

Hearing is Set: Wed, April 13, 2021  
Hearing time: 9:30am  
Judge/Calendar: Honorable Allyson Zipp/CIVIL

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Superior Court  
Linda Myhre Enlow  
Thurston County Clerk

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

In re:

CHALLENGE TO BALLOT TITLE  
FOR INITIATIVE MEASURE NO.  
1921

No. 22-2-00628-34

PETITIONER'S REPLY TO ATTORNEY GENERAL'S  
RESPONSE TO PETITION CHALLENGING BALLOT  
TITLE FOR INITIATIVE MEASURE NO. 1921

In new section 2 of Initiative 1921, subsection 2 reads:

(2) Such a prohibition applies to any tax based on personal income whether imposed on taxpayers or taxpayers' employers and whether called an income tax, payroll tax, or excise tax, **and therefore includes a 7% tax imposed on certain individuals' capital gains enacted in 2021 and repealed by section 12 of this act.**

That verbiage uses neutral language and there is nothing misleading or inaccurate about what is included there.

**THE TAX BEING REPEALED BY I-1921 HAS BEEN JUDICIALLY DETERMINED TO BE AN INCOME TAX**

In March 2022, Douglas County Superior Court Judge Brian Huber ruled that the tax conflicts with the Washington State Constitution and is "properly characterized as an income tax." That being the case, the Attorney General should not mislead voters by calling the 7% tax an excise tax.

Last year, the Honorable Sharonda Amamilo used very similar phrasing for the ballot title that she assigned to a similar initiative (Initiative Measure No. 1357) – her judicially determined ballot title ended with: “ ... including repealing a 2021 excise tax on certain individuals’ capital gains.” Petitioner does not believe that Judge Amamilo’s ballot title contained constitutional infirmities, was misleading, or did any of the things the Attorney General is accusing Petitioner of.

#### **THE ATTORNEY GENERAL’S CONCISE DESCRIPTION HIDES INFORMATION FROM THE VOTERS**

They had 33 words to describe the policies in I-1921 – an initiative that, among other things, repeals the 7% tax in ESSB 5096 – and yet the Attorney General hid that 7% rate from the voters in their original Concise Description. Because of this legal challenge, they explain why they kept it secret: they say identifying the rate will create bias against the tax and thus for the initiative. In other words, the AG is afraid voters will be dissuaded from supporting the tax and supporting the initiative if they are notified the rate of the tax. But as they have stated previously in court: *"Using the phrase directly from the measure neither creates bias, nor is it inaccurate."*

The Attorney General has repeatedly stated in previous ballot title challenges, “the best practice is simply to use the same phrasing that the initiative itself adopts.” In addition to the cases cited in Petitioner’s Opening Brief, there was also the legal challenge to the Attorney General’s Ballot Title for Initiative Measure No. 1000 (Case #18-2-04230-34, September 2018). Here are excerpts from the “Attorney General’s Response to Petition” where they defend their title and their procedure for drafting it:

*\* "It cannot be true that using a phrase directly from the measure puts a 'thumb on the scale,' especially when the phrase accurately covers the subject matter of the measure."*

*\* "It is certainly accurate to use the very term defined in the statute to say to whom the measure would affect."*

*\* "Using the phrase directly from the measure neither creates bias, nor is it inaccurate."*

Petitioner believes that those legal arguments are still valid, preferred, and operative and should be considered by the Court in support of the Petitioner's proposed Ballot Title.

### **THIS COURT SHOULD NOT DEFER TO THE ATTORNEY GENERAL'S WORDING**

In response to "STANDARD OF REVIEW" on page 3, the Attorney General misinforms the Court as to the legal standard – ballot titles are reviewed *de novo*. So their statement – "The Attorney General's formulation of the ballot title and summary should stand unless a challenger demonstrates that the formulation is statutorily deficient" – **is not true**. The Legislature did not assign unassailable authority to the Attorney General regarding ballot titles. They vested in this Court – you, your Honor, a neutral, non-partisan judge – the critical role of ensuring that the Attorney General not get away with using different standards based on the leanings and preferences and biases of any partisan politician holding that office.

In response to "Attorney General Practice" on page 2, they neglect to highlight the disparate treatment their office provides to titles for ballot measures that their office agrees with compared to those they disagree with. As highlighted in Petitioner's Opening Brief, the ballot title for Initiative Measure No. 1639 (This measure would require enhanced background checks, training, and waiting periods for sales or delivery of **semiautomatic assault rifles**; ...) and the ballot title for Initiative Measure No. 1631 (This measure would charge **pollution fees** on ...) never highlighted those measures contained new terms (designated in bold) and that those new terms were defined in the measures.

On page 4, the Attorney General protests using any of the 33 words in the Concise Description to notify voters of the rate of the tax: 7%. Hiding the rate – keeping it a secret – only serves to help supporters of the tax and thus creates bias against the initiative by keeping voters in the dark. It cannot be true that telling the voters what the initiative actually does creates bias. Notifying the voters the rate of the tax is a critical component of the initiative and so should be included in the Concise Description. The fact that the Attorney General is fighting so hard to keep that 7% rate hidden calls into



question the impartiality of the Attorney General who clearly supports the tax and thus opposes any initiative that seeks to eliminate it. Fortunately, with judicial oversight, the omission of the 7% rate can be corrected (and ballot titles often include a short disclaimer “with exceptions” – just two words – which can be included if the Court has concerns with including the 7% rate in I-1921’s Concise Description).

### **THE SUPREME COURT RULED THAT THE ATTORNEY GENERAL’S BALLOT TITLE FOR INITIATIVE 976 WAS “DECEPTIVE AND MISLEADING”**

The sponsors of Initiative 976 did not write its’ ballot title, the Attorney General did. So now that the State Supreme Court has ruled that their ballot title was “deceptive and misleading,” it is baffling for the Attorney General to say such a definitive decision does not call into question the quality of the advocacy by the Attorney General’s office. Quite the contrary. In fact, with reporting that shows the Attorney General celebrated losing the case (<https://shiftwa.org/democrat-ag-bob-ferguson-celebrates-losing-the-30-car-tab-lawsuit>) really calls into question their sincerity as well. The AG has repeatedly tried to blame the initiative sponsor but the operative language in I-976 (section 2) set annual vehicle tabs at \$30 and granted an exception for “**future** voter-approved charges.” Because the AG removed the word “future” in I-976’s title, they sabotaged the initiative. Petitioner believes that is happening again with this initiative but hopefully this time this Court will help avoid that by sticking with the actual text in I-1921.

### **PATTERN OF DISPARATE TREATMENT**

Thanks to a public records request by the Washington Asians for Equality, internal emails within the Attorney General’s office illustrate definitive evidence that this Attorney General has given preferential treatment to his political allies when drafting their ballot titles including personal phone calls, back-and-forth redrafting, shortening the time to draft their titles to deter court challenges, and more (See Exhibit A).



Petitioner, on the other hand, is an obvious political adversary of the Attorney General and is only asking this Court to provide needed, effective oversight to ensure the rules and procedures for describing ballot measures be applied equally regardless of how Bob Ferguson views the sponsor, Petitioner, and/or the initiative.

### **THE ATTORNEY GENERAL HAS AN OBVIOUS CONFLICT OF INTEREST**

Here is why this Court must step in with regard to the ballot title for I-1921: the Attorney General's office is conflicted here. They are in court defending ESSB 5096's capital gains tax (a policy this Attorney General supports). And this measure repeals these taxes (which this Attorney General obviously opposes).

In light of these facts and the arguments presented in Petitioner's Opening Brief, Petitioner asks the Court to consider this alternative Concise Description for I-1921: **This measure would prohibit the state, counties, cities, and towns from imposing or collecting taxes based on personal income, including repealing a 7% tax enacted in 2021 on certain individuals' capital gains income. (or, in the alternative: ... including repealing the 7% tax ...).**

Unlike the version proposed by the Attorney General, the Petitioner's proposed Ballot Title is superior because it is accurate, matches the language within the initiative itself, doesn't keep the rate of the tax hidden from voters, and provides more information to the voters (the rate of the tax) and thus is more in compliance with RCW 29A.72.050. It is imperative that this court order the initiative's ballot title to describe its essential elements within the word limit. The Petitioner asks the court to ensure that this requirement is met with the ballot title for Initiative 1921.

### **V. RELIEF REQUESTED**

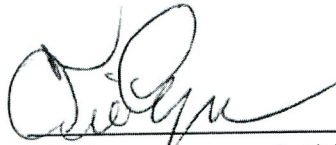
Petitioner respectfully requests that this court grant the following relief:

(A) that the court, pursuant to RCW 29A.72.080, file with the Secretary of State a certified copy of the Ballot Title meeting the above objections, in the amended form recommended in this petition

(with the same changes made to the measure's ballot summary); and

(B) such other legal and equitable relief as this court deems just.

Respectfully submitted this 6th day of April, 2022.

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

Tim Eyman, *pro se* Petitioner  
500 106<sup>th</sup> Ave NE #709  
Bellevue, WA, 98004  
tim.eyman@gmail.com  
425-590-9363



# EXHIBIT A

# The AGO Bent Over Backward to Political Insiders and Issued Misleading Ballot Titles to Mollify Initiative Sponsors

Washington Asians for Equality, September 21, 2020

If you ever wondered how could the AGO issue those misleading ballot titles, read on, through Public Record Request, we unearthed disturbing political insider dealings at the AGO.

Our recent Public Record Request showed that instead of issuing impartial ballot titles that identify the propositions to be voted on, under the heavy influence of a "former State Representative", the AGO, worked with initiative sponsors, through " **a whole lot of back and forth** ", issued misleading ballot titles that **the sponsors "would be comfortable with"**.



## **Copsey, Alan D (ATG)**

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**From:** Copsey, Alan D (ATG)  
**Sent:** Thursday, September 3, 2020 3:43 PM  
**To:** Gonick, Peter B. (ATG); Young, Alicia O. (ATG)  
**Subject:** Last minute revision to I-1234 title

After a whole lot of back and forth with the sponsors, here is the title they would be comfortable with for I-1234. I'm willing to make these changes. Your reactions? We have until 4:15 to finalize.

## **Copsey, Alan D (ATG)**

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**From:** Copsey, Alan D (ATG)  
**Sent:** Thursday, September 3, 2020 9:55 AM  
**To:** McGahey, Stacey (ATG)  
**Cc:** Gonick, Peter B. (ATG); Young, Alicia O. (ATG); Purcell, Noah Guzzo (ATG)  
**Subject:** Emergent issue re draft titles for I-1200 and I-1234  
  
**Importance:** High

Stacey – can you hold off on filing the title for I-1234 until 4:30?

I just got off and extended phone call with Jessie Wineberry (former State Representative), who is working with the sponsors for I-1200 and I-1234. The sponsors saw our title for I-1200 yesterday and are somewhat horrified. They asked Mr. Wineberry to find out why the title reads as it does and whether I-1234 would read the same way. I told him the two measures are identical and we drafted identical titles. He says that with that title, the sponsors could not run the measure.

Washington State constitution gives people the power to govern through the initiative process. And a center piece of the initiative process is the AGO issued ballot title. Court has ruled that "A ballot title must apprise a voter of the proposal being considered" (*Municipality of Metro. Seattle v. City of Seattle*, 57 Wn.2d 446 (1960)), because "voters will often make their decision based on the title of the act alone, without ever reading the body of it." (*Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d 622, 639 (2003)). "When laws are passed, people should know what is in them, especially those voting on the laws." (*Wash. Assoc. for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 667 (2012), "Wiggins, J., dissenting).



On September 2nd, the AGO issued ballot title for I-1200. I-1200 strikes out the prohibition on "preferential treatment" from RCW 49.60.400 (see below).

## **PART VII**

### **PROHIBITION OF DISCRIMINATION**

**Sec. 9.** RCW 49.60.400 and 2013 c 242 s 7 are each amended to read as follows:

(1) The state shall not discriminate against ~~((, or grant preferential treatment to,))~~ any individual or group on the basis of race, sex, color, ethnicity, ~~((or))~~ national origin, age, income, sexual orientation, gender identity, citizenship or immigration status, the presence of any sensory, mental, or physical disability, or veteran status in the operation of public employment, public education, ~~((or))~~ public contracting, or public health and safety.

On 9/2, the AGO issued I-1200 ballot title, and correctly captured the removal of "a prohibition on preferential treatment by government". During their internal discussions, Deputy Solicitor General, Peter Gonick, commented **"I do get the nagging feeling that we're burying the lede by not mentioning the removal of "grant preferential treatment" to the prohibition of discrimination."**

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**From:** Gonick, Peter B. (ATG)

**Sent:** Tuesday, September 1, 2020 2:25 PM

**To:** Young, Alicia O. (ATG) <[alicia.young@atg.wa.gov](mailto:alicia.young@atg.wa.gov)>; Copsey, Alan D (ATG) <[alan.copsey@atg.wa.gov](mailto:alan.copsey@atg.wa.gov)>

**Subject:** RE: I-1234; Due 9/3/20; A-Alan; R- Alicia/Peter

I like Alicia's edits, but I suggest using "governmental discrimination" rather than "state discrimination." I don't feel strongly, though.

However, I do get the nagging feeling that we're burying the lede by not mentioning the removal of "grant preferential treatment" to the prohibition of discrimination. I agree with Alicia that this is just the flip side of prohibiting discrimination (i.e., it's hard to give preferential treatment to someone based on a prohibited characteristic without also discriminating against someone else based on a prohibited characteristic). Nevertheless, that prohibition on preferential treatment was (if I recall the public debates correctly) the main point and legal effect of I-200, since government discrimination was already illegal, if not in statute than as unconstitutional. Solely because I don't want to identify a potential problem without providing a solution, how about:

This measure would extend statutory protections against discrimination to public health and safety; remove a prohibition on preferential treatment by government; specify circumstances that are not prohibited discrimination; and define certain statutory terms.

Below is the I-1200 ballot title.

***Ballot Title***

*Initiative Measure No. 1200 concerns protections against discrimination.*

*This measure would extend statutory protections against discrimination to public health and safety; remove a*



*prohibition on preferential treatment by government; specify circumstances that are not prohibited discrimination; and define certain statutory terms.*  
*Should this measure be enacted into law? Yes [ ] No [ ]*

### **Ballot Measure Summary**

*This measure would extend statutory protections against discrimination to public health and safety; prohibit discrimination in COVID-19 testing, tracing, and treatment; require the state to provide no-cost COVID-19 vaccines, when available, without discrimination; declare protection from discriminatory use of deadly force, including chokeholds, by law enforcement as a civil right under state law; remove a statutory prohibition on preferential treatment by state and local government; specify circumstances that are not prohibited discrimination; and add definitions.*

On 9/3, before the AGO submitted the same ballot title for I-1234, which is identical to I-1200, Jesse Wineberry called and complained that “**with that (I-1200) title, the sponsors could not run the measure**”. Deputy Solicitor General, Alan Copsey, frantically sent out a high importance emergency email and asked the AGO to hold off on filing the I-1234 ballot title. Mr. Copsey stressed that Jesse Wineberry was a former State Representative. Who gave a former State Representative the power to interfere the AGO’s ballot title drafting process? **Solicitor General Noah Purcell was copied on that email, yet he did nothing to stop Jesse Wineberry from interfering.**

As Mr. Copsey stated in his email, “**after a whole lot of back and forth with the sponsors**”, **they finally settled on a version that “they (I-1234 sponsors) would be comfortable with”**. Mr. Copsey basically took the edits from the I-1234 sponsors and ran with it. The revised I-1234 ballot title intentionally failed to inform voters that I-1234 would “remove a prohibition on preferential treatment by government.”



**From:** Copsey, Alan D (ATG)  
**Sent:** Thursday, September 3, 2020 3:43 PM  
**To:** Gonick, Peter B. (ATG) <peter.gonick@atg.wa.gov>; Young, Alicia O. (ATG) <alicia.young@atg.wa.gov>  
**Subject:** Last minute revision to I-1234 title

After a whole lot of back and forth with the sponsors, here is the title they would be comfortable with for I-1234. I'm willing to make these changes. Your reactions? We have until 4:15 to finalize.

As drafted:

#### BALLOT TITLE

Statement of Subject: Initiative Measure No. 1234 concerns protections against discrimination.

Concise Description: This measure would extend statutory protections against discrimination to public health and safety; remove a prohibition on preferential treatment by government; specify circumstances that are not prohibited discrimination; and define certain statutory terms.

Should this measure be enacted into law? Yes ☐ No ☐

#### BALLOT MEASURE SUMMARY

This measure would extend statutory protections against discrimination to public health and safety; prohibit discrimination in COVID-19 testing, tracing, and treatment; require the state to provide no-cost COVID-19 vaccines, when available, without discrimination; declare protection from discriminatory use of deadly force, including chokeholds, by law enforcement as a civil right under state law; remove a statutory prohibition on preferential treatment by state and local government; specify circumstances that are not prohibited discrimination; and add definitions.

Their version:

#### BALLOT TITLE

Statement of Subject: Initiative Measure No. 1234 concerns prohibiting discrimination.

Concise Description: This measure would expand statutory prohibitions on discrimination to public health and public safety, including responses to COVID-19 and law enforcement's discriminatory use of deadly force; and specify exceptions to statutorily prohibited discrimination.

Should this measure be enacted into law? Yes ☐ No ☐

#### BALLOT MEASURE SUMMARY



Below is the revised I-1234 ballot title:

### **Ballot Title**

Initiative Measure No. 1234 concerns prohibiting discrimination.

*This measure would expand statutory prohibitions on discrimination to public health and public safety, including responses to COVID-19 and law enforcement's discriminatory use of deadly force; and specify exceptions to statutorily prohibited discrimination.*

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

### **Ballot Measure Summary**

*This measure would expand statutory prohibitions on discrimination by state and local government to public health and public safety; prohibit discrimination in COVID-19 testing, tracing, and treatment; require the state to provide no-cost COVID-19 vaccines, when available, without discrimination; declare protection from discriminatory use of deadly force, including chokeholds, by law enforcement as a civil right under state law; specify exceptions to statutorily prohibited discrimination; and define certain statutory terms.*

Deputy Solicitor General, Peter Gonick, tried to raise his objection. Mr. Gonick stated "**I think our version was better, and I am not fond of revising ballot titles to mollify sponsors**, unless of course we think it makes the ballot title better (or at least no worse). For the reason we've previously discussed, **I prefer mentioning the removal of preferential treatment.**" Despite Mr. Gonick's objection, the AGO later issued the same misleading ballot title for I-1242, another identical initiative to I-1200 and I-1234.



## **Copsey, Alan D (ATG)**

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**From:** Gonick, Peter B. (ATG)  
**Sent:** Thursday, September 3, 2020 4:23 PM  
**To:** Young, Alicia O. (ATG); Copsey, Alan D (ATG)  
**Subject:** RE: Last minute revision to I-1234 title

If it's not too late, I'd be against making the revisions. I think the new version is accurate, so if we've done it, I'm OK with it. But I think our version was better, and I'm not fond of revising ballot titles to mollify sponsors, unless of course we think it makes the ballot title better (or at least no worse). For the reasons we've previously discussed, I prefer mentioning the removal of preferential treatment.

Peter B. Gonick  
Deputy Solicitor General  
Office of the Attorney General  
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Olympia, WA 98504-0100  
(360) 753-6245

To put things in perspective, noticed that Mr. Alan ignored court ruling on similar I-1120, and issued a very misleading ballot title for I-1122, through our lawyers, we presented the AGO with our proposed ballot title for I-1129 through I-1176. Deputy Solicitor General, Alan Copsey, was again tasked to issue ballot titles for those initiatives. Mr. Copsey did not give us a chance to work "back and forth" with him to reach a ballot title that we were "comfortable with". Instead, he ignored court ruling on similar initiative, and told us to go ahead and challenge him in court, which we did. **What a double standard!** If you are an average Joe like us facing an opponent who is a political insider, such as a former State Representative, you have no chance of getting a fair dealing at the AGO.

State law, RCW 29A.72.050(1) clearly requires that " The concise description (of ballot title) must contain no more than thirty words, **be a true and impartial description of the measure's essential contents**, clearly identify the proposition to be voted on, and **not, to the extent reasonably possible, create prejudice either for or against the measure.**" By allowing Jesse Wineberry to interfere and I-1234's sponsors to rewrite ballot title and summary to their satisfaction, the AGO clearly "created prejudice" for the measure and failed to comply with the law.

As our other Public Records Request data show, Jesse Wineberry also drafted/influenced other ballot titles. How prevalent is this unlawful abuse of power and influence at the AGO? The legislature should launch a full investigation into the abuse of public trust and failure to comply with the law at the AGO. The AGO should be held accountable for violating people's trust and the law.