
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; 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 RESPONDENT KIM WYMAN, SECRETARY OF
STATE OF THE STATE OF WASHINGTON**

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I. INTRODUCTION

Plaintiffs seek to enjoin Initiative 1366's placement on the 2015 general election ballot. The superior court correctly denied Plaintiffs' request having determined that they had not established that they were entitled to legal or equitable injunctive relief. While the superior court's ultimate conclusion denying the injunction was correct, its analysis was flawed. This Court should hold that Initiative 1366 should remain on the ballot for a decision by the voters because it does not fall within the extremely narrow circumstances that justify pre-election removal of an initiative measure. The Court should conclude that Initiative 1366 is within the scope of the people's broad legislative power.

Accordingly, the Secretary of State respectfully requests that this Court affirm the superior court's order rejecting Plaintiffs' injunctive request and allowing Initiative 1366 to remain on the ballot. The Secretary of State and county election officials need to receive a final decision in this appeal by September 4, 2015, in order to print and mail ballots and voters' pamphlets to at least 60,000 military and overseas voters by the statutory deadline of 45 days before the election date. More importantly, the people of the State of Washington should have an opportunity to exercise their fundamental constitutional right to enact or reject Initiative 1366 in the upcoming election.

II. ISSUE PRESENTED

Where Initiative 1366 would amend the state sales tax rate, an act that is plainly legislative in nature, and only proposes to the legislature a constitutional amendment that may or may not be acted upon, does Initiative 1366 fall outside the scope of the people's initiative power?

III. STATEMENT OF THE CASE

Initiative 1366 (I-1366) concerns state taxes and fees. Section 1 of the initiative explains its purpose and intended effect: “[T]he 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. . . . This measure provides a reduction in the burden of state taxes by reducing the sales tax . . . unless the legislature refers to the ballot for a vote a constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes and majority legislative approval for fee increases. The people want to ensure that tax and fee increases are consistently a last resort.” I-1366 § 1.

Section 2 would cut the state retail sales tax from 6.5 percent to 5.5 percent. I-1366 § 2(1).

Section 3 would make the tax cut take effect on April 15, 2016, unless the legislature first refers to the ballot for a vote an amendment to the state constitution that includes certain provisions. I-1366 § 3. The proposed amendment must require “two-thirds legislative approval or voter approval to raise taxes . . . and majority legislative approval for fee

increases.” I-1366 § 3(2). The terms “raises taxes” and “majority legislative approval for fee increases” are specifically defined. I-1366 §§ 3(2), 6. Section 6 defines “raises taxes” as “any action or combination of actions by the state legislature that increases state tax revenue deposited in any fund, budget, or account, regardless of whether the revenues are deposited into the general fund.” If the legislature does refer the constitutional amendment to the ballot for a vote before April 15, 2016, then Section 2 of the Act, which reduces the tax rate, would expire.¹ I-1366 § 3(1).

Thus, if the legislature refers the constitutional amendment to the ballot before April 15, 2016, then the state retail sales tax rate would stay at 6.5 percent. If the legislature does not refer the constitutional amendment before that time, the state retail sales tax rate would be reduced to 5.5 percent.

Approximately 339,236 signatures were submitted in support of including I-1366 on the ballot for the 2015 general election. CP at 94 (Augino Decl.) (attached). On July 30, 2015, the Secretary of State certified that the initiative had garnered sufficient signatures from registered voters to qualify for the ballot. CP at 96 (Augino Decl., Ex. 1). That same day, Plaintiffs filed suit seeking to enjoin the Secretary from actually placing the initiative on the ballot. CP at 1-24.

¹ Sections 4 and 5 update statutory references. Section 7 requires liberal construction to effectuate the intent, policies, and purpose of the act. Section 8 is a severability clause, and section 9 entitles the act the “Taxpayer Protection Act.”

After considering all parties' briefs and hearing oral argument, the superior court denied Plaintiffs' motion for permanent injunction. CP at 130-38 (Order) (attached). While the superior court determined that "I-1366 appears to exceed the scope of the initiative power," it ultimately concluded that questions surrounding the First Amendment prevented Plaintiffs from establishing that they had a clear legal or equitable right to enjoin I-1366's placement on the ballot.² CP at 137. Plaintiffs immediately sought direct review by this Court. The Secretary of State has asked this Court for accelerated review so that she and all county election officials can have a final decision on I-1366 by September 4, 2015, the deadline for finalizing ballots and the voters' pamphlet. *See* Dkt. No. 18.

IV. ARGUMENT

A. This Pre-Election Challenge To I-1366 Merits Judicial Resolution Despite Issues Of Standing

The people's constitutional right of initiative is well-established and well-protected. Ensuring that the people can exercise this right in the upcoming election is a matter of significant and continuing public importance that should be decided by this Court. Nevertheless, the

² In the matter below, the superior court reached the right result in determining that I-1366 should remain on the ballot, yet much of the superior court's rationale and its findings and conclusions were incorrect as a matter of law and of fact. The Secretary of State takes specific exception to Findings of Fact Nos. 12, 14-15, 17, and 18. CP at 131. While designated as findings of fact, they are in essence conclusions of law that should be reviewed de novo. *See Robel v. Roundup Corp.*, 148 Wn.2d 35, 43, 59 P.3d 611 (2002). Moreover, the Secretary takes exception to all or part of Conclusions of Law Nos. 3-9, 12, and 13. CP at 136-37. However, because the Secretary is not asking for a change in the final result reached by the trial court, she did not cross appeal and argues alternative grounds for affirmance. *See State v. Sims*, 171 Wn.2d 436, 442-43, 256 P.3d 285 (2011).

Secretary of State disputes that some of the Plaintiffs have established the requisite standing to bring their challenge against I-1366 based on the reasons given. Plaintiffs assert that they have standing to bring this action as taxpayers, as county election officials, and as legislators. Br. Appellants at 8-9. The Secretary of State does not challenge their ability to bring the action as taxpayers. *See State ex rel. Boyles v. Whatcom County Superior Court*, 103 Wn.2d 610, 614, 694 P.2d 27 (1985) (recognizing litigant standing to challenge governmental acts on the basis of status as a taxpayer). Thus, the Court need not address the Plaintiffs' other claimed bases for standing. In the event the Court does consider these bases, the Secretary does dispute the county election officials' and legislators' separate, individual claims of official standing.

The county elections officials assert that they have individual standing "due to the administrative burdens they will incur in placing a potentially unlawful initiative on the ballot" and their "inherent interest in preventing an illegal vote." Br. Appellants at 8. These assertions, however, do not grant the county election officials separate standing. The officials' reliance on *City of Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45 (2013), for standing in their official capacities is misplaced. *Wallin* involved a city's declaratory action asserting that a local initiative prohibiting automated traffic safety cameras was beyond the scope of the local initiative power because the city's power to legislate on the subject derived from a grant by the state legislature, not the city's inherent local legislative power. *Wallin*, 174 Wn. App. at 771-72. The sponsor of the

initiative challenged the city's standing, claiming that it could not establish injury if the initiative were placed on the ballot, regardless of its invalidity. *Wallin*, 174 Wn. App. at 772. The Court of Appeals disagreed finding that there were "clear financial and administrative costs associated with the election process" that the city would incur by placing the invalid initiative before the voters. *Id.* at 782. It, therefore, held that the city had standing to challenge the initiative. *Id.*

In this case, however, neither the county election officials, nor their respective counties will pay for any cost of elections on statewide measures in 2015, including any costs attributed to I-1366. The State fully reimburses counties for the expenses of elections on statewide ballot measures in odd numbered years, including prorated overhead expenses, which includes employee time. RCW 29A.04.420(1). Thus, the county elections officials overreach in their assertions that they will be burdened by I-1366's placement on the ballot. Moreover, their claimed interest in preventing an illegal vote does not give them an interest beyond that of any citizen of the State. Their claim of official standing should fail.

Similarly, the plaintiff legislators lack standing in their official capacities. Relying on *League of Education Voters v. State*, 176 Wn.2d 808, 817-18, 295 P.3d 743(2013), the plaintiff legislators assert that they have standing because I-1366 prevents them from independently initiating the constitutional amendment process. Br. Appellants at 8-9. In *League of Education Voters*, a specific bill failed to pass notwithstanding having received a simple majority of votes, including those made by the

individual legislators, due to the requirements of Initiative 1053. *League of Educ. Voters*, 176 Wn.2d at 817. This Court found that the legislators' interest in maintaining the effectiveness of their votes gave them sufficient standing to challenge the legality of the supermajority initiative. *Id.* But this case is unlike *League of Education Voters* where the legislators were specifically harmed because their votes had been nullified by I-1053's supermajority vote requirement. None of the plaintiff legislators' prior votes will be in any way impacted by I-1366. And as explained below, the initiative if passed will not nullify any future legislative votes: nothing in I-1366 requires the plaintiff legislators to propose a constitutional amendment or to vote for or against any constitutional amendment should one be proposed. Thus, none of the plaintiff legislators would be harmed by a popular vote on I-1366, and their claim of individual legislator standing should fail.

Notwithstanding these issues of standing, the Secretary of State asserts that this matter is properly before this Court for final determination. Plaintiffs seek to enjoin I-1366 from the 2015 general election ballot based on the assertion that it is beyond the scope of the people's initiative power. Such an argument is one of only two challenges that this Court has deemed justiciable prior to an election. *Coppernoll v. Reed*, 155 Wn.2d 290, 298-99, 119 P.3d 318 (2005). Determining whether I-1366 falls within the people's power of initiative is an issue of significant and continuing public importance that merits this Court's judicial resolution. *Coppernoll*, 155 Wn.2d at 300-01.

B. Pre-Election Challenges Must Remain Limited And Narrow To Protect The People's Right Of Initiative

For over one hundred years, the people's right of initiative has been protected through the Washington Constitution and this Court's jurisprudence. Article II, section 1 of the Washington Constitution reserves to the people "the power to propose bills, laws, and to enact or reject the same at the polls." Const. art. II, § 1. Recognizing the preeminence of this power, this Court has "vigilantly protected" the people's right of initiative by liberally construing the constitutional provision and narrowly limiting the scope of pre-election challenges. *Coppernoll*, 155 Wn.2d at 297-98. This Court has historically recognized only two narrow and limited means for removing an initiative from the ballot prior to an election: (1) if the initiative does not meet procedural requirements for placement on the ballot, or (2) the subject matter of the initiative is outside the scope of people's initiative power. *See Ford v. Logan*, 79 Wn.2d 147, 152, 483 P.2d 1247 (1971); *Futurewise v. Reed*, 161 Wn.2d 407, 411, 166 P.3d 708 (2007).

In the matter below, the superior court reached the right result in determining that I-1366 should remain on the ballot, yet the superior court's rationale for doing so was incorrect as a matter of law. Contrary to the superior court's supposition, there is no outstanding judicial question of whether the First Amendment of the United States Constitution or article I, section 5 of the Washington Constitution precludes *any* pre-election review. No court has ever concluded that these free speech

provisions mandate that all initiatives must be placed on the ballot no matter what.³ To do so would lead to electoral chaos and absurdity as any conceivable measure would have to go before the voters regardless of the extent of the initiative’s procedural defect or unlawful scope of subject matter.

Nevertheless, this Court has recognized that there *are* free speech and other significant implications in the *substantive* review of initiatives prior to an election. *Coppernoll*, 155 Wn.2d at 298; *Futurewise*, 161 Wn.2d at 411. Substantive pre-election review, which includes considering whether a measure is unconstitutional or otherwise invalid, “involves issuing an advisory opinion, violates ripeness requirements, undermines the policy of avoiding unnecessary constitutional questions, and constitutes unwarranted judicial interference with a legislative process. . . . [And] may also unduly infringe on free speech values.” *Coppernoll*, 155 Wn.2d at 298-99. Because of the constitutional preeminence of the people’s right of initiative, this Court has drawn a bright line between substantive and procedural pre-election review,

³ The sponsors’ reliance on *Meyer v. Grant*, 486 U.S. 414, 422, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988), for the proposition that the entire initiative process is protected “core political speech” is incorrect. The United States has made a clear distinction between state restrictions on “interactive communications concerning political change” (*Meyer*, 486 U.S. at 422), and those that “protect the integrity and reliability of the initiative process.” *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 191, 119 S. Ct. 636, 142 L. Ed. 2d 59 (1999). Only the former involves strictly protected “core political speech.” *Id.* at 190. “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997).

prohibiting the former and allowing only the latter on two narrow and restricted grounds. *Coppernoll*, 155 Wn.2d at 298-99.

Restricting pre-election review to only limited, threshold grounds allows the courts to guard the people's right to initiative, while also ensuring that the exercise of that right is procedurally and constitutionally sound. *Dumas v. Gagner*, 137 Wn.2d 268, 283-84, 971 P.2d 17 (1999) ("the judiciary should exercise restraint in interfering with the elective process which is reserved to the people in the state constitution" (internal quotation marks omitted)); *Ford*, 79 Wn.2d at 152 ("The courts of this state possess and have long exercised jurisdiction to adjudicate [the threshold question of whether a proposal was the proper subject of an initiative.]). It also preserves the people's fundamental right to direct democracy through initiative, and the people's right to express their views through an initiative vote—even if the measure is later found invalid. *See Coppernoll*, 155 Wn.2d at 298 ("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)" and thus removing an initiative from the ballot "may infringe on free speech values").

In sum, the superior court erred in supposing that there is an open question of whether free speech concerns foreclose all pre-election review of initiatives. There is not. Rather, this Court has recognized only two narrow and limited means for removing an initiative from the ballot prior to an election. Further, this Court has made clear that substantive review

of an initiative is not allowed prior to its passage. This Court should hold that the superior court erred in its rationale.

C. I-1366 Does Not Exceed The Scope Of The People’s Initiative Power Because, If Adopted, It Would Not Amend The Washington Constitution

Recognizing that striking a qualifying initiative from the ballot is an extraordinary act reserved for the most extreme circumstances, this Court has found only one statewide initiative to be outside the scope of legislative power in the entire history of Washington’s initiative process. *Futurewise*, 161 Wn.2d at 411 n.2 (discussing *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 718-19, 911 P.2d 389 (1996), which involved an initiative proposing to amend federal law by creating a federal initiative process, creating a federal agency, and calling for a world meeting). “If an initiative otherwise meets procedural requirements, is legislative in nature, and its fundamental and overriding purpose is within the State’s broad power to enact, it is not subject to pre-election review.” *Futurewise*, 161 Wn.2d at 411 (internal quotation marks omitted). To ensure that a claim is not a pretext for a challenge to the substance of an initiative, this Court has explained that it must be “clear” that an initiative is outside of the legislative power to warrant removing it from the ballot. *Coppernoll*, 155 Wn.2d at 305. This Court has also emphasized that the court must look to the actual text of the initiative, not its possible downstream effects, to determine whether it should be stricken from the ballot. *Futurewise*, 161 Wn.2d at 412.

In contrast, this Court recognized in both *Coppernoll* and *Futurewise* that where a challenger's argument concerns whether the initiative ultimately conflicts with some constitutional provision, that issue must be resolved post-election only if an initiative is adopted by the voters. For example, in *Futurewise*, challengers asserted that I-960 would "effectively alter the state constitution's referendum process without complying with the procedures for amending the constitution." *Futurewise*, 161 Wn.2d at 411. According to challengers, this was so because I-960 required any legislative action that raised taxes and resulted in excess expenditures to be automatically subject to referendum. *Id.* This Court concluded that this challenge was not appropriate for pre-election review because I-960 "[did] not purport to amend the constitution, whatever its practical 'effect' may be." *Futurewise*, 161 Wn.2d at 412; *see also Coppernoll*, 155 Wn.2d at 303 (leaving for post-election review the question of whether I-330 violated separation of powers principles).

In determining whether I-1366 should remain on the ballot, the superior court below did not restrain itself to the narrow inquiry of whether I-1366 was within the State's legislative power under article II, section 1. Rather, the superior court summarily assumed that the measure was *not* after (1) engaging in an inappropriate inquiry of whether I-1366 violated article XXIII, the constitutional provision setting forth requirements for constitutional amendments and (2) making assumptions not found in the actual text of the initiative. Neither comports with the

limited and narrow scope set forth by this Court for reviewing an initiative prior to an election, and should be rejected.

1. I-1366 does not alter the constitutional amendment requirements of article XXIII.

Contrary to the superior court's uncritical acceptance of Plaintiffs' assertions, I-1366 does not improperly invoke the constitutional amendment process. The initiative does not "bypass" the constitutional amendment process set forth in article XXIII as the superior court found. *See* CP at 134 ¶ 6. Nothing in the text of the initiative purports to change or alter the requirements for obtaining a constitutional amendment. The initiative does not propose the precise language or actual text of the constitutional amendment. The initiative does not alter the requirement that the actual text of the proposed amendment originate in either the House or the Senate. And the initiative does not direct the legislature to submit the amendment to the people without a vote of the legislature or without two-thirds approval by the members of each legislative house. *See generally* I-1366, *specifically* I-1366 § 3. Each of these was an erroneous assumption made by the superior court but not supported by actual text of the measure itself.

Plaintiffs' argument here is akin to the ones this Court rejected in *Futurewise* and *Coppernoll*. In *Futurewise*, challengers asserted that I-960 attempted to amend the state constitution's referendum process, where here, Plaintiffs assert that I-1366 attempts to amend the process set forth in article XXIII. In *Futurewise*, this argument was not sufficient to remove

the initiative from the ballot and this Court should reach the same conclusion here. An allegation that an initiative attempts to alter a process set forth in the constitution cannot keep the initiative off the ballot unless the initiative “purport[s] to amend the constitution” itself. *Futurewise*, 161 Wn.2d at 412. And to the extent that Plaintiffs are suggesting that I-1366 encroaches on the legislature’s power under article XXIII, this Court has already explained that separation of powers questions must also be addressed in post-election review. *Coppernoll*, 155 Wn.2d at 303.

2. I-1366 is within the people’s legislative power

Further, the superior court erred in concluding that the scope of the initiative *appeared* to be outside the people’s power. *See* CP at 134-35. As an initial matter, no one disputes that the people’s initiative power does not include amending the state constitution. *See Ford*, 79 Wn.2d at 155. But I-1366 does not amend the state constitution. Rather, I-1366 proposes a change in state statute and is therefore within the plain language of the article II initiative power “to propose bills, laws, and to enact and reject the same at the polls.” Const. art. I, § 1. If passed, I-1366 would cut the state sales tax rate unless a contingency occurs: a legislative choice to propose a constitutional amendment. I-1366 §§ 2, 3. Cutting the state sales tax rate is plainly legislative in nature and within the general legislative authority of the people to enact. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 200, 11 P.3d 762 (2000) (“[T]here is no serious

dispute that in general an initiative can repeal, impose, or amend a specific tax.”).⁴

Plaintiffs assert, and the superior court found, that I-1366 improperly “invokes” the constitutional amendment process by forcing the legislature to propose an amendment. Br. Appellants at. 13. However, nothing in the state constitution suggests that the people cannot express through an initiative their desire for a constitutional amendment. Nor does the constitution suggest that an idea or suggestion for a constitutional amendment can only begin with a source inside the legislature. *See* Const. art. XXIII, § 1. The superior court’s implied conclusion that the original idea or motivation for a constitutional amendment can only come from the legislature itself, and not from the people, is absurd. If that were the case, then no individual legislator could ever take up a constituent’s proposal for an amendment.

If I-1366 passes, the legislature might choose to propose the constitutional amendment through a two-thirds vote of both houses, or it might not. Encouraging the legislature to initiate the constitutional amendment process is not the same as forcing the legislature to do so as the superior court found. *See* CP at 134 ¶ 7. Individual legislators will still have a choice of whether to propose the suggested constitutional amendment to their respective house, or not. Individual legislators will

⁴ This Court has also recognized that enacting conditional legislation is a valid legislative power under certain circumstances. *Amalgamated Transit Union Local 587*, 142 Wn.2d at 233-34. Many statutes, including ones related to elections, contain contingent legislative provisions. *See, e.g.*, RCW 29A.56.300.

also have a choice of overriding or amending I-1366 through a two-thirds vote, or not. Nothing in I-1366 forces or restricts these legislative choices and other possible avenues for addressing the initiative.

Both the Plaintiffs and the superior court ignore the actual text of the initiative and improperly engage in a substantive review of constitutionality of the proposed amendment to find the “fundamental and overriding purpose” of I-1366 is to amend the constitution under article XXIII. *See* Br. Appellants at 11-15. Both the Plaintiffs and the superior court assume a reading of I-1366 where the initiative would conflict with article XXIII, but courts are obligated to construe statutes and initiatives in a way that preserves their constitutionality whenever possible. *See ZDI Gaming, Inc. v. State*, 173 Wn.2d 608, 619, 268 P.3d 929 (2012). And neither the Plaintiffs nor the superior court should assume that the legislature will engage in some future unconstitutional act should I-1366 pass. Thus, while this Court can address whether I-1366 is outside the people’s initiative article II, section 1 power, it should decline to consider arguments that I-1366 conflicts with or violates any other provision of the Washington Constitution. This is so even if Plaintiffs are attempting to shove a square peg into a round hole by asserting that their argument challenging an initiative’s constitutionality is about the scope of the people’s power under article II, section 1.

The people’s fundamental right of initiative warrants careful restriction of the circumstances when an initiative will be stricken from the ballot. While Plaintiffs ask this Court to speculate that I-1366 will

result in an unconstitutional amendment if adopted, they have not met their burden of showing that the initiative would clearly do so. Accordingly, Plaintiffs have not met their burden of establishing that I-1366 exceeds the permissible scope of the people's initiative power. I-1366 should remain on the ballot.

V. CONCLUSION

The Secretary of State respectfully requests that this Court issue an order allowing I-1366 to remain on the ballot. Plaintiffs' request to enjoin I-1366's valid placement on the ballot fails. The voters' fundamental right to vote on an initiative should not be abridged unless the initiative is clearly outside the scope of the people's power. Even though the superior court allowed the initiative to remain on the ballot, the superior court erred in concluding that I-1366 fell outside the people's initiative power. I-1366 does not amend the state constitution or alter the constitutional amendment requirements. Instead, it would amend the state sales tax rate, an act that is plainly within the people's power, and merely proposes to the legislature a constitutional amendment that may or may not be taken up by that body.

RESPECTFULLY SUBMITTED this 26th day of August 2015.

s/ CALLIE A. CASTILLO
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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:

| | |
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DATED this 26th day of August 2015, at Olympia, Washington.

s/ Stephanie N. Lindey
STEPHANIE N. LINDEY
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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,

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.

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.
24
25
26

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
25
26

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
26

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 ///

24 ///

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.
6

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8 
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



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

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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.

No. 15-2-18335-4 SEA

ORDER ON PLAINTIFFS' MOTION
FOR PERMANENT INJUNCTION

THIS MATTER came before the Court on Plaintiffs' Motion for Preliminary and Permanent Injunction ("Motion"). The Court has considered the pleadings, briefs and declarations, including the Motion and all supporting declarations, Defendants' Oppositions to the Motion and all supporting declarations, Plaintiffs' Reply in support of the Motion, and the

1 other pleadings and papers filed in this action. Based on the foregoing, the Court makes the
2 following Findings of Fact and Conclusions of Law:

3 **FINDINGS OF FACT**

4 **A. Parties.**

5 1. Plaintiffs challenge the placement of Initiative 1366 (“I-1366” or the “Initiative”)
6 on the ballot for the November 2015 general election.

7 2. Plaintiff Sherril Huff is the Director of Elections for King County. She resides in
8 King County, Washington, and is a taxpayer in the state of Washington.

9 3. Plaintiff Mary Hall is the Auditor for Thurston County. She resides in Thurston
10 County, Washington, and is a taxpayer in the state of Washington.

11 4. Plaintiff David Frockt is a Washington State resident who lives in Seattle,
12 Washington. He is a taxpayer in Washington State and also a Washington State Senator for the
13 46th Legislative District.

14 5. Plaintiff Reuven Carlyle is Washington State resident who lives in Seattle,
15 Washington. He is a taxpayer in Washington State and also a Washington State Representative
16 for the 36th Legislative District.

17 6. Plaintiffs Tony Lee and Angela Bartels reside in Seattle, Washington and are
18 taxpayers in Washington State.

19 7. Plaintiff Eden Mack resides in Seattle, Washington and is a taxpayer in
20 Washington State.

21 8. Plaintiff Paul Bell resides in Sammamish, Washington, and is a taxpayer in
22 Washington State.

23 9. Plaintiff Gerald Reilly resides in Olympia, Washington and is a taxpayer in
24 Washington State.

1 Washington State.

2 10. Defendant Kim Wyman is Secretary of State for the State of Washington.

3 11. Defendants Tim Eyman, Leo J. Fagan and M.J. Fagan are I-1366's sponsors.

4 **B. Standing.**

5 12. Plaintiffs have standing to bring this action on multiple independent grounds, and
6 at a minimum, this case may proceed forward based on taxpayer standing and public importance.
7 Plaintiffs are taxpayers and elected officials and will suffer actual and substantial injury,
8 financial, administrative, constitutional, or otherwise, from the placement of I-1366 on ballot for
9 the November 2015 general election.
10

11 13. The issues presented here are of significant public importance.

12 14. Additionally, with respect to Plaintiff Huff and Plaintiff Hall, the financial and
13 administrative burden of placing a potentially unlawful initiative on the ballot is sufficient injury
14 to confer standing. *City of Longview v. Wallin*, 174 Wn. App. 763, 783, 301 P.3d 45 (2013).
15

16 15. Plaintiffs Frockt and Carlyle have standing because the initiative would hamper
17 and harm their ability independently and in a deliberate fashion determine whether to invoke the
18 constitutional amendment process under Article XXXIII of the Washington Constitution.
19

20 **C. I-1366.**

21 16. I-1366 was filed on January 5, 2015 by Defendants Tim Eyman, Leo J. Fagan and
22 M.J. Fagan. On July 29, 2015, Defendant Wyman certified that I-1366 had received a sufficient
23 number of signatures to be placed on the ballot for the November 2015 general election.

24 17. The stated purpose of I-1366 is to amend the Washington Constitution to require a
25 two-thirds supermajority vote in the legislature or a popular vote to approve any measure that
"raises taxes".

1 We first must decide whether Initiative 1366 is outside the scope of the initiative power
2 reserved to the citizens of King County under article II, section 1 and article XI, section 4 of the
3 Washington State Constitution. One of the foremost rights of Washington State citizens is the
4 power to propose and enact laws through the initiative process. Wash. Const. art. II, § 1(a).
5 "The passage of an initiative measure as a law is the exercise of the same power of sovereignty
6 as that exercised by the Legislature in the passage of a statute." *Love v. King County*, 181 Wash.
7 462, 469, 44 P.2d 175 (1935).

8 As a general rule, courts are reluctant to rule on the validity of an initiative before its
9 adoption. This reluctance stems from our desire not to interfere in the electoral process or give
10 advisory opinions. *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 911 P.2d 389, cert. denied, 519
11 U.S. 862, 117 S.Ct. 167, 136 L.Ed.2d 109 (1996); *Maleng v. King County Corrections Guild*, 150
12 Wn.2d 325, 76 P.3d 727, 729 (2003).

13 However, it "is well established that a pre-election challenge to the scope of the initiative
14 power is both permissible and appropriate." *Futurewise v. Reed*, 161 Wn.2d 407, 411, 166 P.3d
15 708 (2007). *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wash. App. 427, 432, 260 P.3d
16 245 (2011). Importantly, the Attorney General agrees that the question presented here is within
17 the narrow category of questions that can be answered pre-election and is therefore justiciable.
18 Although the Attorney General's Office is defending the initiative, it agrees that this case is
19 properly before the court. This challenge is different than other potential substantive challenges
20 which must be resolved post-election, such as the "two subject" prohibition.

21 All parties agree that the Washington Constitution may only be amended by the process
22 in Article XXIII, not by the legislative or initiative power in Article II. They agree, and the
23 Washington State Supreme Court has held four times, that the Constitution may not be amended
24 by initiative. They disagree that I-1366 amends the constitution. In deciding this question, we
25 must determine the initiative's fundamental and overriding purpose.

26 The Court finds that the fundamental, stated and overriding purpose of I-1366 is to
27 amend the Constitution. Sponsors do not contest that the referenced I-1366 "promotional
28 material" for the "2/3- For Taxes Constitutional Amendment Initiative" was drafted not by some
29 unnamed supporters, but by themselves. The "promotional material" are not mere
30 advertisements, but either fundraising letters from some of the defendants, or the actual page
31 attached to the I-1366 signature gathering document. The initiative's text explicitly links the
32 proposed constitutional amendment (with specific constitutional amendment language submitted
33 with the initiative) to a reduction in the sales tax from 6.5% to 5.5%. Legislators would have no
34 authority to propose changes to the constitutional amendment. The initiative's sponsors have
35 decided that already.

36 I-1366 appears to violate Article XXIII Constitutional process in at least three ways.
37 First, the initiative proposes the constitutional amendment, rather than coming from the Senate
38 or the House. The constitutional amendment's text comes directly from the initiative with no
39 possible changes by any legislator. The constitutional amendment process effectively bypasses
40 representatives elected by the people. Second, I-1366 directs the legislature to submit the
41 proposed amendment to a public vote without the requirement that it be passed by 2/3 of each
42 independent house, thereby amending the constitution and the constitutional process.

43 Third, the initiative uses the threat of a large reduction in the sales tax (and large
44 reduction in services to Washingtonians) to force legislators to engage in the physical act of
45 "proposing" the constitutional amendment for the ballot, notwithstanding that some will be forced to
do so against their will and without any changes to the amendment. The purpose of the initiative
is not to legislate, but to invoke the constitutional amendment process. Sponsors characterize
the legislator's proposal as a "choice", but there is no choice here.

1 Thus, I-1366 appears to violate the Constitutional Amendment process in multiple ways
2 and appears to exceed the scope of the initiative power. However, that is not the end of the
3 inquiry. In order to obtain preliminary injunction, plaintiffs must establish (1) a clear legal or
4 equitable right; (2) a well-grounded fear of immediate invasion of that right; and (3) that the act
5 complained of will result in actual and substantial injury. *Rabon v. City of Seattle*, 135 Wn.2d
6 278, 284, 957 P.2d 621 (1998). Whether this proposed injunction triggers First Amendment
7 protections is not that clear, as our Supreme Court has neither squarely addressed the issue nor
8 harmonized its reasoning in the *Futurewise*, *Coppernoll*, *Philadelphia II* and *Maleng* cases.
9 Moreover, previous pre-election cases involving local initiatives are of limited precedential value
10 on this issue, since the state initiative process is part of the state constitution itself.

11 Although our Supreme Court has allowed pre-election review of initiatives in limited and
12 rare circumstances, it has never squarely decided whether the First Amendment to the US
13 Constitution and/or Article I, Section 5 of the Washington Constitution are violated by pre-
14 election restrictions on initiatives. Although it is questionable whether the "public forum" doctrine
15 fully applies in this case, the *Coppernoll* court recognized that First Amendment concerns may be
16 triggered by judicial involvement in initiatives prior to the election, **even if the initiative is
17 later struck down:**

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

25 *Coppernoll v. Reed*, 155 Wn.2d 290, 298 (2005).

Thus, language in *Coppernoll* and other cases indicate that the election has importance
separate and apart from whether the measure is valid or even implemented. Plaintiffs cite
Initiative & Referendum Inst. v. Walker, 450 F.3d 1082 (10th Cir. 2006) and other federal cases,
but those cases merely stand for the proposition that sponsors have no First Amendment right to
the result of an election, or to implement their initiative. Those cases do not speak to the issue
presented here.

Our Supreme Court has invalidated these sponsor's prior initiatives on multiple
occasions...but only after the election had occurred. Here, although the ultimate decision is
obviously the Supreme Court's, there is a substantial possibility that I-1366 will be found to be
invalid for exceeding the scope of the initiative process, and that voters will be voting on a
measure which will never go in to effect. Plaintiffs have alluded to additional Constitutional and
other substantive challenges to I-1366 which would make it susceptible to post-election
invalidation, including most prominently an alleged violation of the two subject rule.
Nevertheless, the *Coppernoll*, *Philadelphia II* and *Maleng* cases require that the preliminary
injunction be denied because it is not clear that it would not violate the First Amendment or
Article I, Section 5.

Of course, on appeal, the Supreme Court could squarely decide the First Amendment
issue prior to the election, but this trial court is not in a position to say that the law on this issue
is clear and settled.

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CONCLUSIONS OF LAW

1. Issues of law are dispositive of Plaintiffs' Motion. Consolidation of Plaintiffs' request for preliminary and permanent injunctive relief is therefore appropriate under CR 65(a)(2).

2. The Court has jurisdiction over Defendants and over the subject matter of this action, this case is justiciable, at a minimum plaintiffs have taxpayer standing and this lawsuit involves issues of significant public importance.

3. The power to invoke the constitutional amendment process is not part of the Article II legislative power.

4. Article XXIII provides a specific procedure through which the Constitution can be amended. Article XXIII requires first that an amendment is proposed in "either house" of the Legislature. Before the amendment is submitted to the public for a vote, each house of the Legislature must pass the proposed amendment by a two-thirds majority. Only then can the proposed amendment be submitted to the public for a vote.

5. The Constitution may not be amended by initiative.

6. The process of amending the Constitution cannot be invoked by initiative.

7. Constitutional amendments may not be proposed by initiative, rather amendments must be proposed in either branch of the legislature.

8. The fundamental and overriding purpose of I-1366, as evidenced by its text, its title, the material appended to the signature page and the sponsor's promotional material is to invoke the process to amend the Constitution to require a two-thirds legislative supermajority or a public vote for approval of any measure that "raises taxes."

9. For the reasons identified in the above Memorandum Opinion, I-1366 appears to

1 exceed the scope of the initiative power. The legislative power reserved to the people under
2 Article II, sec. 1 does not include the ability to propose constitutional amendments by initiative
3 or amend the Constitution by initiative.

4 10. To obtain injunctive relief, Plaintiff's must establish (1) a clear legal or equitable
5 right; (2) a well-grounded fear of immediate invasion of that right; and (3) that the act
6 complained of will result in actual and substantial injury. *Rabon v. City of Seattle*, 135 Wn.2d
7 278, 284, 957 P.2d 621 (1998).

8
9 11. For the reasons, identified in the above Memorandum Opinion (which is
10 incorporated into these Findings of Fact and Conclusions of Law by reference) plaintiffs have
11 not established that they have a "clear" legal or equitable right to injunctive relief.

12 12. Although I-1366 appears to exceed the scope of the initiative power , our
13 Supreme Court has not clearly and squarely ruled on whether the First Amendment to the United
14 States Constitution and/or Article I Section 5 of the Washington State Constitution provide
15 additional protections against pre-election challenges even in circumstances where the initiative
16 may itself be invalid. The Supreme Court may clarify this issue prior to the election, but this trial
17 court cannot.

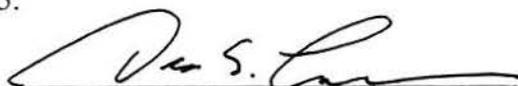
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19 13. The Court cannot say at this time whether Plaintiffs' actual and substantial
20 injuries outweigh Defendants' First Amendment rights under the United States Constitution or
21 their rights under Article I, Section 5 of the Washington State Constitution.
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ORDER

Based on the foregoing Findings of Fact and Conclusions of Law and Memorandum Opinion, the Court hereby DENIES Plaintiffs' Motion for Preliminary Injunction.

DATED this 14th day of August, 2015.



Honorable Dean S. Lum
King County Superior Court Judge