

1 X EXPEDITE
2 No hearing set
3 X Hearing is set
4 Hearing Date: April 20, 2022 (trial setting date)
5 Hearing Time: N/A
6 Judge/Calendar: Hon. Indu Thomas
7
8
9

10 SUPERIOR COURT OF THE STATE OF WASHINGTON
11 THURSTON COUNTY

11 In the Matter of:)
12 A CHALLENGE TO THE BALLOT TITLE) No. 22-2-00796-34
13 AND SUMMARY OF INITIATIVE NO. 1929)
14) PETITIONERS' OPENING
15) BRIEF IN SUPPORT OF APPEAL
16) OF BALLOT TITLE AND
17) SUMMARY FOR INITIATIVE
18) NO. 1929
19)
20)
21)
22)
23)
24)

25 **I. INTRODUCTION AND RELIEF REQUESTED**

26 Petitioners J. Vander Stoep and Repeal the Capital Gains Income Tax appeal the ballot
27 title and ballot measure summary issued by the Attorney General's Office ("AGO") for Initiative
28 Measure No. 1929.¹ As drafted, the AGO's proposed ballot title exceeds the thirty-word limit in
29 RCW 29A.72.050(1), and the Court will have to make some changes so that it complies. In an
30 attempt to comply with the thirty-word limit, the ballot title improperly hyphenates capital gains,
31 counts "sale/exchange" as one word, and employs a convoluted structure, the result of which is a
32

33 ¹ "Under RCW 29A.72.080, a person may challenge the ballot title of an initiative in Thurston
34 County Superior Court within five days of its filing with the Secretary of State. The superior
35 court then examines the ballot title, measure, and objections 'and shall, within five days, render
36 its decision....' RCW 29A.72.080." *Wash. Ass'n for Substance Abuse & Violence Prevention v.*
37 *State*, 174 Wn.2d 642, 661, 278 P.2d 632 (2012).

1 confusing word salad.

2 Additionally, the proposed ballot title and ballot measure summary for I-1929 will
3 mislead Washington voters about the measure's content and create undue prejudice against it:
4 the AGO's proposed ballot title and ballot measure summary describe RCW 82.87 as an "excise
5 tax" on the sale or exchange of certain capital assets despite the Superior Court ruling that RCW
6 82.87 is not an excise tax but an income tax. That ruling has been in place at every step of I-
7 1929's process to date: when I-1929 was filed, when the AGO issued the ballot title letter, and
8 when this appeal was filed. In an effort to create prejudice against I-1929, the AGO's proposed
9 title picks one side of the "excise tax" vs "income tax" debate about the nature of the tax, and it
10 has picked the side rejected by the only court that will have considered the issue by the time the
11 measure goes to the ballot in November.

12 Finally, the AGO's proposal cherry-picks just two specific exemptions, both of which
13 favor the initiative's opponents, and inaccurately describes those exemptions without any
14 qualifications. This will create unfair prejudice against I-1929.

15 The Court can resolve these problems by revising the proposed ballot title and ballot
16 measure summary for I-1929. Petitioners have proposed a title and summary that avoid these
17 issues, striking a middle ground in the "income tax" versus "excise tax" debate such that the
18 descriptions are accurate regardless of how that litigation ultimately resolves. The Court should
19 require the Secretary of State to use Petitioners' proposed title and summary, included in
20 Petitioners' proposed order.

21 II. FACTS

22 A. The Capital Gains Tax Imposed by RCW 82.87.

23 Amendment 14 to the Washington Constitution defines property to "mean and include
24 everything, whether tangible or intangible, subject to ownership." Const. art. VII, § 1. In 1933,
25 the Washington Supreme Court held that a graduated state income tax was a non-uniform tax on
26 property in violation of the Washington Constitution. *Culliton v. Chase*, 174 Wn. 363, 25 P.2d
27

1 81 (1933). In 1936, the Washington Supreme Court again invalidated a graduated income tax
2 that the Legislature had described as a tax on “the privilege of receiving income.” *Jensen v.*
3 *Henneford*, 185 Wn. 209 (1936). Between 1934 and 2010, Washington voters have rejected ten
4 proposals to impose a personal or corporate income tax and in 2021 voted to repeal the tax at
5 issue here in an advisory vote. See Jason Mercier, *History of income tax votes in Washington*,
6 WASHINGTON POLICY CENTER (Oct. 17, 2016),
7 <https://washingtonpolicy.org/publications/detail/history-of-income-tax-votes-in-washington>.

8 In 2021, Governor Inslee signed into law ESSB 5096, Declaration of Harry Korrell at ¶ 2,
9 Ex. 1, codified at RCW 82.87.010 *et seq.* (“RCW 82.87”). RCW 82.87.040 imposes a seven
10 percent tax on “Washington capital gains” earned by individuals over the course of a year. RCW
11 82.87.020(13) defines “Washington capital gains” as “an individual’s adjusted capital gain, as
12 modified in RCW 82.87.060, for each return filed under this chapter.” RCW 82.87.020(1)
13 defines “adjusted capital gain” in reference to the federal income tax: “federal net long-term
14 capital gain” subject to a number of defined additions and deductions. RCW 82.87.020(7)
15 defines “long-term capital gain” as “gain from the sale or exchange of a long-term capital asset.”
16 RCW 82.87.020(6) defines “long-term capital asset” as “a capital asset that is held for more than
17 one year.” And RCW 82.87.020(2) defines “capital asset” by reference to the internal review
18 code: “the same meaning as provided by Title 26 U.S.C. Sec. 1221 of the internal revenue code
19 and also includes any other property if the sale or exchange of the property results in a gain that
20 is treated as a long-term capital gain under Title 26 U.S.C. Sec. 1231 or any other provision of
21 the internal revenue code.”

22 As “Washington capital gains” are the starting point in determining an individual’s tax
23 liability, one must first identify an individual’s federal net long-term capital gain reportable for
24 federal income tax purposes. RCW 82.87.020(3). From there, an individual may include a loss
25 carryforward so long as it is attributable to Washington and not carried back for federal income
26 tax purposes. RCW 82.87.040(3). Next, he or she can deduct long-term capital gains from the
27

1 capital gains tax, including gains from certain real estate transactions, retirement plans, and
2 business transactions (such as commercial fishing privileges). RCW 82.87.050.

3 From this initial set of calculations, the tax authorizes individuals to make certain
4 deductions: (1) a \$250,000 standard deduction per individual (or combined in the case of spouses
5 or domestic partners); (2) amounts the state is prohibited from taxing under the U.S. or
6 Washington Constitution; (3) adjusted capital gain derived from the sale or transfer of a
7 taxpayer's interest in a qualified family-owned small business; and (4) \$100,000 charitable
8 contributions on top of the \$250,000 standard deduction. RCW 82.87.060. Finally, the taxpayer
9 may credit taxes paid to other taxing jurisdictions on capital gains derived from capital assets in
10 that other taxing jurisdiction to the extent those capital gains are included in the calculation of
11 Washington capital gains. RCW 82.87.100.

12 Taxpayers must file their capital gains tax return on or before the deadline to file federal
13 income tax returns. RCW 82.87.110(1)(a). A taxpayer who obtains a time extension for filing
14 their federal income tax returns is entitled to the same time extension for their capital gains tax
15 filing so long as they provide Washington with their extension confirmation number or other
16 satisfactory evidence. RCW 82.87.110(5). A taxpayer who owes money under the capital gains
17 tax is required to file a copy of his or her federal income tax return as well as all schedules and
18 supporting documentation. RCW 82.87.110(2).

19 **B. Douglas County Superior Court Declares the Capital Gains Tax an**
20 **Unconstitutional Income Tax.**

21 In 2021, plaintiffs challenged in Douglas County Superior Court the capital gains tax
22 imposed by ESSB 5096. Korrell Decl. ¶ 3-4, Ex. 2 & 3. The plaintiffs alleged the tax violates
23 (1) the Commerce Clause of the United States Constitution; (2) the uniformity and one-percent
24 limit requirements set forth in Article VII, Sections 1 & 2 of the Washington Constitution; and
25 (3) the Privileges and Immunities Clause of Article I, Section 12 of the Washington Constitution.
26
27

1 *Id.* The claim pertaining to Article VII, Sections 1 & 2 of the Washington Constitution is
2 relevant to this ballot title appeal.

3 On March 1, 2022, Douglas County Superior Court held that the RCW 82.87 capital
4 gains tax is properly characterized as an income tax and that, as an income tax, it is an
5 unconstitutional property tax. Korrell Decl. ¶ 5, Ex. 4 at 26. The Court listed a number of
6 “incidents” of the tax that showed “the hallmarks of an income tax rather than an excise tax.” *Id.*
7 at 23-26. These included the tax’s reliance on federal IRS income tax returns; IRS’s
8 characterization of the tax as an income tax; the annual levy of the tax, not at the time of each
9 transaction; the tax’s application to net capital gain rather than gross value; consideration of
10 various deductions and exclusions; and its imposition on individuals only rather than also on
11 corporations. *Id.* at 23-25. On March 22, 2022, the Court issued its order rejecting the State’s
12 contention that the tax was an “excise tax,” declaring the capital gains tax unconstitutional and
13 invalid and, therefore, void and inoperable as a matter of law. *Id.* at 11.

14 On March 25, 2022, the State of Washington filed a notice of appeal with the Washington
15 Supreme Court seeking direct review of the Douglas County Superior Court’s order. *Id.*

16 **C. I-1929 and the AGO’s Proposed Ballot Title and Ballot Measure Summary.**

17 On March 21, 2022, J. Vander Stoep filed Initiative Measure 1929. Korrell Decl. ¶ 6, Ex.
18 5. I-1929 is not an amendatory measure; it is a straightforward repealer of RCW 82.87. If
19 enacted, I-1929 would apply retroactively to January 1, 2022, as well as prospectively. *Id.*

20 On April 6, 2022, the AGO submitted to the Secretary of State the following ballot title
21 and ballot measure summary:

22 **BALLOT TITLE**

23 Statement of Subject: Initiative Measure No. 1929 concerns taxes.

24 Concise Description: This measure would repeal a 7% excise tax on annual
25 capital-gains above \$250,000 by individuals from the sale/exchange of stocks and
certain other capital assets (the tax exempts real estate and retirement accounts).

26 Should this measure be enacted into law? Yes [] No []

BALLOT MEASURE SUMMARY

This measure would repeal an excise tax imposed on the sale or exchange of certain long-term capital assets by individuals who have annual capital gains of over \$250,000. The tax applies to the sale or exchange of stocks, bonds, and certain other long-term capital assets, but exempts real estate, retirement accounts, and certain other assets. This repeal would operate retroactively to January 1, 2022, as well as prospectively.

Korrell Decl. ¶ 7, Ex. 6. The AGO’s proposed ballot title and ballot measure summary ignore the Douglas County Superior Court’s declaratory judgment ruling and state that I-1929 would repeal an “excise tax.” *Id.* The summary also wrongly states the tax would apply to transactions (“the sale or exchange”) rather than income. However, a person could engage in dozens of sales or exchanges of assets and pay no tax; the tax only applies if the net income from those sales is above \$250,000. The AGO’s proposal is thus misleading and creates prejudice against I-1929. The Court should reject it and revise it as explained in detail below.

III. ARGUMENT

A. The AGO’s Proposed Concise Description Exceeds the 30-Word Limit.

The Court must revise the AGO’s proposed concise description because it exceeds the 30-word limit and is confusing. RCW 29A.72.050(1) sets forth the standard for the concise description:

The concise description must contain no more than thirty words, be a true and impartial description of the measure’s essential contents, clearly identify the proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for or against the measure.

Id. The AGO’s proposed concise description contains thirty-two words. In an attempt to conform to the word limit, the concise description hyphenates “capital gains” and places a slash between the words “sale” and “exchange.” *Id.* The concise description is only thirty words if “capital-gains” and “sale/exchange” are each counted as one word. But “capital-gains” and “sale/exchange” are each two words. A word limit means nothing if it can be circumvented by improper punctuation.

1 Capital gains are two words, not one, and are never combined by a hyphen. The
2 dictionary does not hyphenate “capital gains.” *Capital gain*, MERRIAM-WEBSTER.COM
3 DICTIONARY, <https://merriam-webster.com/dictionary/capital%20gain> (last visited Apr. 13,
4 2022). Neither federal law nor federal authorities hyphenate capital gain. *See, e.g.*, 26 U.S.C.
5 § 1222 (“The term ‘long-term capital gain’ means gain from the sale or exchange of a capital
6 asset held for more than 1 year, if and to the extent such gain is taken into account in computing
7 gross income.”); I.R.S. Topic No. 409 Capital Gains and Losses (Feb 3, 2022). And “capital-
8 gains” is not a term of art in Washington State. *See, e.g.*, RCW 82.87.020 (“‘Adjusted capital
9 gain’ means federal net long-term capital gain.”); Korrell Decl. ¶ 8, Ex. 7 at 1 (“A capital gains
10 tax (CGT) is a tax on the profit realized . . .”). Even the AGO’s proposed ballot measure
11 summary spells out capital gains. As capital gains are two words, the proposed concise
12 description violates the thirty-word limit, and the Court must revise it to comply.

13 In addition, the proposed concise description fails the thirty-word limit because
14 “sale/exchange” are two words, not one. The tax at issue purports to impose a tax “on the sale or
15 exchange of long-term capital assets.” RCW 82.87.040. The proposed concise description
16 replaces the words “sale or exchange” with “sale/exchange.” Joining the words “sale” and
17 “exchange” with a slash does not combine them into one word, the slash just replaces “or.” As
18 “sale” and “exchange” are two words, the proposed concise description violates the thirty-word
19 limit and should be redrafted to comply with statutory requirements.

20 Further, the proposed concise description’s shortcuts and structure create a confusing
21 description of the essential contents of the measure. There are at least two issues with how the
22 proposed description describes the tax: “this measure would repeal a 7% excise tax on annual
23 capital-gains above \$250,000 by individuals from the sale/exchange of stocks . . .” First, it
24 seems as if there is a verb, like “earned,” that should precede “by individuals.” Capital asset
25 appreciation is not “by individuals”; individuals earn profit from capital asset appreciation. A
26 natural reading of the text is that the tax is imposed “by individuals,” rather than the State, which
27

1 is clearly wrong. Second, replacing “or” with a slash is confusing. The slash punctuation mark
2 has various meanings, including that two words are in conflict (such as love/hate). Using a slash
3 in the description of the content of the measure could cause confusion and, thus, prejudice the
4 measure. There is no reason the ballot title, which is all that most voters will read, should
5 present the essential contents of the ballot measure in such an imprecise and confusing manner.

6 **B. The Court Should Revise the AGO’s Proposed Concise Description and**
7 **Ballot Title Summary to Remove References to an Excise Tax.**

8 In general, ballot titles must be clear and should not confuse voters. *Municipality of*
9 *Metro. Seattle v. City of Seattle*, 57 Wn.2d 446, 357 P.2d 863 (1960). This rule “has particular
10 importance in the context of initiatives since voters will often make their decision based on the
11 title of the act alone, without ever reading the body of it.” *Citizens for Responsible Wildlife*
12 *Mgmt.*, 149 Wn.2d 622, 639, 71 P.3d 644 (2003); *see also Wash. Assoc. for Substance Abuse &*
13 *Violence Prevention v. State*, 174 Wn.2d 642, 667, 278 P.3d 632 (2012) (“when laws are passed,
14 people should know what is in them, especially those voting on the laws.”) (Wiggins, J.,
15 dissenting).

16 As a predicate matter, labeling RCW 82.87 an excise tax is neither true nor impartial and
17 will confuse voters. On March 1, 2022, Douglas County Superior Court held that RCW 82.87 is
18 an income tax and not an excise tax. Following that ruling, on March 22, 2022, the Court issued
19 an order declaring RCW 82.87 “unconstitutional and invalid and, therefore, [] void and
20 inoperable as a matter of law.” Korrell Decl. ¶ 5, Ex. 4 at 11. As of the date of this ballot title
21 appeal, that order is still in effect but has been appealed. And while the appellate process has not
22 run its course, there is no guarantee that (1) the process will be completed by the time of the vote
23 on this measure or (2) the Douglas County Superior Court order will be reversed. A ballot title
24 that describes the law as the State hopes it to be, not as the law is currently characterized, is not
25 accurate and is drafted to the benefit of the measure’s opponents. The Court should not adopt a
26
27

1 title that picks a side in the ongoing fight over the proper characterization, much less the side that
2 has been rejected by the only court to have ruled on the issue.

3 Labeling RCW 82.87 an excise tax will also confuse the average informed voter, who
4 will know from personal experience that a capital gains tax is an income tax. Every year voters
5 are asked to declare capital gains or loss when they file their federal *income* tax returns. Korrell
6 Decl. ¶ 9, Ex. 8. These federal capital gains are the same capital gains that are the starting point
7 for RCW 82.87's calculation. Moreover, RCW 82.87 bears many of the hallmarks of a typical
8 income tax. As the Douglas County Superior Court highlighted in its summary judgment ruling,
9 the tax "relies upon federal IRS income tax returns," "is levied annually," is levied on "net
10 capital gain," not individual sales or exchanges, and "is based on an aggregative calculation of an
11 individual's capital gains over the course of a year from all sources, taking into consideration
12 various deductions and exclusions[.]" Korrell Decl. ¶ 5, Ex. 4 at 23-24.

13 In addition to being false and confusing, labeling RCW 82.87 an excise tax in the ballot
14 title and ballot measure summary is inappropriate given the risks and uncertainty of ongoing
15 litigation. By the time of the vote, an appellate court could have issued a final judgment
16 affirming or reversing the Douglas County Superior Court's ruling. Picking sides when drafting
17 the ballot title and summary creates the possibility that voters will be presented with a title and
18 summary that are untrue and misleading. This can easily be avoided by using Petitioners'
19 proposed title and summary, which simply refers to the tax as a tax on capital gains income.

20 In *Washington Citizens Action of Washington v. State*, 162 Wn.2d 142, 171 P.3d 486
21 (2007), the Court dealt with a similar issue in a post-election constitutional challenge to I-747,
22 and its reasoning is instructive here. I-747's text purported to amend the ability of taxing
23 districts to increase property taxes from a limit of two percent to one percent. However, four
24 months before the signature submission deadline, Thurston County Superior Court issued a
25 permanent injunction holding the two percent limit unconstitutional and reinstating the former
26
27

1 six percent limit. The Washington Supreme Court issued a final judgment affirming the trial
2 court in September 2001. *City of Burien v. Kiga*, 144 Wn.2d 819, 828, 31 P.3d 659 (2001).

3 Challengers to I-747 argued that the measure misled voters (because it said it reduced the
4 increase limit from two percent to one percent instead of from six percent to one percent) and
5 was not justified in presuming I-722 (which set the two percent limit) was constitutional given
6 the Superior Court’s injunction. *Wash. Citizens Action of Wash.*, 162 Wn.2d at 157. The
7 Supreme Court held that the text of the initiative “misled voters about the substantive impact of
8 the initiative on existing law” in violation of Article II, Section 37 of the Washington
9 Constitution. *Id.* at 156. And while the Court declined to address whether the measure also
10 violated Article II, Section 19, *id.* at 163, the Court acknowledged that Article II, Section 19 and
11 Article II, Section 37 shared a “common purpose” of “ensur[ing] that those voting on legislation
12 are not deceived or misled[.]” *Id.* at 154.

13 Here, a Superior Court has held that RCW 82.87 is not an excise tax. If that ruling is not
14 overturned by the time of the vote, a ballot title stating RCW 82.87 is an excise tax would be
15 untrue and would mislead voters. The ballot title should reflect the law as it is at the time of the
16 vote, to avoid misleading voters. *Id.* Implicit in the *Wash. Citizens* decision is that an initiative
17 should not have a title that conveys an inaccurate characterization of the law being amended or
18 repealed, especially if that characterization has been rejected in the course of ongoing litigation.

19 Unlike in *Wash. Citizens*, in this case there is middle ground that allows drafting a title
20 and summary that are accurate and do not pick sides in the ongoing litigation. The parties to the
21 Douglas County Superior Court litigation disputed the nature of RCW 82.87: excise tax versus
22 income tax. But there is no dispute that the tax applies to capital gains income above \$250,000,
23 as Petitioners’ proposal states. The State argued that a valid excise tax under controlling
24 Washington precedent can be applied to “income.” In their brief opposing summary judgment,
25 the State wrote “[m]any types of transactions generate income But that does not mean that
26 a tax on these transactions is an income tax.” Korrell Decl. ¶ 10, Ex. 9 at 16. The State went
27

1 further in its Reply Brief in support of its own motion for summary judgment, arguing “The tax
2 is tied to the amount of profit earned from the voluntary sale of long-term capital assets, RCW
3 82.87.040(1)” Korrell Decl. ¶ 11, Ex. 10 at 2. Thus, simply describing RCW 82.87 as a tax
4 on capital gains income will remain accurate whether it is ultimately held to be an “income tax”
5 or an “excise tax” by an appellate court.

6 Describing RCW 82.87 as an excise tax is also unfair to I-1929’s proponents for one
7 additional but critical reason specific to the ongoing litigation. There is potential that the legal
8 debate will shift from whether RCW 82.87 is an excise tax or income tax to whether an income
9 tax is a property tax. If an income tax is not a property tax, then RCW 82.87 could be a
10 constitutional non-uniform income tax. Senator Pedersen recently stated that the importance of
11 the capital gains tax was “less about the dollars that it’s raising and more about the fact that the
12 opponents are attacking it as an income tax, and that gives us a clean shot to go back to the
13 Supreme Court and go back to the root of this entire problem[.]” Korrell Decl. ¶ 12, Ex. 11. The
14 State’s briefing foreshadowed this line of argument. *See* Korrell Decl. ¶ 10, Ex. 9 at 15-16
15 (describing *Culliton*, 174 Wash. 363 and *Jensen*, 185 Wash. 209 as “fractured decisions.”). If
16 this Court approves the AGO’s proposed ballot title and summary (calling the tax at issue an
17 “excise tax”) and the Supreme Court deems RCW 82.87 a constitutional “income tax” before the
18 November election, the proponents of I-1929 will be left with a fatally defective ballot title and
19 measure summary. Petitioners’ proposal avoids this problem.

20 **C. The AGO’s Proposed Concise Description and Ballot Measure Summary**
21 **Cherry-Pick Exemptions, Rendering the Proposal Misleading.**

22 The proposed concise description and ballot measure summary will create prejudice
23 against the initiative for the additional reason that they cherry-pick two exemptions to the benefit
24 of the initiative’s opponents: real estate and retirement accounts. There is no requirement that a
25 ballot title contain an index of the measure’s contents or that the title give details contained in the
26 bill. *Garfield Cty. Transp. Auth. v. State*, 196 Wn.2d 378, 398, 473 P.3d 1205 (2020). In the
27

1 case of RCW 82.87, it would be impossible for I-1929's title or measure summary to index all of
2 the measure's content or even just all the exemptions. Computation of RCW 82.87's tax is
3 complicated, requires analysis into what counts as "Washington capital gains," and involves a
4 number of credits, deductions, and exemptions. I-1929's ballot title and ballot measure summary
5 can put voters on notice to inquire about these details by broadly stating that the tax is subject to
6 credits, deductions, and exemptions. An interested voter would have the information necessary
7 to read the text of the measure and RCW 82.87 to learn the details. But highlighting just two
8 exemptions, both of which benefit opponents of the measure, is not impartial and causes
9 prejudice to the proponents of the I-1929.

10 This prejudice is heightened by the misleading manner in which the two exemptions are
11 described. A ballot title or measure summary may not describe a measure's contents in a partial
12 or misleading manner. RCW 29A.72.050; *Garfield Cty. Transp. Auth.*, 196 Wn.2d at 398. In
13 particular, the AGO's proposed concise description is misleading in two ways. First, it gives
14 voters the impression that "real estate and retirement accounts" are the sole exemptions in RCW
15 82.87 but does not state that other assets are exempted, deducted, or credited.

16 Second, the ballot title does not provide any qualifications in describing the real estate
17 and retirement account exemptions. This is inaccurate. RCW 82.87.050(3) only exempts certain
18 retirement accounts, such as retirement savings accounts under 26 U.S.C. § 401(k), deferred
19 compensation plans under 26 U.S.C. § 457(b), individual retirement accounts or individual
20 retirement annuities described in .S.C. § 408, and Roth individual retirement accounts described
21 in 26 U.S.C. § 408A. The average informed lay voter would likely read the unqualified language
22 as describing an exemption for any accounts an individual plans to save for retirement. This will
23 create bias against the initiative measure because it makes it seem as if the tax's reach is less than
24 it is. While RCW 82.87.050(1) and (2) broadly exempt real estate, there remain exceptions to
25 certain transactions in RCW 82.87.050(2)(b)(ii)-(iii). Again, an unqualified description of the
26 exemption misleads voters and is inaccurate. These issues can be easily remedied.

1 it is. Ongoing litigation poses a real risk that any concise description or ballot measure summary
2 that picks sides in the “excise tax versus income tax” debate will end up misleading voters at the
3 time of the vote. The title of I-1929 should steer a middle ground and merely state the
4 undeniable subject of the tax: capital gains income above \$250,000. Petitioners respectfully
5 request that this Court grant their Petition and adopt their proposed ballot title and ballot title
6 summary for I-1929 as set forth in Petitioners’ proposed order.

7 Respectfully submitted this 18th day of April, 2022.

8
9 Davis Wright Tremaine LLP
 Attorneys for Petitioners

10
11 By: s/Harry J.F. Korrell
 Harry J. F. Korrell, WSBA # 23173
 Robert J. Maguire, WSBA # 29909
 920 Fifth Avenue, Suite 3300
 Seattle, WA 98104-1610
 Telephone: 206-622-3150
 E-mail: harrykorrell@dwt.com
 robmaguire@dwt.com

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, certify under the penalty of perjury under the laws of the state of
3 Washington that I am now and at all times herein mentioned a citizen of the United States, a
4 resident of the State of Washington, over the age of eighteen years, not a party to or interested in
5 the above-entitled action, and competent to be a witness herein.

6 On this date I caused to be served in the manner noted below a copy of the document
7 entitled *Petitioners' Opening Brief in Support of Appeal of Ballot Title and Summary for*
8 *Initiative 1929* on the following:

9 Via E-mail on April 18, 2022
10 Steve Hobbs, Secretary of State
11 State of Washington
12 416 Sid Snyder Ave. SW
13 Olympia, WA 98504-0220
14 jeffrey.even@atg.wa.gov
15 serviceATG@atg.wa.gov

16 Robert Ferguson, Attorney General
17 State of Washington
18 1125 Washington St. SE
19 Olympia, WA 98504-0100
20 jeffrey.even@atg.wa.gov
21 serviceATG@atg.wa.gov

22 Kai A. Smith, WSBA 54749
23 Paul J. Lawrence, WSBA 13557
24 1191 Second Avenue, Suite 2000
25 Seattle, WA 98101-3404
26 kai.smith@pacificalawgroup.com
27 paul.lawrence@pacificalawgroup.com
sydney.henderson@pacificalawgroup.com

DATED this 18th day of April, 2022.

24 s/Lesley Smith
25 Lesley Smith
26 Legal Assistant
27