

NO. 92075-3

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IN THE 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,

Appellants,

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,

Respondents.

**BRIEF OF RESPONDENTS,
INITIATIVE SPONSORS**

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INTRODUCTION

A lawsuit to strike an initiative or referendum from a ballot is one of the deadliest weapons in the arsenal of the measure's political opponents. With increasing frequency, opponents of ballot proposals are finding the weapon irresistible and are suing to stop elections.

James D. Gordon III & David B. Magleby, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L. Rev. 298, 298 (1989), *an article cited in Coppernoll v. Reed*, 155 Wn. 2d 290, 297 (2005). This suit is nothing more than an invitation for this Court to perform Appellants' political bidding. However, neither jurisprudence, nor its accompanying public policy, support Appellants' extraordinary request to ban Initiative 1366 from appearing on the November 2015 General Election ballot. Appellants' invitation is one that the Court should justifiably refuse.

Specifically, Sponsors argue that (1) this suit is not justiciable and Appellants lack standing, (2) relevant jurisprudence and policy disfavor banning elections on initiatives, (3) even if considered on their merits, Appellants' contentions are meritless, and (4) prohibiting the public vote on an initiative based on its content, after complying with all time, place and manner regulations, violates the free speech protections of the First Amendment and Article I, Section 5 of the Washington Constitution.

ARGUMENT

I

APPELLANTS' CLAIM IS NOT JUSTICIABLE AND THEY HAVE FAILED TO PROVE STANDING TO REQUEST THAT AN ELECTION BE BANNED

Washington Courts have never prohibited a public vote on a statewide initiative after sufficient signatures of voters have been obtained and the Secretary of State has certified the measure for the ballot. **Only once** has a statewide initiative been rejected as being beyond the scope of the initiative power, but that was with a measure seeking a change to federal law and **no signatures had yet been collected** —*Philadelphia II v. Gregoire*, 128 Wn. 2d 707 (1996). The fact that this Court has never given such a drastic remedy to a certified statewide initiative should cause the Court to ensure that these Appellants have standing to seek such an extreme and far-reaching remedy. Appellants here do not.

A. Appellants' Claim is not Justiciable at this Time.

A justiciable controversy is one that is:

- (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement,
- (2) between parties having genuine and opposing interests, [and]

(3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic.

To-Ro Trade Shows v. Collins, 144 Wn. 2d 403, 411 (2001).

Inasmuch as there is no guarantee that Initiative 1366 would be enacted by the voters, it is evident that this suit is the epitome of a “possible, dormant, hypothetical, speculative, or moot disagreement,” and that any “harm” suffered by Appellants is merely “potential, theoretical, abstract or academic” at best. This case does not present a justiciable controversy.

[T]he authority of the judiciary over the [initiative] process is limited. “[W]e are dealing with a political and not a judicial question, except only in so far as there may be express statutory or written constitutional law making the question judicial.”

Schrempp v. Munro, 116 Wn. 2d 929, 932 (1991). There is no express statutory or written constitutional law requiring judicial intervention. Appellants’ claims are not justiciable at this time.

Additionally, that “[t]here being before us no statute, or initiative measure enacted by the people, the proposed measure presents no justiciable controversy and we, therefore, do not pass upon its validity.”

State ex rel. O’Connell v. Kramer, 73 Wn. 2d 85, 87 (1968); see also *In re Initiative Petition No. 349, State Question No. 642*, 838 P.2d 1, 21 (Okla.

1992) (concurrency) (“[n]o showing of actual or threatened injury can be made [by] a measure that is not law.”).

There is only one case in which this Court has reviewed and rejected a potential statewide initiative— *Philadelphia II*, 128 Wn.2d 707. The issue regarding the scope of the initiative power was justiciable in that case because the Attorney General had refused to issue a ballot title. It was the sponsors of the initiative who sought review by this Court—those whose efforts in seeking an election were directly jeopardized. *Id.* at 709. *Philadelphia II* provides no basis for concluding that anyone who wants to stop people from voting has a justiciable claim.

Appellants’ dispute about the supposedly wrongful nature of this initiative is only possible, dormant, hypothetical and speculative. Nor is the “harm” in allowing people to express themselves at the polls direct and substantial. The case is not justiciable at this time.

B. Appellants have Failed to Prove They Have Standing to Demand that the Public be Prohibited from Voting

In addition to a lack of justiciability, Appellants also lack standing. Similarly, standing requires a distinct and personal interest in an issue which is not contingent or a mere expectancy, and more than an abstract interest in having others, such as Secretary Wyman, comply with Appellants’ view of the law. In deciding whether a plaintiff has standing, this Court has looked at whether the plaintiff has a “special or peculiar

interest which has been aggrieved any **differently in kind or degree than that of the general public.**” *Ocean Spray Cranberries, Inc. v. Doyle*, 81 Wn. 2d 146, 154 (1972) (emphasis added).

1. Appellants’ Interest in the Scope of the Initiative Power is Abstract

Appellants’ interest in not allowing Initiative 1366 to be placed on the ballot is completely abstract. Although many people may wish that particular matters were not on the ballot, the “injury” in having an opportunity to vote on Initiative 1366 is imperceptible and one that is not “special or peculiar” to Appellants. Rather, disagreements regarding public policy are the natural product of our free and democratic society.

Appellants’ claim of a “constitutional harm” rings like the abstract interest in making sure one’s view of the constitution is followed. An analysis of the justiciability and standing doctrines reveals that Appellants have not, and simply cannot, meet these legal requirements. Such an analysis also reveals why Washington Courts have historically declined to engage in pre-election review of state-wide initiatives.¹

¹ This same concern does not apply in the same way to local initiatives because the local initiative power is a statutory creation of the Legislature, which has the discretion to allow or disallow initiatives on local matters. Because the initiative power extends only to legislative actions and municipalities are involved in numerous administrative or executive functions, local initiatives may be beyond the scope of the initiative power in that regard. *See, e.g., City of Port Angeles v. Our Water-Our Choice!*,

If the mere opposition to the enactment of a law was sufficient to confer standing, the standing requirement itself would be rendered a nullity. Lobbyists would become litigators and legislative processes would likely come to a halt if anyone opposed to a potential law could simply sue on the basis that they do not want anyone to vote on it. The Court should deny Appellants the relief they seek because they lack standing for the following specific reasons:

2. Appellants Submitted No Evidence to Support Standing

It is absolutely clear that Appellants have provided **no evidence whatsoever** to support their standing. The only evidence supplied in support of their motion is a declaration of one of the Appellants' attorneys, and this sole declaration does not establish any facts relative to standing. Clerks Papers (CP), at 38, *et seq.* Instead, Appellants' motion relied on statements **in the complaint** about the Appellants' various interests. Allegations in a complaint are simply allegations—they are not proof of any fact. *Coughlin v. Christoffersen*, 72 Wn. 2d 1039 (1967). For this reason alone, the Court should reject this appeal.

170 Wn. 2d 1 (2010). More commonly, however, local initiatives may be prohibited by state legislation when delegation of power is granted directly to a city or county legislative body, an initiative exercising that power is beyond the scope of the local statutory initiative power. *See, e.g., City of Seattle v. Yes for Seattle*, 122 Wn. App. 382 (2004).

3. Appellants' Allegations about Standing are Insufficient

Even if the Court were to consider allegations in the Complaint to be evidence of facts, the allegations themselves as well as the argument about those allegations, are deceptive, misleading and insufficient to support standing. The Complaint describes the Appellants as election officials, legislators, taxpayers, residents and voters. CP at 1, *et seq.* As addressed below, none of these allegations of status prove an injury sufficient to confer standing to shut down an election.

The Complaint alleges that Sherril Huff is the Director of Elections for King County and Mary Hall is the Auditor of Thurston County. There is no allegation, let alone proof, that either election official has the authority to speak for, or sue in the name of, either of the two counties. They do not.

Amazingly, Sherrill Huff is claimed to be “injured and has standing her capacity as Director of Elections for King County **because the County will incur the costs** of holding an invalid and needless election should I-1366 be placed on the ballot.” CP at 5 (emphasis added). A similar claim is made in regard to Mary Hall from Thurston County. *Id.* As addressed above, neither County is a party to the action and neither official is “injured” simply because her employer might incur costs of the election.

More troubling, however, is the Complaint’s allegation that “Ms. Huff [and] Ms. Hall ... will suffer irreparable harm from incurring the expense of an invalid and needless election.” CP at 11. The allegation appears nonsensical on its face. It is absurd to conclude that Ms. Huff and Ms. Hall are incurring election costs simply because they are election officials.

If the Appellants are intending to claim that the **counties** will incur costs of the election, that claim is deceptive, misleading and incorrect.

State law provides:

Whenever state officers or measures are voted upon at a state primary or general election held in an odd-numbered year under RCW 29A.04.321, the state of Washington shall assume a prorated share of the costs of that state primary or general election.

RCW 29A.04.420(1). The public vote on I-1366 will be a state measure voted upon in an election in an odd numbered year. The **state** will pay the costs of the election, giving King and Thurston County no “injury” and certainly no unique “injury” to Appellants Huff and Hall. The argument that the counties will incur election costs is misleading and incorrect.

Two other Appellants are alleged to have standing as state legislators—Plaintiff David Frockt as a Senator and Reuven Carlyle as a member of the House of Representatives. Neither legislator purports to speak on behalf of the Senate or House of Representatives. Having

legislators on the Plaintiff list adds nothing to the question as to whether Appellants possess standing or, whether as Sponsors contend, their interest is nothing beyond the interest of the general public. *See Walker v. Munro*, 124 Wn. 2d 402 (1994) (legislators do not have standing to challenge enacted initiative requiring two-thirds vote relative to taxes). The Court in *League of Educ. Voters v. State*, 176 Wn. 2d 808 (2013) concluded that standing existed because legislators could point to their **particular votes on a specific bill** which were ineffective because of the challenged law.

The legislators here are not “injured” by allowing people to vote on an initiative. Moreover, even if the initiative is approved by the voters, it purports to do nothing as the Complaint alleges that would “prevent them from exercising their rights to initiate the constitutional amendment process pursuant to Article XXIII.” CP at 6. These legislators may continue to initiate constitutional amendments and they may continue to oppose the initiation of constitutional amendments. I-1366 does not require that the Legislature propose a constitutional amendment, nor does it require that the Legislature vote on referring anything to the voters.²

²Appearing in the voters’ pamphlet, the Office of Financial Management’s official fiscal impact statement on I-1366 states:

The initiative presents the Legislature with a choice that leads to two possible and mutually exclusive scenarios. The Office of Financial Management (OFM) cannot predict how the Legislature will act. For the purposes of this fiscal

The normal process for processing potential constitutional amendments still applies.

4. Standing is not Conferred Simply Because the Issues are of Public Importance

The Complaint asserts that “[a]ll Appellants also have standing because this matter is of serious public importance, immediately affects substantial segments of the population and its outcome will have a direct bearing on commerce, finance, labor, industry or agricultural generally.” CP at 6 (Complaint). The Secretary of State has agreed with Appellants that the Court should review the claims in this case simply because the claims are of serious public importance. It is on this point that Sponsors and the Secretary of State part ways.

impact statement, OFM describes the fiscal impact of each scenario. Scenario 1 – The Legislature does not refer a constitutional amendment to voters prior to April 15, 2016. On April 15, 2016, the state retail sales tax rate would decrease from 6.5 percent to 5.5 percent . . . Scenario 2 – The Legislature refers a constitutional amendment to voters prior to April 15, 2016. The constitutional amendment would appear on the November 2016 general election ballot.

http://www.ofm.wa.gov/ballot/2015/I-366_Fiscal_Impact_Statement.pdf.

Initiative 1366’s intent section states: “The people declare and establish that the state needs to exercise fiscal restraint by either reducing tax burdens or limiting tax increases to only those considered necessary by more than a bare majority of legislators.”

http://sos.wa.gov/_assets/elections/initiatives/FinalText_727.pdf. The initiative is about protecting taxpayers by controlling taxes and it gives the Legislature the choice as to how to accomplish that goal.

While the Sponsors agree that the case is of serious public importance simply because it involves a statewide initiative that has been certified for the ballot, Sponsors disagree that the importance automatically gives anyone standing to challenge it. If public importance were sufficient to confer standing, anyone could challenge any initiative before or after a public vote and anyone could challenge the Legislature's vote on a potential enactment of a new statute or amendment to any statute.

The result of Appellants' argument is that the Court will be in the position of regularly monitoring the legislative processes if anyone interested in any public issue with the wherewithal to hire attorneys can invoke the Courts to review and stop the legislative process. Not only is this a poor public policy and undesirable role for the Courts, it is contrary to this Court's jurisprudence in *Walker v. Munro*, 124 Wn. 2d 402 and *League of Education Voters v. State*, 176 Wn. 2d 808.

In *Walker*, the Court denied standing to legislators who sought to review the 2/3 vote requirement for raising taxes resulting from Initiative 601. In *League of Education Voters*, the Court found standing on the part of legislators who could point to their votes on specific bills which were rendered ineffective because of a supermajority vote requirement. At no

point, did the Court suggest that anyone had standing simply because a challenge to a state law on legislative processes was a public issue.³

In support of the notion that any controversy of public importance gives anyone standing, Appellants cite only to Division II of the Court of Appeal in *Wallin v. City of Longview*, 174 Wn. App. 763 (2013). The Court in *Wallin* merely stated that “[w]here a controversy is of serious public importance the requirements for standing are applied more liberally.” *Id.* at 778 (citing *City of Seattle v. State*, 103 Wn. 2d 663, 668 (1985)). *City of Seattle*, like *Wallin*, involved a “**municipal corporation** challenging the constitutionality of a legislative act.” *City of Seattle*, 103 Wash. 2d at 668 (emphasis added).

Here, there are no municipal corporations involved, nor any similarly completed legislative action. Treatment of standing “more liberally” in those circumstances does not mean standing is no longer required. After all, neither case sought to prevent a vote on a statewide measure that had been certified for the ballot as Appellants seek to do here.⁴

³ The Court in *Walker* did mention how the public interest in an issue might loosen standing requirements, but concluded that the challenge to a recently passed initiative was still unripe and speculative. *Walker*, 124 Wn. 2d at 412.

⁴ The Complaint also asserts that Appellants have standing as voters. CP at 5. No rationale is provided for the Court to conclude that all one has to

5. Taxpayer Standing is not Appropriate Because Secretary Wyman is not Purporting to Violate any Law

The only plausible basis for standing is taxpayer standing.

However, plaintiffs asserting taxpayer standing must show that the government official's action being challenged is clearly illegal. *Friends of N. Spokane Cnty. Parks v. Spokane Cnty.*, 184 Wn. App. 105 (2014).

Appellants have not shown that the Secretary of State would be violating any law by placing Initiative 1366 on the ballot, if she were unsure about its validity. In fact, as *Philadelphia II* indicates, the Secretary of State, like the Attorney General, has mandatory duties to place matters on the ballot regardless of their content. *Philadelphia II*, 128 Wash. 2d at 714-16.

Because Secretary Wyman would not be violating any law, taxpayer standing should be rejected and the legality of Initiative 1366 decided after the election, if it is adopted by the voters, and when challenged by someone who is actually harmed by the result of the popular vote.

be is a voter to be “injured” by the placement of a measure on the ballot. If having an opportunity to vote on a measure is “injurious” enough to confer standing to stop an election, then standing would be conferred on any member of the public. Judicial restraint inherent in standing requirements would become nothing but a historical curiosity.

The factually unsupported allegation of immediate harms is belied by the proposed initiative itself. If the measure is not adopted by the voters, there is no impact. If the measure is adopted by the voters, the Legislature could choose not to propose a constitutional amendment. While there would be a reduction in the state portion of the sales tax (unless the Legislature suspends the effect of the initiative under Article II, Section 1(c)), Appellants have not asserted any right to make sure that any particular revenue stream remains intact. There is no such right.

If the Legislature decided to propose a constitutional amendment to require a two thirds vote for tax increases, the people would not have a chance to vote on it until **November of 2016**. Of course, the voters could reject the proposed constitutional amendment. But if it was adopted, it would not be effective until the 2017 legislative session. The request for an injunction lacks immediacy and the allegation that the initiative will “immediately affect substantial segments of the population” is false. CP at 6 (Complaint). The Court should not decide these constitutional questions in the hasty manner in which this pre-election review requires.

II APPELLANTS’ ARGUMENTS DO NOT OVERCOME THE PREEMINENT CONSTITUTIONAL RIGHT OF INITIATIVE

One may wonder how many times the Court must state:
“Preelection review of initiative measures is highly disfavored.”

Futurewise v. Reed, 161 Wn. 2d 407, 410 (2007) (citing *Coppernoll*, 155 Wn. 2d at 297). And the disfavor is strongly rooted in this state's constitutional history.

The initiative is the first power reserved by the people in the Washington Constitution. Const. art. 2, § 1(a). Adopted in 1911, the right of initiative is nearly as old as our constitution itself, deeply ingrained in our state's history and widely revered as a powerful check and balance on the other branches of government. Accordingly, **this potent vestige of our progressive era past must be vigilantly protected by our courts.**

Coppernoll, 155 Wn. 2d at 296-97 (emphasis added) (citations omitted).

Appellants ask this Court to take an unprecedented step in prohibiting the public from voting on a statewide measure that has already gathered sufficient signatures to be placed on the November 2015 General Election ballot. They ask the Court to take this step based on their arguments that the measure is (in their view) beyond the scope of the initiative power.

A. Appellants are not Entitled to an Injunction Because they do not Possess the Right to Prohibit an Election, they will not Suffer Substantial Injury and the Equities do not Tip in their Favor.

Appellants cite *Rabon v. City of Seattle*, 135 Wn. 2d 278, 284 (1998) for the three requirements to obtain injunctive relief, namely, (1) a clear right; (2) well-grounded fear of invasion of that right and, (3)

resulting actual and substantial injury. Brief of Appellants, at 22.

Appellants are not entitled to an injunction for three reasons.

First, the right not to have an election on Initiative 1366, even if all of their legal arguments were correct (which they are not) is not a right which they possess. Citizens, taxpayers and voters do not possess a right to be free from an election they think is wrong. Second, as discussed above in regard to standing, simply having the election will not result in actual or substantial injury to them.⁵

The two Maryland cases on which Appellants rely are simply irrelevant in light of the high value Washington courts place on the right of people to vote in the initiative process. Also discussed above, *League of Education Voters*, cited in Brief of Appellants, at 24, does not stand for the proposition that any legislator has the right to seek an injunction to stop an initiative prior to the election.

Third, Appellants largely ignore the balancing of equities for injunctive relief.

[S]ince injunctions are addressed to the equitable powers of the court, the listed criteria must be examined in light of

⁵ In Brief of Appellants, at 23, Appellants refer to *Wallin v. City of Longview*, 174 Wn. App. 763 (2013) for the proposition that public expenditures of an election are sufficient. The argument ignores that a *City* that would actually pay the expenses is different from the more diffused “injury” of all state taxpayers.

equity including balancing the relative interests of the parties and, if appropriate, the interests of the public.

Kucera v. State, Dep't of Transp., 140 Wn. 2d 200, 209 (2000) (en banc).

In balancing the relative interests, the drastic remedy of prohibiting everyone from voting far outweighs the possibility that the initiative might be beyond the power of initiative, an issue which can be easily resolved after the election instead of the time starved schedule dictated by a pre-election decision. The public interest calls for denying the injunction.

B. This Case is Distinguishable from the Only Case in which this Court Found a Statewide Initiative to be Beyond the Scope of the Initiative Power

With the adoption of the seventh amendment to the state constitution, the people reserved unto themselves the initiative power. Less than four years later, in an effort similar to the present suit, opponents of an initiative requested this Court to engage in pre-election review of an initiative. In response, this Court stated:

With the ultimate question of the validity of this proposed legislation we have no present concern. Courts will not determine such questions as to contemplated legislation which may, perchance, never be enacted.

State v. Superior Court In & For Thurston Cnty., 92 Wash. 44, 47 (1916).

In an attempt to avoid the ripeness barrier to judicial involvement, Appellants argue that Initiative 1366 fits within the subject matter exception to the rule against pre-election review. The argument has an

obvious problem if applied to the other lawmaking institution in this state, the Legislature. Courts do not step in to stop the Legislature from voting on an allegedly improper bill because legislators have proposed a bill beyond the scope of the legislature's power.

Similarly, one should not be able to stop the people from voting on an initiative because its opponents have created an argument that the initiative is beyond the scope. The only example in our state's history of jurisprudence of a statewide initiative being found to be outside the scope of the initiative power was an initiative that sought to change federal law, something neither the Legislature nor the people has the authority to do.

Philadelphia II v. Gregoire, 128 Wn. 2d 707.

Appellants are correct that this Court has referenced the exception to the ban on pre-election review of initiatives in both *Coppernoll v. Reed*, 155 Wn 2d 290 and *Futurewise*, 161 Wn. 2d 407. But in neither case did the Court decide that the narrow exception applied. The only case involving a proposed statewide initiative wherein pre-election review occurred remains *Philadelphia II*.

The present case is easily distinguishable from *Philadelphia II*. In that case, the Court did not simply find that the initiative was beyond the scope of the initiative power, it went "beyond the jurisdiction of the State" because it was purporting to enact a "federal initiative process." *Id.* at

719. While that initiative proposed changes in state law, “[t]he proposed change in state law is merely an ephemeral stepping stone to a national initiative process and has no independent state purpose.” *Id.* At its most basic level, the Court’s decision hinged on the fact that “it is not within Washington’s power to enact federal law.” *Id.* at 720.

In contrast, in the present case, the Legislature has full authority to lower the sales tax and the authority to refer a constitutional amendment to the ballot. *Amalgamated Transit Union Local 587 v. State*, 142 Wn. 2d 183, 200 (2000) (“there is no serious dispute that in general an initiative can repeal, impose, or amend a specific tax”). The legislative power of the voters is co-extensive with the legislative power of the Legislature. “[W]hen the people pass an initiative, they exercise legislative power that is coextensive with that of the legislature.” *Washington State Farm Bureau Fed'n v. Gregoire*, 162 Wn. 2d 284, 290-91 (2007). That should be the end of the inquiry and Appellants’ drastic vote-stopping request should be denied.

C. Appellants’ Misstate the “Purpose” of Initiative 1366 and Erroneously Mix Jurisprudence Involving Local Initiatives that are Beyond the Scope of the Initiative Power

The crux of Appellants’ argument is that “[t]he issue before the Court is whether the purpose of I-1366 is to exercise the power under article XXIII” to amend the state constitution. Brief of Appellants, at 11.

The real question, however, is not whether I-1366 has **purpose** to amend the constitution, but whether it **actually does**. Appellants frame the question as they do in terms of purpose because it is absolutely clear that I-1366 does not amend the constitution.

Appellants seize upon the language in *Philadelphia II* that the “fundamental and overriding purpose of the initiative is to create a federal initiative process,” and argue that the Court should look at the purpose of I-1366 without regard to the full text of the initiative. By focusing on this comment about the purpose of that initiative, Appellants ignore the test stated by the Court in *Philadelphia II*:

in order to be a valid initiative, Philadelphia II must be legislative in nature and enact a law that is within the state's power to enact.

Philadelphia II, 128 Wn. 2d at 719. Appellants later argue that I-1366 is not legislative in nature, but do not argue that I-1366 or any part thereof is outside the state’s power, as was the federal initiative legislation at issue in *Philadelphia II*.

Nonetheless, Appellants argue that the initiative must be viewed in terms of its fundamental and overriding purpose. By capitalizing on this phrase from *Philadelphia II*, Appellants can pick a narrow purpose related to the potential referral of a constitutional amendment and ignore the rest of the initiative. To divine the purpose of Initiative 1366, Appellants cite

campaign literature and campaign materials. Furthermore, Appellants go so far as to claim the initiative is “entitled ‘2/3 Constitutional Amendment.’” The “title” to which they refer is simply a heading on initiative petitions which has no legal significance. The title of the act appears in section 9 and is the “Taxpayer Protection Act.” The official title prepared by the Attorney General – the one that will appear on the ballot and in the voters’ pamphlet – reads as follows:

Initiative Measure No. 1366 concerns state taxes and fees. 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.

Appendix 1, attached hereto.

Appellants ignore the broader, official title prepared by the Attorney General and instead focus solely on the legally insignificant heading. But it is the entire initiative they seek to have blocked from a public vote.

Appellants also assert that the purpose of the initiative is revealed in “its promotional materials.” Of course, the initiative does not create promotional materials. Supporters do. Some supporters may choose to campaign based on the possibility that the initiative will result in an opportunity to vote on a future constitutional amendment. Some supporters may campaign on the tax relief from the reduction in the state

sales tax.⁶ Others may support it to send a message to their elected representatives about excessive taxation. The purpose of the measure is determined by what it says, not what anyone says about it. *Washington Citizens Action of Washington v. State*, 162 Wn. 2d 142, 149 (2007) (text of initiative or voters pamphlet may be used to determine purpose); *Pierce County v. State*, 150 Wn. 2d 422, 430 (2003) (en banc). Likewise, motives of legislators are irrelevant. *Golden State Transit Corp. v. City of Los Angeles*, 686 F.2d 758, 759 (9th Cir. 1982). That some Sponsors may

⁶ In section 2, the initiative institutes a simple statutory requirement that the state sales tax rate be reduced from 6.5% to 5.5% effective April 15, 2016. Nothing in the state Constitution requires the sales tax to be any particular rate. In fact, over the preceding decades, the state sales tax rate has been changed many times by the Legislature. Tellingly, the Appellants' argument about the initiative's purpose ignores Initiative 1366's intent section: "This measure provides a reduction in the burden of state taxes by reducing the sales tax, enabling the citizens to keep more of their own money to pay for increases in other state taxes and fees due to the lack of a constitutional amendment protecting them" The Legislature is capable of dealing with that revenue reduction; it has done so on numerous occasions, sometimes without the advanced notice that this initiative provides. For instance, the Legislature adjusted to the elimination of the state motor vehicle excise tax in 2000 following the approval of a citizen initiative repealing it. The Legislature adjusted to the loss of revenue from the economic slowdown in 2008/2009. In both situations, the Legislature had to adjust the state budget either to accommodate the decision of the electorate or changes in the economy. The revenue impact from the passage of the initiative, should the sales tax be lowered, is not unprecedented. In fact, during this year's legislative session, the Governor and the Legislature raised taxes by an amount that is comparable to the revenue reduction from this initiative's possible lowering of the sales tax.

<http://leap.leg.wa.gov/leap/Budget/Detail/2015/cTBalSheet0629.pdf>.

want the Legislature to choose to refer a constitutional amendment to the people does not make that the sole, fundamental, or overriding purpose of the measure to the exclusion of the reduction in the sales tax.

Appellants' argument that no one should be allowed to vote on this initiative, which has been titled by the Attorney General and certified to have sufficient signatures, boils down to this: the initiative gives the Legislature the option to submit a constitutional amendment to the voters in lieu of a reduction in the state portion of the sales tax and the constitution can only be amended by the Legislature submitting to the voters a constitutional amendment.

Appellants make this argument by claiming that a future constitutional amendment is the sole purpose of the initiative and that *Ford v. Logan*, 79 Wn. 2d 147 (1971) mandates the result they seek. The argument is easily refuted by the OFM's fiscal impact statement: "The initiative presents the Legislature with a choice that leads to two possible and mutually exclusive scenarios. The Office of Financial Management (OFM) cannot predict how the Legislature will act." *See supra* n. 2. While OFM cannot predict that voter approval of I-1366 will result in a constitutional amendment, neither should the Court accept Appellants' invitation to predict the future.

In fact, this Court has expressly warned that courts should not review of the proprieties of initiatives based on assumed practical effects of the measure. In rejecting a similar last minute claim that Initiative 960 was beyond the scope of the initiative power because it would improperly amend the constitution, the Court made clear: “I-960 does not purport to amend the constitution, whatever its practical ‘effect’ may be.” *Futurewise*, 161 Wn. 2d at 412. Neither does I-1366 amend the constitution.

Appellants ignore the fact and reasoning in *Ford* and fail to mention that *Ford* has been severely limited in *Maleng v. King Cnty. Corr. Guild*, 150 Wn. 2d 325 (2003). In *Ford*, the “initiative aspires to ‘amend’ the King County Charter by deleting all of its sections, thus repealing it.” *Ford*, 79 Wn.2d at 151. Initiative 1366 does not purport to amend the state constitution in any way at all. Instead, it gives the Legislature the option of referring a constitutional amendment to the people at a subsequent election. Additionally, the initiative does not dictate the text of a constitutional amendment, but rather only the key features. Unlike the measure in *Ford*, there will be no automatic change in the constitution by people voting this November.

Appellants and the trial court incorrectly assumed that a constitutional amendment will be referred to the voters if the voters are

allowed to vote and decide to pass I-1366. Those are simply suppositions because there are several possible legislative reactions to I-1366 if it receives a favorable vote. The Legislature could decide to refer a constitutional amendment to the voters with a two-thirds vote as required by Article XXIII. The Legislature could decide to refer a competing constitutional amendment at the same time.

With a two-thirds vote, the Legislature could decide to suspend all or part of the operation of I-1366 as it did with Initiative 1351 in 2015 and Initiative 773 in 2002. Or, the Legislature could decide to allow the reduction in the sales tax to take place and either raise other taxes or adjust spending. I-1366 does not amend the constitution nor ensure that the constitution is in fact amended. After all, a constitutional amendment could also be rejected at the polls if the Legislature chose to refer such a measure to the voters.

Nevertheless, Appellants rely heavily on the language in *Ford*, 79 Wn. 2d 147 that suggests that amending the constitution is not a legislative act. Importantly, the Court in *Ford* was reviewing an initiative to repeal the King County charter. The Court analogized repealing the charter to amending the state constitution.

The Court recognized the significance of a ballot measure that would amend a governing document by bypassing the amendment process.

The method by which our constitution may be amended is set forth in Const. art. 23, s 1, and involves two distinct phases. First, two-thirds of each house of the legislature must agree to submit the proposed amendment. Then it must be approved and ratified by the majority of the electors acting in their capacity as the ultimate sovereign. The process is manifestly distinct from that involved in the enactment of ordinary bills or laws. The legislature can only propose, it cannot effectuate, amendments. Such complete action is not legislative in nature under the general provisions of our constitution.

Id. at 155.

Unlike the initiative in *Ford* that would repeal the King County Charter directly if approved by the voters, Initiative 1366 does not repeal or amend the state constitution upon approval by the voters. Rather the constitutional requirements of a two-thirds vote of both houses of the legislature must propose a future constitutional amendment and if they do (which the initiative does not require), the people as the ultimate sovereign will still need to vote upon it before any constitutional amendment is made. Supporting this principle, the Court in *Ford* was careful to note that the initiative “does not include the power to **directly** amend or repeal the constitution itself.” *Id.* at 156 (emphasis added). I-1366 does not purport to do so.

After discussion about the amendment of the constitution being a two-step process, the Court in *Ford* noted that “[a]mendment of our state constitution is not a legislative act and thus is not within the initiative

power reserved to the voters.” *Id.* at 156. This is the language upon which Appellants heavily rely.

However, it is apparent from the entire context that the Court considered amendment not to be a legislative act because it involves two separate legislative acts—a vote by both houses and a vote by the people. The Court in *Ford* did not indicate that the amendment of the constitution was some other type of act, *i.e.*, an executive, judicial or administrative act. Significantly, Initiative 1366 does not contradict this two-step process.⁷ If I-1366 is allowed to remain on the ballot and is approved by the voters, the Legislature would have the choice of referring a constitutional amendment through a two-thirds vote by both houses and a majority vote by the people.

Appellants make only a passing reference to *Maleng*, perhaps because it severely limited *Ford* essentially to its facts. Regardless of their intent, Appellants completely ignore *Maleng*'s importance to the question at hand.

One of the foremost rights of Washington State citizens is the power to propose and enact laws through the initiative process. Const. art. II, § 1(a). “The passage of an initiative measure as a law is the exercise of the same power of

⁷ Appellants reference the language in *Ford* regarding the “tempering element of time.” 79 Wn.2d at 156. If voters approved I-1366, the Legislature could go through its normal legislative process on a proposed amendment and a public vote could not occur until November 2016.

sovereignty as that exercised by the Legislature in the passage of a statute.” *Love v. King County*, 181 Wash. 462, 469, 44 P.2d 175 (1935).

As a general rule, courts are reluctant to rule on the validity of an initiative before its adoption. This reluctance stems

from our desire not to interfere in the electoral process or give advisory opinions....

Maleng, 150 Wn. 2d at 330 (citations omitted). Like the Appellants here, the initiative opponents in *Maleng* argued that charter amendment “is not a ‘mere legislative act’ but instead an act ‘of a higher order.’ ” *Id.* at 331 (citing *Ford*, 79 Wn. 2d at 155).

The Supreme Court in *Maleng* distinguished *Ford* as being a case where the initiative would directly **repeal and not merely amend** the county charter.

Upon proper examination of the Washington State Constitution, we found no provision that gives the electorate the legislative authority to **directly repeal** the organic law that allocates legislative powers.

Maleng, 150 Wn. 2d at 331 (emphasis added).

Here, we are asked to review a proposed amendment, rather than a repeal, of the KCC. *Ford* was expressly limited to an **attempt to repeal, not amend**, the KCC, and does not control the issue in this case.

Id. at 332 (emphasis added). This Court ruled that an amendment by initiative was appropriate, thereby limiting *Ford* to situations where the

attempt was made to **repeal** an organic document by initiative. Initiative 1366 does not repeal the state constitution.

If the initiative to repeal the King County charter is analogous to amending the state constitution, then *Maleng* is analogous to amending the state constitution. The Supreme Court allowed the amendment in *Maleng*. Not to be forgotten, however, is that I-1366 does not directly amend the state constitution; rather it gives the Legislature the option to do so.

Finally, Appellants argue that the trial court concluded that I-1366 is contrary to Article XXII regarding constitutional amendments. Brief of Appellants, at 12. This argument is reminiscent of that in both *Coppernoll* and *Futurewise*, where initiative challengers argued that the respective initiatives were beyond the scope of the initiative power because they did something unconstitutional. *Coppernoll*, 155 Wn. 2d at 302; *Futurewise*, 161 Wn. 2d at 412 (“Appellants’ argument is essentially that the initiative would be unconstitutional if enacted.”). This Court has made it abundantly clear that pre-election review is not appropriate for claims of conflict with the constitution.

Nevertheless, the Appellants’ argument regarding the three ways of violating Article XXIII is illusory. First, the notion that I-1366 violates the requirement that a proposal for a constitutional amendment comes from an initiative as opposed to one house of the legislature is absurd. If

I-1366 is approved at the polls, there will be no referral of a constitutional amendment to the people unless some member of one of the houses makes such a proposal. If the trial court was not using “proposal” in a formal sense, then the argument makes even less sense. Legislators get their ideas (proposals) about potential legislative actions from many sources. The Court should be reluctant to conclude that an idea which came from an initiative or any other source violates the Article XXIII requirement that the proposal come from the legislature.

Second, the conclusion that the initiative directs the legislature to submit the proposed amendment for a public vote without a two-thirds legislative vote is simply false. Brief of Appellants, at 13. The initiative text requires no such thing. The Court should not intentionally choose to interpret a legislative proposal as being unconstitutional.

Third, the fact that the initiative includes a onetime reduction in sales tax does not force the legislature to put a constitutional amendment on the ballot. A reduction in sales tax, a particularly regressive tax in hitting poorer citizens hardest, could be replaced with increases in other taxes and/or adjustments in spending. The so-called gun to the head argument ignores that the Legislature has numerous ways of funding state activities. I-1366 deals only with one of them.

Initiative 1366 does not limit how the Legislature prioritizes spending. With or without I-1366, the legislature can increase the percentage of spending for certain government services, allocate more existing revenue for government services, or raise revenue for government services. The initiative's passage would simply provide taxpayers with a reduction in the tax burden (helping offset recent or future tax increases) or would provide an opportunity to vote on a constitutional amendment to create revenue-raising protections and procedures. Neither scenario precludes the Legislature from adjusting the state's budget to accommodate its policy choices.

II
A PRELIMINARY INJUNCTION TO PROHIBIT PEOPLE FROM EXERCISING THEIR VIEWS AT THE POLLS IS AN UNCONSTITUTIONAL PRIOR RESTRAINT ON FREE SPEECH

In response to Sponsors' argument that an injunction prohibiting a vote would interfere with free speech rights, Appellants' tersely claim:

"This is contrary to Washington law." Brief of Appellants, at 15.

Tellingly, they cite no Washington law in support of this terse assertion.

This Court has never addressed whether First Amendment or Article I, Section 5 free speech rights are violated if an election is enjoined after citizens have complied with all valid time, place and manner restrictions.⁸

⁸ An analysis of the factors from *State v. Gunwall*, 106 Wn. 2d 54 (1986)

Appellants' claims fail to recognize that the public vote on Initiative 1366 is a valid expression of political speech, and that such expression is still fulfilled even if Initiative 1366 fails at the polls, is enacted and subsequently invalidated by judicial decree or is suspended or repealed by the Legislature.

A. Voting is an Exercise of Free Speech.

In *Coppernoll*, the Supreme Court expressly recognized the First Amendment concerns raised by judicial involvement in initiatives prior to the election.

Because ballot measures are often used to express popular will and to send a message to elected representatives (regardless of potential subsequent invalidation of the measure), substantive preelection review may also unduly infringe on free speech values. ... For example, after voter passage of Initiative 695 requiring \$30 vehicle license tabs, it was ruled invalid by the trial court. A nearly identical measure was quickly passed by the legislature and signed by the governor before an appeal could be heard.

Coppernoll, 155 Wn. 2d at 298. The Court echoed this principle in *Futurewise*, 161 Wn. 2d 407.⁹ Although the Court referred to the burden

is not necessary because “it is already settled that Article I, Section 5 is subject to “independent interpretation.’ ” *Bradburn v. N. Cent. Reg'l Library Dist.*, 168 Wn. 2d 789, 800 (2010) (citation omitted).

⁹ The only Court to reject this concept was the court in *Wallin v. City of Longview*, 174 Wn. App. at 791, which focused only on the free speech right of initiative sponsors and said nothing about the right of the public to vote.

“substantive preelection review” has on free speech values, the Court has never addressed the infringement of free speech that is **experienced in exactly the same way** that an injunction prohibiting an election would have even if based on scope of the initiative power.

There is no doubt that the initiative process comes within the ambit of political speech:

The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change... [T]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as “core political speech.”

Meyer v. Grant, 486 U.S. 414, 421-22 (1988). Clearly, the relief Appellants seek is foreclosed by the historical protection of the right of people to vote in the initiative process.

Appellants seek to block all voters from sending their message through the polls about the policies, provisions, and principles embodied in Initiative 1366. Initiative campaigns are not just about passing laws; they are about informing and involving the people in a discussion over public policy. They are the preferred vehicle for accomplishing what lawmakers may be hesitant, or simply unwilling, to accomplish. *See M. Sean Radcliffe, Pre-Election Judicial Review of Initiative Petitions: An Unreasonable Limitation on Political Speech*, 30 *Tulsa L.J.* 425, 425

(1994). Whether the measure is advisable is determined by the voters. Whether the measure is legal can be determined by the Courts after the voters have spoken.

In addition to characterizing the proposition of legislation by means of initiative as involving **core political speech**, *Meyer*, 486 U.S. at 422, the Supreme Court has further noted that the core value of the First Amendment, Free Speech Clause is the public interest in having free, unhindered debate on matters of public importance. *See Pickering v. Board of Education*, 391 U.S. 563 (1968). This Court has understandably taken a similar approach:

[T]he First Amendment prohibits the State from silencing speech it disapproves, particularly silencing criticism of government itself. Threats of coerced silence chill uninhibited political debate and undermine the very purpose of the First Amendment.

State ex rel. Pub. Disclosure Comm'n v. 119 Vote No! Comm., 135 Wn. 2d 618, 626 (1998).

B. The Initiative Process Itself is Political Speech Made Within a Public Forum.

Although the Washington Supreme Court has allowed pre-election review of initiatives in limited circumstances, it has never decided whether the First Amendment and Article I, Section 5 of the Washington Constitution are violated by a content-based restriction on initiatives—

regardless of whether the review is based on the legality of the measure or the scope of the initiative power. The notion that the State can create a public forum for the communication of political speech (*i.e.*, the vote) and then restrict access based on the content is antithetical to the constitutional protection of rights to petition government and free speech.

Though the public forum doctrine first arose in the context of streets and parks, it has been applied in a variety of government created fora: school publications (*Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819 (1995)), charitable contribution programs, (*Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985)), and school mail systems (*Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983)). Like a state publication, the initiative process “is a forum more in a metaphysical than in a spatial or geographic sense, but the same principles are applicable.” *Rosenberger*, 515 U.S. at 830.

The bestowal of this right upon the citizens of Washington “opened for use by the public [] a place for expressive activity.” *Perry Educ. Ass'n*, 460 U.S. at 45. As such “[t]he Constitution forbids a state to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place.” *Id.*

Thus, the initiative process is a limited-public forum for political speech. Being duly designated only “[r]easonable time, place and manner regulations are permissible, and [] **content-based prohibition[s] must be narrowly drawn to effectuate a compelling state interest.**” *Perry Educ. Ass’n*, 460 U.S. at 46 (emphasis added). The restrictions on timing, number of signatures and initiative format are certainly reasonable time, place and manner restrictions. But the Appellants’ invocation of the Court’s power to stop an election on a measure that has sufficient signatures **based on the content of the measure** is completely unprecedented, too extreme, and interferes with the right of all the voters of Washington to express their views on this subject at the ballot box.

C. Aside from *Coppernoll*, the Only Decision to Address Free Speech Rights in Having the Public Vote is the Non-Persuasive Decision in *Wallin v. City of Longview*.

As addressed above, this Court in *Coppernoll* recognized free speech impact of pre-election review of initiatives. The only recorded decision wherein this right was rejected was concerning a local initiative in *Wallin v. City of Longview*, 174 Wn. App. 763, cited in Brief of Appellants, at 17-19. Unfortunately, the Court of Appeals’ analysis in *Wallin* is extremely thin.

The Court noted that local initiatives were not based on any constitutional right, but are purely a matter of legislative choice. *Id.* at

790. That, of course, is not true with a statewide initiative like I-1366. More importantly, the shallow nature of the analysis in *Wallin* is best reflected in the *Wallin* Court's statement that the "petition sponsors were permitted to circulate their petition for signatures and to submit that petition to the county auditor to have the signatures counted." *Id.* at 791.

That, of course, was true in *Coppernoll*. To assert that one's free speech rights are fully protected by the right to collect and submit signatures on a petition recognizes only part of the right. It is analogous to saying that a student's right to speech at a school newspaper is fulfilled by the right to submit an article, letter or advertisement for publication even though publication is ultimately prohibited because of its content. *Wallin's* superficial analysis should be rejected.

Similarly, Appellants' reliance on *AFL-CIO v. Eu*, 36 Cal.3d 687, 696, 686 P.2d 609, 614 (1984), *Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 247-48, 69 N.E.2d 115, 127-28 (1946), and *City of Detroit v. City Clerk*, 98 Mich. App. 136, 139, 296 N.W. 2d 207, 208 (1980) are as unpersuasive as *Wallin*. Neither the California, Massachusetts, nor Michigan cases address freedom of speech whatsoever. Instead, they speak solely to the question of whether the Court will engage in pre-election review.

The only case cited by Appellants that addressed First Amendment rights is *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1099-1100 (10th Cir. 2006), cited in Brief of Appellants, at 21. As noted by Appellants, the First Amendment “does not protect the right to make law, by initiative or otherwise.” *Id.* Importantly, the Sponsors of I-1366 do not dispute that the First Amendment does not protect the right to make law. They are not contending that they have a First Amendment right to have I-1366 go into effect. The people do, however, have a right to express their views at the polls regardless of whether the vote results in the making of law.

D. The Appellants’ Request to Prohibit Public Voting Based on the Content of the Initiative Cannot Survive Strict Scrutiny

Sponsors and over 339,000 thousand voters of Washington exercised their constitutional rights of free speech when they engaged in the initiative process. However, before the rest of the public’s voice could be heard, Appellants sued the Sponsors to prohibit a vote based on the content of the message. As stated above in *Perry Educ. Ass’n*., “a content-based prohibition must be narrowly drawn to effectuate a compelling state interest.” 460 U.S. at 46 (citing *Widmar v. Vincent*, 454 U.S. 263, 269-270 (1981)).

The Appellants have neither articulated a compelling state interest, nor shown how a prohibition on public expression through the ballot could be narrowly drawn to protect the element of speech inherent in voting. Yet, the restriction on public expression can easily be avoided. Whether the initiative passes, whether it results in a proposal for a constitutional amendment, whether it results in a reduction in the state sales tax, whether it is amended or suspended by the Legislature and whether it is legal or within the scope of the initiative power should be determined after the election.

CONCLUSION

Appellants' arguments are not based on settled law. The resolution of their arguments should be settled only if and when the initiative is approved by the voters and only after thorough, not hurried, briefing of the issues that Appellants' rush to the Courthouse requires.

Importantly, *Philadelphia II*, the only case in which a statewide initiative was prevented from reaching the ballot, involved an initiative proposing changes to federal law for which no signatures had been gathered and which had not been certified for the ballot. This Court has *never* banned an election on a certified statewide initiative on any basis.

Moreover, despite *Philadelphia I*'s exception to the ban on pre-election review, there is no *requirement* that judicial review be complete

before the election when the scope of the initiative power is challenged. Even if one assumes Appellants' arguments are correct (which they are not), the "harm" of letting people vote on something they should not is far less than the harm of the Court being forced into making a hasty decision on constitutional questions of first impression. Any decision to issue an injunction to stop a matter from being voted upon should not be made without proper briefing, thorough research and careful consideration.

Appellants' appeal should be denied.

Respectfully submitted this twenty-sixth day of August, 2015 by

STEPHENS & KLINGE LLP



Richard M. Stephens (WSBA 21776)
Attorneys for Sponsors Tim Eyman,
Mike Fagan and Jack Fagan

DECLARATION OF SERVICE

I, Jill E. Stephens, declare as follows:

I am a citizen of the United States, a resident of the State of Washington, and an employee of Stephens & Klinge LLP. I am over twenty-one years of age, not a party to this action and am competent to be a witness herein.

On August 26, 2015, I caused a true copy of the foregoing Brief of Respondents, Initiative Sponsors to be served on the following person via electronic mail, pursuant to consent of counsel:

PACIFIC LAW GROUP LLP
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 26th day of August, 2015, at Bellevue, Washington.



Jill E. Stephens

Paralegal

Appendix 1



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