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NO. 92708-1

King County Superior Court No. 15-2-28277-8 SEA

SUPREME COURT
OF THE STATE OF WASHINGTON

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

v.

The STATE OF WASHINGTON,

Appellant, and

TIM EYMAN, LEO J. FAGAN and M.J. FAGAN,

Appellants.

OPENING BRIEF OF APPELLANTS,

THE INITIATIVE SPONSORS

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 ORIGINAL

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INTRODUCTION

This appeal seeks to preserve the right of the voters to enact a tax reduction, which is not challenged on any grounds, and to give the legislature an opportunity to refer a constitutional amendment to the ballot. For giving the legislature that option, the trial court ruled that the initiative invades the legislature's power to propose constitutional amendments and violates the prohibition on combining provisions which are not germane to each other, a legal argument which is equally applicable to the legislature itself. For the Respondents to prevail, the Court must find that the legislature itself could not enact legislation that mirrors Initiative 1366 (I-1366).¹ This heavy burden is one the Respondents cannot bear.

Preliminarily, however, Appellants contend that this case was and is not justiciable in that Respondents have asked the trial court to step in and rule on the legislature's responsibilities before the legislature had an opportunity to consider what steps to take. Taxpayer standing does not exist to challenge discretionary actions and the legislature's choices in response to I-1366 are purely discretionary, including the choice to take no action at all. The trial court should not have interfered with the legislative processes until the legislature has had an opportunity to choose how to

¹ A copy of I-1366 is attached hereto as Appendix 1.

respond. For this and other reasons, Respondents lack standing to seek the relief requested in this case.

Finally, there is no conceivable challenge to the portion of the initiative that reduces the state sales tax. If Section 3, which gives the legislature the option of proposing a constitutional amendment, is found to be invalid, the Court should honor the severability clause.

ASSIGNMENT OF ERROR

1. The trial court erred in granting summary judgment declaring I-1366 to be void in its entirety. CP 420.

STATEMENT OF THE CASE²

On November 3, 2015, the voters approved I-1366. The ballot title selected by the Attorney General to appear on the ballots read as follows:

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.

CP 36.

The purpose and intent of the initiative is described in Section 1:

[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

² Because the index to the Clerk's Papers is not available, Appellants have estimated the citation to the Clerk's Papers and will correct this brief if necessary.

legislators. . . . This measure provides a reduction in the burden 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.

Id.

To accomplish this goal of fiscal restraint, Section 2 reduces the state retail sales tax rate from 6.5% to 5.5%. Section 3 provides the effective date for the sales tax reduction on April 15, 2016, unless a contingency occurs. Namely, if prior to April 15, the legislature refers a constitutional amendment to the voters, then Section 2 expires and the sales tax reduction never takes effect. *See* Section 3.

Unlike many initiatives which give the legislature no option other than to repeal, amend, or suspend the initiative (options inherent with the legislature with a two-thirds vote within the first two years), I-1366 suggests to the legislature options which it has always had. The legislature can always refer a constitutional amendment with a two-thirds vote and it can always repeal a tax reduction initiative with a two-thirds vote. At its essence, I-1366 is the voters' message to the legislature that if it chooses to refer a constitutional amendment, the sale tax reduction can essentially be repealed. Because the voters highlighted these options to the legislature, options it already has, the trial court invalidated the entire initiative.

The trial court also erroneously assumed that I-1366 dictated the exact language of a potential proposed constitutional amendment that would avoid the sales tax reduction. CP 420. This is contradicted by the evidence (CP 373) and is an unnecessary assumption that should not be made simply because it supports Respondents' argument that I-1366 is unconstitutional.

It is worth noting that this year's legislature has already considered multiple options when it comes to the possible referral of a constitutional amendment. During the 2016 legislative session, it considered a proposed constitutional amendment (Senate Joint Resolution 8211) that roughly matched the policies for a constitutional amendment proposed in Section 3. It also considered a proposed constitutional amendment (Senate Joint Resolution 8212) that contained policies suggested by Section 3 but also included additional policies not mentioned in Section 3. It also considered a constitutional amendment that did not contain I-1366's proposed policies (House Joint Resolution 4214) and it was accompanied by a proposed bill that amended Section 3 (House Bill 2786), ensuring that any constitutional amendment was acceptable.

This shows that the legislature recognizes that there will be no constitutional amendment proposed without a two-thirds vote of both houses of the legislature, which is the same vote requirement for modifying an initiative. The policies suggested in Section 3 are not required for a

constitutional amendment. Section 3 contains no binding handcuffs; the legislature retains its plenary power to refer any constitutional amendment it wants. Or not. It should be allowed to choose its preferred course of action before the Court becomes involved.

Additionally, should the legislature choose to refer a constitutional amendment to the ballot and should the voters approve it, the assertion that a two-thirds vote requirement will make tax increases impossible ignores our state's twenty year history where a two-thirds vote was a statutory requirement as a result of 1993's Initiative 601 and its subsequent renewals by the Legislature and the people. Taxes were increased during that time. Also, it ignores the actions of the legislature after 2013, after this Court ruled that the statutory two-thirds vote requirement was unconstitutional in *League of Education Voters v. State*, 176 Wn. 2d 808 (2013).³

³ For example, in 2015, the legislature raised taxes:

ESHB 1449 with a 95-1 vote in the House and a 46-0 vote in the Senate;
SSSB 5052 with a 60-36 vote in the House and a 41-8 vote in the
Senate;
ESSB 6138 with a 60-38 vote in the House and a 35-10 vote in the
Senate.

Telling, this was after *League of Education Voters* and without two-thirds legislative vote requirement in order for the bills to be enacted. Also, in 2013, the legislature raised taxes with a two-thirds vote:

SB 5627 with a 71-22 vote in the House and a 41-8 vote in the Senate;
ESHB 1846 with a 95-0 vote in the House and a 47-1 vote in the Senate;
SESSHB 1971 with a 77-15 vote in the House and a 36-11 vote in the
Senate.

Since I-601's passage in 1993, the two-thirds vote requirement has not prevented tax increases. It is purely speculative to conclude that tax increases would never occur if the legislature decides to refer a constitutional amendment to the ballot and if the voters approve it.

Nonetheless, the trial court granted Respondents' motion for summary judgment. This appeal follows.

ARGUMENT

With the adoption of the seventh amendment to the state constitution, the people reserved unto themselves the power to adopt state laws through the initiative power. This power, like that of the legislature, is limited only by the constitution.

Because the trial court granted a motion for summary judgment, this Court's review is *de novo*. *Rose v. Anderson Hay & Grain Co.*, 184 Wn. 2d 268, 286 (2015). Critically, the trial court's findings in response to the summary judgment motion are inappropriate because evidence was submitted presenting trial issues of fact.

It is undisputed that the legislature has the 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), *as amended* (Nov. 27, 2000), *opinion corrected*, 27 P. 3d 608 (2001) ("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).

As to the trial court’s conclusion and the merits of Respondents’ arguments, they should be rejected as inconsistent with established jurisprudence. However, as a preliminary matter, the trial court should never have taken Respondents’ invitation to inject itself into the legislature’s response to I-1366.

I.
**UNDER *WALKER V. MUNRO*, INVOLVING AN ANALOGOUS
INITIATIVE, RESPONDENTS’ CLAIMS ARE NOT JUSTICIABLE
AT THIS TIME BECAUSE THE LEGISLATURE HAS NOT HAD
THE OPPORTUNITY TO RESPOND TO I-1366 WITHOUT A
PREMATURE JUDICIAL DECISION**

Before a court weighs in to resolve controversies brought before it, the court must determine whether the controversy is justiciable. This is especially true involving constitutional challenges because of the judicial reluctance to decide constitutional issues unless absolutely necessary. *Futurewise v. Reed*, 161 Wn. 2d 407, 410 (2007) (“policy of avoiding unnecessary constitutional questions”). This is also especially true when the controversy surrounds the exercise of legislative power or the

functioning of another branch of government. *See generally, Brown v. Owen*, 165 Wn. 2d 706 (2009).

Fortunately, there are two cases that are uniquely helpful to the justiciability question here, namely, whether judicial review of I-1366 is justiciable at this time. Both involve initiatives and both happen to include a two-thirds vote requirement for tax increases.

The first is *Walker v. Munro*, 124 Wn. 2d 402 (1994). *Walker* was filed to challenge the constitutionality of Initiative 601, which included a statutory requirement for a two-thirds legislative vote for tax increases. Like the present case, the suit was filed immediately after the election seeking a ruling before the next legislative session had completed. As in the present case, the challengers paraded a list of horrible consequences if the initiative were allowed to stand. The Court found that the constitutional claims were not justiciable. *Id.* at 426. For the next twenty years, Washington and its legislature functioned with a two-thirds vote requirement for tax increases.

Twenty years after the enactment of Initiative 601, the Court considered the constitutionality of two provisions of I-1053 in *League of Educ. Voters*, 176 Wn. 2d 808. The first provision was a two-thirds vote requirement for tax increases, referred to by the Court as the “Supermajority Requirement.” The second was a voter approval requirement for taxing

legislation that increased spending beyond the state spending limit, referred to by the Court as the “Referendum Requirement.” *Id.* at 812.

The majority in *League of Education Voters* relied on its now oft-cited decision in *To-Ro Trade Shows v. Collins*, 144 Wn. 2d 403, 411 (2001). While declaratory relief is suited to constitutional issues, it will be denied when the controversy is not justiciable. The Court in *To-Ro Trade Shows* explained that 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, 144 Wn. 2d at 411, *quoted in League of Educ. Voters*, 176 Wn. 2d at 816.

The analysis of the Court in *League of Education Voters* on justiciability is critical to the present dispute. The Court found the challenge to the Supermajority Requirement “is justiciable because the requirement has nullified the legislator respondents’ votes by preventing the passage of tax legislation that received a simple majority vote.” *League of*

Educ. Voters, 176 Wn. 2d at 816-17 (votes on a specific bill are a “concrete example”).

The specific example of SHB 2078 moves the legislator respondents’ claim from the **realm of abstract diluted legislative power** to the realm of actual vote nullification.

Id. at 818 (emphasis added); *see also* the dissent by Justice Charles Johnson, *id.* at 829 (Johnson, C., J., dissenting (“Justiciability questions are broader and more important than the specific mechanism used to get a case in front of the court”)).

For the same reasons as in *Walker*, this dispute is not justiciable because the legislature has not had the opportunity to address I-1366 free from judicial intervention and no legislator’s votes have been impacted. Unlike the facts in *League of Education Voters*, Respondents offer nothing but abstract predicted impacts on legislator’s power, depending upon unknown, future potential actions by the legislature.

The lack of justiciability in this case is also supported by this Court’s contrasting treatment of the Referendum Requirement as well.

The Referendum Requirement has not harmed any of the respondents. Without identifying a legal interest at issue, let alone an injury to that interest, LEV cannot establish a justiciable controversy.

League of Educ. Voters, 176 Wn. 2d 819. The Court applied the analysis in *Walker* that “the course of future events is, at this time, purely speculative and subject to a challenge when a specific dispute arises in regard to a

particular bill.” *Walker*, 124 Wn. 2d at 413, *quoted in League of Educ. Voters*, 176 Wn. 2d at 819.

The variations in potential constitutional amendments are limitless. In the first ten days of the 2016 legislature, prior to the trial court’s ruling, legislators had already introduced at least five different constitutional amendments. The legislature should have been allowed to decide how it wanted to respond to I-1366 before a court ruled.

Here and now, the controversy is not ripe because there is no certainty as to how the legislature will respond to I-1366 if the initiative is allowed to take effect. And as addressed herein, the legislature has multiple options. It is evident that this suit is the epitome of a “possible, dormant, hypothetical, speculative, or moot disagreement,” and that any “harm” suffered by Respondents is merely “potential, theoretical, abstract or academic” at best. *To-Ro Trade Shows*, 144 Wn. 2d at 411.

For instance, the legislature could propose a constitutional amendment that mirrors the policies suggested in I-1366, propose a different constitutional amendment, propose multiple constitutional amendments, suspend or repeal all or part of I-1366, or propose no constitutional amendment at all. It can adjust spending, increase other taxes, or both, to adjust to the sales tax reduction. Because it is unclear how the legislature will respond, it should have been allowed to do so without

judicial intervention. Respondents' claims simply are not justiciable at this time.

II.
RESPONDENTS HAVE FAILED TO PROVE
THEY HAVE STANDING

The requirement for Respondents' standing to assert their claims is part of the justiciability requirement. *To-Ro Trade Shows*, 144 Wn. 2d at 411. 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 their view of the law declared. 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).

Respondents' interests are not different in kind than the interests of the public at large. 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 come to a halt if anyone opposed to a potential law could simply sue on the basis that they do not want legislators to consider it. The Court should deny Respondents the relief they seek because they lack standing under the following specific grounds upon which they seek.

A. Respondents do not have Standing as Taxpayers

As mentioned above, the allegation of immediate harms is belied by the initiative itself. The legislature has several choices. The reduction of the sales tax does not effect until April 15 so it may not be known until then whether the legislature chooses to propose a constitutional amendment. It may 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)), Respondents have not asserted any right to make sure that any particular revenue stream remains intact. There is no such right. *See Amalgamated Transit*, 142 Wn. 2d at 200 (“there is no serious dispute that in general an initiative can repeal, impose, or amend a specific tax”). In fact, the path to be chosen by the legislature may not impact Respondents at all.

1. Taxpayer Standing Requires a Challenge to Nondiscretionary Actions; Here, the Legislature’s Response to I-1366 is Purely Discretionary

Appellants recognize that this Court in *Huff v. Wyman*, 184 Wn. 2d 643 (2015) concluded that these Respondents (with the exception of the League of Women Voters of Washington which was not a party in *Huff*) had taxpayer standing to bring suit as to whether I-1366 should be placed on the ballot. Ultimately, this Court found that, while the Respondents in *Huff*

had sufficient injury as taxpayers to confer standing, they could not prove any injury sufficient to justify injunctive relief. *Id.* at 733.

The Court in *Huff* reaffirmed that taxpayer standing does not exist to challenge discretionary actions.

However, taxpayer **disagreement with a discretionary governmental** act is not enough to convey standing.

Huff, 361 P. 3d at 730 (emphasis added) (citations omitted).

Now that the voters have spoken, the situation is far different. In *Huff*, at issue was the **nondiscretionary duty** to place I-1366 on the ballot. *Id.*; see also *Philadelphia II v. Gregoire*, 128 Wn. 2d 707 (1996) (non-discretionary duty to draft a ballot title for initiative). What is at issue now is the legislature's **purely discretionary options, not even duties**, on how to respond to the Initiative. As mentioned above, the legislature has several options, including the choice of not referring any constitutional amendment, referring several constitutional amendments, or referring one with several provisions. Because there are no non-discretionary duties and no state officer threatening to undertake unconstitutional action, taxpayer standing does not exist.

Additionally, what exactly is the illegal use of taxpayer funds complained of here? Consideration and deliberation by the legislature on how to respond to the initiative, either by referring a constitutional amendment or amendments or by adjusting taxes and/or spending to adjust

to a sales tax reduction? In fact, Plaintiff Mack made clear that she didn't want the legislature to deliberate or consider anything except the duty to fund education. CP 405-06. While Plaintiff Mack has every right to her opinion, courts should never be in the position of interfering with the legislature's decisions on what issues to deliberate, especially when it comes to responding to an initiative passed by the voters.

2. Taxpayer Standing to Inject the Court in On-going Legislative Processes is Inappropriate

The public policy implications of finding standing based on the simple "injury" that the legislature is considering potential changes in law that the Respondents oppose is troubling. Courts should not be drawn into interfering with the legislative process when the only "expenditure of taxpayer funds" is the legislature's deliberation of policies some litigants oppose.

The right of a legislative body to exercise its legislative powers will not be invaded by the judicial branch of government.

Brown v. Owen, 165 Wn. 2d at 720 (citations omitted).

Nor does the Courts' duty of noninterference in legislative processes depend upon fairness, wisdom or expediency of the legislation being considered.

Any law or proposed law may be, and often is, unfair to some. ... Legislative bodies ... are not to be stopped from exercising the supreme function of making laws by such

considerations. . . . Courts will not concern themselves with any questions of policy or hardship or expediency. Nor will they in any case intervene to hinder or influence the process of legislation in any of its steps.

State v. Superior Court In & For Thurston Cty., 92 Wash. 16, 25 (1916).

As Justice Charles Johnson expressed in his dissent in *League of Education Voters*, the Court should not interfere in

political legislative action, in which courts have not interfered, nor should they. Because of the multitude of possible outcomes, the essence of the political legislative process involves many competing political choices into which courts should not intrude to act as referee.

176 Wn. 2d at 831 (Johnson, C., J., dissenting).

Similarly, this Court in *Fritz v. Gorton*, 83 Wn. 2d 275 (1974) recognized that the electorate can make mistakes or errors in judgment

relative to fiscal policy and the solvency of the government itself. However, state legislators, acting in their capacity as the duly elected representatives of the people, although well intentioned, are not always infallible in all matters of legislative import.

It is certainly not the function or prerogative of the Courts to second guess and substitute their judgment at every turn of the road for the judgment of legislators in matters of legislation.

So it is, or should be, in the case of direct legislation by the people via the initiative process.

Fritz, 83 Wn.2d at 283 (emphasis added) (line breaks added).

The concern about interfering with legislative processes is analogous to what this Court in *Huff* recognized as a separate basis for

denying taxpayer standing—harassment of public officials. *Huff*, 361 P. 3d at 730. While this suit does not constitute “harassment,” it does involve a request that the Court interfere with the legislative process by prematurely ruling on the constitutionality of a law that has yet to be implemented.

B. Respondents Carlyle and Frockt Do Not Possess Special Standing as Legislators Because their Votes have not been Impacted

Respondents David Frockt as a Senator and Reuven Carlyle as a member of the House of Representatives are alleged to have special standing as state legislators. Having legislators on the list of plaintiffs adds nothing to the question as to whether Respondents possess standing or, whether as Appellants contend, their interest is nothing beyond the interest of the general public.

This is apparent from both *Walker* and *League of Education Voters* as addressed above. In *Walker*, the Court ruled that legislators do not have standing to challenge an enacted initiative requiring two-thirds vote relative to taxes, namely, Initiative 601. In contrast, the Court in *League of Education Voters*, 176 Wn. 2d 808, concluded that legislators’ standing existed because they could point to their **particular votes on a specific bill** which were ineffective because of the challenged law. Since it is uncertain how the legislature would have responded to I-1366 and no one’s vote is diluted in any way, this case is analogous to *Walker*.

Moreover, the legislators here are not “injured” because I-1366 does not prevent them from exercising their rights to initiate the constitutional amendment process. These legislators may continue to initiate constitutional amendments and they may continue to oppose the initiation of constitutional amendments. They may continue to propose or oppose constitutional amendments as well as propose or oppose amendments to proposals to refer constitutional amendments to the voters. 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. The normal process for considering potential constitutional amendments still applies. The fact that their motives for voting in certain ways may be impacted by the differences between what their constituents want and what the people of the state of Washington want is not a basis for standing to challenge the law.

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

Respondents alleged they have standing because this matter is of serious public importance. Public importance does not automatically give anyone standing to challenge a law. If public importance were sufficient to confer standing, anyone could challenge any law, or proposed law, at any time. Anyone could invoke the courts to challenge the legislature’s vote on a potential enactment of a new statute or amendment to any statute.

The “public importance” argument was made in *League of Education Voters* regarding the Referendum Requirement and this Court concluded that issue was not justiciable.

For the **public importance exception** to apply, the dispute must be ripe ...and, as discussed above, the Referendum Requirement has never been triggered or otherwise affected any legal interests.

League of Educ. Voters, 176 Wn. 2d at 820 (citing *Walker*, 124 Wn. 2d at 414) (emphasis added)).

As was the situation in *Walker*, any challenge to I-1366 is simply unripe because the legislature has not decided how to respond to the initiative yet. Until it does, there is no way of knowing how it will decide to respond to its policies. For instance, if it chooses not to submit a constitutional amendment to the voters in any form, there is no impact on legislators when it comes to the possible referral of a constitutional amendment which is at the heart of Respondents’ claims. Their dispute is unripe until the legislature decides what to do.

Ignoring these limitations puts the courts in the position of injecting itself into political processes and regularly monitoring the legislative process if anyone interested in any public issue with the wherewithal to hire attorneys can invoke judicial power 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 both *Walker* and *League of Education Voters*.

**III.
THE TRIAL COURT ERRED IN ISSUING FINDINGS
IN ITS RULING ON RESPONDENTS' MOTION
FOR SUMMARY JUDGMENT**

This case was resolved by the trial court in response to a motion for summary judgment. Nonetheless, the trial court issued findings of fact and asserted findings based on Respondents' evidence. As is well-established, a trial court is not free to decide issues of fact in response to a motion for summary judgment. *Oltman v. Holland Am. Line USA, Inc.*, 163 Wn. 2d 236, 249 n.10 (2008) ("findings and conclusions are inappropriate on summary judgment"). If there is any need for findings, then summary judgment is improper.

The trial court ignored the Declaration of Doug Ericksen, a legislator who directly rebutted several of the statements made by the Respondent legislators.⁴ For instance, Senator Ericksen declared that I-1366 was conditional or contingency legislation similar to SB 5987 or the "top two primary" initiative. Appendix 2. Any constitutional amendment would still need to be "proposed by legislators, heard in committees, deliberated upon by legislators, subject to amendments" and ultimately

⁴ A copy of the Declaration of Doug Ericksen is attached hereto as Appendix 2.

approved by two-thirds of both houses. *Id.* There is no “bypass” of the normal legislative process. *Id.*

The trial court’s assumption that there was such a bypass is disputed and for that reason alone, summary judgment was erroneous.

**IV.
RESPONDENTS FAILED TO MEET THE HEAVY BURDEN TO
PROVE THAT I-1366 IS UNCONSTITUTIONAL BEYOND A
REASONABLE DOUBT**

Allegations that the constitution is violated should not be taken lightly. The questions here must be decided in the context of both the power of the people as legislators as well as the legislature itself.

[T]he people effectively act as the legislative branch when they pass an initiative. “In approving an initiative measure, the people exercise the same power of sovereignty as the legislature does when it enacts a statute.” ... The same constitutional constraints apply to both an initiative and a legislative enactment.

Freedom Found. v. Gregoire, 178 Wn. 2d 686, 699 (2013) (citations omitted).

In this case, as in all, the court presumes that an initiative is constitutional, just as it presumes the constitutionality of a statute duly enacted by the legislature. *Amalgamated Transit*, 142 Wn. 2d at 205. It is this presumption that the Respondents must, but cannot, overcome.

The presumption of constitutionality applies to initiatives and the burden is high.

The party challenging a statute's constitutionality "must prove that the statute is unconstitutional beyond a reasonable doubt."

League of Educ. Voters, 176 Wn. 2d at 820 (citations omitted).

Additionally, in engaging in reviewing whether an initiative is unconstitutional, the **Court must interpret the measure in any way possible that would save its constitutionality.**

If an initiative, like a statute, "is susceptible of several interpretations, some of which may render it unconstitutional, the court, without doing violence to the legislative purpose, will adopt a construction which will sustain its constitutionality if at all possible to do so."

Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1, 149 Wn. 2d 660, 671 (2003) (citations omitted). Similarly, courts "liberally construe initiative proposals so as to give them effect, and a hypertechnical construction which deprives them of effect is to be avoided." *Maleng v. King Cty. Corr. Guild*, 150 Wn. 2d 325, 334 (2003).

Therefore, Respondents bear the burden of showing I-1366 is unconstitutional beyond a reasonable doubt after the Court interprets the provision in any way which will sustain its constitutionality. This is a burden Respondents cannot successfully bear and the trial court completely ignored the doctrine of constitutional avoidance.

One of the ways in which Respondents misinterpret I-1366 in a way that suits their unconstitutionality argument, but is not a necessary interpretation, is the claim that "the content of the required constitutional

amendment is expressly prescribed by the Initiative.” CP 60. While Section 3 includes certain provisions and policies, that does not mean that a proposed constitutional amendment by the 2016 legislature cannot include other provisions and policies not referenced in I-1366. The Court should not interpret I-1366’s hoped for provisions as being exclusive as the trial court erroneously did.

Rather, the Court should expect that the legislature could include language that has other tax related consequences by proposing a constitutional amendment crafted in the legislative deliberative processes. As explained above, that was already occurring in the 2016 legislative session prior to the trial court’s ruling. *See* SJR 8211, SJR 8212, HJR 4214, HB 2786, etc. These evidence the legislature’s serious and considered response to the voters’ approval of I-1366 during the first week of the legislative session, until the trial court ruled that the entire initiative was invalid.

The notion that a constitutional amendment as a result of I-1366 is not subject to “drafting, deliberation or amendment” is flatly disputed. *See* Appendix 2. The additional argument that the constitutional amendment would not be “approved as a result of such a process by a two-thirds vote of both houses” is misleading at best. *Id.* I-1366 does not purport to cause a constitutional amendment to be referred to the votes without a two-thirds

vote of both houses. The trial court erred in granting summary judgment when there is a clear dispute of facts on this point.

A. I-1366 Does not Violate The Single Subject Rule in Article II, Section 19; The Sales Tax Reduction and Potential Opportunity to Vote on a Constitutional Amendment regarding Taxes are Germane to Fiscal Restraint

Article II, Section 19 is the source for the single subject rule for legislative bills which has been adopted by analogy to initiatives. It has two requirements. The bill must contain a single subject and the single subject must be embraced in the title. *Washington Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn. 2d 642, 655 (2012).

I-1366 meets both requirements.

1. I-1366's Title Expresses a Broad Subject of Fiscal Restraint

Titles may be general or restrictive because “the legislature in each case has the right to determine for itself how comprehensive shall be the object of the statute.” *Gruen v. State Tax Comm'n*, 35 Wn. 2d 1, 22 (1949), *overruled in part on other grounds by State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn. 2d 645 (1963). However, for initiatives, the ballot title is chosen by the Attorney General instead of the sponsor of the proposed legislation. RCW 29A.72.060. Because legislators who sponsor bills are allowed to decide whether to have a broad or narrow title and the sponsors of initiatives are not, the Court should be reluctant to conclude that Attorney

General's title should be read restrictively. In the case of an initiative, the lawmaking body (the people) have no right to determine how comprehensive the title is.

Here, the Attorney General's ballot title is as follows:

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.

CP 36.

While the subject of the measure needs to be "expressed" in the title, "it is not necessary that the title contain a general statement of the subject of an act; '[a] few well-chosen words, suggestive of the general subject stated, is all that is necessary.'" *Washington Ass'n for Substance*, 174 Wn. 2d at 655 (citations omitted) (emphasis added).

" '[A] title complies with the constitution if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law.' " ...

The title need not be an index to the contents, nor must it provide details of the measure.

Id. at 660 (citation omitted). Here, the title did provide all the details to the voters.

The title for I-1366 is suggestive of a broad subject of the act: fiscal restraint in regard to state taxes and fees. The fact that there is an “and” in the statement of subject portion of the ballot title does not render the title invalid because of multiple subjects.

There is no violation of article II, section 19 even if a general subject contains several incidental subjects or subdivisions.

Washington Assn'n for Substance Abuse, 174 Wn. 2d at 656 (citations omitted); *see also Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn. 2d 622 (2003) (title which referred to prohibitions on body gripping traps or poisoning had one subject).

That the title must only suggest the general subject is evident from the Court's decision in *Fritz v. Gorton*, 83 Wn. 2d 275. The initiative in *Fritz* created wide sweeping changes to state and local government operations. As explained by the Court,

[t]he challenging parties assert that the body of the initiative covers a 'multitude of subjects' including: (1) disclosure of campaign financing; (2) limitations on campaign spending; (3) regulation of lobbying activities; (4) regulation of grass roots educational activities; (5) disclosure of financial affairs of elected officials; and (6) public inspection of public records.

Id. at 290. The Court concluded that all of these “subjects” were related to the subject of “openness in government” even though that phrase was not included in the ballot title. *Id.*

Reducing the sales tax, the only provision of the initiative which purports to have any force of law, is germane to fiscal restraint. Section 3 which provides the effective date and gives the option to avoid the sales tax reduction is clearly germane to the general subject of fiscal restraint.

2. The Sales Tax Reduction and a Contingent Effective Date Based on the Legislature's Decision Whether to Refer a Constitutional Amendment to the Voters are Germane to Each Other

Here, the ballot title chosen by the Attorney General is broad and general, rather than restrictive. Because the title is general, all that is required is “some ‘rational unity’ between the general subject and the incidental subdivisions.” *Id.* (citations omitted). Again, there must be some rational unity is met by germaneness between the general subject and all of the provisions.

Respondents claim the initiative “combines a one-time sales tax reduction with a constitutional amendment.” CP 62-63. By referring to “one-time,” Respondents must be referring to the fact that the legislature can amend or repeal initiatives—all initiatives make a “one-time” change. But the initiative does not combine the sale tax reduction with a constitutional amendment. I-1366 results in either a one-time reduction in the sales tax or a one-time opportunity for the voters to vote on a constitutional amendment. It will not result in both.

Here, the Respondents complain that there are multiple subjects for four reasons. First, they assert that the sales tax reduction is a one-time event (which they admit is fully within the legislative power of the people) and one of a continuing nature, a constitutional amendment. Respondents cited *Washington Toll Bridge Auth. v. State*, 49 Wn. 2d 520 (1956) and *Amalgamated Transit Union*, 142 Wn. 2d at 193, as examples where more than one subject was found.

In *Washington Toll Bridge*, the two subjects were the authorizing of tolls and the building of a specific toll road. 49 Wn. 2d at 524-25. Here, I-1366 does not include any site specific, administrative action. It lowers the sale tax rate which applies broadly to almost all retail sales and gives the legislature an option to avoid that reduction by giving voters an opportunity to vote on a constitutional amendment on taxes generally. The tax reduction is not just germane to, but squarely within, the goal of fiscal restraint.

Additionally, the so-called separate subject of a continuing nature, a constitutional amendment, does not arise from the initiative itself. If there ever is a constitutional amendment that has a continuing nature, it will happen only if two-thirds of the legislature refer one to the ballot and only if the people approve it. If those both occur, the result that has a continuing

nature will be the result of a completely different act of the voters at a completely different time.

Similarly, in *Amalgamated Transit*, the Court concluded that the initiative had two subjects, setting “license tab fees at \$30 and to provide a continuing method of approving all future tax increases.” 142 Wn. 2d at 217. Here, the initiative creates the possibility of lowering the sales tax, but it does not create or otherwise affect future tax increases. The legislature has the option to refer a constitutional amendment to the ballot, that may or may not be approved, but the initiative itself does not mandate that result.

Second, Respondents contend that a reduction in sales tax is not germane to limiting tax increases. That is absurd; of course it is. They are germane because, as the Initiative expressly states,

[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.

I-1366 § 1. Both provisions are germane to one another because they are both about state government exercising fiscal restraint.

Third, Respondents argue that there are two subjects because I-1366 includes something lawful (the sales tax reduction) and something they

claim is unlawful (a potential referral of a constitutional amendment). CP 65-66. This has never been a basis for determining whether an initiative or bill contains more than one subject. If it were, then courts would never have to deal with severability issues for any legislation whatsoever. Under Respondents' argument, the mere fact that part of a bill was invalid means the Court must invalidate the whole. There is no law to support Respondents' creative argument.

Fourth, Respondents assert there are two subjects because I-1366 involves the power of the voters under Article II in enacting the initiative and the legislature's power under Article XXIII. It appears this was the basis for the trial court's decision

I-1366 violates this section by combining two separate actions of law that lack rational unity. Section 2 is an article II act of enacting an immediate tax reduction; section 3 relates to an article XXIII act of proposing a constitutional amendment related to not only future tax increases but also the calculation of users fees. Consistent with the holdings of *Washington Toll Bridge Authority v. State*, 49 Wn.2d 420, 304 P.2d 676 (1956) and *Amalgamated Transit Union v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000), these three separate subjects and purposes cannot be said to possess a rational unity.

CP 426.⁵ By referring to an "Article II act" and an "Article XXIII act," it appears that the trial court was assuming that rational unity was lacking

⁵ The trial court decision is unclear in that it references three separate subjects and purposes after reciting only two.

because Section 3 generally deals with a matter governed by another article in the constitution.

This assumption that neither the voters nor the legislature can exercise legislative power that deals in any way with a subject governed by another article of the constitution is completely unprecedented and would seriously hamper legislative prerogatives. The constitution deals with many subjects in its various articles, such as education, municipal corporations, and water, to cite a few. There is no authority that suggests that any bill which the legislature or voters enact under Article II has multiple subjects simply because it relates in some way to another subject which is addressed elsewhere in the constitution. While the argument is creative, it has no jurisprudential footings.

To resolve the single subject question, the Court should rely on its very recent case, *Washington Association for Substance Abuse and Violence Prevention v. State*, 174 Wn. 2d 642. This Court addressed a challenge to the liquor privatization initiative on single subject grounds. As addressed below, the initiative involved more than privatization of liquor sales, yet this Court rejected the single subject challenge.

For instance, this Court rejected the argument that an earmark of funds and new taxes and fees for public safety purposes was a separate subject from liquor sale privatization. *Washington Ass'n for Substance*

Abuse, 174 Wn. 2d at 656. Furthermore, the Court cited Justice Talmadge's concurring opinion in *Wash. Fed'n of State Emps. v. State*, 127 Wn. 2d 544, 575 (1995) (Talmadge, J., concurring in part/dissenting in part) (proposing that considering whether the legislature has historically treated issues together is relevant to analysis of a law under the single-subject rule).

Here, the legislature has historically treated taxes and fees together on occasion. *See* CP 397; *see e.g., Sea-Pac Co., Inc. v. State, Dep't of Fisheries*, 30 Wn. App. 659 (1981) (statutory scheme imposing taxes and fees).

Respondents also reference the policy against logrolling. CP 70. The characterization of any initiative as logrolling is not particularly useful as a test for constitutionality. Courts have recognized that one of the purposes of the single subject requirement was to prevent logrolling, namely, joining a popular proposal with an unpopular proposal with the goal of the popular proposal having enough momentum to carry the unpopular provision. *See Washington Ass'n for Substance Abuse*, 174 Wn. 2d at 658 ("the initiative was designed to attract voters who did not approve of liquor privatization but did favor an increase in funding"). The Court rejected the argument. *Id.*

Because initiatives and bills often contain multiple provisions, the constitution does not require that each individual provision in a bill be

proven to have garnered approval of the majority. In fact, it is impossible to prove how the voters would have voted if the initiative were worded differently. Rather, the requirement is that the provisions be germane to each other. Logrolling has never been articulated by the Court as a test, but a general policy underlying the provision. Besides, “logrolling” would not be useful as a test. There is no prohibition on laws or initiatives from having multiple provisions and it is always possible for an opponent to argue that logrolling occurred by having one provision that the opponent doesn’t like joined with another claimed to be more popular.

Just like the distinction between taxes and fees, the Court in *Washington Association for Substance Abuse* rejected that the distinction between spirits and wine created a single subject rule violations. *Id.* at 659-60 n.3. The distinctions about which Respondents complain are equally insufficient.

More to the point, however, the liquor initiative privatized liquor sales and increased fees on liquor sales. Presumably, some voters wanted privatized liquor sales on the belief that liquor would be available at lower cost and did not want the higher taxes or fees on liquor. Others may have wanted higher taxes and fees on liquor, but opposed privatization of liquor sales or were ambivalent about it. There is no way to know. This Court

correctly concluded that these different provisions were germane to the subject.

The same result should occur here. A sales tax reduction is germane to fiscal restraint as is the option given to the legislature to retain the tax upon referring to the voters a constitutional amendment regarding taxes.

B. I-1366 Does not Violate Article XXIII Regarding the Process for Amending the Constitution; The Initiative Does Not Circumvent Any Step in the Process and Leaves the Initiation of that Process to the Legislature's Discretion

The crux of Respondents' argument is that amending the constitution is not a legislative process at all, let alone one that can be exercised through the initiative power. CP 67, *et seq.* It is undisputed that the voters cannot **adopt** a constitutional amendment by initiative. But the voters are certainly free to inform the legislature that they want an opportunity to vote on one. Because Section 3 does not create any law,⁶ it is like the policy considerations which this Court articulated in *Pierce Cty. v. State*, 150 Wn. 2d 422 (2003), *as amended on denial of reconsideration* (Mar. 9, 2004).

Our decision today reaffirms the purpose of the constitutional prohibition against passing separate laws in a single vote or election and **forecloses the possibility that a bill or initiative could be declared unconstitutional solely**

⁶ After reviewing I-1366, the Code Revisor did not codify Section 3.

on the grounds that its policy expressions raise other topics.

Id. at 435-36 (“precatory language cannot yield additional ‘subjects’ ”)
(emphasis added).

As the Court reaffirmed in *League of Education Voters*,

[d]etermining whether the constitution prohibits a particular legislative action requires the court to first examine the plain language of the constitutional provision at issue.

176 Wn. 2d at 821 (citing *Washington Water Jet Workers Ass'n v.*

Yarbrough, 151 Wn. 2d 470, 477 (2004), *as amended* (May 27, 2004)).

While it is clear that the voters cannot adopt a constitutional amendment through the initiative, there is nothing in the language of either Article that provides that the voters cannot express their desire to the legislature. That should be the end of the inquiry.

In rejecting a similar 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 (emphasis added). Neither does I-1366 purport to amend the constitution even though one practical effect **might** be the referral of a constitutional amendment to the voters. As addressed above, the legislature may choose to refer a constitutional amendment to the ballot; it may not. The legislature should be allowed to determine what the effects of the initiative are.

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

The purpose of the initiative must be determined by what it says and not what anyone else says about it. The relevant purpose is the purpose of the voters and the most practical method of determining the voters' intent is by looking at the wording of the initiative itself. When there is ambiguity, courts can consider information in the voters' pamphlet.⁷ In this case, whatever is used, it is inescapable that the purpose of the initiative is to lower the sales tax unless the legislature chooses to refer a constitutional amendment to the people. There is no purpose to obtain a constitutional amendment in isolation.

Respondents rely on *Ford v. Logan*, 79 Wn. 2d 147 (1971), for the proposition that the process for amending a constitution is different than enacting statutes. Respondents ignore the fact and reasoning in *Ford* and fail to mention that *Maleng*, 150 Wn. 2d 325 severely, limited the *Ford* decision. In *Ford*, the "initiative aspires to 'amend' the King County

⁷ *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).

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. 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 offers the features the voters hope for. Unlike the measure in *Ford*, there will be no automatic change in the constitution by allowing the legislature to vote.

Respondents argued that *Ford* stands for the proposition that amendment of the constitution was not a legislative act and, therefore, the voters cannot mention constitutional amendments in an initiative. 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. But, 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. I-1366 does not contradict this two-step process.

This Court in *Maleng* distinguished *Ford* as being a case where the initiative would directly **repeal** and **not merely amend** the county charter. *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 or amend the state constitution.

Respondents **assume** that a constitutional amendment will be referred to the voters as a result of I-1366. Those are simply suppositions because there are several possible legislative reactions to I-1366. 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 multiple constitutional amendments, refer one that mirror's Section 3's provisions or refer one that does not.

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 adjust other taxes and/or 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 such a measure were referred to the voters.

1. I-1366 Does not Violate any Limitation that only Legislators can “Propose” Constitutional Amendments

Respondents argue that I-1366 is unconstitutional because it interferes with the legislature’s unique role to propose constitutional amendments. Their argument is nonsensical. If “propose” is referring to initiating the legislative process for amending the constitution, the Court should not construe I-1366 as itself proposing the amendment. A rational interpretation of the initiative is that a legislator or group of legislators will still have to propose the constitutional amendment and that the initiative does not bring any constitutional amendment to the legislature for a vote without following the normal legislative processes.

If Respondents refer to “propose” as coming up with the idea, their argument must be rejected because the ideas for legislation and constitutional amendments may come from legislators, constituents, lobbyists, think tanks or an endless list of potential generators of legislative ideas. There is absolutely no law, nor logic, that would dictate that the people through the initiative power cannot suggest to the legislature that someone in the legislative body “propose” an amendment.

Second, Respondent’s argument that I-1366 directs the legislature to submit a proposed amendment for a vote without a two-thirds legislative

vote is simply false. The Court should not unnecessarily interpret I-1366 in a way that makes it unconstitutional.

Third, the fact that the initiative includes a onetime reduction in the sales tax does not force the legislature to put a constitutional amendment on the ballot. A reduction in sales tax, a particularly regressive tax, meaning it impacts poorer citizens harder, could be replaced with increases in other taxes and/or accommodated by adjustments in spending.⁸ Respondents' argument ignores that the legislature has numerous methods of funding.

Initiative 1366 does not limit how the legislature prioritizes spending. With or without I-1366, the legislature can increase the spending for certain government services, allocate more existing revenue for government services, or raise revenue for government services. I-1366 simply provides taxpayers with a reduction in the tax burden (helping offset recent or future tax increases) or provides 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 the legislature's policy choices.

2. I-1366 Does not Violate Article XXIII on the Theory that it Contains Multiple Subjects; There is no Single Subject Rule for Proposed Constitutional Amendments

Respondents argue that a constitutional amendment would violate

⁸ CP 402-03.

Article XXIII because it would contain multiple subjects, namely taxes and fees. CP 70. While taxes and fees are not so dissimilar or “non-germane” to violate the single subject rule, Respondents’ argument fails for a more fundamental reason—there is no single subject rule applicable to constitutional amendments.

The requirement for a single subject arises from Article II, Section 19 which expressly refers to “no bill shall embrace more than one subject, and that shall be expressed in the title.” Article XXIII provides no restriction on subjects or titles. If it did, numerous constitutional amendments would be suspect if Respondents’ theory that fees and taxes are separate subjects. *See, e.g.*, Article 8, Section 4 (Moneys dispersed only be appropriation, regardless of whether moneys are obtained by taxes or fees); Amendment 18 (highway fees and excise taxes); Amendment 43 (Funds for support of common schools come from a variety of sources, including sales, taxes, donations, and fees); Amendment 55 limiting taxes on property by both the state and all other taxing districts; Amendment 60 which refers to state debt and defines “general state revenues” as “all state money received in the treasury from each and every sources whatsoever except ...” five specific types; Amendment 73 (mingling power to tax, power to condemn and police power).

Respondents' argument also demonstrates why this case is premature and non-justiciable. If there really were a requirement that a constitutional amendment cannot contain multiple subjects and taxes and fees are not germane, the legislature should be given the opportunity to refer more than one constitutional amendment to the voters.

C. I-1366 Does not Violate the Scope of the Initiative Power in Article II; The Power to Reduce the Sale Tax is Undisputed and Giving the Legislature the Option to Keep the Sales Tax is Legitimate Conditional Legislation

1. I-1366 Does not Violate Article II on the Grounds that its Purpose is to Amend the Constitution

Respondents seized upon the language in *Philadelphia II v. Gregoire*, 128 Wn. 2d 707 regarding the “fundamental and overriding purpose of the initiative” and argue that the Court should look at the purpose of I-1366 without regard to the actual text of the initiative. *Id.* at 719. By focusing on this comment about the purpose of that initiative, Respondents ignore the scope of that initiative which was to “create a federal initiative process.” *Id.* The Court focused on whether the initiative was within the state’s legislative power.

[I]n 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.**

Id. (emphasis added). The Court in *Philadelphia II* did not rule that purposes should be deduced from anything other than the initiative’s text.

By capitalizing on the reference to “fundamental and overriding purpose” from *Philadelphia II*, Respondents 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, Respondents cite campaign literature and campaign materials. The precedent of this Court is to determine the purpose from the text of the initiative or statements in the voters’ pamphlet. *Washington Citizens Action*, 162 Wn. 2d at 149.

Furthermore, Respondents go so far as to claim the initiative is “entitled ‘2/3 Constitutional Amendment.’” The “title” to which they refer is simply a heading above the initiative’s text that was filed with the Secretary of State. *See* CP 381, *et seq.* It 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 is the one that matters and it is far broader than just referring to a potential constitutional amendment. CP 36.

The fundamental overriding purpose of the initiative in *Philadelphia II* was to **enact federal** law. Recognizing this, the Court in *Huff* concluded that “appellants here have not shown the fundamental and overriding purpose of I–1366 with the same level of clarity.” *Huff*, 361 P.3d at 732. Of course, nothing new has happened since the *Huff* decision to prove the sole purpose that the Respondents claim, other than the voters have voted.

Additionally, this Court in *Huff* stated:

On the other hand, respondents view I-1366 as containing a form of **conditional legislation** that would operate to reduce the sales tax unless the legislature takes specified action to amend the constitution. They argue that the initiative is nothing more than **contingent legislation** to reduce taxes, a form of direct legislation within the legislature's power. **Viewed in this light, the purpose of I-1366 is the enactment of law and not the amendment of the constitution.**

Huff, 361 P.3d at 732 (emphasis added).

This Court in *Huff* recognized that if the initiative only called for a reduction in the sales tax there would be no question that the initiative did not exceed the scope of the initiative power. *Id.* Likewise, if the initiative purported to enact a constitutional amendment, it would be beyond the scope of the initiative power. *Id.* This Court wisely concluded there was a “conceivable alternative view that I-1366 proposes conditional legislation” and therefore the appellants in *Huff* could not demonstrate that the initiative is beyond the scope of the reserved legislative power. *Id.* See also CP 374. Because the Court has recognized that it is conceivable that I-1366 is conditional legislation, the Court should interpret the initiative as this Court did in *Huff* and find the initiative is within the scope of the initiative power.

Respondents have the burden to prove unconstitutionality beyond a reasonable doubt. If that burden has any meaning, this Court’s conclusion that I-1366 could be legitimate conditional legislation surely insulates the

initiative from Respondents' contention that it is unconstitutional.

The voters were clearly told that the passage of the initiative would result in the lowering of the sales tax unless the legislature chose to refer a constitutional amendment to the ballot.⁹ Voters approved the initiative knowing that the legislature would decide how it prefers to respond. This Court should have left the legislative process alone without intervention.

The voters were clearly told that passage of the initiative would result in the lowering of the sales tax unless the legislature chose to refer a constitutional amendment to the ballot. Voters approved the initiative knowing the legislature would decide how it prefers to respond. The trial court should have left the legislative process alone without intervention.

2. I-1366 Does not Bind Future Legislatures and Thereby Violate Article II; Future Legislatures have the Full Panoply of Legislative Tools to Respond to the Initiative; the Contingent Nature of Section 3 Gives the Legislature an Additional Tool

I-1366 is not invalid because it binds future legislatures. If the sales tax rate is reduced, future legislatures may raise it or reduce it further.

A law passed by initiative is as subject to the legislative power of future legislatures as is any other statute. Thus, the

⁹ A copy of the Declaration of Tim Eyman is attached hereto as Appendix 3.

fact that [a former statute] originated as an initiative does not impede the legislature's ability to amend that statute.

Wash. State Farm Bur. Fed., 162 Wn. 2d at 302.

The binding of future legislatures is clearly unripe and speculative. The only action that would bind future legislatures would be a **future vote** of the people **only if they approved** one or more constitutional amendments and **only if the legislature** referred one or more amendments with a two-thirds majority vote of both houses.

It was asserted that Representative Carlyle and Senator Frockt are forced to vote contrary to the constituents' interests. This is false. Their assumption that no changes may be proposed in the committee process is also erroneous. *See* CP 373. And their assertion that they cannot vote "no" to a proposed constitutional amendment is simply untrue.

These legislators simply do not like the reduction in the sales tax adopted by the voters, nor do they like the option given for retaining the sales tax rate. That is the nature of legislative processes, including the existence of two entities which can exercise legislative power—the legislature and the voters.

3. I-1366 is a Legitimate Exercise of Legislative Power because Giving the Legislature an Option is Well-established Conditional Legislation and has been Used by the Legislature Itself in Regard to the Sales Tax

As addressed above, this Court in *Huff* recognized that the I-1366 could be viewed as conditional legislation, rather than an improper use of Article II initiative power. *Huff*, 361 P.3d at 732. Additionally, the legislature itself enacted conditional legislation in regard to the sales tax. The Code Revisor's notes to the sales tax statute, RCW 82.08.020, reveal the following:

Effective date—1975-'76 2nd ex.s. c 130: "This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: **PROVIDED, That the provisions of this 1976 amendatory act shall be null and void in the event chapter . . . (*Substitute Senate Bill No. 2778), Laws of 1975-'76 2nd ex. sess. is approved and becomes law.**" [1975-'76 2nd ex.s. c 130 § 4.]

*Reviser's note: "Substitute Senate Bill No. 2778" failed to become law.

(emphasis added).

In 2015, the voters have done substantially what the Legislature has done in the past—make an amendment to the sales tax statute contingent upon other legislative action by the legislature itself. There is historical precedent for the voters' decision and the Court should not set it aside or cast doubt on the legislature's freedom to enact conditional legislation.

D. The Provisions of I-1366 are Severable

If the Court were to find that some provision of the initiative is unconstitutional, the provisions are severable. There is no challenge to

Section 2 which lowers the sales tax by one percent. The only challenge is to Section 3 which includes the option for the legislature, an option it has always had, to refer a constitutional amendment. Given the public policy favoring the exercise of the right of initiative, a refusal to sever should be rare and should only occur in the most extreme circumstances.

League of Education Voters, 176 Wn. 2d at 827, is instructive on severability. This Court reaffirmed the two-part test for severability: (1) whether the voters intended severability and would have passed the constitutional provision without the unconstitutional provision or (2) “where the part eliminated is so intimately connected with the balance of the act as to make it useless to accomplish the purposes.” *Id.*

As to the first factor, the Court ruled that a severability clause is “**conclusive**” that the voters or legislature intended severability to apply, “unless it can be said that the declaration is obviously false on its face.” *Id.* (quotations omitted; emphasis added). The plaintiffs in *League of Education Voters* attempted to argue that the severability clause was “obviously false on its face” because the intent was to create two laws: the Supermajority Requirement **and** the Referendum requirement. *Id.*

The Court rejected the argument:

[T]he fact that the voters intended to impose both requirements is inconsequential. Anytime a bill or initiative contains multiple provisions, it can be argued that legislators or voters intended to pass multiple provisions.

Id. at 827-28 (emphasis added). As in *League of Education Voters*, the severability clause for I-1366 is not obviously false on its face.

As to the second factor, Respondents argued that Sections 2 and 3 of I-1366 are “intertwined.” The test is that a severability clause will not save a portion of an initiative that cannot stand on its own, or, in other words, is “rendered...useless” if severed. *McGowan v. State*, 148 Wn. 2d 278, 294 (2002). In order for a provision to stand on its own, the “invalid provision must be grammatically, functionally, and volitionally severable” in order for the remainder to survive. *Id.* at 295.

Section 2 meets the second element of the severability test. Section 2 lowers the sales tax. This Section is far from “useless.” Furthermore, Section 2 can stand on its own as it is “grammatically, functionally, and volitionally severable.” Section 2 makes grammatical sense as it does not require dissecting and excising valid language from the middle of a section with invalid language. Functionally, Section 2 simply lowers the sales tax. It requires none of Section 3 to function.

Finally, Section 2 is volitionally severable. There is no reason to assume voters would not want a reduction in the sales tax. Voters have approved several initiatives in recent years that limited taxes (I-1107 repealing soda pop taxes, I-747 limiting property taxes, I-695 lowering car tab taxes). Additionally, the sales tax reduction in Section 2 is the only

section which purports to make a binding legislative change. Section 3 merely identifies an option the legislature has always had.

By passing I-1366, the voters made the decision that if the legislature chooses to refer a constitutional amendment, then there is no need for the sales tax reduction. But if the opportunity for a vote on a constitutional amendment is something impermissible, the voters still want to receive the sales tax reduction. Here, the sales tax reduction remains useful in a potentially stand-alone role in obtaining “fiscal restraint” as is the stated purpose of I-1366 in Section 1.

Ultimately, considering all of these factors, Section 2 and 3 are easily severable from each other.

CONCLUSION

Sponsors urge this Court to resist substituting the Respondents’ policy preferences for those chosen by the people and allow the legislature to consider its response to the initiative before the April 15, 2016 effective date. These issues are all policy decisions within the purview of the legislative branches, both the legislature and the voters.

RESPECTFULLY SUBMITTED this 5th day of February, 2016.

STEPHENS & KLINGE LLP

By /s/ Richard M. Stephens
Richard M. Stephens, WSBA 21776
Attorney for Appellants Tim Eyman,
Leo Fagan and M. J. Fagan

APPENDIX A

Initiative Measure No. 1366

filed January 5, 2015

2/3 CONSTITUTIONAL AMENDMENT

COMPLETE TEXT

AN ACT Relating to taxes and fees imposed by state government; amending RCW 82.08.020, 43.135.031, and 43.135.041; adding new sections to chapter 43.135 RCW; creating new sections; and providing a contingent expiration date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

INTENT

NEW SECTION. **Sec. 1.** Over the past twenty years, the taxpayers have been required to pay increasing taxes and fees to the state, hampering economic growth and limiting opportunities for the citizens of Washington.

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.

Since 1993, the voters have repeatedly passed initiatives requiring two-thirds legislative approval or voter approval to raise taxes and majority legislative approval for fee increases. However, the people have not been allowed to vote on a constitutional amendment requiring these protections even though the people have approved them on numerous occasions.

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, 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.

REDUCE THE SALES TAX UNLESS...

Sec. 2. RCW 82.08.020 (Tax imposed--Retail sales--Retail car rental) and 2014 c 140 s 12 are each amended to read as follows:

(1) There is levied and collected a tax equal to (~~six~~) five and five-tenths percent of the selling price on each retail sale in this state of:

(a) Tangible personal property, unless the sale is specifically excluded from the RCW 82.04.050 definition of retail sale;

(b) Digital goods, digital codes, and digital automated services, if the sale is included within the RCW 82.04.050 definition of retail sale;

(c) Services, other than digital automated services, included within the RCW 82.04.050 definition of retail sale;

(d) Extended warranties to consumers; and

(e) Anything else, the sale of which is included within the RCW 82.04.050 definition of retail sale.

(2) There is levied and collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection must be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include:

(a) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, unless the farm tractor or farm vehicle is for use in the production of marijuana;

(b) Off-road vehicles as defined in RCW 46.04.365;

(c) Nonhighway vehicles as defined in RCW 46.09.310; and

(d) Snowmobiles as defined in RCW 46.04.546.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section must be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection must be deposited in the performance audits

of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter apply to successive retail sales of the same property.

(7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

...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

NEW SECTION. **Sec. 3.** (1) Section 2 of this act takes effect April 15, 2016, unless the contingency in subsection (2) of this section occurs.

(2) If the legislature, prior to April 15, 2016, refers to the ballot for a vote a constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes as defined by voter-approved Initiatives 960, 1053, and 1185 and section 6 of this act and majority legislative approval for fee increases as required by voter-approved Initiatives 960, 1053, and 1185 and codified in RCW 43.135.055 and further defined by subsection (a) of this section, section 2 of this act expires on April 14, 2016.

(a) "Majority legislative approval for fee increases" means only the legislature may set a fee increase's amount and must list it in a bill so it can be subject to the ten-year cost projection and other accountability procedures required by RCW 43.135.031.

STATUTORY REFERENCE UPDATES

Sec. 4. RCW 43.135.031 (Bills raising taxes or fees - Cost analysis - Press release - Notice of hearings - Updated analyses) and 2013 c 1 s 5 are each amended to read as follows:

(1) For any bill introduced in either the house of representatives or the senate that raises taxes as defined by (~~RCW 43.135.034~~) section 6 of this act or increases fees, the office of financial management must expeditiously determine its cost to the taxpayers in its first ten years of imposition, must promptly and without delay report the results of its analysis by public press release via e-mail to each member of the house of representatives, each member of the senate, the news media, and the public, and must post and maintain these releases on its web site. Any ten-year cost projection must include a year-by-year breakdown. For any bill

containing more than one revenue source, a ten-year cost projection for each revenue source will be included along with the bill's total ten-year cost projection. The press release shall include the names of the legislators, and their contact information, who are sponsors and cosponsors of the bill so they can provide information to, and answer questions from, the public.

(2) Any time any legislative committee schedules a public hearing on a bill that raises taxes as defined by (~~RCW 43.135.034~~) section 6 of this act or increases fees, the office of financial management must promptly and without delay report the results of its most up-to-date analysis of the bill required by subsection (1) of this section and the date, time, and location of the hearing by public press release via e-mail to each member of the house of representatives, each member of the senate, the news media, and the public, and must post and maintain these releases on its web site. The press release required by this subsection must include all the information required by subsection (1) of this section and the names of the legislators, and their contact information, who are members of the legislative committee conducting the hearing so they can provide information to, and answer questions from, the public.

(3) Each time a bill that raises taxes as defined by (~~RCW 43.135.034~~) section 6 of this act or increases fees is approved by any legislative committee or by at least a simple majority in either the house of representatives or the senate, the office of financial management must expeditiously reexamine and redetermine its ten-year cost projection due to amendment or other changes during the legislative process, must promptly and without delay report the results of its most up-to-date analysis by public press release via e-mail to each member of the house of representatives, each member of the senate, the news media, and the public, and must post and maintain these releases on its web site. Any ten-year cost projection must include a year-by-year breakdown. For any bill containing more than one revenue source, a ten-year cost projection for each revenue source will be included along with the bill's total ten-year cost projection. The press release shall include the names of the legislators, and their contact information, and how they voted on the bill so they can provide information to, and answer questions from, the public.

(4) For the purposes of this section, "names of legislators, and their contact information" includes each legislator's position (senator or representative), first name, last name, party affiliation (for example,

Democrat or Republican), city or town they live in, office phone number, and office e-mail address.

(5) For the purposes of this section, "news media" means any member of the press or media organization, including newspapers, radio, and television, that signs up with the office of financial management to receive the public press releases by e-mail.

(6) For the purposes of this section, "the public" means any person, group, or organization that signs up with the office of financial management to receive the public press releases by e-mail.

Sec. 5. RCW 43.135.041 (Tax legislation – Advisory vote – Duties of the attorney general and secretary of state – Exemption) and 2013 c 1 s 6 are each amended to read as follows:

(1)(a) After July 1, 2011, if legislative action raising taxes as defined by (~~RCW 43.135.034~~) section 6 of this act is blocked from a public vote or is not referred to the people by a referendum petition found to be sufficient under RCW 29A.72.250, a measure for an advisory vote of the people is required and shall be placed on the next general election ballot under this chapter.

(b) If legislative action raising taxes enacted after July 1, 2011, involves more than one revenue source, each tax being increased shall be subject to a separate measure for an advisory vote of the people under the requirements of this chapter.

(2) No later than the first of August, the attorney general will send written notice to the secretary of state of any tax increase that is subject to an advisory vote of the people, under the provisions and exceptions provided by this chapter. Within five days of receiving such written notice from the attorney general, the secretary of state will assign a serial number for a measure for an advisory vote of the people and transmit one copy of the measure bearing its serial number to the attorney general as required by RCW 29A.72.040, for any tax increase identified by the attorney general as needing an advisory vote of the people for that year's general election ballot. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits in this subsection.

(3) For the purposes of this section, "blocked from a public vote" includes adding an emergency clause to a bill increasing taxes, bonding or contractually obligating taxes, or otherwise preventing a referendum on a bill increasing taxes.

(4) If legislative action raising taxes is referred to the people by the legislature or is included in an initiative to the people found to be sufficient under RCW 29A.72.250, then the tax increase is exempt from an advisory vote of the people under this chapter.

NEW SECTION. **Sec. 6.** A new section is added to chapter 43.135 RCW and reads as follows:

For the purposes of this chapter, "raises taxes" means 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.

CONSTRUCTION CLAUSE

NEW SECTION. **Sec. 7.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

SEVERABILITY CLAUSE

NEW SECTION. **Sec. 8.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

TITLE OF THE ACT

NEW SECTION. **Sec. 9.** This act is known and may be cited as the "Taxpayer Protection Act."

-- END --

APPENDIX B

Honorable William Downing
Plaintiffs' Motion for Summary Judgment
Noted with Oral Argument: January 19, 2016 at 9:00 a.m.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

TONY LEE, an individual taxpayer; ANGELA)
BARTELS, an individual taxpayer; DAVID)
FROCKT, an individual taxpayer and Washington)
State Senator, REUVEN CARLYLE, an individual)
taxpayer and Washington State representative;)
EDEN MACK, an individual taxpayer; GERALD)
REILLY, an individual taxpayer; PAUL BELL, an)
individual taxpayer, and THE LEAGUE OF)
WOMEN VOTERS OF WASHINGTON,)
Plaintiffs,)
vs.)
The STATE OF WASHINGTON; TIM EYMAN,)
LEO J. FAGAN and M.J. FAGAN)
Defendants.)

No. 15-2-28277-8 SEA

**DECLARATION OF DOUG
ERICKSEN**

I, Doug Ericksen, declare as follows:

1 1. I am a citizen of the United States over the age of eighteen, have personal
2 knowledge of the facts stated herein, and am competent to testify to the matters stated in this
3 declaration.
4

5 2. I am a Washington state resident, taxpayer and elected official. Since 2011, I
6 have served as the State Senator for the people of Whatcom County's 42nd Legislative District.
7 From 1999 to 2010 I served the same district in the Washington State House of Representatives.
8 I currently serve as Chairman of the Senate Energy, Environment, and Telecommunications
9 Committee. In previous legislative sessions I have served on numerous committees, in several
10 leadership positions, and have various appointments standing and temporary special legislative
11 committees.
12

13 3. I am familiar with Initiative 1366 (I-1366), have read it, read the information in
14 the voters pamphlet about it, including the Attorney General's description and the OFM analysis
15 and the pro and con arguments. As a legislator, I have contemplated how the legislature should
16 implement I-1366.
17

18 4. I-1366 is conditional or contingency legislation where certain provisions apply
19 depending upon conditions in the future. In this case, I-1366 reduces the state sales tax rate on
20 April 15, 2016 if the legislature chooses not to refer a constitutional amendment to the voters that
21 contains certain provisions identified in I-1366. Conditional or contingency legislation is
22 nothing new and the legislature has historically enacted conditional legislation. For instance,
23 Senate Bill 5987 was approved by the legislature and signed by the Governor in 2015, which
24 provided if a low carbon fuel standard was adopted by executive order, then the transit funds
25 would be redirected to highway appropriation. In my 17 years serving in the legislature, I have
26 voted upon various types of conditional or contingency legislation. Another example of
27
28

1 conditional legislation was the "top two primary" Initiative 872, approved by voters in 2004.
2 Sec. 18 states: "This act takes effect only if the Ninth Circuit Court of Appeals' decision in
3 Democratic Party of Washington State v. Reed, 343 F.3d 1198 (9th Cir. 2003) holding the
4 blanket primary election system in Washington state invalid becomes final and a Final Judgment
5 is entered to that effect."
6

7 5. I have read the Declaration of Reuven Carlyle in Support of Plaintiffs' Motion for
8 Summary Judgment on Declaratory Relief and the Declaration of David Frockt in Support of
9 Plaintiffs' Motion for Summary Judgment on Declaratory Relief.
10

11 6. There are several statements in both declarations which are simply incorrect. For
12 instance, it is asserted that I-1366 "specifically prescribes the content of a proposed
13 constitutional amendment." It is clear from reading the text of the initiative that it specifically
14 prescribes certain content of a proposed constitutional amendment in order to avoid the reduction
15 in the sales tax. But given the legislature's process and its "checks and balances," I-1366's
16 constitutional amendment can only be described as the voters' preferred or hoped for version of a
17 constitutional amendment. The legislature has complete power to propose any tax-related
18 provisions for a constitutional amendment.
19

20 7. I also have no reason to believe that I-1366 will somehow cause a constitutional
21 amendment to be voted upon by voters unless the amendment is proposed by legislators, heard in
22 committees, deliberated upon by legislators, subject to amendments and voted upon by two-
23 thirds of both houses of the legislature. I-1366 does not bypass the legislative process for
24 proposing constitutional amendments.
25

26 8. There will be no constitutional amendment referred to the voters unless approved
27 by a two-thirds vote in both the House and Senate. Those same two-thirds of legislators may
28

1 suspend or repeal the sales tax reduction regardless of whether a constitutional amendment is
2 referred to the voters and, if so, what it contains. This happened recently with Initiative 1351
3 during the 2015 session. The legislature suspended a portion of that initiative with a two-thirds
4 vote. The power of the legislature is not limited by I-1366 regarding constitutional amendments
5 as Representative Carlyle or Senator Frockt suggest.
6

7 9. Representative Carlyle states that "I-1366 mandates that I essentially vote in favor
8 of one of those two alternatives in the upcoming January 2016 legislative session." That is not
9 true. While legislators may vote for or against any proposed constitutional amendment, no one is
10 mandated to vote for the reduction in the sales tax.
11

12 10. The sales tax reduction was mandated by the voters of the state and no legislator
13 is required to vote for it. Rather, I-1366 gives the legislature the option to avoid that result by
14 referring a constitutional amendment to the voters.
15

16 11. In paragraph 3 of the Carlyle Declaration, he states that a reduction in sales tax by
17 one percent will result in "drastic cuts to the state budget." It is simply premature to know the
18 overall effect of this year's legislative action. While the sales tax reduction in itself will reduce
19 state revenues, there is nothing in I-1366 that limits the legislature's ability to adjust spending or
20 increase other taxes. Such political decisions are often made in the context of the circumstances
21 at hand. It is impossible to know with any level of certainty how the legislature will address a
22 sales tax reduction if it chooses not to refer a constitutional amendment to the voters. It may in
23 fact motivate the legislature to make significant changes in the tax laws to have less reliance on
24 the sales tax, alter spending, or any combination of the two. There is no certainty what the
25 state's overall revenue will be simply by looking at the state's portion of the sales tax in a
26 vacuum. Contrary the statements made in the Carlyle Declaration, a reduction in the sales tax
27
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1 certainly would not result in a continuing violation of the contempt order issued by the
2 Washington Supreme Court in *McCleary v. State*.

3
4 12. In paragraph 5 of the Carlyle Declaration, it is stated that the definition of “raises
5 taxes” in a constitutional amendment designed after I-1366 would “virtually prohibit[] ...routine
6 technical fixes in the tax code, such as adjusting the dates that certain tax exemptions or
7 loopholes expire, or engaging in numerous other routine and administrative governance actions
8 that relate to revenue measures. Requiring a two-thirds supermajority vote for the technical ,
9 non-political actions described above will seriously compromise the legislature’s ability to
10 function.” I disagree for three primary reasons. First, changing the end date of a tax or
11 exemptions is not purely technical. These are policy-based decisions. Second, if the fixes he is
12 referring to are “non-political,” or merely technical corrections, it does not seem likely that it
13 will be impossible to obtain a two-thirds vote to approve them. Third, the definition of raising
14 proposed in I-1366 is current statutory law and has been the law since 2007.

15
16 13. The Carlyle Declaration also ignores that there was a two-thirds vote requirement
17 for taxes as a result of Initiative 601 adopted in the early 1990s and the legislature was able to
18 function for many years when a two-thirds vote requirement from Initiative 601 was followed.
19 The Carlyle Declaration ignores the fact that the two-thirds vote requirement was also in effect
20 during the 2008 and 2009 legislative sessions and balanced budgets were adopted during both of
21 those sessions. The two-thirds vote requirement also in effect during the 2011 and 2012
22 legislative sessions; nonetheless, taxes were increased by achieving the two-thirds threshold in
23 2012. The two-thirds vote requirement does not stop tax increases.

24
25 14. Paragraphs 6 and 8 of the Carlyle Declaration refer to the legislative process for
26 the legislature to consider constitutional amendments. I do not believe that this process will be
27
28

1 bypassed in any way with a constitutional amendment prompted by I-1366. Any amendment
2 will still need to be proposed in one more houses of the legislature, be subject to deliberation, be
3 subject to amendments and either be approved by both houses with a two-thirds vote or not, just
4 like any other constitutional amendment.
5

6 15. It is simply premature to know how the legislature will respond to I-1366, by
7 referring a constitutional amendment to the people, by referring more than one constitutional
8 amendment, by combining the provisions of a constitutional amendment addressed in I-1366
9 with other tax related provisions, by voting to repeal or even suspend I-1366's sales tax reduction
10 with a two-thirds vote. The legislature has many tools at its disposal and it should be given the
11 opportunity to address what the people of this state voted for.
12

13 16. Senator Frockt's Declaration claims I-1366 "presents the legislature with an
14 untenable Hobson's choice: either propose a specific constitutional amendment limiting tax and
15 fee increases or accept a one percent reduction in the state sales tax." Regardless of how one
16 views how "tenable" the choices are, the legislature is often in the position of making difficult
17 choices. Unlike other initiatives that do not involve conditional or contingency legislation, I-
18 1366 at least gives the legislature a choice instead of just mandating the sales tax reduction.
19

20 17. Senator Frockt's Declaration also refers to a gas tax bill that passed in the Senate
21 and House with a majority vote, but less than a two-thirds majority. One cannot assume that
22 legislators would vote in exactly the same way if there was a two-thirds vote requirement. The
23 assumption that "[h]ad the super majority rule been in place, SB 5987 would have been stopped
24 dead in its tracks" is speculative. Besides, his characterization of the bill as being "critical" and
25 necessary for "vital infrastructure projects" is simply his opinion. More importantly, one cannot
26 assume that legislators would vote in exactly the same way if there was a two-thirds vote
27
28

1 bypassed in any way with a constitutional amendment prompted by I-1366. Any amendment
2 will still need to be proposed in one more houses of the legislature, be subject to deliberation, be
3 subject to amendments and either be approved by both houses with a two-thirds vote or not, just
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6 15. It is simply premature to know how the legislature will respond to I-1366, by
7 referring a constitutional amendment to the people, by referring more than one constitutional
8 amendment, by combining the provisions of a constitutional amendment addressed in I-1366
9 with other tax related provisions, by voting to repeal or even suspend I-1366's sales tax reduction
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12

13 16. Senator Frockt's Declaration claims I-1366 "presents the legislature with an
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15 fee increases or accept a one percent reduction in the state sales tax." Regardless of how one
16 views how "tenable" the choices are, the legislature is often in the position of making difficult
17 choices. Unlike other initiatives that do not involve conditional or contingency legislation, I-
18 1366 at least gives the legislature a choice instead of just mandating the sales tax reduction.
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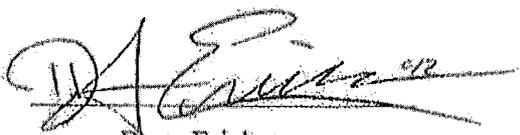
20 17. Senator Frockt's Declaration also refers to a gas tax bill that passed in the Senate
21 and House with a majority vote, but less than a two-thirds majority. One cannot assume that
22 legislators would vote in exactly the same way if there was a two-thirds vote requirement. The
23 assumption that "[h]ad the super majority rule been in place, SB 5987 would have been stopped
24 dead in its tracks" is speculative. Besides, his characterization of the bill as being "critical" and
25 necessary for "vital infrastructure projects" is simply his opinion.
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18. Because there are many options available to the legislature, the legislature should be given the opportunity to address I-1366 without judicial interference in declaring the initiative invalid before the legislature has had time to act.

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

Executed this 7th day of January, 2016, at Fernvale Washington.


Doug Erickson

DEFENDANT INITIATIVE SPONSORS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - #4

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FAX (425) 453-6224

APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

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

No. 15-2-28277-8 SEA

**DECLARATION OF TIM
EYMAN**

Plaintiffs,

vs.

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

Defendants.

I, Tim Eyman, declare as follows:

1. I am a citizen of the United States over the age of eighteen, have personal knowledge of the facts stated herein, and am competent to testify to the matters stated in this declaration.

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1 2. I was a co-sponsor of Initiative 1366 and have sponsored and pursued many tax-
2 related initiatives over the years in our state.

3 3. I am familiar with Initiative 1366 (I-1366) because I helped draft it and read the
4 information in the voters pamphlet about it, including the Attorney General's description and the
5 OFM analysis and the pro and con arguments. As a voter and interested citizen, I have a strong
6 interest in the policies in I-1366.
7

8 4. I-1366 is a straightforward taxpayer protection initiative that adopts legislation
9 that the Legislature has the power to enact. The initiative involves simple statutory changes. In
10 addition, the Attorney General assigned a ballot title to the initiative that gives the voters full
11 disclosure and complete notice of the initiative's policies.
12

13 5. As a co-sponsor of the initiative, throughout the campaign for I-1366, I made it
14 clear that I-1366 was conditional legislation that would result in one of two one-time, short-term
15 policies: either a one-time lowering of the sales tax in 2016 or a one-time referral of a
16 constitutional amendment in 2016. I-1366 does not result in the sales tax being further reduced
17 in 2017 or later years nor does it result in any referrals of a constitutional amendment in 2017 or
18 later years. It's a one-time lowering of the sales tax in 2016 or a one-time referral of a
19 constitutional amendment in 2016 (which may or may not pass). **And under no circumstances**
20 **will I-1366 result in both policies being adopted, only one of them, and voters were**
21 **informed of this fact repeatedly throughout the campaign.** For instances, on August 2, 2015,
22 during a KING 5 TV interview, when asked what the initiative does, I said: "Well, the Attorney
23 General's office writes an official ballot title for every initiative. And their ballot title says this
24 measure would lower the sales tax unless the legislature puts on the ballot a 2/3-for-taxes
25 constitutional amendment. So it's a really straightforward policy that we're talking about. It's
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1 called the Taxpayer Protection Act because that's what we're trying to do, to protect the
2 taxpayers either by lowering the sales tax or letting the people vote on a 2/3-for-taxes
3 constitutional amendment." In response to another question about it, I responded: "This time
4 the hope and the goal is to protect the taxpayers either by lowering the sales tax and letting us
5 keep more of our money if we're not gonna get this extra protection, or let us vote on a 2/3-for-
6 taxes constitutional amendment." When asked about whether I-1366 forces the legislature to
7 refer a constitutional amendment to the ballot, I said "There's a Seattle Times story that said it
8 very well: Eyman's initiative offers a choice: tax cut or a vote on a constitutional amendment.
9 And that's exactly what it is. It is a choice. We can't force them to do anything but I think the
10 voters can express their desire to have some kind of taxpayer protection either lowering the sales
11 tax and allowing us to keep more of our money or allow us to vote and have this constitutional
12 amendment. The initiative is kind of agnostic as to which direction they want the legislature to
13 go."
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17 6. Here are excerpts from the May 17, 2015 Seattle Times story that I referenced in
18 the KING 5 interview: "**Headline: Eyman initiative sets up choice: tax cut or constitutional**
19 **change.** ... I-1366 would lower the state sales tax from 6.5 to 5.5 percent unless the Legislature
20 places a constitutional amendment on the ballot by next April 15 requiring two-thirds legislative
21 approval — or majority voter approval — for any tax increases. ... But Eyman and supporters
22 say you only need to look at what's going on in Olympia these days to see why the initiative is
23 needed. They point to Gov. Jay Inslee and Democrats in the Legislature proposing \$1 billion or
24 more in new taxes, despite the state having \$3 billion in additional tax revenue coming in due to
25 the rebounding economy."
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1 7. In the voters pamphlet, in the pro argument in favor of Initiative 1366, it read, in
2 part: "I-1366 is the Taxpayer Protection Act – its intent is protecting taxpayers from Olympia's
3 insatiable tax appetite, either by reducing their crushing tax burden or letting the people vote on a
4 tougher-to-raise-taxes constitutional amendment. The initiative prods the Legislature to confront
5 the critical issue of overtaxation."
6

7 8. In its fiscal analysis in the voters pamphlet, Office of Financial Management
8 wrote: "The initiative presents the Legislature with a choice that leads to two possible and
9 mutually exclusive scenarios. The Office of Financial Management (OFM) cannot predict how
10 the Legislature will act. For the purposes of this fiscal impact statement, OFM describes the
11 fiscal impact of each scenario." Again, only one of I-1366's proposed policies will be enacted.
12 And which one it will be will be determined by the 2016 legislature.
13

14 9. After co-sponsoring several "2/3 initiatives" and seeing how overwhelmingly
15 supported this policy is by the voters, I hope that the 2016 legislature refers a 2/3-for-taxes
16 constitutional amendment to the 2016 ballot. The voters may approve it; they may not, but
17 they'll at least have the opportunity to vote on it. But if the Legislature chooses not to refer a
18 constitutional amendment, I am more than happy to see the sales tax reduced; after all, I have co-
19 sponsored other tax reducing initiatives and found them to be effective at protecting taxpayers
20 too. Either outcome is consistent with my goal when I co-sponsored I-1366: to protect
21 taxpayers.
22

23 10. With a great deal of assistance, I helped draft Initiative 1366. Its bill title reads:
24 "AN ACT Relating to taxes and fees imposed by state government." All nine sections of the
25 initiative clearly relate to and connect with this bill title.
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1 Section 1: describes the initiative's intent;
2 Section 2: amends RCW 82.08.020 and concerns the state sales tax;
3 Section 3: creates a new section and concerns the measure's effective date and the contingency
4 that the legislature may refer a two-thirds-for-taxes constitutional amendment to the ballot;
5 Section 4: amends RCW 43.135.031 and concerns cost analysis of tax and fee increase bills;
6 Section 5: amends RCW 43.135.041 and concerns tax advisory votes;
7 Section 6: creates a new section defining the phrase "raises taxes" which is identical to current
8 law;
9 Section 7: provides a construction clause (requires the initiative to be liberally construed to
10 "effectuate the intent, policies, and purposes of this act").
11 Section 8: makes the provisions severable; and
12 Section 9: establishes the title of the act, calling it the "Taxpayer Protection Act."

13
14 The Attorney General analyzed the initiative and assigned it the following Statement of
15 Subject: "Initiative Measure No. 1366 concerns state taxes and fees." All nine sections of the
16 initiative clearly relate to and connect with this Statement of Subject. The Attorney General's
17 Concise Description reads: "This measure would decrease the sales tax rate unless the
18 legislature refers to voters a constitutional amendment requiring two-thirds legislative approval
19 or voter approval to raise taxes, and legislative approval for fee increases." All of these
20 provisions are germane to the subject of state taxes and fees.
21
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23

24 11. When I filed the initiative's text with the Secretary of State, I put a heading at the
25 top "2/3 Constitutional Amendment". I recognized that it had no legal significance so it was
26 only placed there so that the Secretary of State could differentiate it from other initiatives topics
27 filed on the same day (Bring Back Our \$30 Car Tabs
28

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1 http://www.sos.wa.gov/assets/elections/initiatives/FinalText_721.pdf, Tougher on Tolls

2 http://www.sos.wa.gov/assets/elections/initiatives/FinalText_722.pdf, and Let the Voters Decide on Red-Light
3 Ticketing Cameras http://www.sos.wa.gov/assets/elections/initiatives/FinalText_723.pdf).

4
5 12. When I helped set up our political action committee, it was named "2/3
6 Constitutional Amendment". I recognized that it had no legal significance so it was only named
7 that to differentiate it from other initiatives by other sponsors.

8
9 13. When the petition was drafted and printed, it had a heading at the top that read
10 Tougher To Raise Taxes and just below that (and above the Attorney General's ballot title) it
11 read Let the Voters Decide on 2/3-For-Taxes Constitutional Amendment. I recognized that it
12 had no legal significance so it was worded that way in order to alert voters of one of the possible
13 outcomes from the initiative.

14
15 14. There was a vigorous campaign on I-1366. Our side made arguments for it and
16 opponents made arguments against it. The voters' pamphlet presented the issues thoroughly.
17 And voters sided with us and passed I-1366.

18
19 15. After it was announced that I-1366 had passed, the media reported that several
20 legislators were planning to propose constitutional amendments spurred by I-1366
21 (OLYMPIAN, Nov 5, 2015: State lawmakers to propose amending constitution in response to
22 Eyman's I-1366). Their proposals will undoubtedly be subjected to intense scrutiny, vigorous
23 discussion and debate, public hearings, lobbying, and legislative votes. I am certain that a
24 constitutional amendment will only be referred to the 2016 ballot if it is proposed and sponsored
25 by legislators in both chambers and only after receiving a two-thirds vote in both the House and
26 Senate. I also know that with a two-thirds vote in the House and Senate, the legislature can
27 amend or repeal Initiative 1366. I also know that the legislature may ultimately refer a
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1 constitutional amendment that does not contain the exact same policies proposed by I-1366
2 because the two-thirds legislative vote for a constitutional amendment can also, with that same
3 two-thirds vote, amend I-1366 and negate the initiative's sales tax reduction regardless of the
4 constitutional amendment's content. Nonetheless, I hope and pray that the legislature recognizes
5 the voters' clear desire to vote on a clean 2/3-for-taxes constitutional amendment.
6

7 16. From 1994 through 2005, the policies and provisions of I-601 were in effect,
8 including the two-thirds vote requirement. During that time, each legislative session adopted a
9 balanced budget and during some of those sessions, taxes were increased.
10

11 17. In 2005, the legislature suspended for two years the two-thirds vote requirement
12 and taxes were raised in 2005.

13 18. In 2006, the legislature voted to reestablish the two-thirds vote requirement one
14 year early.

15 19. In 2007, voters passed Initiative 960 and reinforced the legislature's two-thirds
16 vote requirement for raising taxes.
17

18 20. In 2008 and 2009, the two-thirds vote requirement was in effect and the
19 legislature adopted balanced budgets during both sessions without raising taxes.

20 21. In 2010, the legislature suspended for two years the two-thirds vote requirement
21 and raised numerous taxes costing taxpayers \$6.7 billion: Senate Bill 6143 imposed numerous
22 taxes on various items totaling \$4.78 billion (passed 52-44 in the House and 25-21 in the Senate),
23 House Bill 2493 imposed taxes on tobacco items totaling \$925.7 million (passed 54-43 in the
24 House and 28-17 in the Senate), House Bill 2956 imposed taxes on hospitals totaling \$683.1
25 million (passed 65-31 in the House and 26-15 in the Senate), House Bill 2561 imposed taxes on
26 construction totaling \$245.5 million (passed 59-38 in the House and 28-18 in the Senate), and
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1 Senate Bill 6846 imposed taxes on phone services totaling \$78.8 million (passed 56-34 in the
2 House and 29-12 in the Senate).

3 22. In November 2010, the voters reinstated the two-thirds vote requirement by
4 passing I-1053.

5
6 23. In 2011 and 2012, the two-thirds vote requirement was in effect. During the
7 **2012 legislative session, two bills that raised taxes were passed and both received more than**
8 **a two-thirds vote**; Engrossed Senate Bill 6635 imposed business & occupation taxes on out-of-
9 state banks totaling \$170 million (passed 74-24 in the House and 35-10 in the Senate) and House
10 Bill 2590 imposed taxes on petroleum products totaling \$24 million (passed 93-1 in the House
11 and 40-0 in the Senate).

12
13 24. In 2013, the two-thirds vote requirement was rejected by the state supreme court
14 so **during the 2013 legislative session, it was not in effect. Five bills that raised taxes were**
15 **passed and almost all of them passed with over a two-thirds vote**: Substitute Senate Bill
16 5444 imposed taxes on leases for publicly-owned property totaling \$2 million (passed 91-6 in the
17 House and 47-2 in the Senate), Senate Bill 5627 imposed taxes on commuter air carriers totaling
18 \$500,000 (passed 71-22 in the House and 41-8 in the Senate), Engrossed Substitute House Bill
19 1846 imposed taxes on insurance for pediatric oral services (passed 95-0 in the House and 47-1
20 in the Senate), Second Engrossed Second Substitute House Bill 1971 imposed taxes on telephone
21 and telecommunications services totalling \$397 million (passed 77-15 in the House and 36-11 in
22 the Senate), and Engrossed House Bill 2075 imposed taxes on certain property transfers totaling
23 \$478 million (passed 53-33 in the House and 30-19 in the Senate).

24 25. In 2014, the two-thirds vote requirement was not in effect. Two bills raising taxes
25 were passed: Senate Bill 6505 imposed taxes on marijuana totaling \$24.9 million (passed 55-42
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1 in the House and 47-0 in the Senate) and Engrossed Substitute House Bill 1287 imposed a
2 leasehold excise tax on tribal property totaling \$1.3 million (passed 61-37 in the House and 37-
3 12 in the Senate).

4
5 **26. In 2015, the two-thirds vote requirement was not in effect. Four bills raising**
6 **taxes were passed and almost all of them received over a two-thirds vote:** Engrossed
7 Substitute House Bill 1449 imposed taxes on crude oil or petroleum products transported by
8 railroad totaling \$17 million (passed 95-1 in the House and 41-8 in the Senate), Second
9 Substitute Senate Bill 5052 imposed taxes on medical marijuana sales (passed 60-36 in the
10 House and 41-8 in the Senate), Second Engrossed Substitute Senate Bill 5987 imposed taxes on
11 motor vehicle fuel totaling \$3.7 billion (passed 54-44 in the House and 37-7 in the Senate), and
12 Engrossed Substitute Senate Bill 6138 imposed taxes on software manufacturers totaling \$1.45
13 billion (passed 60-38 in the House and 35-10 in the Senate).

14
15 **27. Conclusions to be drawn from our state's 21 year history with the two-thirds vote**
16 **requirement (outlined in points 16-25): the two-thirds vote requirement does not stop the**
17 **legislature from raising taxes; it only makes tax increases a last resort, rather than a first**
18 **response. In addition, it is shown that from 1994 through 2015, even when a two-thirds vote**
19 **requirement was not in effect, tax increases regularly passed the House and Senate with more**
20 **than a two-thirds vote. The fear-mongering and predictions of gridlock in the Carlyle and Frockt**
21 **declarations are clearly contradicted by our state's extensive experience with the two-thirds vote**
22 **requirement.**

23
24
25 **28. If the legislature cannot pass a tax increase with a two-thirds vote, is the**
26 **legislature unable to raise taxes? No. With a majority vote in the House and Senate, the**
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1 legislature can refer revenue-raising bills to the ballot. On several occasions, the legislature has
2 referred referendum bills to the ballot which proposed tax and/or fee increases:

3 * The 1991 legislature voted to refer Referendum 42 to the ballot which proposed higher taxes
4 on telephone lines.

5
6 * The 1994 legislature voted to refer Referendum 43 to the ballot which proposed higher taxes
7 on cigarettes, liquor, and pop syrup.

8 * The 1997 legislature voted to refer Referendum 48 to the ballot which proposed higher taxes
9 for a sports stadium.

10
11 * The 2000 legislature voted to refer Referendum 50 to the ballot which proposed certain fee
12 increases.

13 * The 2002 legislature voted to refer Referendum 51 to the ballot which proposed higher taxes
14 and fees for transportation.

15 Conclusion: requiring two-thirds legislative approval or voter approval for tax increases
16 does not stop tax increases; it only makes them a last resort, not a first response.

17
18 29. The majority opinion in *League of Education Voters* wrote: "Our holding today is
19 not a judgment on the wisdom of requiring a supermajority for the passage of tax legislation.
20 Such judgment is left to the legislative branch of our government. Should the people and the
21 legislature still wish to require a supermajority vote for tax legislation, they must do so through
22 constitutional amendment." Now that the people and the legislature have accepted the court's
23 invitation, this Court should not interfere with a legislative process that is currently unfolding
24 that does exactly what the court counseled.

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26 30. Justice Charles Johnson's dissent in LEV is analogous to this case: "... this effort
27 to enact a legislative proposal has consistently been recognized by this court as a political
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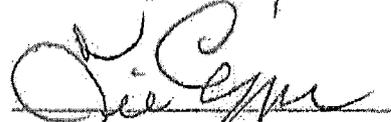
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1 legislative action, in which courts have not interfered, nor should they. Because of the multitude
2 of possible outcomes, the essence of the political legislative process involves many competing
3 political choices into which courts should not intrude to act as referee." That's exactly the same
4 situation here.
5

6 31. I urge this court to resist substituting its' policy preferences for those chosen by
7 the people and the legislature. Such policy decisions are the pervue of the legislative branch,
8 not the judiciary, as stated in the court's ruling in LEV.
9

10 I declare under penalty of perjury under the laws of the State of Washington that the
11 foregoing is true and correct.

12 Executed this 11th day of January, 2016, at Mukilteo, Washington.

13
14 
15 Tim Eymann

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DECLARATION OF SERVICE

I, Richard M. 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 January 11, 2016, I caused a true copy of the foregoing to be served on the following person via electronic mail, pursuant to consent of counsel:

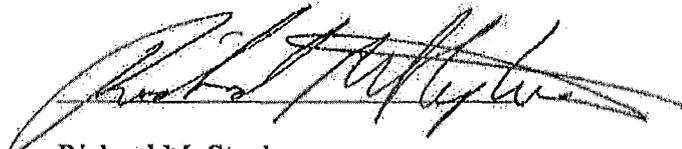
PACIFIC LAW GROUP LLP
Paul J. Lawrence
Paul.Lawrence@pacificallawgroup.com

And

OFFICE OF THE WASHINGTON
STATE ATTORNEY GENERAL
Callie A. Castillo
CallieC@ATG.WA.GOV

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

Executed this 11th day of January, 201, at Bellevue, Washington.



Richard M. Stephens

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OFFICE RECEPTIONIST, CLERK

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Please find attached Appellant's Opening Brief.

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