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THURSTON  
SUPERIOR COURT

STATE OF WASHINGTON  
THURSTON COUNTY COUNTY SUPERIOR COURT

In the Matter of:

TIM EYMAN,

Plaintiff

v.

JAY INSLEE, in his official capacity as  
Governor of the State of Washington,

Defendant.

No. **21-2-01945-34**

COMPLAINT FOR DECLARATORY JUDGMENT

## **I. INTRODUCTION**

1. The Constitution of the State of Washington permits the Governor to veto "one or more sections or appropriation items" in a bill the Legislature passes, but "may not object to less than an entire section, except that if the section contains one or more appropriation items he may object to any such appropriation item or items." Const. art. III, § 12.

2. I, Tim Eyman, a political activist and lifelong resident and taxpayer in the state of Washington who is affected by these actions, bring this action to challenge the validity of Governor Jay Inslee's vetoes in two bills passed during the 2021 legislative session that will

result in detrimental policies taking effect that will not only hurt me, but all citizens and companies doing business in Washington state. The Governor exceeded his constitutional authority multiple times this session and cannot be allowed to get away with such a blatant abuse of power. On April 25, 2021, the house and senate barely passed the so-called Low Carbon Fuel Standard in Engrossed Third Substitute House Bill No. 1091 which included subsection 8 in section 3 which delayed the implementation date of this bad policy – the bill would not have been passed without the delay required in this subsection. But then on May 17, 2021, the Governor vetoed that single subsection (the delay of the Lower Carbon Fuel Standard in subsection 8) of the bill in order to implement this destructive policy immediately rather than delaying it as the bare majority of the people's representatives required. His partial veto of that single subsection is impermissible under the Constitution and so it constitutes an unconstitutional action inflicting a painful policy upon me, the people, and the companies that do business in Washington. Similarly, the Governor took the same unconstitutional action on the anti-competitive bill commonly referred to as the Cap-and-Trade Scheme (Engrossed Second Substitute Senate Bill No. 5126). This legislation also barely passed the Legislature and only because it included subsection 7 of section 22 which delayed the implementation of this destructive policy. The Constitution does not grant the Governor the power to rewrite legislation. But in his veto message, the Governor admitted that's exactly what he was doing. He went further and provided his justification for his unconstitutional action: " ... the delayed effective date established in subsection (7) unnecessarily hinders our state's ability to combat climate change, one of the greatest challenges facing our state and the world today." So to him,

the end justifies the means. But no matter how much he wants his destructive policy goals, his desires do not justify violating the Constitution to achieve them.

There are supposed to be three co-equal branches of government – legislative, judicial, and executive. But to Governor Inslee, he believes there is only one: him. Governor Inslee prefers to be judge, jury, and executioner, sidestepping the Constitution and co-opting the powers of the Legislature and the courts. Such mad, power-hungry actions must be challenged and overturned.

With both bills, each requiring delays in the implementation of a Low Carbon Fuel Standard and a Cap-and-Trade Scheme, the Governor exceeded his constitutional authority by vetoing less than an entire section or appropriation item. This Court should grant declaratory judgment invalidating the Governor's vetoes and declaring the vetoed portions of the bills to be part of the validly enacted laws.

3. The sole issue presented by this case is the validity of the Governor's vetoes of less than a full section or appropriation item. This is an issue of substantial public interest affecting the constitutional roles and prerogatives of the people, the people's elected representatives in the Legislature and of the Governor as the State's chief executive officer. The public policy merits of the Legislature's enactments or of the Governor's partial vetoes are not at issue.

## **II. PARTIES**

4. Plaintiff Tim Eyman is a lifelong resident and taxpayer in the state of Washington who is deeply committed to the state Constitution, a longtime advocate for the taxpayers, and interested in and personally affected by the destructive policies contained in Engrossed Third Substitute House Bill No. 1091 (Low Carbon Fuel Standard) and Engrossed Second Substitute



Senate Bill No. 5126 (Cap-and-Trade Scheme). I am bringing this Complaint for Declaratory Judgment because I have taxpayer standing and believe the policies in these laws are hurtful, costly, arbitrary, anti-competitive, and absurd especially since neighboring states are not required to follow them. I support the decision by the Legislature to delay these policies and will be hurt as a taxpayer if Governor Inslee's unilateral action to rewrite these laws is not challenged and overturned. In addition, Attorney General Bob Ferguson, who would represent the Legislature in any legal challenge to these bills, is a proponent of these destructive policies, is an ally of Governor Inslee, and wishes to be Governor in the future. Bob Ferguson would not vigorously challenge the Governor's unconstitutional actions due to Mr. Ferguson's obvious conflict-of-interest and his own political self-interest. Finally, Mr. Ferguson's opposition to Initiative Measure No. 976 and his subsequent failure to vigorously defend this voter-approved initiative (no motion to change venue, no affidavit of the judge, no motion for reconsideration before appealing the TRO, responding "I don't know" when asked by the judge what I-976's section 12 did, celebrating the court's rejection of it), instills zero confidence in this Attorney General. For these reasons and others, I am bringing forth this legal challenge.

5. Jay Inslee is the Governor of the State of Washington. The powers and duties of the Governor include the approval, veto, or partial veto of bills passed by the Legislature, within the limits of article III, section 12 of the Washington Constitution.

### **III. JURISDICTION AND VENUE**

6. This Court has jurisdiction over this matter pursuant to RCW 2.08.010, RCW 7.24.010, and RCW 7.24.050.

7. Venue is proper in Thurston County pursuant to RCW 4.12.020 because the events giving rise to this action arose in Thurston County.

#### IV. FACTS

8. On April 25, 2021, the Legislature passed (barely) Engrossed Third Substitute House Bill No. 1091 (Low Carbon Fuel Standard). It was initially proposed in the House of Representatives and assigned bill number 1091 and was initially passed on February 27, 2021. Then the Senate, but not in identical form, passed it on April 8, 2021. Following the deliberations of a conference committee, both legislative bodies gave final passage (barely) on April 25, 2021, as Engrossed Third Substitute House Bill No. 1091 (E3SHB 1091) because of the delayed implementation of the policy in subsection 8 of section 3. Full bill history here: <https://tinyurl.com/3snskzns>

On April 24, 2021, the Legislature passed Engrossed Second Substitute Senate Bill No. 5126 (Cap-and-Trade Scheme). It was initially proposed in the Senate and passed by one vote on April 8, 2021. Then the House, but not in identical form, passed it on April 23, 2021. Following the deliberations of a conference committee, both legislative bodies gave final passage (barely) on April 24, 2021, as Engrossed Second Substitute Senate Bill No. 5126 (E2SSB 5126 -- Cap-and-Trade Scheme) because of the delayed implementation of the policy in subsection 7 of section 22. Full bill history here: <https://tinyurl.com/yeekva7p>

9. On May 17, 2021, Governor Inslee vetoed subsection 8 of section 3 of Engrossed Third Substitute House Bill No. 1091 (Low Carbon Fuel Standard). He admitted doing so in his veto message: "I have vetoed Section 3(8) of Engrossed Third Substitute House Bill No. 1091." He provided his justification for rewriting the legislation: "... we cannot delay its implementation until some unknown time in the future -- the crisis is now, and we must act now." So to him, the end justifies the means.

But no matter how much he wants his destructive policy goals, his desires do not justify violating the Constitution to achieve them.

10. On May 16, 2021, Governor Inslee did likewise with regard to Engrossed Second Substitute Senate Bill No. 5126 (Cap-and-Trade Scheme). In his veto message, his end-justifies-the-means message came through loud and clear: " ... the delayed effective date established in subsection (7) unnecessarily hinders our state's ability to combat climate change, one of the greatest challenges facing our state and the world today." Again, no matter how much he wants his destructive policy goals, his desires do not justify violating the Constitution to achieve them.

11. The Governor's vetoes in E3SHB 1091 and E2SSB 5126 exceeded the Governor's authority under article III, section 12 of the Washington Constitution, and therefore have no force or effect.

12. After the Governor signed E3SHB 1091 and E2SSB 5126 with his partial vetoes, he transmitted them to the Office of the Secretary of State, where they were chaptered under the Laws of 2021 (chapter 317, section 3 and chapter 316, section 22).

#### **V. CAUSE OF ACTION: DECLARATORY JUDGMENT**

13. Plaintiff Tim Eyman realleges and incorporates by reference all of the preceding paragraphs, as if fully set forth below:

14. For reasons including but not limited to those stated in this Complaint, an actual dispute exists between Tim Eyman and Governor Jay Inslee (hence the case may be cited and referred to as *Eyman v Inslee*). The Parties have genuine and opposing interests that are direct and substantial, and a judicial determination would be final and conclusive.

15. Tim Eyman is entitled to declaratory judgment that the Governor's partial vetoes in



E3SHB 1091 and E2SSB 5126 are constitutionally invalid and have no force or effect. Tim Eyman is further entitled to declaratory judgment declaring Laws of 2021, chapter 317, section 3 and chapter 316, section 22 are valid and effective in their entire form in which the Legislature enacted them, including the delays in the destructive policies the Governor unlawfully vetoed from the two bills.

## **VI. REQUEST FOR RELIEF**

WHEREFORE, Tim Eyman respectfully requests the following relief:

1. That this Court enter a declaratory judgment that the Governor's vetoes in E3SHB 1091 and E2SSB 5126 exceeded the Governor's constitutional authority under article III, section 12 of the Washington Constitution, and are for that reason invalid and of no legal force or effect;
2. That this Court declare that subsection 8 of section 3 of E3SHB 1091 and section 22 of E2SSB 5126 are currently in full force and effect and in the form in which they passed the Legislature and without the Governor's vetoes;
3. Such other and further relief as may follow from the entry of declaratory judgment;
4. Reasonable attorneys' fees (if an attorney later agrees to handle this case), expenses and costs to the fullest extent allowed by law and equity; and
5. Any further relief as this Court may deem necessary and proper.

## **VII. CONCLUSION**

As was recently reported on November 9, 2021 (<https://tinyurl.com/wckujf98>):

*"Governor Inslee, in order to twist the arms of the votes needed to pass his expensive and inefficient 'climate bills' during the 2021 legislative session, struck a deal with legislators to*

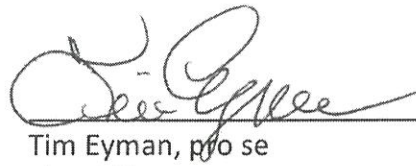
*insert a section into the legislation that linked the actual implementation of the two bills to the passage of a 5-cent per gallon tax on gas to fund a transportation package (which is scheduled to be debated during the upcoming legislative session). Yet when the bill arrived on Governor Inslee's desk, he broke his end of the 'bargain.' ... Remember that Democrat House Speaker Laurie Jenkins immediately stated that legislators were going to sue the governor for overstepping his veto authority. Not surprisingly, **in the six months since the governor vetoed the legislation, the meek-and-mild legislative Democrats have yet to follow through on their pretend threat and actually file the promised lawsuit.** (Just like when Pierce County Democrats publicly threatened to amend the governor's emergency authority after he unfairly imposed COVID-related restrictions on their constituents. After telling voters they were going to challenge the governor, the Pierce County Democrats quietly did nothing and have allowed the governor to continue his one-man rule of the state for nearly 620 days.)"*

It is also this extended delay that prompts this legal challenge. The Court needs to serve as a check on this Governor's seemingly endless expansion of power.

In a rare display of independence, the state supreme court ruled just last week that Governor Inslee had exceeded his constitutional authority concerning partial vetoes in 2019 (<https://www.courts.wa.gov/opinions/pdf/988358.pdf>). This Court should not condone or excuse the Governor's partial vetoes in 2021 and rule differently just because the plaintiff this time is not an attorney. In 2018, as a *pro se* litigant, I challenged the legislature's manipulation of the initiative process and a unanimous state supreme court agreed the legislature's actions were unconstitutional (*Eyman v Wyman*). The merits, and not the plaintiff's identity, should carry the day.



Respectfully submitted this 15th day of November, 2021.

A handwritten signature in black ink, appearing to read "Tim Eyman", is written over a horizontal line.

Tim Eyman, pro se

Plaintiff

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