No. 100226-2

SUPREME COURT OF THE STATE OF WASHINGTON

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, a nonprofit organization,

Petitioner,

v.

JAY INSLEE in his official capacity as WASHINGTON STATE GOVERNOR, THE STATE OF WASHINGTON, and the WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

At the Governor's request, the Legislature introduced a bill in 2019 aimed at increasing Chinook salmon abundance to restore the Southern Resident Orca population. One of the bill's key provisions was to increase the maximum civil penalty for violating the State Hydraulic Code, which regulates construction projects affecting bodies of water to protect fish life.

Before the bill's passage, the Senate inserted an unrelated provision into the bill, a section that had previously failed as a standalone measure. The Senate then tried to shield that section from veto by directing that the increased penalty authority would take effect only if the unrelated and unpopular section was "enacted into law." The Governor vetoed this language along with the unrelated section it sought to protect. The result was that the law as enacted did not specify a maximum penalty, but required rulemaking to provide for a penalty schedule. The Legislature did not override the veto or challenge it in court.

The lower courts correctly dismissed the Building Industry Association of Washington (BIAW)'s lawsuit seeking to invalidate the Governor's veto under the Uniform Declaratory Judgments Act. BIAW failed to establish that its members' rights were affected by the veto. And this case is not a good vehicle for the Court to forego traditional justiciability requirements and address the balance of powers between the Legislature and the Governor where neither branch of government is asking the Court to do so. This Court should deny review.

II. COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Before it was vetoed, Section 8(1)(a) of Second Substitute House Bill 1579 established a maximum civil penalty amount that the Washington Department of Fish and Wildlife (WDFW) could levy for violations of the Hydraulic Code, subject to rulemaking. Second Substitute House Bill (2SHB) 1579, 66th Leg. Reg. Sess. (Wash. 2019). Section 8(1)(a) set the maximum penalty at $10,000 if Section 13—an unrelated provision—was "enacted into law." But it set the maximum penalty at $100 if

Section 13 was "not enacted into law." The Governor vetoed Section 13 and Section 8(1)(a). Without Section 8(1)(a), 2SHB 1579 does not state a maximum penalty, but still requires WDFW to engage in rulemaking to establish a penalty schedule for violations of the Hydraulic Code.

1. Did BIAW fail to establish a justiciable controversy to challenge the Governor's veto of Section 8(1)(a), especially where none of BIAW's members demonstrated they or their customers were penalized or planned to violate the Hydraulic Code?

2. Even if BIAW had standing, did the Governor act within his constitutional authority to veto Section 8(1)(a) where the Legislature drafted Section 8(1)(a) to prevent the Governor from exercising his undisputed authority to veto Section 13?

3. Did BIAW waive its mandamus claim by not assigning error to its dismissal or addressing mandamus in its appeal, and is the claim foreclosed by the Administrative Procedure Act (APA), mootness, and failure to state a claim?

III. STATEMENT OF THE CASE

A. 2SHB 1579 Implements the Southern Resident Killer Whale Task Force's Recommendation to Increase Chinook Abundance by Enhancing WDFW's Authority to Enforce the Hydraulic Code

In light of the grave threat of extinction to Southern Resident Orcas, the Governor convened the Southern Resident Killer Whale Task Force to formulate recommendations for restoring the orcas' population and their ecosystem. CP 193-95, 200, 203, 209. One of the Task Force's key recommendations was to strengthen the tools for enforcing the Hydraulic Code, a set of laws that require projects affecting bodies of water to get preconstruction permits from WDFW to ensure "the adequacy of the means proposed for the protection of fish life." RCW 77.55.021(1).

Consistent with that recommendation, the Governor requested and the House introduced House Bill 1579 to implement the Task Force's recommendations related to increasing Chinook abundance. CP 347-58 (House Bill (H.B.) 1579, 66th Leg. Reg. Sess. (Wash. 2019)). As recommended by

the Task Force, H.B. 1579 provided WDFW a number of additional tools to enforce the Hydraulic Code, including authority to "levy civil penalties of up to ten thousand dollars for every violation." CP 353. WDFW was previously limited to imposing penalties of up to $100 a day. Former RCW 77.55.291 (2018). The bill also required WDFW to adopt a penalty schedule based on certain enumerated factors. CP 353-54. Other than a change in numbering,[1] the provision authorizing WDFW to levy "civil penalties of up to ten thousand dollars for every violation" remained unchanged throughout several versions of the bill. CP 353-54 (H.B. 1579, § 7); 366 (Substitute H.B. (SHB) 1579, § 8, 66th Leg. Reg. Sess. (Wash. 2019)); 379-380 (2SHB 1579, § 8).

[1] Section 7 in H.B. 1579 became Section 8 in 2SHB 1579. The House later introduced a second substitute house bill which required the Department to identify by rule personnel authorized to approve civil penalties, but that version otherwise did not substantively amend Section 8. CP 379-80.

Late in the legislative session, however, the Senate amended 2SHB 1579 in two material ways. CP 397. First, the Senate added Section 13, which BIAW describes as providing for "construction of three suction dredging projects … to aid in floodplain management strategies." CP 8 ¶ 18. All parties to this case agree that Section 13 "was not a recommendation of the Southern Resident Killer Whale Task Force" or related to implementing such recommendations. CP 8 ¶ 19, 12 ¶¶ 49-50. The text of Section 13 had first been proposed as a standalone measure by Senator Hobbs in 2015. CP 129-32. Although reintroduced five additional times in subsequent legislative sessions, the Legislature never passed the suction-dredging bill. CP 417-19.

Second, the Senate changed Section 8, which addressed WDFW's civil penalty authority. The former Section 8(1)(a) simply capped WDFW penalty authority at $10,000 per violation. The amendment replaced that cap with the following provision:

> If section 13 of this act is enacted into law by June 30, 2019, the department may levy civil penalties of up to ten thousand dollars for every violation of [RCW 77.55] or of the rules that implement [RCW 77.55]. If section 13 of this act is not enacted into law by June 30, 2019, the department may levy civil penalties of up to one hundred dollars for every violation of this chapter or of the rules that implement this chapter. Each and every violation is a separate and distinct civil offense.

CP 392, 416. By making the increased maximum penalty authority contingent on passage of the wholly unrelated Section 13, the amendment undermined a primary objective of the bill to enhance WDFW's civil enforcement authority.

B. Governor Inslee Vetoed Section 13 and Section 8(1)(a)

Governor Inslee approved 2SHB 1579 with two exceptions. First, he vetoed Section 13 because that provision fell outside the title and scope of the bill. CP 52. BIAW agrees, and does not challenge the veto of Section 13. CP 12 ¶¶ 49-51, 164.

Second, Governor Inslee vetoed Section 8(1)(a). As the Governor explained, "[b]y making the original civil penalty amount contingent on passage of an unconstitutional section of the bill [Section 13]," and "by structuring the contingency

language within a subsection," the "Legislature intentionally attempted to circumvent and impede" the Governor's veto authority. CP 52-53.

The Legislature did not exercise its option to reconsider the Governor's veto. *See* Const. art. III, § 12. Accordingly, 2SHB 1579 as vetoed by the Governor became Laws of 2019, Chapter 290 (CP 52). *See also Petition of Washington State Emps. Ass'n*, 86 Wn.2d 124, 126, 542 P.2d 1249 (1975) ("[A]ny portion of a bill enacted by the legislature which shall have been vetoed by the Governor, and which veto is not overridden, is to be considered exactly as if such portion of the bill had never been enacted.").

C. BIAW Petitioned for Emergency Rulemaking

On May 21, 2019, BIAW submitted a formal request for emergency rulemaking to WDFW. CP 123-24. Arguing that the bill as enacted was either unconstitutional or stripped WDFW of all civil penalty authority, BIAW sought emergency repeal of all existing WDFW regulations for civil fines and also asked that

WDFW "decline the governor's directive" to impose any fines. CP 123-24.

On June 17, 2019, WDFW formally denied BIAW's request for emergency rulemaking. CP 126-27. But it did advise BIAW that it would not issue any civil penalties until it adopted new rules implementing 2SHB 1579. CP 127. BIAW did not seek judicial review of WDFW's decision on its petition for rulemaking.

WDFW promulgated final rules implementing 2SHB 1579 that became effective on June 12, 2020. Order 20-75, Wash. St. Reg. 20-11-019 (May 12, 2020) (amending WAC 220-660-050, -370, -460, -470, -480). WDFW's new compliance rule, WAC 220-660-480, recognizes WDFW's responsibility "to help the regulated community understand how to comply" with the Hydraulic Code. WAC 220-660-480. To that end, it requires WDFW to employ numerous strategies to achieve voluntary compliance, such as education, technical assistance, and correction requests. *Id*. It also provides for a range of

increasingly strict enforcement tools, from "issuing notices of correction and stop work orders to penalties and, when appropriate, criminal prosecution." *Id*. Civil penalties may be appealed pursuant to the APA. *Id*.

BIAW has since filed a separate APA rule challenge to WAC 220-660-480, currently pending in Thurston County Superior Court. Petition for Review (Pet.) at 9.

D. Procedural History

BIAW filed this lawsuit in July 2019—almost a year before WDFW's rules implementing 2SHB 1579 became effective. CP 5-16. The Legislature is not a party to this lawsuit. *Id*. BIAW seeks (1) a declaration under the Uniform Declaratory Judgment Act (UDJA) that the veto of Section 8(1)(a) was invalid and (2) a statutory writ of mandamus requiring rulemaking by WDFW as though Section 8(1)(a) had not been vetoed. CP 30-31, 453.

The parties filed cross-motions for summary judgment, addressing both justiciability and the merits. CP 161, 420. The

trial court granted summary judgment in favor of the Governor and WDFW on standing, dismissing BIAW's lawsuit in its entirety with prejudice. CP 515-16. BIAW failed to establish cognizable harm on behalf of any of its members stemming from the Governor's veto. RP at 43-46. And, while recognizing that a dispute between the Legislature and the Governor may warrant review as a matter of great public importance, the trial court declined to cast aside standing requirements on the premise that BIAW's challenge raised such concerns. RP at 48.

BIAW appealed. CP 517-21. In its opening brief, BIAW argued only that it had standing to challenge the Governor's veto under the UDJA and that the veto was invalid. Opening Br. of Appellant. It made no arguments about mandamus. *Id*. The Court of Appeals affirmed summary judgment in favor of the Governor and WDFW. *Bldg. Indus. of Wash. v. Inslee*, No. 54987-5-II, 2021 WL 2934501 (Wash. Ct. App. July 13, 2021) (unpublished).

In a motion for reconsideration, BIAW argued that the Court of Appeals should have addressed why BIAW had standing to seek mandamus against WDFW even if it did not have standing under the UDJA. Appellant's Mot. for Reconsideration. The Court of Appeals denied reconsideration.

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

BIAW establishes none of the criteria for discretionary review. The Court of Appeals decision is a straightforward application of this Court's well-established criteria for justiciability under the UDJA. BIAW failed to show that its members' rights have been or will be affected by the Governor's veto. Additionally, by not assigning error or otherwise addressing the dismissal of its mandamus claim on appeal, BIAW waived that challenge, which, in any event, is moot, fails to state a claim, and is foreclosed by the APA. Finally, although the scope of the Governor's veto power may involve significant constitutional questions about the balance of power between the Legislature and the Governor, the Legislature is not challenging

the validity of the veto exercised here. This Court should deny review. RAP 13.4(b)(1), (3), (4).

A. The Court of Appeals Correctly Applied this Court's Cases Regarding Justiciability under the UDJA

BIAW's Petition fails to establish that the Court of Appeals decision conflicts with this Court's UDJA cases. *See* RAP 13.4(b)(1). To the contrary, the decision correctly applies those cases in each of the respects challenged by BIAW.

1. The Governor's Veto of a Statutory Penalty Cap Did Not Injure the Rights of BIAW's Members

First, BIAW does not establish that the Court of Appeals' decision conflicts with this Court's cases requiring persons challenging a law to demonstrate that their legal rights or relations have been adversely affected by it. A challenge under the UDJA must "present a justiciable controversy based on allegations of harm personal to the party that are substantial rather than speculative or abstract." *Grant Cnty. Fire Protection Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d

419 (2004). Here, BIAW did not show that the veto caused direct and substantial harm to BIAW's members.

BIAW does not claim that any of its members have been or will be penalized under the new law as vetoed. Rather, it complains of "additional regulatory burden" caused *not* by the Governor's veto, but by other aspects of 2SHB 1579, unaltered by the Governor's veto. Pet. at 14-16 (discussing the bill's repeal of RCW 77.55.141, a statute that previously required permits for single-family home bulkhead construction to be approved, with or without conditions). It argues that the Court of Appeals decision's rejection of its "additional regulatory burden" theory of harm conflicts with *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 369 P.3d 140 (2016). That case is distinguishable.

Spokane Entrepreneurial Center involved a challenge to the validity of an entire initiative that would have (1) reassigned water rights held pursuant to state law, and (2) required builders and developers to go through an additional level of approval from

neighborhood residents for all major developments. *Id.* at 107. This Court concluded that the petitioners had standing to challenge the validity of the initiative based on those harms. *Id*.

By contrast, here, the Governor's veto did not assign away rights or impose regulatory burdens. BIAW claims that *other* parts of 2SHB 1579 exact new regulatory burdens on its members. *See, e.g.*, Pet. at 15-17 (discussing repeal of RCW 77.55.141). But BIAW does not seek to invalidate those provisions. BIAW seeks to invalidate a veto which imposed no new regulatory burdens.

BIAW now wisely disclaims its earlier "market uncertainty" theory, in which it argued that the possibility of higher penalties for persons who choose to violate the Hydraulic Code would somehow cause its builders or their customers to decline projects they otherwise would have undertaken. *Compare* Pet. at 18 ("The lower courts misunderstood the alleged harm, believing it to be market uncertainty") *with* Appell. Br. at 17-18 ("By vetoing a cap on the possible penalty, the Governor

removed a guaranteed maximum risk that builders were taking when they began a project that is governed by the hydraulic project approval process.") *and* Reply Br. at 13-14 (relying on business impact of "uncertainty about the cost of a misstep and increased fines," and claiming "[l]ack of clarity frightens potential clients away"). As the Court of Appeals noted, BIAW failed to come up with any evidence that any specific project had been declined based on this alleged uncertainty. *BIAW,* Slip op. at 7, 11-13. In any event, raising the penalty for engaging in illegal, unprotected activity does not interfere with a judicially-cognizable right. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (defining "injury in fact" as the invasion of a "legally protected interest") (emphasis added).

The Court of Appeals also properly distinguished *Rocha v. King County*, 195 Wn.2d 412, 460 P.3d 624 (2020). *See BIAW,* Slip Op. at 19-20; Pet. at 2, 9-13. In *Rocha*, the petitioners claimed that they had legally-protected rights under

RCW 2.36.080 and the Washington Minimum Wage Act, and that King County's jury selection and compensation system violated those rights. *Rocha*, 195 Wn.2d at 416. The County disputed whether jurors had legally-cognizable rights under either law. Because this Court had to "analyze the merits of petitioners' arguments to determine whether petitioners ha[d] rights that could be asserted in a UDJA claim," standing was satisfied "for the purpose of analyzing these claims." *Id*. at 420. In contrast, here, BIAW's claimed injury is not premised on its own statutory or constitutional rights. BIAW instead claims economic harm based on the consequences its members would face for violating the Hydraulic Code—a law that BIAW does not challenge.

Finally, to the extent BIAW bases its harm on a *valid* veto, and argues WDFW lacked statutory authority to promulgate rules authorizing a maximum $10,000 penalty, *see* Pet. at 17, its remedy lies in its rule challenge under the APA, not a declaratory judgment challenge to the veto. RCW 34.05.510.

BIAW failed to establish a legally-sufficient injury-in-fact to challenge the veto.

2. The Court of Appeals Properly Acknowledged and Declined to Apply the Substantial Public Interest Exception

BIAW also argues that the Court should take review on the premise that the Court of Appeals misapplied cases allowing for a less rigid standing analysis when faced with issues of significant public interest. Pet. at 9-11. But the Court of Appeals properly recognized that some cases involve issues of substantial public interest that call for a more flexible approach. It just declined to find that this case warranted such an exception. Slip Op. at 18-20.

"On occasion, this court has taken a 'less rigid and more liberal' approach to standing when necessary to ensure that an issue of substantial public importance does not escape review." *Wash. State Hous. Fin. Comm'n v. Nat'l Homebuyers Fund, Inc.*, 193 Wn.2d 704, 718, 445 P.3d 533 (2019) (quoting *Grant Cnty. II*, 150 Wn.2d at 803) (additional quotations omitted). An issue

of substantial public importance is one which "'immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally.'" *Id*. (quoting *Wash. Nat. Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 77 Wn.2d 94, 96, 459 P.2d 633 (1969)); *see also Grant Cnty. II*, 150 Wn.2d at 803.

Although BIAW focuses on *Rocha* in its public interest exception argument and insists that the Court of Appeals misapplied it, the Court in *Rocha* did not actually apply or analyze the public interest exception (although it did recite it). This is because, as described above, the *Rocha* Court had to address the merits of petitioners' claims to determine if they had alleged legally-protected interests. *Rocha*, 195 Wn.2d at 420. The standing and merits questions in that case were one and the same. Here, the Court need not address the merits of BIAW's veto challenge to determine if it has demonstrated cognizable harm. Thus, the Court of Appeals correctly distinguished *Rocha*.

In any event, the case cited in *Rocha* recites the same public interest test identified above. *See Farris v. Munro*, 993 Wn.2d 316, 330, 662 P.2d 821 (1983) (quoting *Wash. Nat. Gas Co.*, 77 Wn.2d at 701)).

Here, as the Court of Appeals observed, the outcome of BIAW's challenge "may or may not impact only a narrow class of homebuilders," *BIAW,* Slip Op. at 19, based on a series of speculative contingent events. *See* CP 487 (describing events that must occur before penalty is issued); Br. of Respondents at 18-19 (same). And, even if BIAW had established broad impact, there is no legally-protected public interest in violating the Hydraulic Code or being subjected to a lesser penalty for doing so.

B. BIAW Waived Any Appeal of the Dismissal of its Mandamus Claim, Which, in Any Event, Fails

BIAW complains that the Court of Appeals did not address its standing to bring a statutory mandamus claim against WDFW. Pet. at 11-13. While this is true, it is entirely because BIAW did not argue for reversal of the dismissal of its mandamus claim.

See Appell. Br. In fact, the word "mandamus" does not even appear once in BIAW's opening brief. *Id*. BIAW also did not include any assignments of error in its opening brief. *Id*.

In BIAW's *reply* brief, the word "mandamus" appears once, in a footnote. Reply Br. at 12 n.4. There, BIAW cited the RAP authorizing parties to seek direct Supreme Court review of certain superior court decisions, including actions "against a state officer in the nature of quo warranto, prohibition, injunction or mandamus." *Id*.; RAP 4.2(a)(5). But the rule governing direct review is irrelevant to BIAW's underlying standing to bring a mandamus claim (and direct review was denied). BIAW made no arguments in support of reversing dismissal of its mandamus claim to the Court of Appeals.

In any event, BIAW's mandamus claim fails for a number of reasons. It is completely foreclosed by the APA. RCW 7.16.360. *See also* CP 444-45, 493-94 (citing additional authorities). It fails to articulate a non-discretionary duty of WDFW unenforceable through other means. RCW 7.16.160-

.170. *See also* CP 445-47, 493-94. And it is entirely dependent on BIAW's separate UDJA challenge to the validity of the Governor's veto, which fails on both justiciability and the merits.

C. BIAW's Veto Challenge Does Not Warrant Review Where the Legislature is Not a Party and Does Not Claim that the Governor has Interfered with its Legislative Powers

Finally, BIAW urges this Court to take review (and ignore BIAW's lack of standing) based on the constitutional nature of BIAW's challenge. Pet. at 5-11. BIAW appeals to the supposed need for clarity on the part of the Legislature and the Governor regarding the balance of legislative powers, and on the part of the public regarding the effect of the Governor's veto on the legislation. But neither the Legislature nor the Governor are asking the Court to provide clarification in this case. And this Court's cases are clear regarding the effect of a veto that the Legislature does not override or successfully challenge in court.

First, this Court's modern veto cases exemplify that a veto challenge involves a "delicate constitutional balance" between "the executive and legislative branches with respect to the veto

power." *Washington State Legislature v. Lowry*, 131 Wn.2d 309, 320, 931 P.2d 885 (1997). Resolution of a veto dispute "requires examination of the actions of *both* the Legislature and the Governor" to "'make sure *neither* the Legislature nor the Governor takes unfair advantage, and the balance our constitution envisions endures.'" *Washington State Legislature v. State of Washington* (*Locke*), 139 Wn.2d 129, 137, 985 P.2d 353 (1999) (quoting *Lowry*, 131 Wn.2d at 330-31) (emphasis added).

While the Court only involves itself in such disputes "rarely, and reluctantly," it recognizes its clear mandate as part of a veto challenge "to decide whether legislative designation of sections is true to the spirit of the constitution." *Lowry*, 131 Wn.2d at 320. Thus, while the Legislature may challenge a veto that exceeds the Governor's authority to veto whole bills, sections, and appropriation items, the Court examines the actions of *both* the Legislature and the Governor to ensure that neither branch upsets the delicate balance envisioned by the Framers. *Id*.

Here, the Legislature has not challenged the Governor's veto to 2SHB 1579, and it is not asking this Court to review its actions or that of the Governor. BIAW's attempt to argue on behalf of the Legislature does not raise an issue of substantial public importance. *See Carrick v. Locke*, 125 Wn.2d 129, 136, 882 P.2d 173 (1994) ("Unlike many other constitutional violations, which directly damage rights retained by the people, the damage caused by a separation of powers violation accrues directly to the branch invaded. The maintenance of a separation of powers protects institutional, rather than individual, interests."). The Legislature is fully capable of challenging a veto it believes has infringed on its legislative powers.

Second, the legal effect of the Governor's veto, unchallenged by the Legislature, is well-established. "In approving or disapproving legislation, the Governor acts in a legislative capacity and as part of the legislative branch of government. . . . The veto is upheld if the Legislature fails to override it." *Wash. Fed'n of State Emp. v. State*, 101 Wn.2d 536,

544-45, 682 P.2d 869 (1984) (internal quotation marks omitted).[2] Thus, there is no legitimate confusion as to what the law says after the veto. 2SHB 1579 as vetoed was enacted into law. Section 8(1)(a) is not the law. The law as enacted requires WDFW to adopt by rule a penalty schedule, which it did. RCW 77.55.440(6); WAC 220-660-480. If BIAW believes that the rule lacks statutory authority under the law as vetoed, that challenge will be reviewed in its APA rule challenge. RCW 34.05.570(2).

Lastly, BIAW does not challenge the validity of the law as enacted; it challenges only a procedural step in the lawmaking process. In other words, BIAW does not claim that any part of

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[2] *See also Petition of Washington State Emps. Ass'n*, 86 Wn.2d 124, at 126 ("[A]ny portion of a bill enacted by the legislature which shall have been vetoed by the Governor, and which veto is not overridden, is to be considered exactly as if such portion of the bill had never been enacted."); *Wash. State Grange v. Locke*, 153 Wn.2d 475, 485, 105 P.3d 9 (2005) ("Because the legislature did not override the governor's veto, ESB 6453, as altered by the governor's vetoes, became Laws of 2004, chapter 271.").

2SHB 1579 as enacted would be constitutionally infirm if the Legislature had passed 2SHB 1579 without including Section 8(1)(a). BIAW fails to recognize that the Governor acts "as a *part* of the legislature" when exercising the veto power. *Petition of Washington State Emps. Ass'n*, 86 Wn.2d at 126. This Court is loath to interject itself into a challenge to the lawmaking process. *See Wash. State Grange*, 153 Wn.2d at 499-500; *Brown v. Owen*, 165 Wn.2d 706, 722, 206 P.3d 310 (2009); *State ex rel. Reed v. Jones*, 6 Wash. 452, 454, 477, 34 P. 201 (1893). "The 'check'" on the Governor's veto power "as it has always been, will be the Legislature's two-thirds override." *Wash. Fed'n of State Emps.*, 101 Wn.2d 536 at 547.

V. CONCLUSION

The Court should deny BIAW's petition.

This document contains 4,220 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 25th day of October 2021.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of the above document to be served on the following via the Court's electronic filing system:

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