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STATE OF WASHINGTON
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NO. 95749-5

SUPREME COURT OF THE STATE OF WASHINGTON

TIM EYMAN and MICHAEL J. PADDEN,
Respondents/Cross Appellants

v.

KIM WYMAN, in her capacity as Secretary of State,
Defendant,

THE WASHINGTON STATE LEGISLATURE; and DE-ESCALATE
WASHINGTON
Appellants/Cross Respondents,

CYRUS HABIB, in his capacity as Lieutenant Governor,
Intervenor

**SECRETARY OF STATE'S ANSWER TO
MOTION FOR RECONSIDERATION**

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ANSWER TO MOTION FOR RECONSIDERATION

Yesterday the Court issued its decision that affirmed placement of Initiative 940 on the State's general election ballot. In accordance with that decision, the Secretary of State's Office began (1) notifying counties which statewide measures would be included on their ballots; (2) preparing final certification of the measures (RCW 29A.72.250); and (3) preparing the final content of the statewide Voters' Pamphlet, which must include the ballot title, text, explanatory statement, fiscal impact, and committee statements for all statewide measures appearing on the ballot (RCW 29A.32.070). As previously explained to this Court, all of these are necessary steps to meet the printing and mailing deadlines for military and overseas voters under federal and state law. 52 U.S.C. § 20302(a)(8); RCW 29A.40.070 (setting the deadline for mailing military and overseas ballots).

The Secretary of State's Office also provided notice of the Court's decision to the two different committees created in anticipation of the possible outcomes of this case.¹ Each of these committees were to provide their respective advocacy statements to the Secretary of State's Office last

¹ To satisfy the requirements of RCW 29A.32.060, two sets of pro and con committees were established to prepare advocacy statements for and against (1) Initiative 940 alone and (2) Initiative 940 and Initiative 940B as alternatives. Each committee was to prepare their respective statements and rebuttal statements in anticipation of this Court's decision so that the required statements would be ready for inclusion in the Voters' Pamphlet no matter the outcome.

night. Only the committees for Initiative 940 alone submitted for and against statements. Rebuttal statements are due August 31, 2018.

Because this Court called for an answer to De-Escalate Washington's Motion for Reconsideration, the Secretary of State's Office has now halted progress on each of the actions described above. The Secretary continues to take no position on the merits of the case. The Secretary, however, does need to know as soon as possible whether this Court will reconsider its decision. If the Court does reconsider, the Secretary also needs to know with certainty what exactly, if anything, concerning Initiative 940 would appear on the ballot and in the Voters' Pamphlet.

Specifically, if this Court were to adopt De-Escalate Washington's alternate proposal of Initiative 940 and ESHB 3003 appearing as alternatives, the Secretary of State needs to know what that means. She needs to know whether the alternative is ESHB 3003 alone exactly as adopted by the Legislature, or whether the Secretary should assume Initiative 940B is the law that would result if Initiative 940 were amended by ESHB 3003. The Legislature did not incorporate key portions of Initiative 940 into ESHB 3003, and therefore, if ESHB 3003 were adopted as written alone, without incorporating all of the provisions of Initiative 940, the result would be nonsensical.

In anticipation of the various outcomes of this case, the Attorney General's Office prepared a provisional ballot title and explanatory statement if Initiative 940 and an amended version of Initiative 940 would appear in the Voters' Pamphlet. This assumes the Secretary of State would start with Initiative 940 and incorporate ESHB 3003's amendments to create the Initiative 940B that voters will see in the Voters' Pamphlet. The Secretary of State is prepared to print the Attorney General's ballot title, as well as its explanatory statement and a text of Initiative 940B that reflects the amendments that ESHB 3003 would make to Initiative 940, if adopted. However, the Secretary would want to be certain that this is what the Court would want, as opposed to Initiative 940 and ESHB 3003 each appearing alone.

The Secretary of State and county election officials need to receive this Court's resolution of this case as soon as possible in order to print and mail ballots and voters' pamphlets to military and overseas voters by the statutory deadline of 45 days before Election Day.

RESPECTFULLY SUBMITTED this 29th day of August 2018.

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s/ Callie A. Castillo

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I certify, under penalty of perjury under the laws of the state of Washington, that on this date I served a true and correct copy of the foregoing document via electronic mail per the agreement between the parties on the following:

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DATED this 29th day of August 2018, at Olympia, WA.
s/Stephanie N. Lindey
STEPHANIE N. LINDEY
Legal Secretary

SOLICITOR GENERAL OFFICE

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