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Judge/Calendar: Hon. Allyson S. Zipp

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Superior Court
Linda Myhre Enlow
Thurston County Clerk

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

In the Matter of:

No. 22-2-00628-34

A CHALLENGE TO THE BALLOT TITLE
OF INITIATIVE No. 1921, AN INITIATIVE
TO THE PEOPLE

PETITIONER'S OPENING BRIEF IN SUPPORT
OF THE ALTERNATIVE BALLOT TITLE
PROPOSED BY PETITIONER FOR I-1921

ARGUMENT

They were given 33 words to describe Initiative 1921 and the Attorney General's ballot title never mentions the rate of the largest tax increase in Washington state history: 7%. The voters should be told how big this new tax will start at.

Petitioner's proposed alternative ballot title includes this fact – the Attorney General's title hides it.

LARGEST NEW TAX IN WASHINGTON STATE HISTORY

Last year, an advisory vote on this new tax was on the November 2021 ballot for a public vote. It was Advisory Vote #37 and 61.06% of the voters recommended rejecting this new kind of income tax (<https://results.vote.wa.gov/results/20211102/advisory-vote-no-37.html>).

Why was this tax so overwhelmingly rejected by voters? Because the Attorney General's short description informed voters of the rate of the tax: "The legislature imposed, without a vote of the people, a **7% tax** on capital gains ... " (<https://voter.votewa.gov/genericvoterguide.aspx?e=871&c=99#/measure/5068>)

The size of this new tax – reflected by the rate – is a critical piece of information that voters deserve to be informed of when voting on Initiative 1921. But that 7% rate is being kept hidden from voters. Why? Because the Attorney General supports this new income tax and he saw the results of the advisory vote where voters were informed of the 7% rate. So he is keeping the size of this new tax a secret from voters in his current ballot title for I-1921.

He shouldn't be allowed to get away with hiding that.

And "7%" – a number with a percentage symbol after it – would only count as one word. Certainly this court can allow at least one of the 33 words in the Concise Description for I-1921 to inform voters how big this new tax is.

It is completely unprecedented for an initiative's ballot title to hide the size of its' tax increase:

In 2004, the ballot title for I-884 was: Initiative Measure No. 884 concerns dedicating funds designated for educational purposes. This measure would create an education trust fund for smaller classes, extended learning programs, certain salary increases, preschool access, and expanded college enrollments and scholarships, funded by **increasing retail sales tax by 1%**.

In 2005, the ballot title for I-912 was: Initiative Measure No. 912 concerns motor vehicle fuel taxes. This measure would repeal motor vehicle fuel tax increases of **3 cents in 2005 and 2006, 2 cents in 2007, and 1.5 cents per gallon in 2008**, enacted in 2005 for transportation purposes.

In all previous tax increase initiatives, the Attorney General informed the voters of the size of the tax increases – but with Initiative 1921, this Attorney General is keeping the 7% rate a secret.

Petitioner is not requesting the ballot title include the Office of Financial Management's cost projection even though their independent analysis confirms this is the largest new tax in state history:

Ten-year projection:

**Fiscal
Year**

Capital Gains Tax



2022	\$0
2023	530,000,000
2024	564,000,000
2025	606,000,000
2026	623,000,000
2027	643,000,000
2028	665,000,000
2029	689,000,000
2030	713,000,000
2031	739,000,000

Total: **\$ 5,772,000,000**

OFM's analysis here: <https://voter.votewa.gov/genericvoterguide.aspx?e=871&c=99#/measure/5068>

and here: <https://content.govdelivery.com/accounts/WAGOV/bulletins/2d76e17>

Voters deserve to know how big this new income tax is.

Petitioner asks this court to include "7%" in the 33 word Concise Description for I-1921.

THIS NEW TAX WAS ENACTED IN 2021

This is a recent tax that was enacted in 2021 – that is a critical piece of information that the voters deserve to know. The ballot title for I-912 in 2005 provided when the tax increase was enacted: *Initiative Measure No. 912 concerns motor vehicle fuel taxes. This measure would repeal motor vehicle fuel tax increases of 3 cents in 2005 and 2006, 2 cents in 2007, and 1.5 cents per gallon in 2008, enacted in 2005 for transportation purposes.*

Last year, Petitioner filed an initiative which contained similar policies as I-1921. The AG assigned a ballot title that Petitioner challenged. The case was assigned to the Honorable Judge Sharonda Amamilo. After considering both sides' arguments, she rendered her decision and included the year the repealed tax was enacted (Judge Amamilo's wording at the end of her title: " ... including repealing a 2021 excise tax on certain individuals' capital gains.").

THE ATTORNEY GENERAL'S LONGSTANDING POLICY HAS BEEN "THE BEST PRACTICE IS SIMPLY TO USE THE SAME PHRASING THAT THE INITIATIVE ITSELF ADOPTS"

In the legal challenge to the Attorney General's ballot title for Initiative 1525 (Case #16-2-001480-34), the Deputy Solicitor General filed his legal brief on April 22, 2016 that included this important excerpt: "A ballot title is not the forum for resolving unclear initiatives, and so **the best practice is simply to use the same phrasing that the initiative itself adopts.**"

This same policy was reiterated on May 24, 2018 when the Attorney General defended their ballot title for Initiative 1639 (Case #18-2-02564-34): "**The word is used in the concise description because it is the terminology used throughout the initiative ...**".

This same policy was also cited when the Attorney General defended their ballot title for Initiative 1631 (Case #18-2-01614-34): " ... it may be misleading to voters to describe the charge as a tax **when the measure uses the word fee.** See I-1631, Sec. 20."

The term -- taxes based on personal income -- is used throughout I-1921 and no definition is provided and no quotation marks are ever used. Quotation marks imply the term is defined and it is not in I-1921.

For Initiative 1631 in 2018, the term – pollution fees – was actually defined in the measure and neither the Attorney General nor this Court put that term in quotation marks.

For Initiative 1639 in 2018, the term – semiautomatic assault rifles – was actually defined in the measure and still neither the Attorney General nor this Court put that term in quotation marks.

Petitioner requests equal treatment and that quotation marks not be used in I-1921's Concise Description.

Again, it is important for voters to know, and there are plenty of words available, to identify the rate of the tax (7%) and the year it was enacted (2021) in I-1921's Concise Description.

Petitioner provides the Court with this proposed alternative for I-1921's Concise Description (which mirrors much of the wording from Judge Amamilo):

This measure would prohibit the state, counties, cities, and towns from imposing or collecting taxes based on personal income, including repealing a 7% tax imposed on certain individuals' capital gains enacted in 2021.

The AG's Concise Description wastes three words in its Concise Description (... from imposing or collecting taxes **it describes as** "based on personal income" ...). With only 33 words to provide information to the voters about the initiative, Petitioner urges the Court to agree that identifying the rate of the tax (7%) and the year it was enacted (2021) is more informative to the voters than the AG's three words which are unnecessary and superfluous.

Petitioner believes that the proposed alternative is superior to the Attorney General's version because it provides more information to the voters and is therefore more in compliance with RCW 29A.72.050. It is imperative that this court order this initiative's ballot title to be described consistent

with the longstanding policy of the Attorney General (“the best practice is simply to use the same phrasing that the initiative itself adopts”).

And most importantly, the alternative provides more information to the voters.

Again, there are plenty of words available to identify the rate of the tax (7%) and the year it was enacted (2021) in the Concise Description for I-1921.

And again, most importantly, it provides more information, not less, to the voters voting on this initiative.

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 (and to modify the Ballot Measure Summary to correspond with any changes to the Ballot Title); and

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

Respectfully submitted this 31st day of March, 2022.

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

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