballot measure); *Washington Fed'n of State Employees v. State*, 127 Wn.2d 544, 901 P.2d 1028 (1995) (same); *In re Ballot Title for Initiative 333*, 88 Wn.2d 192, 558 P.2d 562 (1977) (challenge to ballot title).

Attorney General declined to step in. CP 3, 97-105, 107, 109-110. Sane sued as quickly as reasonably possible and well within the statutory period after Sound Transit elected in late November 2001 to build the truncated 14-mile light-rail line.

C. Resolution 75 Is an Unauthorized Delegation of the Voters' Power to Decide Whether Sound Transit's Light-Rail Project Is Worth the Price.

Sound Transit is wrong when it claims that no agency could embark on a large project if it did not get the sort of unlimited discretion to change a project approved by the voters that it seeks here. First, the law makes it clear that agencies may make any number of changes to a project approved by the voters as long as the changes do not substantially alter the project approved by the voters. Second, there is no prohibition against an agency obtaining voter approval to build a lesser project in the event that costs escalate, but the law requires that the agency describe the costs and benefits of the lesser project to the voters and obtain their informed approval. Here, Sound Transit made no attempt to obtain voter approval of a lesser project.

On the contrary, in Sound Move the agency described only the 21-mile route that light-rail was originally to take, its original cost and its original ridership estimate. *See* Earl Decl., Ex. B.

Sound Transit made no attempt to obtain voter consent for a light-rail line that might not go north to the University District, that might take nineteen years to build, or that might only carry one-third the riders of the original plan.

Without any citation of authority, Sound Transit claims that the legislature left it up to the agency to decide how the plan should be modified in the case of a budget shortfall or changed circumstances. Response Brief at 46-47. Every inference that can be drawn from the enabling legislation is to the contrary. The whole purpose for putting a detailed system plan before the voters was to let them decide whether the proposed plan was worth the cost. Sound Transit defeats this legislative purpose by grabbing for itself the power to make substantial changes to the plan.

Sound Transit's attempts to distinguish the cases cited by Sane are not convincing. *Uhler v. City of Olympia*, 87 Wash. 1, 152 P. 998 (1915) is squarely on point. It stands for the proposition that when the legislature determines that an item will be decided by popular vote, the propounding agency may not stack the measure with a provision that gives the agency the right to change what the people have approved. That is precisely what Sound Transit is trying to accomplish here. The other cases cited

by Sound Transit stand for the proposition that changed circumstances require a revote, *Bremerton Municipal League v. City of Bremerton*, 13 Wn.2d 238, 124 P. 2d 798 (1942), and that measures so broad that they leave the propounding agency with excessive discretion must be rejected. *Hughbanks v. Port of Seattle*, 193 Wash. 498, 76 P.2d 603 (1938).

If the legislative requirement of voter approval is to have meaning, the agency must be prohibited from stuffing the ballot proposition with a clause delegating the decision-making authority back to the propounding agency. The discretion Sound Transit attempted to grant itself to change the plan violates the law. The law gives the voters the final say.

III. CONCLUSION

Sound Transit concluded its post-election analysis, titled appropriately "from No to Yes," with an explanation of how it reversed the electoral defeat it had suffered in the 1995 election:

> The informed publics, (sic) . . . concluded the RTA . . . had made changes, could be trusted to do the job, that its plan was priced right and that a decade was the right amount of time to trust the RTA to implement the project . . .

CP 251. Sound Transit won that election and the voters' trust by promising to deliver its project on time and on budget. Today the

trust is gone, and the budget and time-line approved by the voters are distant memories. All that remains is an agency determined to hold on to a voter-approved tax revenue stream by any means possible.

At stake now is the public's trust in the electoral process. That trust is fragile; it can be maintained only if the will of the majority is upheld each and every time it is challenged by those who find democracy an inconvenient impediment to what they think is best. Requiring Sound Transit to return to the polls to determine whether the public wants the project now on the table is the way to preserve that trust. Sound Transit may lose this next election or it may win it; nobody knows for sure what the result will be. But if the election is never held, if the voters become the powerless victims of a government-sponsored bait and switch, public cynicism will be the winner, and we will all lose.

DATED this 8th day of April, 2003.

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