

NO.
King County Superior Court No.15-2-18335-4

**SUPREME COURT OF
THE STATE OF WASHINGTON**

SHERRIL HUFF, an individual taxpayer and King County Director of Elections; MARY HALL, an individual taxpayer and Thurston County Auditor; DAVID FROCKT, an individual taxpayer and Washington State Senator; REUVEN CARLYLE, an individual taxpayer and Washington State representative; EDEN MACK, an individual taxpayer; TONY LEE, an individual taxpayer; ANGELA BARTELS, an individual taxpayer; GERALD REILLY, an individual taxpayer; and PAUL BELL, an individual taxpayer,

Plaintiffs,

v.

KIM WYMAN, in her official capacity as Secretary of State for the State of Washington; TIM EYMAN, LEO J. FAGAN and M.J. FAGAN,
Defendants.

Emergency Motion for
Accelerated Review

**I. IDENTITY OF MOVING PARTY AND STATEMENT OF
RELIEF SOUGHT**

The Secretary of State respectfully requests that this Court accelerate its review of this case and adopt the briefing schedule as suggested below. The issue in this case is whether I-1366 will appear on the 2015 general election ballot. The Secretary of State and county

election officials need to receive the final decision in this appeal by September 4, 2015 in order to print and mail ballots and voters' pamphlets to military and overseas voters by the statutory deadline of 45 days before election day.

II. PORTIONS OF RECORD RELIED UPON

To support this motion, the Secretary of State relies on the declaration of Lori Augino, Director of Elections, filed below, a copy of which is attached to this motion.

III. ARGUMENT SUPPORTING THE MOTION

County auditors must mail general election ballots to military and overseas voters by Saturday, September 19, 2015. RCW 29A.40.070. The Secretary of State's Director of Elections anticipates that more than 60,000 (and perhaps substantially more) military and overseas ballots will be mailed. Augino Decl. ¶ 2. Several counties include the statewide voters' pamphlet when they mail ballot packets to their military and overseas voters. Augino Decl. ¶ 2.

For general election ballots to be timely formatted, proofed, printed, tested with the vote tallying equipment, and distributed to voters, the county auditors need to have the final content for the ballot no later than September 4, 2015. Augino Decl., ¶ 3.

For voters' pamphlets to be timely formatted, proofed for accuracy, printed, translated, and distributed to voters, the Secretary of State needs to have the final content no later than September 4, 2015. Augino Decl., ¶ 4.

The Secretary of State respectfully requests that this court grant accelerated review and set a briefing schedule that will allow the court to issue an order finally resolving this case by close of business on September 4, 2015.

To facilitate accelerated review, the Secretary of State further proposes the following case schedule:

Deadline for Statement of Grounds for Direct Review: August 17, 2015.

Deadline for designation of clerk's papers: August 18, 2015

Deadline for the superior court to provide index and file clerk's papers at the Supreme Court: August 20, 2015

Deadline for Answer to Statement of Grounds for Direct Review, if any: August 20, 2015.

Deadline for filing Appellants' Opening Brief if review has not been denied: August 20, 2015

Deadline for filing Respondents' Response Brief if review has not been denied: August 26, 2015

Deadline for filing Appellants' Reply Brief if review has not been denied: August 31, 2015

Plaintiffs' and Sponsors' counsel were consulted about this order on Wednesday, August 12.. Plaintiffs have no objection to this order and the briefing schedule contained herein. While a draft of this motion was sent to Sponsors' counsel, because of time constraints and the fact that he is currently out of state, we were unable to determine whether Sponsors' counsel has an objection to this motion.

IV. CONCLUSION

The Secretary of State respectfully requests that this Court grant accelerated review, set the briefing schedule suggested above, and issue an order finally resolving this case by close of business on September 4, 2015. Doing so will allow more than 60,000 military and overseas voters to receive their ballots according to statutory deadlines created to ensure that these voters can then return ballots in time for them to be counted.

RESPECTFULLY SUBMITTED this 14th day of August, 2015.

ROBERT W. FERGUSON
Attorney General



REBECCA R. GLASGOW, WSBA 32886
CALLIE A. CASTILLO, WSBA 38214

PETER B. GONICK, WSBA 25616

Deputy Solicitors General

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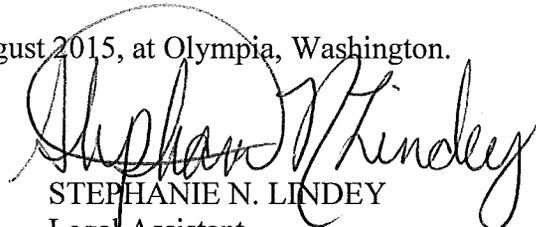
CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that I served, via electronic mail per agreement between the parties, a true and correct copy of the foregoing document, upon the following:

Paul J. Lawrence
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DATED this 14th day of August 2015, at Olympia, Washington.



STEPHANIE N. LINDEY
Legal Assistant

Honorable Dean S. Lum
Hearing Set
Friday, August 14, 2015 at 10:00am

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

SHERRIL HUFF, an individual taxpayer and King County Director of Elections; MARY HALL, an individual taxpayer and Thurston County Auditor; DAVID FROCKT, an individual taxpayer and Washington State Senator, REUVEN CARLYLE, an individual taxpayer and Washington State representative; EDEN MACK, an individual taxpayer; TONY LEE, an individual taxpayer; ANGELA BARTELS, an individual taxpayer; GERALD REILLY, an individual taxpayer; and PAUL BELL, an individual taxpayer,

Plaintiffs,

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KIM WYMAN, in her official capacity as Secretary of State for the State of Washington; TIM EYMAN, LEO J. FAGAN and M.J. FAGAN,

Defendants.

NO. 15-2-18335-4 SEA

DECLARATION OF LORI AUGINO

I, Lori Augino, declare as follows:

1 1. I am over eighteen years of age and competent to testify. I currently serve as the
2 Director of Elections in the Office of the Secretary of State of Washington. The information
3 stated below is true and correct and based on my own knowledge.

4 2. Deadlines for Voters' Pamphlet and General Election Ballots. Deadlines for the county
5 auditors to print general election ballots, and for the Secretary of State to print the voters'
6 pamphlet, are driven by the statutory deadlines for taking various actions in preparation for the
7 general election:
8

9 a. The last day for the Secretary of State to certify the results of the state primary election
10 is August 21, 2015. RCW 29A.60.240.

11 b. The last day by which county auditors must mail general election ballots to overseas
12 and military voters is Saturday, September 19, 2015. RCW 29A.40.070. We anticipate that
13 more than 60,000 (and perhaps substantially more) will be mailed. Several counties include the
14 statewide voters' pamphlet when they mail ballot packets to their military and overseas voters.
15

16 c. The deadline for county auditors to mail general election ballots, other than to overseas
17 and military voters, is October 16, 2015. RCW 29A.40.070.

18 d. Election Day is November 3, 2015.

19 3. Deadline for Final Content for the General Election Ballots. For general election
20 ballots to be timely formatted, proofed, printed, tested with the vote tallying equipment, and
21 distributed to voters, the County Auditors need to have the final content no later than
22 **September 4, 2015.** This deadline is driven by the process described below in paragraphs 5
23 through 7.
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1 4. Deadline for Final Content of the Voters' Pamphlet. For voters' pamphlets to be timely
2 formatted, proofed for accuracy, printed, translated, and distributed to voters, the Secretary of
3 State needs to have the final content no later than **September 4, 2015**. This deadline is driven
4 by the process described below in paragraphs 8 through 9.

5
6 5. Nature of General Election Ballots. Counties are responsible for creating, proofing,
7 printing, and testing all ballots. Counties must test each ballot type in its vote tallying
8 equipment to ensure the ballots are formatted properly and can be tabulated accurately by the
9 machines. Counties typically begin formatting ballots shortly after the primary, although they
10 cannot determine the final content until the results of the primary are certified. Substantial
11 time is still required for ballot formatting after its content is certain, because every county must
12 prepare multiple ballot styles based on every combination of issues and offices that will appear
13 in various parts of the county. This can amount to hundreds, sometimes thousands, of different
14 ballot styles within a single county. In addition, some counties must translate the ballots into
15 various languages, as required by state and federal law. Each of the resulting ballot styles must
16 be carefully reviewed and proofread for accuracy.

17
18 6. Printing of General Election Ballots. Many counties use private vendors to print,
19 assemble, and mail ballot packets to voters. Many of these vendors provide this service for
20 numerous jurisdictions, often in multiple states. All of these jurisdictions are in competition to
21 get their ballots printed promptly. After printers receive the ballot orders, they prepare proofs
22 of each ballot style, and provide them to the county auditors for final review and correction of
23 any errors, and for testing of the proofs in the tabulation equipment. After counties approve
24 these proofs (with or without changes), the ballots are printed. In order to meet the deadline to
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1 mail ballots to military and overseas voters, some counties may have to prepare election
2 materials on parallel tracks, one assuming I-1366 will appear on the ballot and one assuming it
3 will not. That way, counties can be ready to print ballots as soon as the final order in this
4 litigation is issued.

5
6 7. Distribution of General Election Ballots. After ballots are printed, county auditors must
7 collate each ballot style with the correct personalized outgoing envelope, correct personalized
8 return envelope, a security envelope, and instruction sheet. As indicated in paragraph 6, some
9 counties utilize vendors to complete this work. For ballots to be timely formatted, printed, and
10 distributed to voters, the county auditors must know the final list of ballot measures appearing
11 on the ballot no later than **September 4, 2015**.

12
13 8. Statutorily Required Content for the Voters' Pamphlet. State law requires the Secretary
14 of State to print and distribute a voters' pamphlet whenever at least one statewide measure or
15 office is scheduled to appear on the general election ballot. Among other required content, state
16 law requires certain information about each ballot measure initiated by or referred to the voters
17 must be included in the pamphlet. Once all of the required content for the voters' pamphlet is
18 collected, (a) the materials must be formatted into different editions, (b) each edition must be
19 proofed thoroughly by multiple people, (c) the contents must be translated into certain
20 languages as required by state and federal law, and (d) all contents must be transcribed into an
21 accessible format.
22

23 9. Distribution of the Voter's Pamphlet. The Secretary of State's Office is responsible for
24 printing and distributing approximately 3,200,000 pamphlets, one for every household in the
25 state. The length of the 2015 pamphlet will vary from 40 pages to 152 pages, depending on the
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1 edition. The same pamphlet does not go to each household, since Washington includes
2 multiple voting districts. In 2015, the voters' pamphlet will be published in 21 regional
3 editions. The volume and time constraints of printing 3.2 million 40 to 152-page pamphlets in
4 approximately two weeks requires state contracts with approximately three commercial
5 printers around the Northwest and one distribution vendor. The voters' pamphlet publication
6 schedule is designed to ensure in-state voters receive the state voters' pamphlet within a day or
7 two of when a voter receives a ballot. A delay in printing the pamphlet would jeopardize the
8 counties' and Secretary's ability to ensure voters have a pamphlet and a ballot at about the
9 same time, when voters may begin voting. In addition, as indicated in paragraph 2, some
10 counties include the statewide voters' pamphlet in the ballot packets for military and overseas
11 voters, which must be mailed by September 19, 2015. For the voters' pamphlet to be timely
12 distributed to voters, the Secretary of State must finalize its content by **September 4, 2015**.

13
14
15 10. Certification of I-1366 to the 2015 General Election Ballot. 339,236 signatures were
16 submitted in support of I-1366 and the Secretary of State has certified that sponsors submitted
17 sufficient signatures of registered voters that the initiative qualifies for the ballot. Attached as
18 **Exhibit 1** is a true and correct copy of the certification.

19 11. **Exhibit 2** is a true and correct copy of the ballot title for I-1366 and **Exhibit 3** is a true and
20 correct copy of the voters' pamphlet explanatory statement that has been submitted by the

21 ///

22 ///

23 ///

1 Attorney General's Office for I-1366.

2
3 I swear under penalty of perjury under the laws of the state of Washington that the foregoing is
4 true and correct and of my own knowledge, and that I executed this declaration at Olympia,
5 Washington, on August 10th, 2015.
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9 _____
10 Lori Augino, Director of Elections
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Secretary of State

Kim Wyman

ELECTIONS DIVISION
PO Box 40229
Olympia, WA 98504-0229
(800) 448-4881
www.vote.wa.gov

CERTIFICATION OF INITIATIVE TO THE PEOPLE NO. 1366

Pursuant to Article II, Section 1 of the Washington State Constitution, RCW 29A.72.230, and WAC 434-379-010, the Office of the Secretary of State has caused the signatures submitted in support of Initiative to the People No. 1366 to be examined in the following manner:

1. It was determined that 339,236 signatures were submitted by the sponsors of the initiative. A random sample of 10,193 signatures was taken from those submitted;
2. Each sampled signature was examined to determine if the signer was a registered voter of the state, if the signature was reasonably similar to the one appearing on the record of that voter, and if the same signature appeared more than once in the sample. We found 9,143 valid signatures, 1,034 signatures that were invalid, and 16 pairs of duplicated signatures in the sample;
3. We calculated an allowance for the chance error of sampling (48) by multiplying the square root of the number of invalid signatures by 1.5;
4. We estimated the upper limit of the number of signatures on the initiative petition which were invalid (36,018) by dividing the sum of the number of invalid signatures in the sample and allowance for the chance of error of sampling by the sampling ratio;
5. We determined the maximum allowable number of duplicate pairs of signatures on the petition (56,846) by subtracting the sum of the number of signatures required by Article II, Section 1 of the Washington State Constitution (246,372) and the estimate of the upper limit of the number of invalid signatures on the petition from the number of signatures submitted;
6. We determined the expected number of duplicate pairs of signatures in the sample (51) by multiplying the square of the sampling ratio by the maximum allowable number of pairs of signatures on the initiative petition;
7. We determined the acceptable number of duplicate pairs of signatures in the sample (40) by subtracting 1.65 times the square root of the expected number of pairs of signatures in the sample from the expected number of pairs of signatures in the sample; and
8. The number of duplicate pairs of signatures in the sample is less than the acceptable number of duplicate pairs of signatures in the sample.

Therefore, I hereby declare Initiative to the People No. 1366 to contain sufficient signatures.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the State of Washington this 30th day of July, 2015.



MARK NEARY
Asst. Secretary of State



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Administration Division
PO Box 40100 • Olympia WA 98504-0100 • (360) 753-6200

January 13, 2015

The Honorable Kim Wyman
Elections Division
ATTN: Initiative and Referendum
PO Box 40220
Olympia, WA 98504-0220

Re: Initiative No. 1366

Dear Ms. Wyman:

Pursuant to RCW 29A.72.060, we supply herewith the ballot title and ballot measure summary for Initiative No. 1366 to the People (an act relating to taxes and fees imposed by state government).

BALLOT TITLE

Statement of Subject: Initiative Measure No. 1366 concerns state taxes and fees.

Concise Description: This measure would decrease the sales tax rate unless the legislature refers to voters a constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes, and legislative approval for fee increases.

Should this measure be enacted into law? Yes [] No []

BALLOT MEASURE SUMMARY

This measure would decrease the state retail sales tax rate on April 15, 2016, from 6.5 percent to 5.5 percent. The sales tax rate would not be decreased if, by April 15, 2016, two-thirds of both legislative houses refer to the ballot a vote on a constitutional amendment that requires two-thirds legislative approval or voter approval to raise taxes, and majority legislative approval to set the amount of a fee increase.

Sincerely,

PETER B. GONICK
Deputy Solicitor General
(360)753-6245

Exhibit 2



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

July 23, 2015

The Honorable Kim Wyman
ATTN: Tami Davis
PO Box 40229
Olympia, WA 98504-0229

Re: Ballot Title and Explanatory Statement for Initiative 1366

Dear Ms. Wyman:

In accordance with RCW 29A.32.040 and RCW 29A.32.070, here is the Ballot Title and Explanatory Statement for Initiative 1366. The Ballot Title for Initiative 1366 was previously established, and is repeated here solely for convenience of reference.

Ballot Title

Statement of Subject: Initiative Measure No. 1366 concerns state taxes and fees.

Concise Description: This measure would decrease the sales tax rate unless the legislature refers to voters a constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes, and legislative approval for fee increases.

Should this measure be enacted into law? Yes [] No []

EXPLANATORY STATEMENT

The Law As It Presently Exists

Washington law charges a sales tax on most retail sales made in the state. Generally, a retail sale is the sale of goods or services, but there are certain exceptions defined by law. There are also certain goods and services that are exempt from the retail sales tax, such as most groceries, over the counter and prescription drugs, and newspapers. The state retail sales tax is currently 6.5% of the selling price on each retail sale. This rate does not include local sales taxes that may also be charged by cities, counties, and other taxing jurisdictions.

Another state law provides that most fees charged by the government are allowed only if they are approved by more than half of the members of each house of the legislature.

ATTORNEY GENERAL OF WASHINGTON

The Washington State Constitution states that no bill may become law unless it receives a yes vote by more than half of the members of each house of the legislature. The Washington State Supreme Court has explained that this voting requirement cannot be changed by a regular law. This means that neither the legislature, nor the people through the initiative process, can pass a law that requires more votes in order for certain types of bills to pass. The only way to increase the number of votes needed for a bill to become a law is to amend the constitution.

The constitution can only be amended if two-thirds of the members of each house of the legislature vote to propose the amendment. The amendment must then be approved by a majority of the voters at the next general election.

The Effect of the Proposed Measure If Approved

This measure would cut the state retail sales tax from 6.5% to 5.5% on April 15, 2016, unless the legislature first proposes a specific amendment to the state constitution. The proposed amendment must require that for any tax increase, either the voters approve the increase or two-thirds of the members of each house of the legislature approve the increase. It must also require the legislature to set the amount of any fee increases.

If the legislature proposes the constitutional amendment before April 15, 2016, then the state retail sales tax would stay at 6.5%.

If the legislature does not propose the constitutional amendment and the state retail sales tax is reduced to 5.5%, that would cut the amount of taxes that individuals and businesses pay for goods and services. It would also lower the State's revenue for government services.

The measure would also define "raises taxes" and "majority legislative approval for fee increases" as those phrases are used in state law.

Sincerely,


CALLIE CASTILLO
Deputy Solicitor General
(360)664-0869