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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

TONY LEE, an individual taxpayer; ANGELA BARTELS, an individual taxpayer; DAVID FROCKT, an individual taxpayer and Washington State Senator; REUVEN CARLYLE, an individual taxpayer and Washington State representative; EDEN MACK, an individual taxpayer; GERALD REILLY, an individual taxpayer; PAUL BELL, an individual taxpayer; and THE LEAGUE OF WOMEN VOTERS OF WASHINGTON,

Respondents,

v.

THE STATE OF WASHINGTON; TIM EYMAN; LEO J. FAGAN;
and M.J. FAGAN,

Petitioners.

**BRIEF OF AMICUS CURIAE ASSOCIATION OF WASHINGTON
SCHOOL PRINCIPALS**

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Office of Fin. Mgmt.,
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Office of Superintendent of Pub. Instruction,
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FullyFundingBasicEducation-McCleary.pdf](http://www.k12.wa.us/LegisGov/2016documents/AA-FullyFundingBasicEducation-McCleary.pdf)5

Office of Superintendent of Pub. Instruction,
Levy Cliff Impact Analysis (Feb. 12, 2016), available at
<http://www.k12.wa.us/SAFS/default.asp>5

Office of the Governor,
Proposed Supplemental 2016 Budget Highlights (Dec. 17, 2015)
(“*Governor’s Budget Highlights*”), available at
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ghlights.pdf](http://www.ofm.wa.gov/budget16/highlights/2016FullBudgetHighlights.pdf)4

Opening Day Special Edition,
THIS WEEK IN OLYMPIA (Wash. Ass’n of Sch. Adm’rs, Olympia,
WA), Jan. 11, 2016 (“This Week in Olympia”), available at
[https://www.wasa-
oly.org/docs/TWIO/TWIO_OpeningDaySpecialEdition1-11-
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Retail Sales Tax,
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Senate Ways & Means Comm.,
A Citizen’s Guide to the Washington State Budget (2016)
(“*Citizen’s Guide to the Budget*”), available at
[http://leg.wa.gov/Senate/Committees/WM/Documents/Publicati
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Senate Ways & Means Comm.,
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 ("Citizen's Guide to K-12 Finance"), available at
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Senate Ways & Means Comm., et al.,
Legislative Budget Notes: 2015-17 Biennium & 2015 Supplemental (Oct. 2015) ("LBN 2015-17"), available at
<http://leap.leg.wa.gov/leap/budget/lbns/2015LBN.pdf>.....2, 8, 9

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Wash. Educ. Ass'n,
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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Association of Washington School Principals (“AWSP”) is a statewide professional association of principals, assistant principals, and principal interns. AWSP has about 3,500 members from throughout Washington, giving it direct insight into how statewide policy impacts Washington’s disparate communities. Dedicated to supporting principals and ensuring school administrators are able to provide meaningful education to all students, AWSP monitors state policies impacting education and has previously participated as *amicus curiae* in cases affecting school funding.

For AWSP’s members to attract quality educators, maintain schools, achieve manageable class sizes, and provide meaningful education to Washington students, it is crucial that public education receives ample state funding. As such, AWSP’s interest in this matter arises from the inevitable damage Initiative 1366 (“I-1366” or “the Initiative”) will impose on education funding if reinstated by this Court. At a time when additional state revenue is badly needed and schools are severely underfunded, I-1366 would undermine the legislature’s ability to finally address the issue and fulfill the state’s paramount duty. Thus, AWSP offers this *amicus curiae* brief in support of the trial court’s ruling and urges this Court to affirm.

II. STATEMENT OF THE CASE

AWSP adopts the Statement of the Case contained in the Answering Brief of Respondents. *See* Resp. Br. 3-9.

III. ARGUMENT

Invoking Jack Benny’s famous “your money or your life” dilemma, the trial court recognized that I-1366 is, and was designed to be, a “pressure-wielding mechanism” that “*propos[es]* precise terms for a constitutional amendment while applying compulsion to quickly move it forward.” CP 424-25, n.1. The legislature’s recent struggles with the budget and repeated failures to secure sufficient funding for schools highlight the simple reality that more state revenue is needed to fulfill the state’s “paramount duty.” Wash. Const. Art. IX § 1. I-1366 does the opposite.

I-1366 threatens to cut \$2.77 billion biennially (about three percent of the state’s *total* biennial budget) from the single revenue stream most closely tied to education, budget-building, and basic government operations.¹ By imposing an ultimatum between these drastic financial

¹ *See* Senate Ways & Means Comm., *A Citizen’s Guide to the Washington State Budget* 2, 11 (2016) (“*Citizen’s Guide to the Budget*”), available at http://leg.wa.gov/Senate/Committees/WM/Documents/Publications/2016/2016%20CGT_B_Final_website.pdf; Senate Ways & Means Comm., et al., *Legislative Budget Notes: 2015-17 Biennium & 2015 Supplemental 1-2* (Oct. 2015) (“LBN 2015-17”), available at <http://leap.leg.wa.gov/leap/budget/lbns/2015LBN.pdf>. The \$2.77 billion represents the 15.4% decrease (from a 6.5% rate to 5.5%) applied to the \$18 billion of projected retail sales tax revenue for the 2015-17 biennium. *See Citizen’s Guide to the Budget* 2, 11.

consequences and the referral of a specific constitutional amendment, I-1366 unconstitutionally impedes the legislative role in amending the constitution. Worse, this coercion was by design, created to pressure the legislature into proposing the desired amendment. For each of these reasons, AWSP urges the Court to affirm the trial court's order and hold that I-1366 is unconstitutional and invalid in its entirety.

A. The Threat of a Retail Sales Tax Rate Reduction Puts Undue Pressure on the Legislature

1. The Budget Is Already Under Serious Strain, Particularly in Education Funding.

As this Court is well-aware, the state has budget problems. Since this Court's decision in *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), the legislature has repeatedly failed to set forth an implementation plan showing how it will achieve ample education funding by 2018.² It took a *record-long* 176-day session in 2015 (the 120-day regular session plus three special sessions) before the legislature could establish a budget for the 2015-17 biennium.³ See Order, *McCleary v. State*, No. 84362-7 at 4 (Aug. 13, 2015).

² See, e.g., Order, *McCleary v. State*, No. 84362-7 (Aug. 13, 2015); Order, *McCleary v. State*, No. 84362-7 (Sept. 11, 2014); Order, *McCleary v. State*, No. 84362-7 (June 12, 2014); Order, *McCleary v. State*, No. 84362-7 (Jan. 9, 2014); Order, *McCleary v. State*, No. 84362-7 (Dec. 20, 2012).

³ See *Journal of the Senate 2* (July 10, 2015), available at http://leg.wa.gov/Senate/SDJ/Documents/2015/SJ_15_013ESS3.pdf; Legislative Info. Ctr., Wash. State Legislature, *Session Dates of the Washington State Legislature* (2015), available at http://leg.wa.gov/LIC/Documents/Statistical%20Reports/Leg_Session_Dates.pdf.

Even after this marathon effort, which increased education spending by over \$1.3 billion, education funding was still so deficient as to warrant this Court’s \$100,000-per-day sanctions.⁴ *See id.* In K-3 class-size reduction, the legislature’s \$350 million appropriation for the 2015-17 biennium fell short by nearly half the \$662.8 million estimated to be necessary by “the legislature’s own Joint Task Force on Education Funding”—to say nothing of the additional \$1.15 billion projected need for the next biennium. *Id.* at 5. Nor could the legislature articulate whether or how the state’s budgets would provide the estimated \$599 million in capital outlays needed for class-size reduction and all-day kindergarten or how it will make up for the estimated shortfall of about 4,000 teachers for these two programs. *See id.* at 6. Finally, this Court held that the legislature “wholly failed to offer any plan for achieving constitutional compliance” in the area of personnel costs. *Id.* After six months, these deficiencies persist.

To meet the state’s “paramount duty” and comply with this Court’s mandate, education funding must increase by billions within the next few years,⁵ and additional revenue is required to do it. Even based on *current*

⁴ *See* Office of the Governor, *Proposed Supplemental 2016 Budget Highlights 1* (Dec. 17, 2015) (“*Governor’s Budget Highlights*”), available at <http://www.ofm.wa.gov/budget16/highlights/2016FullBudgetHighlights.pdf>.

⁵ *See* Office of Superintendent of Pub. Instruction, *2016 Supplemental Budget Request: Fully Funding Basic Education 3*, 8-9 (Oct. 28, 2015), available at

(*McCleary* non-compliant) appropriation levels and assuming a 6.5% retail sales tax rate, the Economic and Revenue Forecast Council's latest budget outlook shows the state will accrue a shortfall of over \$700 million by the end of 2019.⁶

During that time, additional education funding obstacles appear imminent. For example, the temporary four percent local levy-cap increase will expire before the 2017-18 school year, creating a "levy cliff" which will immediately increase the need for state education funding by nearly \$500 million per year.⁷ And because continued reliance on local levies contravenes the state's education funding duty, many legislators have made clear that they will not continue passing the buck to local

<http://www.k12.wa.us/LegisGov/2016documents/AA-FullyFundingBasicEducation-McCleary.pdf> (estimating that to "phase[] in the full funding values over the next five school years" "basic education" funding would require \$3.3 billion for 2017-19 and \$7.7 billion for 2019-21).

⁶ Econ. & Revenue Forecast Council, *Budget Outlook 2-3* (Feb. 17, 2016), available at http://www.erfc.wa.gov/budget/documents/20160217_Outlook.pdf; see also Andy Nicholas, *Declining Revenue Projections Show It's Time for Policymakers to Get Serious about Meeting Washington's Needs*, WASH. STATE BUDGET & POLICY CTR. (Feb. 17, 2016), budgetandpolicy.org/schmudget/declining-revenue-projections-show-it2019s-time-for-policymakers-to-get-serious-about-meeting-washington2019s-needs ("The new forecast of Washington state tax collections makes it clear that lawmakers can no longer assume the growing economy will automatically generate the resources needed to fund court-mandated improvements to schools, mental health, and other important priorities for our state.").

⁷ See Office of Superintendent of Pub. Instruction, *Levy Cliff Impact Analysis* (Feb. 12, 2016), available at <http://www.k12.wa.us/SAFS/default.asp>; *Opening Day Special Edition*, THIS WEEK IN OLYMPIA (Wash. Ass'n of Sch. Adm'rs, Olympia, WA), Jan. 11, 2016, at 3 ("This Week in Olympia"), available at https://www.wasao.org/docs/TWIO/TWIO_OpeningDaySpecialEdition1-11-16.pdf

governments—likely, the cap increase will only be extended a year or so.⁸

Governor Inslee recently signed SB 6195 into law, which directs the legislature to gather data, establish another task force on school staff salaries, and commit to ending dependency on local levies by the end of the 2017 legislative session.⁹ *See* SB 6195. This certainly looks in the right direction; however, SB 6195’s commitment to make a plan does not save schools or the legislature from the levy cliff,¹⁰ nor does it solve the difficult budget and funding questions.

Despite the clear, imminent need for added revenue and an answer for the levy cliff, it is common knowledge in Olympia—and an inescapable political reality—that with a short legislative session and elections in November, this is not a year in which the legislature can significantly increase revenue or absorb I-1366’s \$1.4 billion-per-year revenue reduction.¹¹

Despite this stark reality, the Initiative Sponsors downplay the impact of I-1366’s sales tax cut, claiming in their brief to this Court that “the legislature can increase the spending for certain government services,

⁸ *See, e.g.*, EHB 2698 (having passed in the House, this bill proposes to extend levy cap increase by one year); SB 6353 (proposing to extend levy cap increase by one year); *see also* THIS WEEK IN OLYMPIA 1, 3.

⁹ *See* SB 6195, WASH. STATE LEGISLATURE, <http://app.leg.wa.gov/billinfo/summary.aspx?bill=6195&year=2015>.

¹⁰ For school districts, the 2017 session is too late to fix the problem, “[b]ecause of the timing of school districts’ budgeting processes.” THIS WEEK IN OLYMPIA 3.

¹¹ *See* THIS WEEK IN OLYMPIA 1, 3.

allocate more existing revenue for government services, or raise revenue for government services.” Sp. Br. at 40. However, they ignore both the practical impossibility of this divided legislature replacing so much lost revenue any time in the near- to mid-term and the inappropriateness of this court engaging in such speculation. This Court should consider only the initiative before it and the tax cut threatened, and not whether the legislature would hypothetically replace the lost sales tax revenue with an alternative tax.

The bottom line is that I-1366’s threatened tax cut will occur at a time when Washington “faces enormous financial obligations,”¹² limited revenue, and a legislative session during which legislators are least practically able to accommodate a further revenue reduction.

2. I-1366 Threatens a Sharp Revenue Cut in a Sensitive Area of the Budget.

In light of these budget difficulties, stemming in large part from the education funding crisis, it is especially troublesome that the particular revenue stream targeted in I-1366 is also the one most important to budget-building and most closely tied to education funding.

“Most of the money the state uses to pay for services comes from state taxes,”¹³ and the “[r]etail sales tax is Washington’s principal tax

¹² *Governor’s Budget Highlights* 1.

¹³ *Citizen’s Guide to the Budget* 4.

source,”¹⁴ contributing over \$8.2 billion to the state’s revenue in 2015.¹⁵ Revenue collected from the retail sales tax goes almost entirely¹⁶ to the state’s near-general fund and opportunities pathway account (“NGF-S/OP”),¹⁷ providing *nearly half* of its revenue—about \$18 billion of NGF-S/OP’s \$38 billion for the 2015-17 biennium.¹⁸

I-1366 reduces sales tax revenue by 15.4%.¹⁹ Using the 2015-17 biennium, this represents 7.3% of the NGF-S/OP’s revenue (about \$2.77 billion).²⁰ By targeting a revenue stream that flows almost entirely into NGF-S/OP and supplies more of its revenue than any other source, I-1366 threatens a direct hit to NGF-S/OP.

This puts education squarely in the crosshairs. K-12 education is the largest item on NGF-S/OP’s budget (accounting for over 45% of

¹⁴ *Retail Sales Tax*, WASH. STATE DEP’T OF REVENUE, <http://dor.wa.gov/Content/FindTaxesAndRates/RetailSalesTax/Default.aspx> (last visited Feb. 28, 2016); Kathy Oline et al., Research & Fiscal Analysis, Wash. State Dep’t of Revenue, *Tax Statistics* 2-3, 12 (2015) (“*Tax Statistics*”), available at http://dor.wa.gov/Docs/Reports/2015/Tax_Statistics_2015/tax_statistics_2015.pdf.

¹⁵ See *Tax Statistics* 2-3, 12.

¹⁶ See *id.* 9, 12-14 (showing that in 2015, \$8.208 billion of the \$8.255 billion collected from retail sales tax went to the general fund).

¹⁷ “Because the purposes are similar and fund transfers between the two are common, the education legacy trust account is often discussed in combination with the state general fund,” and are together referred to as the state’s “near-general fund” (“NGF-S”). Senate Ways & Means Comm., *A Citizen’s Guide to Washington State K-12 Finance* 14 (2015) (“*Citizen’s Guide to K-12 Finance*”), available at http://leg.wa.gov/Senate/Committees/WM/Documents/K-12%20Booklet_2015%202-10-15.pdf; see also *Citizen’s Guide to the Budget* 11. NGF-S, in turn, is often discussed in conjunction with the opportunity pathways account. See *Citizen’s Guide to the Budget* 11; see, e.g., LBN 2015-17 at O-22 to -23.

¹⁸ See LBN 2015-17 at O-22; *Citizen’s Guide to the Budget* 11.

¹⁹ See *supra* note 1.

²⁰ See *supra* note 1.

expenditures),²¹ and it depends on NGF-S/OP for *nearly all* of its state funding.²² While the legislature struggles to amply fund basic education, I-1366 threatens the effort by reducing resources for precisely the funds most in need.

By targeting NGF-S/OP, I-1366 also directly hinders the legislature's flexibility in constructing a workable budget. The NGF-S/OP consists primarily of "[t]he state general fund, the largest fund within the state budget," which "provides the primary means for operating the state government." *McCleary*, 173 Wn.2d at 495, 269 P.3d at 236.²³ NGF-S/OP "receives the most attention during the budget-building process" and is made up of "the funds that the Legislature primarily focuses on as part of the operating budget development process."²⁴ This is largely due to the fact that most of NGF-S/OP's funds are undedicated,²⁵ whereas the other \$55.7 billion in the state's biennial budget is principally funded by revenue sources tied to specific uses.²⁶ In fact, over 76% of this \$55.7 billion (roughly \$42.3 billion) is earmarked for a specific use, leaving less

²¹ See *Citizen's Guide to the Budget* 5; *Citizen's Guide to K-12 Finance* 14; *Governor's Budget Highlights* 1; LBN 2015-17 at O-23.

²² See LBN 2015-17 at 2, O-31.

²³ *Citizen's Guide to K-12 Finance* 14.

²⁴ *Citizen's Guide to the Budget* 11, 13.

²⁵ *Id.*; Office of Fin. Mgmt., *A Guide to the Washington State Budget Process* 6 (Oct. 2015), available at <http://www.ofm.wa.gov/reports/budgetprocess.pdf>.

²⁶ See *Citizen's Guide to the Budget* 12. For the 2015-17 biennium, the state's total budget is \$93.7 billion. See *id.* 2.

than \$13.4 billion of the state’s non-NGF-S/OP budget undedicated and available for adjustments.²⁷ I-1366 thus threatens a major cut from the largest revenue source for the NGF-S/OP—the fund most important to the state’s operations, its budget-building, and education funding.

3. Reducing Tax Revenue Is a Step Backward in the State’s Progress Toward Meaningful Education for All Students.

As this Court has repeated many times in recent years, the state’s “paramount duty” is “to make ample provision for the education of all children residing within its borders.” Wash. Const. Art. IX § 1.

I-1366 counteracts this duty at a time of crisis in education funding. If the sales tax is reduced, education will suffer. While the legislature is not permitted to cut offerings “from the basic education program for reasons unrelated to educational policy, such as fiscal crisis,” *McCleary*, 173 Wn.2d at 526-27, 269 P.3d at 251-52, it is unrealistic to expect that such a large reduction in NGF-S/OP’s revenue source will not touch its largest ticket item. Even if current K-12 funding is maintained (at the disproportionate expense of much smaller items), the lost revenue will inevitably delay for years any further progress toward “amply” funding education.

If, on the other hand, I-1366’s proposed amendment does pass in time to prevent the sales tax reduction, this option will also impede

²⁷ See *Citizen’s Guide to the Budget 12*.

education funding and *McCleary* compliance. As noted above, the legislature has struggled for years to address education funding, and it is apparent that more revenue will be necessary. A supermajority requirement for tax increases would make revenue increases even more difficult, forcing the legislature to solve the problem with one hand tied behind its back.

Neither option is acceptable, given the present state of education funding. When “adjusted for regional cost differences,” Washington ranks fortieth in per-student state funding.²⁸ Meanwhile, “[m]any Washington public schools are facing a crisis in finding qualified teachers”²⁹ due, in part, to the under-market salaries school districts are forced to offer. *See McCleary*, 173 Wn.2d at 536, 269 P.3d at 256.; Order, *McCleary v State*, No. 84362-7 at 6 (Aug. 13, 2015). Worse, the burden of these failures is distributed unequally, impacting most heavily the lower-income and property-poor communities least able to supplement state funding with

²⁸ Wash. Educ. Ass’n, *Washington Ranks 40th in Education Spending Per Student (2012)*, available at http://www.washingtonea.org/file_viewer.php?id=611.

²⁹ *Teacher and Substitute Shortage in Washington State*, OFFICE OF SUPERINTENDENT OF PUB. INSTRUCTION, <http://www.k12.wa.us/LegisGov/TeacherShortage.aspx> (last visited March 1, 2016) (“According to a survey of principals conducted in November 2015, 45% of them were not able to employ all of their needed classroom teachers with fully certified teachers who met the job qualifications. More than 80% were required to employ individuals as classroom teachers with emergency certificates or as long-term substitutes. Ninety-three percent indicated that they were “struggling” or in a “crisis” mode in finding qualified candidates.”).

generous local levies.³⁰

As school districts await ample state funding, they must continually cobble together other funding sources to provide for their students. With regard to education funding, “the citizenry share in state sovereignty and responsibility” “[a]t all levels of government.” *McCleary*, 173 Wn.2d at 515, 269 P.3d at 246. By severely impeding the legislature as it attempts to sufficiently fund education, I-1366 would put Washington’s citizens several steps further from satisfying their “paramount duty.”

B. The Coercive Effect of the Sales Tax Reduction Is by Design

I-1366 is not coercive by chance, nor does it merely “inform the legislature that [voters] want an opportunity” to vote on a constitutional amendment, as the Initiative Sponsors and State contend. Sp. Br. at 34; *see also id.* at 40; St. Br. at 20. Rather, the Initiative attaches real-world consequences should the legislature fail to deliver the proposed amendment by the appointed time. And it is by *design* that those consequences rise to the point of legislative coercion.

As stated in the Respondents’ brief, Mr. Eyman previously filed two initiatives—I-1325 and I-1328—with virtually the same content as I-

³⁰ *See id.*; Dr. Martin Boyle, Northwest Regional Educational Laboratory, et al., *Achieving Small School Success in Washington State 5*, available at <http://wssda.org/Portals/0/Resources/Publications/wasssuccess.pdf>.

1366. *See* Resp. Br. at 4, n.1; Initiative 1325 (filed Jan. 6, 2014); Initiative 1328 (filed Jan. 13, 2014). In support of the ballot title drafted by the Attorney General for these two initiatives, Mr. Eyman filed an amicus brief stating:

The goal and intent of each of these initiatives is to provide a strong financial incentive for the legislature to refer to voters a constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes. Either they let the people vote (which costs them nothing) or the voters get some of their money back. . . . Either initiative, if approved by the voters, will have a very powerful lobbying effect on the Legislature to let the people vote on the constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes. . . .

According to their brief, Petitioner believes that despite the voters' anticipated approval of this new initiative, its powerful lobbying effect, and the strong financial incentive it provides, the Legislature will nonetheless refuse to let the people vote, saying it is "impossible." But sponsors are confident that, given the choice, legislators will overwhelmingly vote to refer the constitutional amendment to the ballot.

Brief for Amicus Tim Eyman ("Eyman Amicus") at 1-2, *In re Ballot Title Appeal of Initiative 1325 & 1328*, No. 14-2-00127-1 (Sup. Ct. of Wash., Thurston Cnty., Jan. 29, 2014). Distancing themselves from these statements, the Initiative Sponsors now attempt to dismiss the possibility "that a constitutional amendment will be referred to the voters as a result of I-1366" as "simpl[e] suppositions." Sp. Br. at 38. The Sponsors cannot deny, however, that "[t]he intent of the measure is to convince the

Legislature to let the people vote on the constitutional amendment” and that the pressure created by the sales tax cut was a means to this end.

Eyman Amicus at 2.

At several points, the State’s brief also attempts to distance itself from the constitutional amendment option. It describes I-1366 as a simple “legislative act” amending the state sales tax statutes with an unexceptional condition. St. Br. at 13-14. The State even goes so far to urge that I-1366’s constitutional amendment option is just a “policy expression” without “operative effect.” St. Br. at 26-28. Yet by conditioning the sales tax reduction on the constitutional amendment option, I-1366 gave it the role of determining whether the sales tax reduction would occur.

The Attorney General’s Office chose the following description for I-1366’s ballot title: “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.” CP 36 (emphasis added). To accept the State’s claim that the initiative simply reduces the tax rate while “express[ing] a policy desire” for a constitutional amendment, St. Br. at 20, would cast serious doubt on the Attorney General’s Office’s ballot title, which seemingly announces an ultimatum between co-equal,

mutually exclusive alternatives. *See* RCW 29A.72.050(1) (stating “[t]he concise description must . . . be a true and impartial description of the measure’s essential contents”); *Wash. Ass’n for Substance Abuse & Violence Prevention v. State*, 278 P.3d 632, 642, 174 Wn.2d 642, 660-61 (2012) (“[T]he material representations in the title must not be misleading or false.”).

In truth, the ballot title accurately captures the “either-or” scenario contemplated in I-1366. Neither option vests until the legislature makes its choice; until then, each outcome has as much legal consequence as the other. The State cannot now distance itself from the one option while claiming the other is operative law.

The ballot title and Mr. Eyman’s previous statements make clear that I-1366 is an ultimatum designed to steer the legislature toward the Sponsors’ long-sought two-thirds supermajority amendment. The trial court’s order ruling this “pressure-wielding mechanism” unconstitutional should be affirmed.

IV. CONCLUSION

Any initiative which imposes consequences on the legislature’s failure to propose a specific constitutional amendment intrudes upon the legislature’s role in the amendment process. This is particularly true in the case of I-1366, which coerces the legislature with the threat of a massive

revenue cut under an unworkably short deadline. In the midst of an education funding crisis, a sharp revenue cut is the last thing the state needs. Recognizing the numerous negative effects I-1366 will inevitably have on the state's ability to amply fund basic education and the grave constitutional problems it creates by pressuring the legislature, AWSP respectfully requests that this Court uphold the ruling of the trial court.

RESPECTFULLY SUBMITTED this 2nd day of March, 2016.

/s/ Erick D. Reitz

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that I am over twenty-one years of age, a resident of the state of Washington, not a party to this action, competent to be a witness in the above action, and that I served, via email and pre-paid certified mail, a true and correct copy of (1) Motion for Leave to File Brief of *Amicus Curiae*, (2) Brief of *Amicus Curiae* Association of Washington School Principals, and (3) Appendix to the *Amicus* Brief, upon the following:

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