

Honorable William Downing  
Hearing Set  
Tuesday January 19, 2015 at 9:00 a.m.

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

TONY LEE, an individual taxpayer;  
ANGELA BARTELS, an individual  
taxpayer; DAVID FROCKT, an  
individual taxpayer and Washington  
State Senator; REUVEN CARYLYE,  
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 J. FAGAN; and M.J.  
FAGAN,

Defendants.

NO. 15-2-28277-SEA

[PROPOSED] ORDER DENYING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND  
DISMISSING COMPLAINT

This matter came before the Court on the Plaintiffs' Motion for Summary Judgment on Declaratory Relief. The Court has considered the pleadings, briefs, declarations, and all other pleadings and papers filed in this action, as well as the parties' arguments at a hearing held on January 19, 2016. Based on the foregoing, the Court finds the following facts are undisputed and makes the following conclusions of law:

**UNDISPUTED FACTS**

1. A majority of Washington state voters approved Initiative 1366 (I-1366) in the November 3, 2015, general election.
2. The Initiative’s ballot title appeared on the voters’ ballots 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.
3. Section 2 of I-1366 reduces the state retail sales tax rate from 6.5 percent to 5.5 percent.
4. Section 3 of I-1366 states that the sales tax rate reduction takes effect on April 15, 2016, unless a contingency first occurs. The contingency provides that if the Legislature, prior to April 15, 2016, refers a constitutional amendment that accomplishes specific purposes for a vote, then the tax cut in section 2 expires on April 14, 2016. The proposed amendment must require “two-thirds legislative approval or voter approval to raise taxes . . . and majority legislative approval for fee increases.” The terms “raises taxes” and “majority legislative approval for fee increases” are specifically defined in I-1366.
5. Sections 4 and 5 of I-1366 update statutory references. Section 6 defines “raises taxes” as “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.”
6. Section 7 of I-1366 requires liberal construction to effectuate the intent, policies, and purpose of the act. Section 8 is a severability clause that provides that if any provision of the act is held invalid, the remainder of the act is not affected. Section 9 titles the act the “Taxpayer Protection Act.”

1 7. Plaintiffs filed this action seeking to declare Initiative 1366 unconstitutional and void.

2 **CONCLUSIONS OF LAW**

3 1. All of the plaintiffs lack individual standing because none of them suffer legal injury  
4 from I-1366's passage.

5 2. The legislator plaintiffs do not have standing to bring this action because nothing in  
6 I-1366 restricts the legislators' ability to propose or to vote for or against any  
7 constitutional amendment. Thus, the legislators are not harmed by I-1366. As a matter  
8 of law they have not alleged sufficient harm to amount to legislative standing under  
9 *League of Education Voters v. State*, 176 Wn.2d 808, 817-18, 295 P.3d 743 (2013).

10 3. However, this case presents a sufficiently important question that it constitutes a  
11 significant and continuing matter of public importance that merits judicial resolution.

12 4. I-1366 is a valid exercise of the people's legislative power that complies with all of the  
13 constitutional requirements for an initiative.

14 5. I-1366 contains a single subject in accordance with article II, section 19 of the  
15 Washington Constitution because it sets forth only one operative legislative act. It  
16 amends the state sales tax rate, an act that is plainly within the people's legislative  
17 power, and merely makes that act contingent on a constitutional amendment that may  
18 or may not be taken up by the Legislature.

19 6. An initiative is within the scope of the people's initiative power if (1) it is legislative in  
20 nature, and (2) it is within the state's power to enact.

21 7. The court must look to the actual text of the initiative to determine whether it is within  
22 the people's initiative power.

23 8. I-1366 does not amend the state constitution and it does not alter or relieve the  
24 Legislature from complying with the constitutional amendment requirements set forth  
25 in article XXIII of the Washington Constitution.  
26

1 9. The text of I-1366 contains no language purporting to directly amend the state  
2 constitution itself or the constitution or laws of the United States, and a constitutional  
3 amendment is by no means a certain result.

4 10. The reduction in the sales tax rate in I-1366 is not merely incidental; it is central to the  
5 initiative and it will be its only effect if the contingency never occurs. A constitutional  
6 amendment is not the fundamental and overriding purpose of I-1366.

7 11. Nothing in I-1366 suggests that the legislature would somehow be relieved of the  
8 requirements in article XXIII, section 1. Any constitutional amendment would still  
9 have to be adopted by a two-thirds vote in both houses before it is referred to the  
10 people.

11 12. I-1366, is legislative in nature and would not amend the Washington Constitution.  
12 Thus, I-1366 is within the people's legislative power and it is not outside of the scope  
13 of the people's initiative power.

14 **ORDER**

15 Based on the foregoing undisputed facts and this Court's conclusions of law, the Court  
16 hereby ORDERS that the plaintiffs' motion for summary judgment is DENIED and Plaintiffs'  
17 Complaint is DISMISSED.

18 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

19 \_\_\_\_\_  
20 Honorable William Downing  
21 King County Superior Court

22 Presented by:  
23 s/ CALLIE A. CASTILLO  
24 CALLIE A. CASTILLO, WSBA # 38214  
25 REBECCA R. GLASGOW, WSBA # 32886  
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