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No. 92075-3

(King County Superior Court No. 15-2-1 833-5-4 SEA)

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,

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

Appellees.

BRIEF OF AMICUS CURIAE PAM ROACH

Submitted by:

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IDENTITY AND INTEREST OF AMICUS

State Senator Pam Roach represents the 31st District and serves as Chair of the Senate Government Operations Committee. She is also a registered voter in the state of Washington who exercised her First Amendment rights by signing an Initiative 1366 petition. As a Washington taxpayer she has interest in this litigation because she supports allowing the voters of the state to have a chance to discuss, debate, and vote on Initiative 1366 and the policies in it without judicial interference.

ARGUMENT

Like two of the Plaintiffs in this case, Senator Roach is a legislator serving in Olympia. Like them, she does not represent the Legislature. Like them, she is an individual member of the Legislature and procedurally has standing to speaking only speak for herself.

Unlike the Plaintiffs, however, she is one of the more than 339,000 voters who signed an Initiative 1366 petition so that voters would have the chance to vote on it. If the court removes this qualified statewide initiative from the ballot – something no court has ever done in our state’s history – she and other voters will be irreparably harmed because their right to free speech and First Amendment rights will be undermined,

because those who have signed this initiative will not be able to express their views on this initiative at the ballot box. A logical consequence of such an unprecedented exclusion of a qualified statewide initiative from the ballot will be the undermining of the people's faith in the initiative process itself. For millions of voters, their signature on a petition and their initiative vote at the ballot box is their only evidence that the initiative system works, that the people's voice can be heard in Olympia.

In their brief to the Supreme Court, Appellants wrote: "Neither I-1366's sponsors nor the State will suffer injury from enjoining I-1366 from appearing on the ballot ...". This is what spurred Senator Roach to file this amicus brief: the citizens' initiative process is not just about the sponsors and the State. This argument ignores the 339,000 voters who signed petitions, the scores of citizens who spent thousands of hours collecting those signatures, the hundreds of people who donated funds, and the millions of voters eager to cast a vote for or against Initiative 1366 in November. All those people will be irreparably harmed if they aren't given the opportunity to vote on Initiative 1366. Appellants are two legislators, two county officials, and a handful of citizens whose standing to bring this action is at issue, and none of whom are harmed in any way

by allowing the people to vote at the ballot box on the duly-qualified Initiative 1366.

As Chair of the Senate Government Operations committee, Senator Roach has had extensive experience regarding our state's election laws and the initiative process. Her focus has been to facilitate, and not frustrate, the people's constitutional right to initiative. She respectfully asks this court to do the same.

Appellants claim that Initiative 1366 forces the Legislature to put a constitutional amendment on the ballot. It does not. There's nothing coercive about it. It is not uncommon for legislation to provide a contingency. For example, Senate Bill 5987, which was approved by the 2015 Legislature and signed into law by the governor, said that if a low carbon fuel standard was adopted by executive order, then transit funds would be redirected to highway appropriations.

In his ruling, the trial court wrote: "Sponsors characterize (their) proposal as a 'choice' but there is no choice here." That's simply incorrect. That statement clearly demonstrates a fundamental misunderstanding of Initiative 1366 and both the initiative process and legislative process in this state. Should the voters pass Initiative 1366, the Legislature would have many choices. Initiative 1366 reduces the state

sales tax rate on April 15, 2016. The 2016 legislative session convenes on January 11 and *sine die* is March 10. If the initiative is approved by voters, the 2016 Legislature will examine and explore its many options during the session. It is unknowable at this time - before the people's vote - which path the 2016 Legislature will choose. If the initiative barely passes, it is possible the Legislature will treat it like they did Initiative 1351: adopt some of it and suspend the rest with a two-thirds vote (any initiative can be amended or suspended at any time by the Legislature). If the initiative passes by a wide margin, there will likely be a more concerted effort to adjust spending and taxes to accommodate the reduced sales tax rate or refer a constitutional amendment to the ballot (that amendment may or may not be the preferred version in Initiative 1366 because, again, the initiative can be amended by the Legislature). Previous legislative votes indicate the 2016 Legislature may not have enough legislative support to refer Initiative 1366's suggested constitutional amendment to the ballot, so, unless the Legislature amends the initiative's policies with a 2/3 vote (which they might do), the sales tax reduction will take effect on April 15, 2016. That would not necessarily be a bad outcome though it is not inevitable. A lower sales tax rate would spur the 2016 Legislature to reexamine and possibly change our overall tax

structure and spending priorities which would arguably be a healthy exercise. Pre-election predictions about what will happen if an initiative is approved by voters are almost always wrong and are speculative. Prior to the voters' approval of Initiative 695, Governor Gary Locke did not support lowering car tab taxes and there were not 84 votes in the House and 39 votes in the senate for that change. But after the people's vote, that level of legislative support materialized. If the people speak loudly enough, the Legislature listens. But if the citizens are not allowed to speak as a result of a court-ordered censoring of their collective expression at the ballot box which would prevent a public vote on a qualified state initiative, then legislators will be prevented from hearing from their constituents, resulting in disenfranchisement, disillusionment, and cynicism by the very people they were elected to represent.

When determining the fundamental purpose of legislation in Olympia, legislators look to the language of the bill and review the bill digest and bill report prepared by staff. A legislative bill sponsor may give a floor speech or write a letter to colleagues about their motivations and hopes for their legislation, but it is the bill itself and the analysis of it that determines its fundamental purpose. The same goes for Initiative 1366: what it says is what matters, not what others say about it.

The voters will have access to factual information about Initiative 1366. The voters' pamphlet contains the Attorney General's official ballot title for Initiative 1366, the Explanatory Statement which includes "The Law As It Presently Exists" and "The Effect of the Proposed Measure If Approved" by the Attorney General, the Fiscal Impact Statement by the Office of Financial Management, Arguments For and Against, and the text of the initiative.

Importantly, having Initiative 1366 on the ballot will spur substantive conversations between elected representatives and their constituents. If voters are prevented from voting on Initiative 1366, those discussions will not occur.

The Appellants' are claiming that they will be irreparably harmed if the people are allowed to vote on Initiative 1366. Not so, there is no demonstrable harm to any party by a public vote on an initiative. It is the voters who will be irreparably harmed if Initiative 1366 is removed from the ballot and blocked from a vote because it will prevent the voters from expressing their views on the measure. It is the 339,236 voters who signed petitions who will be irreparably harmed if Initiative 1366 is blocked because they signed those petitions to ensure a vote.

No one knows if a particular initiative will be approved or rejected by the voters. Therefore, it is a waste of the judicial resources and outside the court's authority to hypothesize on the policy implications of initiatives that may never become law. There are many bills voted on in the Legislature that may or may not be signed by the Governor, but the courts would never presume to prevent *those* legislative votes. Qualified statewide initiatives should be treated the same way. After all, the initiative process is, at its core, the right of Washington's citizens to participate in their constitutionally protected role as legislators through an initiative.

Finally, it is noteworthy that every newspaper that has opined on this issue (even those who may well editorialize against passage of the initiative in November) has editorialized against the lawsuit and in favor of letting the people vote. Their arguments are persuasive:

Wenatchee World's Tracy Warner column: *"Don't stifle the public's voice -- We should not vote on this, they insist. It should not be permitted. The will of the electorate is in this case irrelevant, whatever it might be. Forget the petitions, First Amendment, the state constitution's precious grant of legislative power to the people. ... Preventing a public vote on a proposed law would be an extraordinary and dangerous act for the judicial branch. There are limits to power. A judge with doubts about the validity of a proposed law cannot prevent lawmakers from voting on it. A judge cannot declare a law unconstitutional before it is law. Such prior restraint would be an affront to the separation of powers. Yet, that is what the opponents of I-1366 ask of the court. ... Forbidding a vote would silence the public's voice. The people could not exercise rights to speech*

and petition guaranteed by the First Amendment. The judiciary would interfere 'with the elective process which is reserved to the people in the state constitution,' the Supreme Court ruled. ... It appears the opponents of Initiative 1366 fear the outcome of the vote, that the people will present them with a politically inconvenient choice. ... Whatever its fate, fear of the public's message is no cause for the government to stifle the public's voice."

<https://www.wenatcheeworld.com/news/2015/aug/13/dont-stifle-the-publics-voice/>

Spokesman Review: *Courts right to OK initiatives, examine flaws later. ... Unlike the Spokane cases, the issues raised by the Eyman measure are more nuanced and deserve extensive review not possible in just a few weeks. We don't think much of either the local or state initiatives, but putting both to a vote may be the best way.*

<http://www.spokesman.com/stories/2015/aug/15/editorial-courts-right-to-ok-initiatives-examine>

Tacoma News Tribune: *Hold the judging on anti-tax I-1366 for after election day -- A King County judge will be asked Friday to kill a certified state initiative in defiance of two Washington Supreme Court rulings. We trust the judge will read those unanimous opinions and reach the only tenable conclusion: Initiative 1366 belongs to the voters. ... The justices (in 2007) expressed extreme reluctance to jump into the fray before the election and offer advisory opinions on initiatives. That would be roughly equivalent to traipsing over to the Legislature while it's in session and decreeing that a bill shouldn't come to the floor for a vote. The high court understood its constitutional limits. The King County Superior Court should understand its own.*

<http://www.thenewstribune.com/opinion/editorials/article30663540.html#storylink=cpy>

Walla Walla Union Bulletin: *Eyman's latest initiative should go to voters -- Not allowing voters to be heard on this matter is clearly prior restraint. If the judicial system does rule that the initiative is constitutional, the voters would have lost the opportunity to approve it at this time. Eyman and his supporters collected enough signatures to qualify it for the ballot. I-1366 should be on the November ballot.*

<http://union-bulletin.com/news/2015/jul/31/editorial-eymans-latest-initiative-should-go-voter/>

Bainbridge Island Review: *To the ballot box, first -- But, good law or bad, one principle of initiatives remains: As long as an initiative's supporters can gather enough signatures to demonstrate a certain level of support to justify a spot on the ballot, the first pass on its merits should be left to voters. ... Supporters and opponents of initiatives in general - and I-1366 in particular - should make their case first to the voters, then, if necessary, to the courts.*

<http://www.bainbridgereview.com/opinion/321959071.html>

Everett Herald: *Don't pre-empt people's voice -- Whether an initiative is constitutionally flawed is a decision best left to the courts, but even a flawed initiative can serve a purpose in furthering the debate about an issue and in informing lawmakers and officials about the mood and priorities of the public. Supporters and opponents of initiatives in general and I-1366 in particular should make their case first to the voters, then, if necessary, to the courts.*

<http://www.heraldnet.com/article/20150805/OPINION01/150809654>

Columbian: *Let Voters Have Their Say -- Foes of latest Eyman initiative should let it face ballot fate before filing challenge. In 2005, the state Supreme Court unanimously declared in *Coppernoll v. Reed*: "It has been a longstanding rule of our jurisprudence that we refrain from inquiring into the validity of a proposed law, including an initiative or referendum, before it has been enacted." In 2007, the court affirmed that position.*

<http://www.columbian.com/news/2015/aug/03/let-voters-have-their-say/>

Tri-City Herald: *Usually, the legality of an initiative is determined after it has been approved by voters. Using the courts to forbid a proposal before it makes the ballot could start a frightening trend that would discourage future citizen efforts to change state laws.*

http://www.tri-cityherald.com/2015/08/09/3684617_our-voice-voters-should-have-their.html?rh=1#storylink=cpy

CONCLUSION

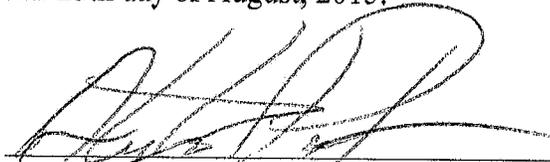
As the longest serving senator currently in the Legislature,

Senator Roach knows how Olympia works. She believes it will work

better if Initiative 1366 is voted on and passed. She urges that the court not take the unprecedented and undemocratic step of preventing the people from voting on a qualified statewide initiative. Let the voters cast their votes for and against Initiative 1366 and allow the checks-and-balances of the legislative process and initiative process to resolve this issue.

She urges the Court to deny Appellants the relief they seek.

RESPECTFULLY submitted this 25th day of August, 2015.



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DECLARATION OF SERVICE

I, Stephen Pidgeon, declare as follows: I am a citizen of the United States and a resident of the State of Washington. I am over twenty-one years of age, not a party to this action, and am competent to be a witness herein. On August 25th, 2015, I caused a true copy of the amicus to be served on the following person via the following means:

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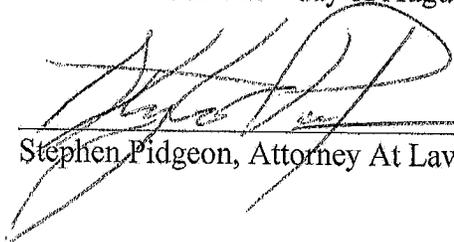
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I declare pursuant to the laws of perjury in the State of Washington that the foregoing is true and correct. Executed this 25th day of August, 2015, at Everett, Washington.



Stephen Pidgeon, Attorney At Law

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Subject: Huff v. Wyman

Attached, please find the Motion for Leave to File Brief of Amici Curiae; and the Brief of Amicus Curiae of Pam Roach. Hard copies will follow by mail.

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