

NO. 92075-3

King County Superior Court No. 15-2-1833-5-4 SEA

**SUPREME COURT  
OF THE STATE OF WASHINGTON**

RECEIVED BY E-MAIL

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.

**SPONSORS' ANSWER TO  
STATEMENT OF  
GROUNDS FOR DIRECT  
REVIEW**

The Sponsors of Initiative 1366, Tim Eyman, Mike Fagan and Jack Fagan, were defendants below and are Respondents in this appeal. The

Sponsors file this Answer to the Appellants' Statement of Grounds for Direct Review.

Direct review is authorized by the rules because this action seeks injunctive relief against a state officer. Sponsors also agree that this appeal involves fundamental issues of broad public import—issues regarding a matter for a statewide public vote and the First Amendment right of voters to have their vote published. However, Sponsors do not agree that the issues are urgent. Certainly, the Court does not and cannot grant direct review of every case involving important issues or injunctive relief against a state officer.

Appellants argue that their case fits within the exception to the prohibition on pre-election review of initiatives for challenges that go to the legitimacy of the exercise of the initiative power. Only once has the Court engaged in pre-election review and prohibited a matter from appearing on the ballot. *Philadelphia II v. Gregoire*, 128 Wn. 2d 707 (1996). Importantly, that case did not involve an initiative for which any signatures had been gathered and had not been certified for the ballot. This Court has *never* banned an election on a certified initiative on any basis.

Appellants also rely on *Coppernoll v. Reed*, 155 Wn 2d 290 (2005) and *Futurewise v. Reed*, 161 Wn. 2d 407 (2007), cases where initiative challengers unsuccessfully attempted to characterize their pre-election lawsuits as challenges to the subject matter of the initiative being beyond the scope of the initiative power. Both *Coppernoll* and *Reed* recognize this limited exception, but it has never been actually applied to a statewide initiative except in *Philadelphia II* and it has never been applied after the people have gathered sufficient signatures to place the initiative on the ballot.

Importantly, none of these cases indicate that a pre-election challenge, even if it fits within the exception to the general prohibition, means that the Court must drop everything and accommodate a request for expedited briefing to ensure that the Supreme Court reviews the initiative before the election. Even to the extent that pre-election review is authorized, pre-election review is not mandated.

The Court could and should address Appellants' arguments after there has been sufficient time for adequate research and briefing especially because constitutional rights of free speech are at stake if the Court denies a public vote based on the content of the initiative even though all valid time, place and manner restrictions have been satisfied.

There is no *requirement* that judicial review be complete before the election in every circumstance. Regardless of the lack of merit in Appellants' arguments, Sponsors urge the Court to consider this appeal under the timeframe for normal appeals. Assuming 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.

Direct review should not be granted on the basis that the issues are urgent.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of August, 2015.

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Attorneys for Appellees, 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 20, 2015, I caused a true copy of the foregoing to be served on the following person via electronic mail, pursuant to consent of counsel:

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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 2<sup>th</sup> Day of August, 2015, at Bellevue, Washington.



Jill E. Stephens

Paralegal