

☐ EXPEDITE
☐ No hearing set
☒ Hearing is set
Date: July 20, 2018
Time: 9:00 AM
Judge/Calendar: The Honorable John
C. Skinder

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

TIM EYMAN,

Plaintiff,

v.

DUANE DAVIDSON, in his capacity as the
State Treasurer, THE STATE OF
WASHINGTON; and THE WASHINGTON
STATE LEGISLATURE,

Defendants.

NO. 18-2-01672-34

PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Tim Eyman ("Plaintiff") respectfully opposes the Defendants' Motion for Summary Judgment. By legislative gimmick, the Washington Legislature seeks to sidestep the constitutionally-mandated requirements of the Budget Stabilization Account, commonly known as the "Rainy Day Fund."¹ The Legislature's efforts are plainly against the will of the voters, and, if permitted to stand, engenders significant adverse policy consequences by encouraging further diversions from the constitutionally-protected Rainy Day Fund. Article VII of the Washington Constitution was enacted specifically to restrain the Legislature's proclivity to overspend. The Legislature must not be permitted to conduct an end-run around

¹ For ease of reference, the Budget Stabilization Account is referred to in this brief as the "Rainy Day Fund," except where quotations or other technical requirements necessitate otherwise.

1 its requirements through the auspices of a bait and switch that avoids the necessity of meeting
2 the 3/5 voting threshold required under Article VII, §12(d)(iii). For all the reasons identified
3 herein, the Motion for Summary Judgment must be denied.²

4 **II. STATEMENT OF FACTS**

5 In 2002, the Washington State Tax Structure Study Committee, commonly known as
6 the “Gates Commission,” issued a report entitled “Tax Alternatives for Washington State
7 Report.” (“Gates Tax Report”) *See* Decl. of T. Eyman, ¶3. Among other things, the Gates
8 Tax Report recommended establishment of a state “rainy day account.” *Id.*

9 **A. Washington Voters Establish the Rainy Day Fund**

10 In 2007, the Legislature took action on the Gates Tax Report. *Id.*, ¶4. The Legislature,
11 by a two-thirds vote in both the House and Senate, referred Engrossed Substitute Senate Joint
12 Resolution 8206 (“ESSJR 8206”) to the voters for approval or rejection of a constitutional
13 amendment establishing a budget stabilization account. *Id.* The Explanatory Statement in the
14 2007 voters’ guide explained the effect of the proposed amendment as follows:

15 The constitutional amendment would require that 1% of “general state revenue” for
16 each fiscal year be transferred into the budget stabilization account. “General state
17 revenue” means all state money received in the treasury, with certain exceptions that
include money from the ownership or operation of any facility, undertaking or project;
money received for restricted purposes; and money received from the sale of bonds.

18 *Id.*, Exh. A. ESSJR 8206, encapsulated in Amendment 99, passed overwhelmingly, with
19 67.7% of voters and all 39 counties voting in support. *Id.*, at ¶5. The expression of the voters
20 as to this issue is the ultimate expression of the political voice in this state by Constitutional
21 mandate. *See* Wash. Const. art. I, §1.

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24 ² Although presented before the Court on Defendant’s Motion for Summary Judgment, if the Court is convinced
25 that summary judgment should be denied, the Court would be well within its authority under CR 56 to simply
award summary judgment *sua sponte* in favor of Plaintiff at this stage. *See e.g. Ins. Pool v. Health Care Author.*,
129 Wn.2d 504, 507, 919 P.2d 62 (1996). Alternatively, if the Court denies summary judgment in favor of
Defendants, Plaintiff will promptly move for summary judgment on his own behalf.

1 In 2011, Washington voters again had an opportunity to weigh in on the Rainy Day
2 Fund. *Id.*, at ¶6. By a two-thirds vote in both the House and Senate, Senate Joint Resolution
3 8206 (“SJR 8206”) was referred to the voters, and it mandated that the Legislature be required
4 to transfer additional funds to the Rainy Day Fund in each biennium in which the state received
5 “extraordinary revenue growth,” with certain limitations. *Id.* The Explanatory Statement
6 again addressed the question of what funds are required to be transferred into the Rainy Day
7 Fund:

8 By the end of each fiscal year (June 30 of each year), the legislature must transfer to the
9 budget stabilization account an amount equal to one percent of the general state
10 revenues for that fiscal year. The legislature may approve the transfer of additional
11 amounts. ***“General state revenues” means all state revenues that are not derived
from a state undertaking or dedicated to a particular purpose, as set forth in article
VIII, section 1 of the Washington Constitution.***

12 *Id.*, Exh. B (emphasis added). Moreover, the voters’ pamphlet statement in favor of SJR 8206,
13 written by Republican State Senator Joe Zarelli and Democrat State Treasurer James McIntire,
14 read in part:

15 Approving SJR 8206 will help: *Build stronger reserves*, keeping the state better
16 prepared for difficult economic times; and *Keep spending at a more sustainable level*,
17 limiting expansions based on unexpected or windfall revenue...Extraordinary revenue
18 spikes should be saved in the constitutionally-protected rainy day fund, not immediately
19 spent. This will prevent unsustainable spending increases and help protect vital
services when times get tough. Passed with overwhelming bipartisan support, SJR
8206 is prudent, thoughtful policy aimed at better management and control of state
spending. *End roller coaster budgeting – please vote yes!*

20 *Id.*, (emphases original); *See also* Decl. of J. Zarelli, at ¶4. Once again, the voters of
21 Washington overwhelmingly supported the strengthening of the Rainy Day Fund, with support
22 from 66.6% of the voters and winning passage in all 39 counties. *See* Decl. of T. Eyman, at ¶7.
23 The will of the voters in this state has therefore been expressed and confirmed in accord with a
24 procedure initiated and directed by the Legislature. The intent and the expression of the people
25 of Washington is explicit.

1 **B. *McCleary* Impacts State Finances**

2 In 2007, a coalition of various individuals brought suit individually and on behalf of
3 their children enrolled in Washington’s public school system, alleging that Washington
4 violated Article IX, §1 of the Washington State Constitution by failing to adequately fund the
5 K-12 school system. *Id.*, at at ¶8; *See also McCleary v. State*, 173 Wn.2d 477, 511-12, 269
6 P.3d 227 (2012). In 2012, the Washington Supreme Court ruled in *McCleary* that the state
7 failed to satisfy its constitutional obligations to fund K-12 education. *Id.* In 2014, the Court
8 ruled that the state was in contempt for lack of progress in implementing the 2012 ruling, and
9 imposed daily sanctions of \$100,000.00. *Id.*; *See also McCleary v. State*, 2014 Wash. LEXIS
10 898, at *7.

11 Following *McCleary*, the Washington Legislature made halting progress in funding K-
12 12 education. On November 15, 2017, however, the Washington Supreme Court determined
13 that the state had achieved full compliance with its orders, except in one major respect: “the
14 legislature delayed complete implementation of the new allocation model for full state funding
15 of basic education salaries until the 2019-2020 school year.” *See* Decl. of T. Eyman, at ¶9; *See*
16 *also McCleary* Supreme Court Order No. 84362-7, June 7, 2018.

17 **C. The Legislature Levies Funds and Requires They Be Deposited into the State**
18 **General Fund**

19 In 2017, the Legislature acted to address *McCleary*. *Id.*, at ¶10. One aspect of the
20 “*McCleary* fix” was the levying of a new property tax for the support of common schools. *See*
21 RCW 84.52.065(2); *See also* Laws of 2017, 3d Spec. Sess., ch. 13, §301. The 2017 legislation
22 had two primary components at issue in this case: 1) “the state must levy an additional property
23 tax for the support of common schools in the state” RCW 84.52.065(2)(a); and 2) “Taxes
24 collected under this subsection (2) must be deposited into the state general fund.” RCW
25 84.52.065(2)(b).

1 **D. The Legislature Seeks More Money and Diverts Funds**

2 In 2018, the Legislature reconvened and was faced with various financial options
3 regarding how to further fund the “*McCleary* fix.” See Decl. of D. Taylor, ¶4. As adjournment
4 approached, the options facing the Legislature included the following: 1) It could vote to raise
5 taxes to fund the “*McCleary* fix,” which could be accomplished with a simple majority vote in
6 both chambers; 2) It could vote to appropriate funds from the Rainy Day Fund, which would
7 require a 3/5 majority vote in both chambers under Article VII, §12(d)(iii) of the Washington
8 State Constitution; or 3) It could ignore the Supreme Court’s directive to fully fund education
9 by September 1, 2018, and maintain the funding timeframes established in Engrossed House
10 Bill 2242 in 2017. *Id.* at ¶5.

11 The prospect of raising additional taxes was deemed unacceptable by the majority party
12 in both houses of the Legislature. *Id.*, at ¶6. Additionally, the majority party chose not to
13 continue to ignore the *McCleary* order to fully fund education by September 1, 2018.
14 Consequently, the only option left was to appropriate funds from the Rainy Day Fund. Doing
15 so, however, meant that the Legislature would need to meet the constitutionally required 3/5
16 vote requirement in the House and Senate. The majority party, lacking that 3/5 majority within
17 their own caucuses, was thus required to get supporting votes from the minority party. Instead,
18 the Legislature opted for a wholly unprecedented approach. *Id.*, at ¶7. One day before
19 scheduled adjournment, Senator Christine Rolfes introduced ESSB 6614 which amended RCW
20 84.52.065(2). Specifically, ESSB 6614 revised RCW 84.52.065(2) to provide that “Except as
21 provided in this subsection, all” taxes were to be deposited into the state general fund, and then
22 provided that \$935 million “collected under this subsection (2) must be deposited into the
23 education legacy trust account for the support of common schools.” See Laws of 2018, ch.
24 295, §1. As reported by the News Tribune, Senator Rolfes stated clearly her reason for doing
25 so:

1 Rolfes told the two news outlets on Tuesday the plan is necessary because the GOP
2 “indicated” they didn’t support an earlier proposal to pay for the property tax cuts with
3 money from the rainy day fund. “We can give that money back directly to the people
4 before it goes to the rainy day fund,” Rolfes said. The strategy “allows it to be a simple
5 majority vote so we don’t have to fight about it.”

6 *See* Walker Orenstein, *The Legislature May Give You a Property Tax Cut – But Not Until*
7 *2019*, News Tribune, Mar. 7, 2018, [https://www.thenewstribune.com/news/politics-](https://www.thenewstribune.com/news/politics-government/article204033719.html)
8 [government/article204033719.html](https://www.thenewstribune.com/news/politics-government/article204033719.html)

9 The proposed redirection of funds from the Rainy Day Fund was unparalleled in the
10 Legislature’s history. *See* Decl. of D. Taylor, at ¶¶7-9; *See also* Decl. of J. Zarelli, at ¶6. At
11 least one member of the House Appropriations Committee was unaware of this type of
12 legislative “redirect” to avoid an “appropriation” out of the Rainy Day Fund at any point since
13 the constitutional establishment of the Rainy Day Fund in 2007. *See* Decl. of D. Taylor, at ¶9.
14 Another member, a former Chair of the Senate Ways and Means Committee, later described it
15 as “completely unprecedented.” *See* Decl. of J. Zarelli, at ¶6. Reaction was also swift from the
16 state official charged with maintaining the Rainy Day Fund. *See* Decl. of T. Eyman, ¶11.
17 Washington State Treasurer Duane Davidson issued a press release stating “We’re extremely
18 concerned with today’s proposals to divert \$700 million from being deposited in the Rainy Day
19 Fund. Choosing not to save today when we’re experiencing extraordinary revenue growth
20 guarantees that our budget problems will be much greater when the next recession hits.” *Id.*,
21 Exh. C. Treasurer Davidson concluded his statement with the simple request: “I urge the
22 Legislature to not start a terrible precedent of diverting Rainy Day funding. Fund our Rainy
23 Day Fund, adjourn and then go home.” *Id.*

24 The Legislature declined to follow suit. *Id.*, at ¶12. On the final day of the session,
25 ESSB 6614 passed with a bare legislative majority. As reported by the News Tribune: “The
latest version was proposed by Sen. Christine Rolfes, D-Bainbridge Island, on Tuesday
evening. It did not receive a public hearing, but passed the Senate 25-23 on Wednesday.” *Id.*

1 In the course of debate, multiple parliamentary points of order were made regarding the
2 necessary vote threshold to pass ESSB 6614. *Id.* In response to a point of order raised by
3 Senator Michael Baumgartner as to the number of votes required for passage, the Lieutenant
4 Governor ruled that a simple constitutional majority was required. *Id.* The reasoning is
5 noteworthy, and is reproduced here at length:

6 In considering the question of how many votes are required for final passage of
7 Engrossed Substitute Senate Bill 6614, the President finds that a simple constitutional
majority is required on the basis of two distinct lines of reasoning.

8 First and foremost, the bill does not contain an appropriation from the Rainy Day Fund.
9 The diversion of extraordinary revenue from existing sources that have historically
10 been deposited in the General Fund would, under Article 7, Section 12, require an
11 adjustment to the Rainy Day Fund to reflect the statutory change. However, the
12 revenue collected through the new property tax levy, enacted in 2017 by the 65th
Legislature, has not yet been deposited into the General Fund. Because the bill does
not request an appropriation from the Rainy Day Fund, a simple majority is all that is
required for final passage.

13 Furthermore, the President also believes that the revenue increase caused by the
14 enactment of this new tax policy is the result not of unexpected positive revenue from
15 existing sources, but rather a policy decision to establish a new levy for the specific
purpose of funding common schools.

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17 *Id.*, Exh. D.

18 **E. Litigation Commences**

19 On March 28, 2018, Plaintiff initiated litigation in this matter. *Id.*, at ¶12. Ironically,
20 due solely to the duties of his office, Treasurer Davidson is the named Defendant. *Id.*

21 **III. STATEMENT OF ISSUES**

- 22 1) Should summary judgment be denied when the diversion of funds from the Rainy
23 Day Fund violates the Washington State Constitution?
- 24 2) Should summary judgment be denied when the funds at issue do not comprise
25 “General State Revenues” pursuant to the Washington State Constitution?

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Defendant relies upon the Declarations of Tim Eyman, Representative David Taylor, and former Senator Joe Zarelli, all of which are filed contemporaneously hereto.

V. AUTHORITY

Defendants offer two arguments in favor of their Motion for Summary Judgment: 1) There is no “appropriation” of funds out of the Rainy Day Fund; and 2) There was no unconstitutional diversion of funds because the Washington State Constitution defines “gross state revenues” in a way that excludes the tax revenues implicated by the Legislature’s action. *See* Memorandum in Support of Defendants’ Motion for Summary Judgment, at 2. The Defendants are mistaken.

A. The Redirection of Funds Violates the Washington Constitution

The initial argument offered by Defendants is that the redirection of funds does not comprise an “appropriation” of funds out of the Rainy Day Fund. *See Id.*, at 6-7. As a practical matter, this argument is entirely secondary to the Defendants’ other argument, namely, that the funds at issue are excluded from the definition of “General State Revenues.” *Id.*, at 7-13. If the funds are, in fact, part of “General State Revenues,” then the Legislature’s redirection of funds was unconstitutional, and the question of an “appropriation” out of the Rainy Day Fund is irrelevant.

As a legal matter, however, the Defendants' argument misses the forest for the trees. *Of course* there was no appropriation from the Rainy Day Fund for the simple reason that the Legislature diverted the funds before they could be deposited into the Rainy Day Fund. As described further below, this was after the funds were initially levied for collection and directed for deposit in the state's general fund. The Defendants' call it "earmarking funds legislatively." *See* Memorandum in Support of Defendants' Motion for Summary Judgment, at 6. Plaintiff calls it an unconstitutional effort to starve the Rainy Day Fund and avoid the 3/5

1 legislative vote required by the Constitution. Moreover, the Legislature's action is directly
2 contrary to the will of Washington voters in acting to establish the Rainy Day Fund in 2007
3 and to strengthen it in 2011.

4 The Washington State Constitution is interpreted in accordance with the intent of the
5 drafters. *See State v. Norman*, 145 Wn.2d 578, 588, 40 P.3d 1161 (2002). In the case of an
6 amendment ratified by the voters, that requires examination of the legislative history and the
7 materials in the official voters' pamphlet. *See Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d
8 679, 687, 743 P.2d 793 (1987). As noted by our Supreme Court:

9 The court long ago said that the intent of the constitution must be derived from the
10 instrument as a whole (*State ex rel. State Capitol Comm'n v. Lister*, 91 Wash. 9, 156 P.
11 858 (1916)), and the State constitution must be construed in the sense in which our
12 framers understood it in 1889. In other words, "its meaning was fixed at the time it was
13 adopted." *Boeing Aircraft Co. v. Reconstruction Fin. Corp.*, 25 Wn.2d 652, 658, 171
14 P.2d 838, 168 A.L.R. 539 (1946).

15 *Northshore School District v. Kinnear*, 84 Wn.2d 685, 715 (1974) (overruled on other grounds
16 by *Seattle School Dist. No. 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978)). Here, the intent of
17 the voters in approving the establishment of the Rainy Day Fund was crystal clear: to constrain
18 the spending habits of the Legislature. This is admitted by the Defendants. *See* Memorandum
19 in Support of Defendants' Motion for Summary Judgment, at 8 (Noting that the 2007 voters'
20 pamphlet provided that the purpose is "to save money during the good times so we are
21 prepared for the bad.") Four years later, the voters again reiterated this purpose. As noted by
22 the 2011 voters pamphlet: "Approving SJR 8206 will help: *Build stronger reserves*, keeping
23 the state better prepared for difficult economic times; and *Keep spending at a more sustainable*
24 *level*, limiting expansions based on unexpected or windfall revenue... *End roller coaster*
25 *budgeting – please vote yes!*" Decl. of T. Eyman, Exh. B (emphases original). This intent was
confirmed with overwhelming statewide votes in favor of establishing and strengthening the
Rainy Day Fund in 2007 and 2011, respectively. *Id.*, at ¶¶5-7.

1 Here, the intent of the voters is flagrantly violated by the Legislature's action in re-
2 directing the funds via ESSB 6614. Put simply, the voters did not establish the Rainy Day
3 Fund only to have the Legislature starve it of funds that would otherwise be deposited in it, but
4 for a hasty re-direction of the funds long after the taxes had already been levied. This is
5 emphatically confirmed by former Senator Joe Zarelli, one of the architects of the Rainy Day
6 Fund itself. See Decl. of J. Zarelli, ¶¶3-5. The Rainy Day Fund is of constitutional dimension,
7 and, as noted by the Washington Supreme Court, "Where the constitution, including its Bill of
8 Rights, is used as a source of public policy, that constitution is not to be read in narrow and
9 grudging fashion. It is to be read in a manner that will give it full force and effect to carry out
10 its purposes in light of contemporary needs." *Housing Authority v. Saylor*, 87 Wn.2d 732,
11 750, 557 P.2d 732 (1976).

12 Here, giving "full force and effect" to the Rainy Day Fund requires protecting the
13 twice-expressed will of the people against the depredations of an opportunistic Legislature.
14 While Senator Rolfes described the motivation for ESSB 6614 was to avoid a "fight," the fact
15 is that sidestepping a "fight" is not an acceptable excuse for violating the Constitution. Indeed,
16 the "fight" the Legislature sought to avoid is only the normal, back-and-forth compromises of
17 the legislative process. Unfortunately, given the intent of the voters and the history of the
18 Rainy Day Fund, it is highly predictable that the Legislature would eventually try to end-run
19 the Constitutional limitation. In this case, the Legislature pursued an unprecedented gimmick
20 in the final hours of the legislative session to defeat the intent of the voters by re-characterizing
21 hundreds of millions of dollars after the tax had already been levied, and after the depositing of
22 these tax proceeds into the general fund had already been directed by the Legislature and had
23 already begun. Not only does this violate the intent of Article VII, as noted below, it also
24 violates the text of the Washington State Constitution and would create significant adverse
25 policy consequences.

1 **B. The Funds At Issue Comprise “General State Revenues”**

2 As noted above, the Defendants argue that no appropriations are made from the Rainy
3 Day Fund, and that the revenues at issue are excluded from the definition of “General State
4 Revenues” under Article VIII of the Washington State Constitution. *See* Defendant’s Memo,
5 at 6-7. The crucial point is the second, i.e. whether or not the funds at issue comprise “General
6 State Revenues.” Plaintiff claims they do. Defendants claim they do not. Defendants are
7 mistaken.

8 As noted by Defendants, Article VIII, §12 of the Washington State Constitution
9 provides that the definition of “General State Revenues” “has the meaning set forth in Article
10 VIII, section 1 of the Constitution.” Article VIII, §1, meanwhile, provides a broad definition of
11 “General State Revenues,” with six comparatively narrow exceptions. The broad definition
12 and the exception at issue is as follows:

13 The term “general state revenues” when used in this section, shall include all state
14 money received in the treasury from each and every source, including moneys received
15 from ad valorem taxes levied by the state and deposited in the general fund in each
fiscal year, but not including the following...

16 (5) Moneys received from taxes levied for specific purposes and required to be
17 deposited for those purposes into specific funds or accounts other than the general
fund...

18 Washington State Constitution, Art. VIII, §1(c). As indicated by reviewing the fifth exemption
19 to the definition of “General State Revenues,” certain sequential requirements must be met to
20 exempt the funds at issue from the overall definition.

21 ***First***, the funds must be “[m]oneys received from taxes levied for specific purposes...”
22 Washington case law clarifies the meaning of “levy”:

23 Levy,” when used in connection with authority to tax, while assuming other meanings
24 through interchangeable or indiscriminate usage, strictly speaking denotes the exercise
25 of a legislative function, whether state or local, which determines that a tax shall be
imposed, and fixes the amount, purpose, and subject of the exaction.

1 *Carkonen v. Williams*, 76 Wn.2d 617, 458 P.2d 280 (1969) (citing 3 Cooley, Taxation s 1012,
2 at 2043-2044 (3th ed. 1924)). Here, the funds at issue were originally levied in 2017 for a
3 specific purpose. The 2017 Legislature revised RCW 84.52.065(2)(a) to “levy an additional
4 property tax for the support of common schools in the state.” Consequently, the first prong of
5 the fifth exemption that the funds be “received from taxes levied for specific purposes...”
6 appears to be met.³

7 ***Second***, not only must it constitute “[m]oneys received from taxes levied for specific
8 purposes, but it must also “be deposited for those purposes into specific funds or accounts other
9 than the general fund.” The conjunctive “and” between the two phrases demonstrates that both
10 prongs must be met contemporaneously: “Moneys received from taxes levied for specific
11 purposes and required to be deposited for those purposes into specified funds or accounts other
12 than the general fund.” This prong is not met.

13 In 2017, the Legislature directed that funds derived from the taxes that were “levied for
14 specific purposes,” i.e. support of common schools in the state, were to be deposited into the
15 state general fund. RCW 84.52.065(2)(b); *See also* Laws of 2017, 3d Spec. Sess., ch. 13, §301.
16 Consequently, those funds are not exempt from the definition of “general state revenues.” In
17 2018, however, after the taxes had been levied but before the proceeds had been collected,⁴ the
18 Legislature re-directed the funds for fiscal year 2019 to the education legacy trust account:
19 funds “collected under this subsection (2) must be deposited into the education legacy trust
20 account for the support of common schools.” *See* Laws of 2018, ch. 295, §1. In other words,
21 the Legislature attempted a “mix/match” approach to satisfy the second prong of the exception
22

23 ³ It is notable, however, that, as ruled by the Lieutenant Governor, the funds in question were not actually yet
24 “received” from the levying of the tax: “However, the revenue collected through the new property tax levy,
25 enacted in 2017 by the 65th Legislature, has not yet been deposited into the General Fund. Because the bill does
not request an appropriation from the Rainy Day Fund, a simple majority is all that is required for final passage.”
See Decl. of T. Eyman, Exh. D.

⁴ According to the Lieutenant Governor.

1 to “General State Revenues” over one year after the original levying of the tax for a specific
2 purpose took place.

3 Review of the constitutional language at issue, and its context in the overall
4 constitutional structure, demonstrates the insupportable nature of the Legislature’s action.
5 Article VIII, §1(c) envisions that action under this provision will take place in the same fiscal
6 year: “The term “general state revenues” when used in this section, shall include all state
7 money received in the treasury from each and every source, including moneys received from
8 ad valorem taxes levied by the state *and deposited in the general fund in each fiscal year...*”
9 Washington State Constitution, Art. VIII, §1(c) (emphasis added). Additionally:

10 When the balance in the budget stabilization account, including investment earnings,
11 equals more than ten percent of the estimated general state revenues *in that fiscal year*,
12 the legislature by the favorable vote of a majority of the members elected to each house
13 of the legislature may withdraw and appropriate the balance to the extent that the
14 balance exceeds ten percent of the estimated general state revenues.

15 *Id.* (emphasis added). Finally, the provisions for measuring the aggregate debt accumulated by
16 the state are measured by a formula based on the fiscal year. *See* Article VIII, §1(b).
17 Permitting a Legislative “bait and switch” of funds derived from taxes that were levied in a
18 previous fiscal year threatens the constitutional order undermining these provisions.

19 **1. Even If The Funds Are Excepted From “General State Revenues,” Half The
20 Funds Must Still Be Deposited Into The General Fund**

21 Notably, *even if* the funds at issue are excepted from the definition of “General State
22 Revenues” under Art. VIII, §1(c)(5), which they are not, the hurried drafting of ESSB 6614
23 results in half the funds being deposited into the state general fund. As outlined above, these
24 funds would definitively comprise “General State Revenues.”

25 ESSB 6614 was drafted in the final hours of the legislative session, behind closed
doors, and as a “Hail Mary” attempt to avoid politically difficult votes and adjourn on time. As

1 a result, the drafting was sloppy, and it results in at least half of the proceeds at issue being
2 definitively destined for the state general fund.

3 As noted by Defendants, ESSB 6614 did two things: 1) It reduced the state property tax
4 added in 2017 for calendar year 2019; and 2) It required that \$935,000,000.00 collected under
5 RCW 84.52.065(2) be deposited into the education legacy trust account for fiscal year 2019.
6 *See* Memorandum in Support of Defendants' Motion for Summary Judgment, at 4 (citing RCW
7 84.52.065(2)(b)(ii) (as amended by Laws of 2018, ch. 295, § 1(2)(b)(ii)). Surprisingly, this
8 results in the Legislature redirecting property tax funds that were levied for collection in
9 calendar year 2019, and directed that only the funds collected in fiscal year 2019 (defined as
10 July 1, 2019 through June 30, 2020) be directed into the education legacy trust account. *See*
11 Decl. of D. Taylor, at ¶8. Consequently, there is only a six-month "overlap" where those funds
12 collected between July 1, 2019 through June 30, 2020 will be deposited into the education
13 legacy trust account. This results in funds collected during the first six months of 2019 being
14 deposited into the state general fund and, by extension, the Rainy Day Fund, and funds
15 collected during the last six months of 2019 being deposited into the education legacy trust
16 account.. In sum, only six months' of the funds levied by the Legislature through ESSB 6614
17 and collected in 2019 will be deposited into the education legacy trust account, while the
18 remaining six months' of collected funds must be deposited into the state general fund. Not
19 only does this demonstrate the hasty manner in the drafting and voting of ESSB 6614, but it
20 removes at least half the funds at issue from the question of whether they do or do not "General
21 State Revenues."

22 **C. The Legislature's Action Creates Significant Adverse Policy Consequences**

23 Finally, it is important to note the truly awful policy consequences of the Legislature's
24 actions. If Defendants have their way, then the fox is left guarding the hen house. If the
25 Legislature may starve the Rainy Day Fund of revenues merely by redirecting funds well after

1 the taxes were originally levied and the funds were directed to be deposited into the state
2 general fund, then the Legislature will have created a new and dangerous weapon to undermine
3 the constitutional limitations imposed by the voters in enacting the Rainy Day Fund. The
4 unprecedented nature of the Legislature's action to redirect funds in the eleventh hour has
5 created what can rightly be viewed as a constitutional crisis. Research has revealed no
6 comparable last minute re-direction of funds that, according to existing law, constituted
7 "general state revenues" and, consequently, were destined for deposit in the Rainy Day Fund.
8 Indeed, as noted by Representative David Taylor's and Senator Joe Zarelli's respective
9 Declarations, this is a wholly unique and unprecedented effort by the Legislature to re-direct
10 funds after they have already been levied and collections have already begun.

11 Indeed, it is notable that the Defendants offer no authority for the proposition that taxes
12 levied for collection for a particular purpose and directed to be deposited into the general fund
13 can be re-levied and re-directed solely for the purpose of avoiding a deposit into the Rainy Day
14 Fund. In fact, the consistent policy of the Legislature since establishment of the Rainy Day
15 Fund in 2007 to avoid a comparable "redirection" of funds – 11 years of legislative activity -
16 merits recognition and respect. Existing law has already defined the nature of the funds in
17 question here, and the ad hoc recitation by the Lieutenant Governor neither constitutes the
18 legislative process, nor is it sufficient to establish judicial precedent. The voters of Washington
19 did not intend to establish a Rainy Day Fund only to have it dried up by redirecting of funds
20 through political backroom deals. The intent of the voters was entirely contrary, and this Court
21 should give that intent the full and appropriate effect it deserves.

22 Finally, it is important to refute a particular point offered by the Defendants. The
23 Defendants set up the straw man argument addressing the dire impact on bonds for capital
24 projects if general state revenues fell to zero dollars. *See* Memorandum in Support of
25 Defendants' Motion for Summary Judgment, at 13. Plaintiff does not believe that the

1 Legislature would take such an action. If nothing else, the political consequences would be too
2 dire. Instead, the far more likely action, as demonstrated by Senator Zarelli's declaration, is
3 that this process of raiding the Rainy Day Fund becomes a regular recourse for the Legislature
4 to divert funds in favor of pressing and momentary concerns, at the expense of the Rainy Day
5 Fund itself. *See* Decl. of J. Zarelli, at ¶7.

6 **VI. CONCLUSION**

7 The intent and text of the Washington State Constitution require that the Legislature's
8 action be found unconstitutional. Defendants ask this Court to agree with their view that
9 somehow the revenue funds in question this year are unique and different than the revenue
10 funds of last year, and all of the years before going back to the enactment of the Rainy Day
11 Fund. This Court should not do so. State Treasurer Davidson said it best in his statement
12 imploring the Legislature against this unconstitutional and unwise action: "I urge the
13 Legislature to not start a terrible precedent of diverting Rainy Day funding." For all the
14 reasons specified above, the Motion for Summary Judgment should be denied.

15 DATED this 9th day of July, 2018.

16 

17 Tim Eyman
18 Plaintiff
19 Pro Se
20
21
22
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25

1 **CERTIFICATE OF SERVICE**

2 I hereby certify under penalty of perjury that under the laws of the State of Washington
3 that on the 9th day of July, 2018, I caused a true and correct copy of the foregoing document,
4 along with copies of the supporting Declarations of David Taylor, Joseph Zarelli, Tim Eyman,
5 and a proposed Order, to be delivered to the following counsel of record as indicated:
6


7 Jeffrey T. Even, WSBA 20367
8 Deputy Solicitor General
9 PO Box 40100
10 Olympia, WA 98504-0100
11 360-586-0728
12 JeffE@atg.wa.gov

13 ***Attorney for Defendants***

SENT VIA:

- 14 ☐ Fax
15 ☐ ABC Legal Services
16 ☐ Express Mail
17 ☐ Regular U.S. Mail
18 ☐ E-File/E-Service
19 ☒ E-Mail via E-Service Agreement

20 Dated this 9th day of July, 2018, at Seattle, Washington.

21 
22 _____
23 Tim Eyman
24
25

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SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

TIM EYMAN,

Plaintiff,

v.

DUANE DAVIDSON, in his capacity as the
State Treasurer, THE STATE OF
WASHINGTON; and THE WASHINGTON
STATE LEGISLATURE,

Defendants.

NO. 18-2-01672-34

DECLARATION OF TIMOTHY EYMAN
IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

I, Timothy Eyman, do solemnly declare and state:

1. I am competent to testify in this matter and make this Declaration based on my personal knowledge.
2. I am the Plaintiff in this matter. I am a native of Washington, and care deeply about this state. I have dedicated much of my adult life to promoting fiscal responsibility in Washington through a variety of initiatives to the people. Over the past 20 years, I have been involved in over 20 ballot measure campaigns. Consequently, I carefully followed the process by which the Rainy Day Fund was established in 2007 and strengthened in 2011. I filed this lawsuit after the Legislature passed ESSB 6614 in March of this year in a transparent and cynical effort to raid funds from the Rainy Day Fund. I am passionate about the Washington State Constitution, and desire that it be followed and respected.

1 3. Regarding background in this case, in 2002, the Washington State Tax Structure
2 Study Committee, frequently known as the "Gates Commission," issued a report entitled "Tax
3 Alternatives for Washington State Report." ("Gates Tax Report"). Among other things, the
4 Gates Tax Report recommended a state "rainy day account" be established.

5 4. In 2007, the Legislature took action on the Gates Tax Report. The Legislature
6 referred Engrossed Substitute Senate Joint Resolution 8206 ("ESSJR 8206") to the voters for
7 approval or rejection of a constitutional amendment establishing a budget stabilization account,
8 or, as it is often referred to, a "Rainy Day Fund." The Explanatory Statement in the 2007
9 voters' guide explained the effect of the proposed amendment as follows:

10 The constitutional amendment would require that 1% of "general state revenue" for
11 each fiscal year be transferred into the budget stabilization account. "General state
12 revenue" means all state money received in the treasury, with certain exceptions that
13 include money from the ownership or operation of any facility, undertaking or project;
money received for restricted purposes; and money received from the sale of bonds.

14 A true and accurate copy of the 2007 voters' guide on this issue is attached as **Exhibit A**.

15 5. ESSJR 8206, encapsulated in Amendment 99, passed overwhelmingly, with
16 67.7% of voters and all 39 counties voting in support. I proudly supported the establishment of
17 the budget stabilization account via passage of ESSJR 8206.

18 6. In 2011, Washington voters again had an opportunity to weigh in on the Rainy
19 Day Fund. Senate Joint Resolution 8206 ("SJR 8206") proposed to the voters that the
20 Legislature be required to transfer additional funds to the Rainy Day Fund in each biennium in
21 which the state received "extraordinary revenue growth," with certain limitations. The
22 Explanatory Statement again addressed the question of what funds are required to be
23 transferred into the Rainy Day Fund:

1 By the end of each fiscal year (June 30 of each year), the legislature must transfer to the
2 budget stabilization account an amount equal to one percent of the general state
3 revenues for that fiscal year. The legislature may approve the transfer of additional
4 amounts. *“General state revenues” means all state revenues that are not derived
from a state undertaking or dedicated to a particular purpose, as set forth in article
VIII, section 1 of the Washington Constitution.”*

5 A true and accurate copy of the 2011 Explanatory Statement on this issue is attached as

6 **Exhibit B.** Moreover, the voters’ pamphlet statement in favor of SJR 8206, written by
7 Republican Senator Joe Zarelli and Democrat State Treasurer James McIntire, read in part:

8
9 Approving SJR 8206 will help: *Build stronger reserves*, keeping the state better
10 prepared for difficult economic times; and *Keep spending at a more sustainable level*,
11 limiting expansions based on unexpected or windfall revenue...Extraordinary revenue
12 spikes should be saved in the constitutionally-protected rainy day fund, not immediately
13 spent. This will prevent unsustainable spending increases and help protect vital
services when times get tough. Passed with overwhelming bipartisan support, SJR
8206 is prudent, thoughtful policy aimed at better management and control of state
spending. *End roller coaster budgeting – please vote yes!*

14 7. Once again, the voters of Washington overwhelmingly supported the
15 strengthening of the Rainy Day Fund, with support from 66.6% of the voters and winning
16 passage in all 39 counties. Once again, I was proud to support the strengthening of the Rainy
17 Day Fund through passage of SJR 8206.

18 8. In 2007, a coalition of various individuals brought suit individually and on
19 behalf of their children enrolled in Washington’s public school system, alleging that
20 Washington was violating Article IX, §1 of the Washington State Constitution by failing to
21 adequately fund the K-12 school system. This was the litigation that eventually culminated in
22 *McCleary v. State*, 173 Wn.2d 477, 511-12, 269 P.3d 227 (2012). In 2012, the Washington
23 Supreme Court ruled in *McCleary* that the state failed to satisfy its constitutional obligations to
24 fund K-12 education. In 2014, the Court ruled that the state was in contempt for lack of
25 progress in implementing the 2012 ruling, and imposed daily sanctions of \$100,000.00.

1 9. Following *McCleary*, the Washington Legislature made halting progress in
2 funding K-12 education. On November 15, 2017, however, the Washington Supreme Court
3 determined that the state had achieved full compliance with its orders, except in one major
4 respect: “the legislature delayed complete implementation of the new allocation model for full
5 state funding of basic education salaries until the 2019-2020 school year.”

6 10. In 2017, the Legislature took action to address *McCleary*. One aspect of the
7 “*McCleary* fix” was the levying of a new property tax for the support of common schools. The
8 2017 legislation had two primary components at issue: 1) “the state must levy an additional
9 property tax for the support of common schools in the state” RCW 84.52.065(2)(a); and 2)
10 “Taxes collected under this subsection (2) must be deposited into the state general fund.” RCW
11 84.52.065(2)(b).

12 11. In 2018, the Legislature also took action on the “*McCleary* fix,” but did so in an
13 unconstitutional manner. The passage of ESSB 6614 creates a terrible precedent for the
14 Legislature to continually raid funds from the Rainy Day Fund. Upon proposal of ESSB 6614,
15 reaction came swiftly from the state official charged with maintaining the Rainy Day Fund.
16 Washington State Treasurer Duane Davidson issued a press release stating “We’re extremely
17 concerned with today’s proposals to divert \$700 million from being deposited in the Rainy Day
18 Fund. Choosing not to save today when we’re experiencing extraordinary revenue growth
19 guarantees that our budget problems will be much greater when the next recession hits.”
20 Treasurer Davidson concluded his press release with the simple request: “I urge the Legislature
21 to not start a terrible precedent of diverting Rainy Day funding. Fund our Rainy Day Fund,
22 adjourn and then go home.” A true and accurate copy of Treasurer Davidson’s press release is
23 attached as **Exhibit C**.

24 12. Unfortunately, the Legislature declined to follow Treasurer Davidson’s advice. On the
25 final day of the session, ESSB 6614 passed with a bare legislative majority. As reported by the

1 News Tribune: "The latest version was proposed by Sen. Christine Rolfes, D-Bainbridge
2 Island, on Tuesday evening. It did not receive a public hearing, but passed the Senate 25-23 on
3 Wednesday." In the course of debate, multiple parliamentary points of order were made
4 regarding the necessary vote threshold to pass ESSB 6614. In response to a point of order
5 offered by Senator Michael Baumgartner as to the number of votes required for passage, the
6 Lieutenant Governor ruled that a simple constitutional majority was required. A true and
7 accurate copy of the Lieutenant Governor's ruling on this point of order is attached hereto as
8 **Exhibit D**. On March 28, 2018, I initiated litigation in this matter. Ironically, due solely to the
9 duties of his office, Treasurer Davidson is the named Defendant.

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

3 DATED this 9th day of July, 2018 at Mukilteo, Washington.

4
5 By 
6 Timothy D. Eyman
7 Plaintiff

EXHIBIT A



ENGROSSED SUBSTITUTE

SENATE JOINT RESOLUTION 8206

Proposed to the People by the Legislature
Amendment to the State Constitution

Official Ballot Title:

The legislature has proposed a constitutional amendment on establishment of a budget stabilization account.

This amendment would require the legislature to transfer 1% of general state revenues to a budget stabilization account each year and prohibit expenditures from the account except as set forth in the amendment.

Should this constitutional amendment be:

Approved [] Rejected []

Votes cast by the 2007 Legislature on final passage:

Senate: Yeas, 45; Nays, 3; Absent, 0; Excused, 1.

House: Yeas, 74; Nays, 23; Absent, 0; Excused, 1.

Note: The Official Ballot Title and Explanatory Statement were written by the Attorney General as required by law. The complete text of Engrossed Substitute Senate Joint Resolution 8206 begins on page 31.

Explanatory Statement

The constitutional provision as it presently exists:

The state constitution currently does not require a budget stabilization account. State statutes, however, currently establish an "emergency reserve fund." Under these statutes, the state treasurer is directed to transfer to the emergency reserve fund in each fiscal year a portion of revenues that exceed the "state expenditure limit." With limited exceptions, the state expenditure limit is the maximum amount that may be spent from the state general fund and certain other accounts in each fiscal year and is calculated based, in part, on growth in personal income. Under these statutes, money may be spent from the emergency reserve fund only with the approval of two-thirds of the members of each house of the legislature, and only if total expenditures would not exceed the state expenditure limit. Under existing statutes, if the balance of the emergency reserve fund exceeds 5% of annual state general fund revenues, then 75% of any balance over that amount shall be transferred to the student achievement fund, earmarked for certain education purposes, and 25% shall be transferred to the general fund.

The legislature may amend or repeal statutes generally and accordingly, may amend or repeal statutes relating to the emergency reserve fund.

The effect of the proposed amendment, if it is approved:

If approved, this amendment would add a new provision to the state constitution establishing a budget stabilization account in the state treasury. The legislature would be authorized to enact laws to carry out the purposes of this amendment. The constitutional amendment would require that 1% of "general state revenue" for each fiscal year be transferred into the budget stabilization account. "General state revenue" means all state money received in the treasury, with certain exceptions that include money from the ownership or operation of any facility, undertaking, or project; money received for restricted purposes; and money received from the sale of bonds. The legislature could appropriate additional amounts into the budget stabilization account if it so chooses.

The constitutional amendment would permit money to be appropriated from the budget stabilization account only in four circumstances. First, if the governor declares a state of emergency resulting from a catastrophic event that makes action by government necessary to protect life or public safety, then by a majority vote of each house of the legislature, money could be appropriated from the account to respond to that emergency. Second, if the official forecast for job growth in the state for any fiscal year is estimated to be less than 1%, then for that fiscal year, money could be appropriated from the account by a majority vote of each house of the legislature. Third, the legislature could appropriate money from the account at any time by favorable vote of at least three-fifths (60%) of the members of each house of the legislature. Fourth, if the balance in the budget stabilization account exceeds 10% of estimated general state revenues for that fiscal year, then by majority vote of each house, the legislature could appropriate any amount that exceeds 10% of estimated general state revenues, but solely for deposit in the education construction fund. Under existing statutes, unless approved by two-thirds majority of the legislature and the voters, funds in the education construction account may be appropriated only for common school and higher education construction.

Under laws enacted by the legislature that would go into effect on July 1, 2008, and only if this proposed constitutional amendment is approved, the emergency reserve account statute would be repealed, and funds remaining in that account would be transferred to the budget stabilization account.

Statement For ESSJR 8206

ESSJR 8206: WASHINGTON SHOULD SAVE FOR RAINY DAYS

Feast or famine? Washington's economy is sometimes up and sometimes down. Unexpected dips in state revenues from a down economy can force the legislature to either raise taxes or cut critical services just when they are needed most.

PREVENT TAX INCREASES AND PROTECT VITAL SERVICES

The Rainy Day Fund is a simple idea, recommended by the bipartisan Gates Tax Commission to save money during the good times so we are prepared for the bad.

Every year 1% of state revenues are automatically put into the fund.

Until the fund reaches 10% of state revenues, the money can only be spent when the economy declines seriously, as it did after 9/11, or if there is a catastrophic emergency requiring immediate action.

If other unforeseen circumstances come up, a 60% majority of the legislature can approve releases.

The spending rules are enforced by the Constitution, making the savings account more secure.

OVERWHELMING BIPARTISAN SUPPORT

The bill introducing this amendment was proposed by Governor Gregoire and approved by overwhelming bipartisan majorities in both the House and Senate.

REQUIRE OLYMPIA TO BUDGET LIKE WASHINGTON FAMILIES

Families prepare for rainy days. State government should do the same.

Vote YES on ESSJR 8206!

Rebuttal of Statement Against

Past responses to economic downturns illustrate the need for a rainy day fund.

After 9/11, cuts to education and health care for the needy.

In the early 1990s, a \$1 billion tax increase.

In the early 1980s, a sales tax on food.

ESSJR 8206 would help prevent this in the future. It would set money aside during good times for use in bad times, thereby avoiding tax increases and protecting critical services.

Please vote Yes.

Voters' Pamphlet Argument Prepared by:

ROSS HUNTER, State Representative, Chairman, Finance Committee; LISA BROWN, State Senator, Majority Leader; JOSEPH ZARELLI, State Senator, Ranking Member, Ways and Means Committee; GARY ALEXANDER, State Representative, Ranking Member, Appropriations Committee; HUGH SPITZER, public finance lawyer and law professor.

Statement Against ESSJR 8206

PROPOSED STABILIZATION ACCOUNT VOTE RESTRICTS CRITICAL DECISIONS.

This proposal restricts the legislature's ability to make critical decisions by requiring a "super majority" vote for expenditures from the stabilization account. It would allow a small minority to block decisions by the majority and would apply even in critical areas such as spending for education and health care. It violates our long-standing practice of majority decision making. Exceptions are made only for a state of emergency or very low employment growth.

YOU CAN'T PREDICT THE FUTURE.

This resolution fails to look forward. We can never predict what will happen. A major earthquake might bring consensus to legislators from different parties – but what about cuts from the federal government or a crashing economy? Partisan politics may stop access to needed funds.

Unlike the U.S. Congress, our state must pass a balanced budget. Many programs necessary for the success of our children are now the state's responsibility. Let's not handcuff ourselves – restricting our ability to react to growing and unexpected needs.

ESSJR 8206 COULD HURT OUR SCHOOLS AND ESSENTIAL GOVERNMENT SERVICES.

Even when the state's economy is struggling, ESSJR 8206 will restrict our ability to react. Funds that may be needed to keep our schools afloat, assist our seniors, or stimulate the economy won't be available. We need stability – not politics.

VOTE NO ON ESSJR 8206.

Vote NO on ESSJR 8206 and keep politics out of our State's Constitution.

Rebuttal of Statement For

A constitutional rainy day fund is a simplistic temporary crutch to address potential budget problems.

It delays permanent solutions to our state's real budget problems.

As the revenue builds, it serves as a tempting source to fund programs through the initiative process.

A rainy day fund will be difficult to access in cases where spending is critical.

Vote NO on ESSJR 8206 to protect our schools and essential government services and to protect our Constitution.

Voters' Pamphlet Argument Prepared by:

HELEN SOMMERS, State Representative, Chair, Appropriations Committee; KEN JACOBSEN, State Senator, Chair, Natural Resources, Ocean, Recreation Committee; SAM HUNT, State Representative, Chair, State Government, Tribal Affairs Committee; JEANNE KOHL-WELLES, State Senator, Chair, Labor, Commerce, Research, Development Committee; RUTH KAGI, State Representative, Chair, Early Learning, Children's Services Committee; JIM MOELLER, State Representative, Co-chair, Joint Committee Veterans, Military Affairs.

EXHIBIT B

Senate Joint Resolution

8206

Proposed to the People by the Legislature
Amendment to the State Constitution:

**The legislature
has proposed a
constitutional
amendment on the
budget stabilization
account maintained in
the state treasury.**

This amendment would require the legislature to transfer additional moneys to the budget stabilization account in each fiscal biennium in which the state has received "extraordinary revenue growth," as defined, with certain limitations.

Should this constitutional amendment be:

- ☐ Approved
☐ Rejected

Votes cast by the 2011 Legislature on final passage:
Senate: Yeas, 47; Nays, 0; Absent, 0; Excused, 2
House: Yeas, 76; Nays, 10; Absent, 0; Excused, 12



**You are voting to Approve or Reject
the bill passed by the Legislature**

Approve - you *favor* the bill passed
by the Legislature.

Reject - you *don't favor* the bill passed
by the Legislature.

The Official Ballot Title and the Explanatory Statement were written by the Attorney General as required by law. The Secretary of State is not responsible for the content of arguments or statements (WAC 434-381-180). The complete text of Senate Joint Resolution 8206 is located at the end of this pamphlet.

Explanatory Statement

Written by the Office of the Attorney General

The Constitutional Provision as it Presently Exists

Article VII, section 12 of the Washington Constitution requires a budget stabilization account to be maintained in the state treasury. By the end of each fiscal year (June 30 of each year), the legislature must transfer to the budget stabilization account an amount equal to one percent of the general state revenues for that fiscal year. The legislature may approve the transfer of additional amounts. "General state revenues" means all state revenues that are not derived from a state undertaking or dedicated to a particular purpose, as set forth in article VIII, section 1 of the Washington Constitution.

Article VII, section 12 also authorizes the legislature to withdraw money from the budget stabilization account. The legislature may do so by majority vote in two situations: (1) during a fiscal year in which the governor declares a state of emergency in response to a catastrophic event that requires government action to protect life or public safety; or (2) in a fiscal year for which the forecasted state employment growth is estimated to be less than one percent. In addition, at any time the balance in the budget stabilization account exceeds ten percent of estimated general state revenues for that fiscal year, the legislature by majority vote may transfer the amount in excess of ten percent to the education construction fund. Otherwise, a three-fifths vote of the legislature is required to withdraw or transfer money from the budget stabilization account. All relevant estimates of employment and revenue are made by the state economic and revenue forecast council.

The Effect of the Proposed Amendment, if Approved

The proposed amendment to article VII, section 12 would require additional revenue to be transferred to the budget stabilization account in any fiscal biennium in which there has been

"extraordinary revenue growth," with certain limitations. "Extraordinary revenue growth" is defined by reference to a baseline consisting of the average biennial percentage growth in general state revenues over the preceding five biennia. Any growth in general state revenue that is more than one-third greater than the baseline is defined as "extraordinary revenue growth." In determining whether "extraordinary revenue growth" has occurred, historical general state revenues must be adjusted to reflect statutory changes to revenue dedication.

The legislature would be required to transfer three-fourths of that "extraordinary revenue growth" to the budget stabilization account, subject to two limitations. First, no transfer of "extraordinary revenue growth" is required where annual average state employment growth during the preceding fiscal biennium averaged less than one percent per fiscal year. Second, no transfer of "extraordinary revenue growth" is required unless the transfer would exceed the amount already transferred to the budget stabilization account during the fiscal biennium, under present law. The deadline for transferring the additional revenue would be the end of each fiscal biennium (June 30 in odd-numbered years).

No change would be made to the legislature's authority to withdraw money from the budget stabilization account.

Fiscal Impact Statement

Not required by law

Argument For Senate Joint Resolution 8206

Overwhelming Bipartisan Support for Strengthening Voter-Approved Rainy Day Fund

In 2007, voters approved the creation of a constitutionally-protected rainy day fund that requires state government to set aside 1% of revenues annually for hard times. SJR 8206, a bipartisan measure, strengthens this fund by requiring a portion of "extraordinary" revenue – that which exceeds 133% of historical average growth – be saved, rather than spent.

Use Good Economic Times to Prepare for Bad

State government should save more money during good times, like the housing boom of several years ago when revenue grew at more than twice the historical average. Saving more of this windfall would have better prepared the state for the downturn that followed.

Approving SJR 8206 will help: *Build stronger reserves*, leaving the state better prepared for difficult economic times; and *Keep spending at a more sustainable level*, limiting expansions based on unexpected or windfall revenue.

Protect Vital Services

A robust rainy day fund protects crucial state services like education and healthcare from deep cuts in bad economic times like we are experiencing now. Putting extraordinary revenue in the fund provides this cushion.

Plan for the Future

Just as your family would not take on unsustainable commitments if you received an unexpected windfall, neither should Olympia. SJR 8206 puts windfall revenue in the rainy day fund for extraordinary use, protecting state services from equally unexpected downturns. Help put an end to roller coaster budgeting – Vote yes on SJR 8206!

Rebuttal of Argument Against

Opponents argue for permitting budgets to be built on unsustainable revenue spikes. This is simply not prudent. Extraordinary revenue spikes should be saved in the constitutionally-protected rainy day fund, not immediately spent. This will prevent unsustainable spending increases and help protect vital services when times get tough. Passed with overwhelming bipartisan support, SJR 8206 is prudent, thoughtful policy aimed at better management and control of state spending. *End roller coaster budgeting - please vote yes!*

Argument Prepared by

Joseph Zarelli, State Senator, Republican, Ridgefield, 18th Legislative District; **Ross Hunter**, State Representative, Democrat, Medina, 48th Legislative District; **James McIntire**, Washington State Treasurer.

Contact: No information submitted

Argument Against Senate Joint Resolution 8206

In 2007 voters amended the constitution to create a "rainy day fund" as a way to force the legislature to save money for bad times. 1% of general funds go into savings for hard times (currently almost \$300 million). It's working well.

8206 requires *more* than the 1% that voters approved - it would *also* require that "extraordinary revenues" go into savings. While it sounds like a good idea to save more – the result is people paying taxes and getting nothing for it, except a bigger savings account.

Budget cuts from hard times couldn't be backfilled with this money, so people would have to live with fewer teachers and nurses, less fish and wildlife enforcement, less clean air monitoring, fewer roads and job creation, all while there was money in the bank waiting for the next recession.

Many people hate it when their bank makes them keep a minimum balance on hand when bills are due. 8206 would effectively raise that minimum balance so class sizes get bigger, prisoners get released early, there is less law enforcement, and there is less help available to people in need.

8206 decreases the amount of taxpayer money that can be used for things taxpayers want and need (and paid for) so it can sit in an already existing rainy day fund with plenty of money in it. It means budget cuts become permanent and you aren't getting the government you paid for. *Please vote no.*

Rebuttal of Argument For

The existing rainy day fund is \$300 million worth of proof that the state is using good economic times to plan for the future. No family puts "extra" money in their savings account when there are still important needs to be met, and government shouldn't either. Continue the constitutionally protected savings account, *and* allow other revenue to be used for backfilling budget cuts made during the recession. *Please vote no* on SJR 8206.

Argument Prepared by

Zack Hudgins, State Representative, 11th District;
Sam Hunt, State Representative, 22nd District;
Mary Lou Dickerson, State Representative, 36th District;
Bob Hasegawa, State Representative, 11th District;
Jamie Pedersen, State Representative, 43rd District;
Jeff Johnson, President, Washington State Labor Council, AFL-CIO.

Contact: No information submitted

EXHIBIT C

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Treasurer: Senate's Attempt to Divert Funds Sets Dangerous Precedent



By Duane Davidson

MARCH 7, 2018

Quotes from Treasurer Davidson
follow.

"We're extremely concerned with today's proposals to divert \$700 million [\[http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Amendments/Senate/6614-S%20AMS%20ROLF%20S6140.5.pdf\]](http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Amendments/Senate/6614-S%20AMS%20ROLF%20S6140.5.pdf) from being deposited in the Rainy Day Fund. Choosing to not save today when we're experiencing extraordinary revenue growth guarantees that our budget problems will be much greater when the next recession hits."

On long-term planning:

"We've had 10 recessions since World War II. *Another will come* – perhaps sooner than we anticipate. With the growing concerns of trade wars and market volatility, now is the time to build Rainy Day balances even higher. The historic boom we are in will not last and when the recession comes all will be grateful if the Legislature is far-sighted today and allows this continued growth."

"It is very short-sighted to seize \$700 million in a diversionary raid on the Rainy Day Fund as proposed. This is unacceptable."

Comparison with California:

"Here in Washington we rarely think of looking to California as an example of fiscal prudence. Governor Jerry Brown and California propose adding over \$5 billion to their own Rainy Day Fund this year. Even California is doing the right thing! We can too. We need to get serious about saving and we need to keep building our Rainy Day Fund in this budget."

Pay Debts:

"If the Legislature chooses to ignore the will of the people and instead tap into what should be Rainy Day Funds – then it should prioritize paying down debt. Our unfunded pension liabilities are our most expensive debt. Washington State's total pension funding is at roughly 84% of its obligations."

Impact on Bond Rating:

"As the State's Chief Financial Officer I have a duty to speak out if we can avoid a self-inflicted wound. If the Legislature shifts its rules to avoid filling the Rainy Day Fund in the year ahead we weaken our financial position and disregard the spirit of the Constitutional Amendment passed overwhelmingly by voters who wanted to save extraordinary revenue. We also damage our well-deserved and hard-won reputation for good fiscal management with bond rating agencies and investors. *Say "no" to budget gimmicks.* Raiding, or diverting, the Rainy Day Fund for today's desires is the opposite of good fiscal management. Don't do it."

"I urge the Legislature to not start a terrible precedent of diverting Rainy Day funding. Fund our Rainy Day Fund, adjourn and then go home."

The Legislature is scheduled to adjourn March 8th.

TAGS: FISCAL, RAINY DAY FUND, STATE TREASURER,
WASHINGTON STATE

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EXHIBIT D

RULING ON ENGROSSED SUBSTITUTE SENATE BILL 6614

March 7, 2018

In responding to the Point of Parliamentary Inquiry raised by Senator Baumgartner as to the number of votes required for final passage of Engrossed Substitute Senate Bill 6614, the President finds and rules as follows:

Article 7, Section 12 of the Washington State Constitution requires a three-fifths vote of the Senate for appropriations of funds from the Budget Stabilization Account, commonly referred to as the Rainy Day Fund. Under this bill, a portion of revenue from a new state property tax levy adopted in the 2017 Legislative Session will be deposited directly into the Education Legacy Trust Account, rather than the General Fund.

In considering the question of how many votes are required for final passage of Engrossed Substitute Senate Bill 6614, the President finds that a simple constitutional majority is required on the basis of two distinct lines of reasoning.

First and foremost, the bill does not contain an appropriation from the Rainy Day Fund. The diversion of extraordinary revenue from existing sources that have historically been deposited in the General Fund would, under Article 7, Section 12, require an adjustment to the Rainy Day Fund to reflect the statutory change. However, the revenue collected through the new property tax levy, enacted in 2017 by the 65th Legislature, has not yet been deposited into the General Fund. Because the bill does not request an appropriation from the Rainy Day Fund, a simple majority is all that is required for final passage.

Furthermore, the President also believes that the revenue increase caused by the enactment of this new tax policy is the result not of unexpected positive revenue from existing sources, but rather a policy decision to establish a new levy for the specific purpose of funding common schools.

Seen in this light, the requirement that this bill obtain a mere simple constitutional majority rather than a three-fifths super majority is in keeping with the spirit as well as the letter of the Rainy Day Fund.

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SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

TIM EYMAN,

Plaintiff,

v.

DUANE DAVIDSON, in his capacity as the
State Treasurer, THE STATE OF
WASHINGTON; and THE WASHINGTON
STATE LEGISLATURE,

Defendants.

NO. 18-2-01672-34

DECLARATION OF DAVID TAYLOR IN
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

1. David Taylor, do solemnly declare and state:

1. I am competent to testify in this matter and make this Declaration based on my personal knowledge.

2. I am a member of the Washington State House of Representatives. I have served in that capacity since March 2009. I currently serve on the House Local Government and House Appropriations Committees and am the Ranking Member on the House Environment Committee. This declaration represents my own opinion as a member of the House of Representatives and does not, nor is it intended to, represent the opinion of the Legislature collectively.

3. Through my service on the House Appropriations Committee, I am well-versed in the process by which funds are levied, collected, and distributed by the Washington State

DECLARATION OF DAVID TAYLOR IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT 1

1 Legislature.

2 4. I was serving in the Legislature as the final days of the session approached in
3 March 2018. One of the major issues facing the Legislature was how to fund the “*McCleary*
4 fix” in light of the requirements of the constitutionally-mandated Budget Stabilization Account
5 and the Supreme Court’s mandate to fully fund education by September 1, 2018.

6 5. As adjournment loomed, the Legislature faced three options: 1) It could vote to
7 raise taxes to fund the “*McCleary* fix”; 2) It could vote to appropriate funds from the Budget
8 Stabilization Account, which would require a 3/5 majority vote under Article VII, §12(d)(iii) of
9 the Washington State Constitution; or 3) It could ignore the Supreme Court’s directive to fully
10 fund education by September 1, 2018, and maintain the funding timeframes established in
11 Engrossed House Bill 2242 in 2017.

12 6. Based on my personal review of the votes in both houses of the Legislature, it
13 was clear to me that there was not a sufficient majority to appropriate funds from the Budget
14 Stabilization Account, and a vote to raise taxes was deemed politically unacceptable by the
15 majority party in both chambers.

16 7. Instead of taking any of the actions outlined above, the Legislature took an
17 unprecedented approach, with a bare majority vote: it simply re-directed funds that were levied
18 for collection in 2019 and deposited them into the education legacy trust account. This action
19 resulted in redirecting \$935,000,000.00 from the Budget Stabilization Account.

20 8. I have carefully reviewed ESSB 6614 whereby the funds were redirected from
21 the Budget Stabilization Account. A true and accurate copy of ESSB 6614 is attached hereto
22 as **Exhibit A**. Surprisingly, it appears that the Legislature redirected property tax funds that
23 were levied for collection in calendar year 2019, and directed that only the funds collected in
24 fiscal year 2019 (defined as July 1, 2019 through June 30, 2020), be directed into the education
25 legacy trust account. Consequently, based on my reading of ESSB 6614, only those funds

DECLARATION OF DAVID TAYLOR IN OPPOSITION TO
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT - 2

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1 collected between July 1, 2019 through June 30, 2020 will be deposited into the education
2 legacy trust account. This results in funds being collected during the first six months of 2019
3 and being directed into the state general fund and, by extension, into the Budget Stabilization
4 Account. In sum, it appears that only six months' of the funds levied by the Legislature
5 through ESSB 6614 and collected in 2019 will be deposited into the education legacy trust
6 account, while the remaining six months' worth of collected funds must be deposited into the
7 state general fund.

8 9. I am gravely concerned regarding the threat to the Budget Stabilization
9 Account. I do not recall any other instance during my elected service in Olympia when the
10 Legislature avoided a vote to appropriate money out of the Budget Stabilization Account by
11 simply re-directing funds that were otherwise headed there. Additionally, my research has not
12 yielded any other instance of that taking place, either before or after 2009 when I entered the
13 Legislature.

14 10. The Legislature's action to divert \$935,000,000.00 from the general fund has
15 significant consequences. Among other things, it was utilized by the Legislature as a means to
16 meet the four-year balanced budget requirement. Prior to this action, the Legislature would
17 have needed a 3/5 vote to use Budget Stabilization Account monies to balance the operating
18 budget, and routinely did so. The Legislature did not do that in this case, and the consequences
19 are significant. If allowed to stand, whenever the Legislature wishes to avoid a 3/5 vote to
20 appropriate funds from the Budget Stabilization Account, all it needs to do is redirect revenue
21 that would have gone into the Budget Stabilization Account into a different dedicated account.

22 11. I believe this action to be squarely against the intent of the voters in establishing
23 the Budget Stabilization Account by constitutional amendment. This appears to be done for
24 political expediency to avoid a special session and avoid the possibility of taking difficult, but
25 constitutionally-appropriate, votes.

DECLARATION OF DAVID TAYLOR IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 3

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

3 DATED this 8th day of July, 2018 at Yakima, Washington.

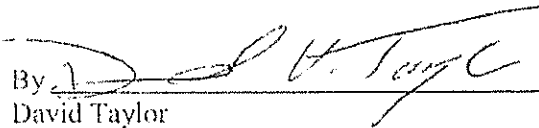
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5 By 
6 David Taylor
7 Member
8 Washington State House of Representatives
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EXHIBIT A

2017 Wa. SB 6614

Enacted, March 27, 2018

Reporter

2018 Wa. ALS 295; 2018 Wa. Ch. 295; 2017 Wa. SB 6614

WASHINGTON ADVANCE LEGISLATIVE SERVICE > STATE OF WASHINGTON — 65TH LEGISLATURE —
2018 REGULAR SESSION > CHAPTER 295, LAWS OF 2018 > SUBSTITUTE SENATE BILL 6614

Notice

Added: Text highlighted in green

Deleted: Red-text-with-a-strikethrough

Synopsis

AN ACT Relating to providing property tax relief by reducing calendar year 2019 state property taxes and redirecting revenue to the education legacy trust account for fiscal year 2019; and amending RCW 84.52.065.

Text

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

Sec. 1. RCW 84.52.065 and 2017 3rd sp.s. c 13 s 301 are each amended to read as follows:

- (1) Except as otherwise provided in this section, subject to the limitations in RCW 84.55.010, in each year the stateshallmust levy for collection in the following year for the support of common schools of the state a tax of three dollars and sixty cents per thousand dollars of assessed value upon the assessed valuation of all taxable property within the state adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue.

(2)

- (a) In addition to the tax authorized under subsection (1) of this section, the state must levy an additional property tax for the support of common schools of the state.

- (i) For taxes levied for collection in calendar years 2018 through 2021, the rate of tax is the rate necessary to bring the aggregate rate for state property tax levies levied under this subsection and subsection (1) of this section to a combined rate of two dollars and forty cents per thousand dollars of assessed value in calendar year 2019 and two dollars and seventy cents per thousand dollars of assessed value in calendar years 2018, 2020, and 2021. The state property tax levy rates provided in this subsection (2)(a)(i) are based upon the assessed valuation of all taxable property within the state adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue.

- (ii) For taxes levied for collection in calendar year 2022 and thereafter, the tax authorized under this subsection (2) is subject to the limitations of chapter 84.55 RCW.

(b)

2017 Wa. SB 6614

- (i) Except as otherwise provided in this subsection, all taxes collected under this subsection (2) must be deposited into the state general fund.
- (ii) For fiscal year 2019, nine hundred thirty-five million dollars of taxes collected under this subsection (2) must be deposited into the education legacy trust account for the support of common schools.
- (3) For taxes levied for collection in calendar years 2019 through 2021, the state property taxes levied under subsections (1) and (2) of this section are not subject to the limitations in chapter 84.55 RCW.
- (4) For taxes levied for collection in calendar year 2022 and thereafter, the aggregate rate limit for state property taxes levied under subsections (1) and (2) of this section is three dollars and sixty cents per thousand dollars of assessed value upon the assessed valuation of all taxable property within the state adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue.
- (5) For property taxes levied for collection in calendar years 2019 through 2021, the rate of tax levied under subsection (1) of this section is the actual rate that was levied for collection in calendar year 2018 under subsection (1) of this section.
- (6) As used in this section, "the support of common schools" includes the payment of the principal and interest on bonds issued for capital construction projects for the common schools.

History

Approved by the Governor March 27, 2018

Effective date: June 7, 2018

Sponsor

By Senate Ways & Means (originally sponsored by Senators Mullet, Rolfes, Dhingra, and Frockt)

WASHINGTON ADVANCE LEGISLATIVE SERVICE
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6 SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

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8 TIM EYMAN,

9 Plaintiff,

10 v.

11 DUANE DAVIDSON, in his capacity as the
12 State Treasurer, THE STATE OF
WASHINGTON; and THE WASHINGTON
STATE LEGISLATURE.

13 Defendants.
14

NO. 18-2-01672-34

DECLARATION OF JOSEPH ZARELLI
IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

15 I, Joseph Peter "Joe" Zarelli, do solemnly declare and state:

16 1. I am competent to testify in this matter and make this Declaration based on my
17 personal knowledge.

18 2. I was a member of the Washington State Senate from 1995 through 2012. At
19 various points in my legislative service, I served as the Majority Caucus Vice Chair and
20 Republican Caucus Vice Chair. My committee assignments included serving as the Chair and
21 Ranking Member of the Senate Ways and Means Committee. I am proud of my legislative
22 service, and always sought to ensure that the Washington State Constitution was honored,
23 respected, and fully complied with.

24 3. During my legislative service, I was intimately involved in the creation of the
25 "Rainy Day Fund" through passage of ESSJR 8206 in 2007 by Washington voters. Indeed,

DECLARATION OF JOSEPH ZARELLI IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 1

1 establishing the Rainy Day Fund in the Washington State Constitution was long a goal of mine,
2 and something that I worked hard to achieve. As part of that effort, I worked closely with
3 supporters of Amendment 99, which put the question of establishing the Rainy Day Fund to the
4 voters of Washington. I was delighted when the voters overwhelmingly approved the measure.

5 4. I was also intimately involved in the 2011 effort to strengthen the Rainy Day
6 Fund by requiring the transfer of additional funds into the Rainy Day Fund in each biennium in
7 which the state received "extraordinary revenue growth," with certain limitations. In fact, I
8 helped draft the voters' pamphlet in favor of the measure, along with Democrat State Treasurer
9 James McIntyre. Once again, I was very pleased when the measure passed with overwhelming
10 support.

11 5. I have read and am familiar with the Defendants' Motion for Summary
12 Judgment. I can say with 100% confidence that this "diversion" of funds before the funds are
13 deposited in the general fund (and, by extension, the Rainy Day Fund) is completely contrary
14 to the intent of the passionate supporters of the Rainy Day Fund who worked tirelessly to get it
15 passed and established in the Washington State Constitution. That is especially true under the
16 circumstances presented in this case. As I understand it, the Legislature desired funds to fully
17 fund the "*McCleary* fix" while avoiding a tax increase vote and still adjourn on time. Instead
18 of taking any of the constitutionally-permissible options, however, they simply re-directed a
19 revenue stream that had already been levied back in 2017 and directed for deposit in the state
20 general fund.

21 6. Not only is the "diversion" of funds completely contrary to the intent of the
22 supporters who campaigned for the establishment of the Rainy Day Fund, but, to my
23 knowledge, it is also completely unprecedented since the establishment of the Rainy Day Fund
24 in 2007. If this had been done prior to my departure from legislative service in 2012, I would
25 almost certainly know about it. I have never heard of this legislative trick being attempted

DECLARATION OF JOSEPH ZARELLI IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 2

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1 before, and it is my earnest hope that the Court takes prompt and decisive action to prevent the
2 Legislature from doing so here.

3 7. I wish to respond to a particular point made by in Defendants' Motion for
4 Summary Judgment. The Defendants appear to argue that the Rainy Day Fund could not be
5 spent entirely because it would impact the amount of money that the State of Washington may
6 borrow. This is a straw man argument. To my knowledge, no one really believes that the
7 Legislature would simply "divert" *all* funds away from the Rainy Day Fund until it is entirely
8 depleted. The much more likely (and dangerous) scenario is that it becomes a regular recourse
9 for the Legislature to divert funds from the Rainy Day Fund in favor of pressing concerns of
10 the moment, particularly when faced with the higher vote threshold mandated by the
11 Constitution. It was \$935,000,000.00 in this case. Next time, it may be a "mere"
12 \$500,000,000.00. Or it could go into the billions. In any case, as with *McCleary* in this case,
13 there will always be pressing legislative concerns. The job of the Legislature is to prioritize
14 those concerns and allocate resources to address them – in accordance with the Constitution.
15 The very purpose of the Rainy Day Fund was to constrain the spending abilities of the
16 Legislature, not enable it to spend freely through a "diversion" of funds that was patently
17 designed to avoid the constitutional strictures at issue.

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DECLARATION OF JOSEPH ZARELLI IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 3

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

4 DATED this 9th day of July, 2018 at SAN ANTONIO, TEXAS, Washington.

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6 By 
7 Joseph Zarelli
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DECLARATION OF JOSEPH ZARELLI IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 4

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6 SUPERIOR COURT OF WASHINGTON
7 COUNTY OF THURSTON

8 TIM EYMAN,

9 Plaintiff,

10 v.

11 DUANE DAVIDSON, in his capacity as the
12 State Treasurer, THE STATE OF
13 WASHINGTON; and THE WASHINGTON
14 STATE LEGISLATURE,

Defendants.

NO. 18-2-01672-34

PLAINTIFF'S ORDER DENYING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

[PROPOSED]

15 This matter comes before the Court on Defendants' Motion for Summary Judgment.

16 The Court has considered the following documents:

- 17
- 18 • Defendants' Motion for Summary Judgment, with supporting Declarations;
 - 19 • Plaintiff's Response in Opposition to Defendants' Motion for Summary
20 Judgment, with supporting Declarations;
 - 21 • Defendants' Reply in Support of Motion for Summary Judgment (if any); and
 - 22 •

23 Based on the filed documents, the submitted evidence, and the arguments of counsel and the
24 parties, IT IS HEREBY ORDERED:

25 Defendants' Motion for Summary Judgment is DENIED.

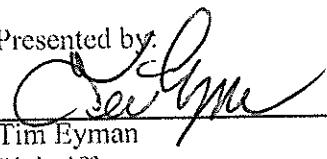
PLAINTIFF'S ORDER DENYING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT [PROPOSED] - 1

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DONE IN OPEN COURT this ____ day of July, 2018.

Hon. John C. Skinder

Presented by:



Tim Eyman
Plaintiff
Pro Se