IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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,

v.

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

Defendants.

No. 15-2-28277-8 SEA

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

INTRODUCTION

The democratic right of the citizens to enact legislation through the initiative process is expressly preserved by the Washington Constitution. That right, however, is circumscribed by limits intended to also protect the structure of our representative government, the integrity of the legislative process and the rights of the minority.

Somewhat paradoxically, perhaps, protection is also there for the majority that falls short of a supermajority.

This action challenging the constitutionality of Initiative 1366 came on for hearing on January 19, 2016 before the undersigned Judge of the above-entitled Court. The plaintiffs were represented by Paul Lawrence, Kymberly Evanson and Sarah Washburn; the defendant State of Washington was represented by Callie Castillo and Rebecca Glasgow; and the individual defendants were represented by Richard Stephens. After reviewing the evidentiary and legal submissions of the parties, the Court heard the thoughtful arguments of counsel. Having considered the foregoing, together with all of the legal authorities cited by the parties, the Court now makes and enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Several of the plaintiffs appear as individual taxpayers, credibly asserting, on behalf of themselves and the communities they serve, a concern that harm would result from the initiative's contemplated adoption of either a sales tax reduction or a constitutional amendment effectively reducing state tax revenues.

2. Two of the plaintiffs also appear as members of the Washington legislature, credibly asserting a concern that the effect of the initiative would be to impair their ability to uphold their sworn duties to their constituents.

3. One of the plaintiffs appears as an association, credibly asserting on behalf of its members, in addition to those interests stated in Finding No. 1, an interest in promoting the values and established mechanisms of our representative democracy.

4. Initiative 1366 ("I-1366") was approved by a narrow vote in the statewide election of November 2015. The terms of that initiative need not be set forth in detail as they are well known to the parties and are matters of public record. Suffice it to say the initiative enacts an immediate reduction in the state sales tax that can only be avoided if a constitutional amendment requiring a supermajority for tax increases is put forward for a vote of the people. The ballot title's "concise description" of the initiative consists of thirty words that follow "This measure would..." Five of those words concern the sales tax while twenty-five of them address the desired constitutional amendment.

5. It really is beyond dispute that the impetus behind I-1366 was to further the goal of adoption of a constitutional amendment requiring a two-thirds vote of the legislature for any tax increase. It is also beyond dispute that a constitutional amendment cannot be adopted by initiative but must first be "proposed" by the legislature and thereafter submitted to a popular vote. What is disputed is whether the mechanism by which this initiative would further its goal accords the legislature its proper role in proposing such an amendment or effectively compels such action in a way that violates the Washington constitution.

6. The requirement of constitution article XXIII that constitutional amendments must initially be "proposed" in the legislature by a 2/3 vote is intended to foster debate and careful consideration before the amendment process is put in motion. The terms of this initiative, with its application of direct, substantial and immediate pressure on legislators, either blithely or belligerently undercuts that process. Even if the 2016 legislature were not facing a daunting and immediate challenge to solve the school funding crisis, the prospect of a severe budget cut to take effect in April (said to

amount to $1.4 billion in the first year) would greatly impede the intended deliberative process; in the operative reality, it renders it an impossibility.

7. The fact that the initiative contains quite specific requirements for the content of the constitutional amendment it is proposing (in distinction from what the legislature might freely propose) confirms that the initiative serves to deprive legislators, individually and collectively, of their rights and duties. In order to avoid the steep reduction in the sales tax revenues previously deemed necessary, the legislature would now be required to "...refer 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 legislature would not be free to consider, say, a 60% supermajority requirement, a different scope for what would be deemed to "raise taxes" or a different approach to this wholly new method for calculating user fees. The initiative has effectively *proposed* the terms of the constitutional amendment rather than leaving that process to the legislature.

8. In addition to "the deliberative nature of a legislative assembly," another recognized benefit behind the rule of article XXIII is the "tempering element of time." Ford v. Logan, 79 Wn. 2d 147, 156, 483 P.2d 1247 (1971). Ordinarily, it may take a session or two or more before both houses of the legislature can hammer out precise language for a proposed amendment that will garner the necessary support of 2/3 of the members of each body. I-1366 would cast aside this benefit by compelling the use of very specific language and mandating that it must be proposed within sixty days.

9. Article II, section 19 of the Washington constitution prohibits enactment of a single piece of legislation that contains two subjects. This bar applies to an initiative if

each subject is an independently operative piece of legislation and the actions are not part of a rational unity. The defendants suggest that only section 2 of the initiative (the sales tax reduction) is an operative "rule of action" while section 3 (referencing the constitutional amendment) is a mere "policy expression." However, pursuant to section 3, there will be a substantial reduction in the state's projected revenue collection if the legislature is unwilling or unable to pass along the proposed amendment and this would not be the case (at least not in the short term) if it did comply with the initiative's directive. As such, section 3 is not merely "precatory" (i.e., a statement of desire) or simply "policy fluff" but is an operative piece of legislation upon which a great deal depends. (I-1366's policy pronouncement that "the state needs to exercise fiscal restraint" is the equivalent of "politicians should keep their promises" as discussed in Pierce County v. State, 150 Wn. 2d 422, 435, 78 P. 3d 640 (2003); both are quite true but in the absence of some "mechanism for bringing about such a utopian notion," they are ineffective in a piece of legislation. The same cannot be said of I-1366's section 3.)

10. It is impossible to determine how many people voted for this initiative because they desired adoption of the constitutional amendment at its heart and how many voted for it because they desired the short-term relief of the immediate reduction in the sales tax. No doubt there were some – an undeterminable number – who desired the one objective but not the other.

Having made the foregoing findings of fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action.

2. The issues before the court are primarily issues of law. Partially due to intertwining with the facts and partially in service of narrative flow, portions of the foregoing "Findings" could or should be labeled Conclusions of Law. These are hereby designated as such and incorporated by this reference into this section of this Order.

3. Standing. The public importance of these issues is, of course, not a basis for standing but it is a basis for taking a liberal view of the standing requirement. These plaintiffs have sufficiently asserted threats to their personal and associational interests such that they have standing to raise this challenge to the initiative.

4. Justiciability. The issues herein present an active dispute that is justiciable today. The dispute is genuine and particularly ripe in this season. No real purpose would be served by waiting to see whether action, conscious inaction or paralysis is the legislative response; the issues remain the same.[1]

5. It is solely the province of the legislative branch of our representative government to "propose" an amendment to the state constitution. The intended process – one that is constitutionally mandated – is one that facilitates a calm deliberation and independent weighing of alternatives before a proposed amendment is submitted for public review. That process is derailed by the pressure-wielding mechanism in this initiative which exceeds the scope of the initiative power.

[1] One cannot help but be reminded of the tight Jack Benny requesting more time to weigh his choices when confronted with a "your money or your life" demand.

6. I-1366 violates art XXIII of the Washington constitution in usurping the role of the legislature by *proposing* precise terms for a constitutional amendment while applying compulsion to quickly move it forward.

7. I-1366 abridges the plenary powers of the 2016 legislature by tying its hands in an impermissible way. See, Washington State Farm Bureau Fed'n v. Gregoire, 162 Wn. 2d 284, 301, 174 P. 3d 1142 (2007).

8. The purpose of Article II, section 19 is to ensure that enacted legislation has won approval on its own merits and not those of some other thoroughbred to which its wagon may be hitched. 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 relating to not only future tax increases but also the calculation of user fees. Consistent with the holdings of Washington Toll Bridge Authority v. State, 49 Wn. 2d 520, 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.

9. It cannot be determined that the sales tax reduction would have been enacted were it not for its being used as a device to further the overriding purpose of a constitutional amendment requiring a supermajority vote for tax increases. Accordingly, section 2 cannot stand on its own today severed from the unconstitutional section 3. The initiative must be struck down in its entirety.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby orders as follows:

1. Plaintiffs have established a basis for entitlement to the declaratory relief they seek and the plaintiffs' motion is GRANTED.

2. For the reasons stated herein, I-1366 is found to violate the cited provisions of the Washington Constitution and, accordingly I-1366 is hereby declared void in its entirety.

Dated this 21st day of January 2016.

Honorable William L. Downing