

Hearing date: Fri, March 11, 2022  
Hearing time: 9:00AM  
Judge/Calendar: Hon. Carol Murphy

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

In the Matter of:

TIM EYMAN,

Plaintiff

v.

JAY INSLEE, in his official capacity as  
Governor of the State of Washington,  
LAURA WATSON, in her official capacity  
as director of the Department of Ecology,  
and the STATE OF WASHINGTON

Defendants.

No. 21-2-01945-34

PLAINTIFF'S ARGUMENT IN  
SUPPORT OF SUMMARY  
JUDGEMENT

INTRODUCTION

Why are we here? The Governor has already lost a recent case that is undistinguishable on the law.<sup>1</sup> This should be a simple case of *Res Judicata*. At a minimum, all the Governor's previous legal arguments are Collateral Estopped.

Why should the Governor be allowed to waste this Court's time trying to distinguish this case from *Inslee*? This is a clear case of "Here we go again."

<sup>1</sup> *Wash. State Legislature v. Inslee*, 198 Wn.2d 561, 498 P.3d 496, (2021)

1 Given the decision of the state supreme court, the Court might want to  
2 consider sanctions against the Defendant, *Sua Sponte*? Or do harmed citizens  
3 have to petition this Court every time this Governor vetoes words, sentences,  
and subsections in legislatively passed bills?

4 The Governor should remove his opposition to this motion so the Court  
5 may go about its other business.

### 6 SUMMARY JUDGEMENT

7 The elements of CR 56 are well known to the court. Black's Law  
8 Dictionary defines Summary Judgement as: "A judgement granted on a claim  
9 or defense about which there is no genuine issue of material fact and on which  
the movant is entitled to prevail as a matter of law."<sup>2</sup>

10 Here, there are no genuine issues of material fact. The Defendant has  
11 sent me an email saying that they wish to depose legislators to better  
12 understand their motives and intents. Such transparent stall tactics cannot be  
13 tolerated. If they are material, why weren't they taken in *Inslee*? Whether or  
14 not they were, the Defendant is collaterally estopped by seeking such  
15 information now. Even more fatally, any such evidence is clearly barred by the  
16 Enrolled Bill Doctrine. As made abundantly clear by the Washington State  
17 Supreme Court, "The enrolled bill doctrine – a doctrine that ensures judicial  
respect for the legislative branch – bars this court from second-guessing the  
legislature's own declaration that it validly enacted that bill into law."<sup>3</sup>

### 18 REMOVING A CONDITION PRECEDENT

19 In a contract, the parties are in privity and owe each other good faith.  
20 The relationship between the Governor and the Legislature must be held to  
21 this same common sense standard.

22 <sup>2</sup> Black's Law Dictionary, 11<sup>th</sup> edition, pg. 1736, (2019)

<sup>3</sup> *Eyman v. Wyman*, 191 Wn.2d 581,582; 424 P.3d 1183, 1185 (2018)

1 In this case, the Governor struck language of a condition precedent of  
2 legislation properly passed by the Legislature. As a matter of public policy and  
3 respecting the separation of powers, this cannot be allowed to stand.

4 It is irrelevant as to the reason why the Legislature included this  
5 condition precedent. It only matters that it did. Although the Governor may  
6 believe he has a legitimate reason to substitute his wisdom in place of the  
7 Legislatures, doing so would render illegitimate 246 years of precedent in this  
8 country.

### 9 **STANDING**

10 Although the Defendant raised the issue of standing in the previous  
11 hearing, I expect them to raise it again, claiming I do not have enough unique  
12 harm to have standing to bring this action. I strongly disagree.

13 Economics icon Milton Friedman famously said, "Inflation is the cruelest  
14 tax of all." That is especially true for the poor and working poor since it raises  
15 the price of food, shelter, and transportation.

16 In my First Amended Complaint filed on December 20, 2021, I provided a  
17 sworn declaration recently presented in bankruptcy court that lists my current  
18 financial misfortunes (Exhibit J – see page 2: "Due to the burdens cause by  
19 the State's litigation, my income in recent years has been non-existent. My  
20 2019 tax return shows my total income was negative \$1435 and my 2020 tax  
21 return shows my total income was negative \$10,344."). I ask the Court to take  
22 Judicial Notice of the fact my income is well below the poverty line. As such,  
23 the Governor's unilateral removal of the legislatively mandated delays and  
24 immediate implementation of the Low Carbon Fuel Standard and the Cap-and-  
Tax Scheme disproportionately harms me and those like me. Because of my  
low-income level (Exhibit J, page 2), I am disproportionately damaged by the  
Governor rewriting these bills. For this reason, and for the additional reasons  
provided in my First Amended Complaint (Exhibits I, J, K, L, and M), I have



1 standing to bring this legal challenge.

2  
3 **CONCLUSION**

4 My arguments have been brief. I expect Defendants' responses will be  
5 voluminous. Rather than guess what their excuses, justifications, and  
6 arguments will be, I will hold off for now and instead rebut them in my  
7 response brief.

8 Respectfully submitted this 10th day of February, 2022.

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Tim Eyman