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AGO  
General Services HLB

THURSTON  
SUPERIOR COURT

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

In the Matter of:

TIM EYMAN,

Plaintiff

v.

ROBERT FERGUSON, in his official  
capacity as the Attorney General of the  
State of Washington, and STEVE HOBBS,  
in his official capacity as the Secretary of  
State of the State of Washington

Defendants.

No. 22-2-01943-34

PETITION – FOR  
DECLARATORY JUDGMENT  
AND MOTION FOR  
TEMPORARY RESTRAINING  
ORDER (TRO)

INTRODUCTION

In 2007, 2010, 2012, and 2015, the voters overwhelmingly approved ballot measures that required every time the Legislature passes legislation “raising taxes as defined by RCW 43.135.034” that it be put on the November ballot as a tax advisory vote (and if the bill contains more than one increase, each receives its own tax advisory vote).

PLAINTIFF'S PETITION FOR  
DECLARATORY JUDGMENT AND  
MOTION FOR TEMPORARY  
RESTRAINING ORDER (TRO)

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1  
2 In the past, the Legislature has taken steps to thwart the constitutionally  
3 guaranteed right of the people to challenge such bills with a referendum. For  
4 instance, in 2003 and 2006, the Legislature imposed very costly legislation  
5 and took steps to prevent voters from second-guessing their unpopular  
6 decisions by placing emergency clauses on their bills in order to make them  
7 "referendum proof." The state Constitution guarantees the people the right to  
8 referendum – to collect signatures to force a public vote on bills passed by the  
9 Legislature. But the Legislature, by using emergency language, has effectively  
10 terminated that constitutional right.

11  
12 So in 2007, the voters approved an alternative to a referendum – a tax  
13 advisory vote. It guarantees a public vote on legislation "raising taxes as  
14 defined by RCW 43.135.034" unless a referendum qualifies. Voters have  
15 approved this policy not once, but four times: once via Initiative 960 in 2007;  
16 again via Initiative 1053 in 2010; again via Initiative 1185 in 2012; and yet  
17 again via Initiative 1366 in 2015.

18  
19 Last year, the Legislature approved E2SSB 5126 which established a  
20 very costly cap and trade system. RCW 43.135.031 requires the Office of  
21 Financial Management to analyze all bills and determine which ones fit the  
22 statute's definition of "raises taxes as required by RCW 43.135.034." **OFM**  
23 **determined that the revenues generated from E2SSB 5126's policies fit**  
24 **that definition.** As they indicated in their email notification: "The Office of  
Financial Management has identified this bill as requiring a ten-year projection  
of increased cost to the taxpayers." (available here:  
<https://content.govdelivery.com/accounts/WAGOV/bulletins/2e3faf1> and also  
in Tim Eyman Declaration Exhibit A). They determined the implementation of



1 the policies in the bill would generate additional revenue of \$3,947,790,216 in  
2 the first 10 years.

3 But the Legislature specifically included a delay in the implementation  
4 of the cap and trade bill. Nonetheless, the Governor partially vetoed some  
5 portions of the bill, including the delay. Many in the Legislature doubted the  
6 constitutionality of the Governor's partial vetoes and threatened litigation.  
7 Plaintiff did, in fact, challenge in Thurston County Superior Court the  
8 Governor's partial veto of the delay in E2SSB 5126 (*Eyman v Inslee*, #21-2-  
9 01945-34). But before the court could rule, the Legislature passed E2SSB  
10 5842 which statutorily removed the delay (thus making the lawsuit moot) which  
11 allowed the cap and trade system – and its corresponding \$3.9 billion increase  
12 in state revenue – to proceed starting on January 1, 2023.

13 The Legislature's "combination of actions" (passage of E2SSB 5126  
14 and E2SSB 5842) will generate, in the first 10 years, \$3.9 billion in additional  
15 revenue. This very clearly fits the statutory requirement for a tax advisory vote  
16 (which OFM has already determined).

17 Again, this "combination of actions by the state legislature" is exactly the  
18 scenario set forth in the tax advisory vote statutes (RCW 43.135.041 – (1)(a)  
19 After July 1, 2011, if legislative action raising taxes as defined by RCW  
20 43.135.034 is blocked from a public vote or is not referred to the people by a  
21 referendum petition found to be sufficient under RCW 29A.72.250, a measure  
22 for an advisory vote of the people **is required** and shall be placed on the next  
23 general election ballot under this chapter.

24 RCW 43.135.041 requires that legislation "raising taxes as defined by  
RCW 43.135.034" be subject to a tax advisory vote. RCW 43.135.034's

1 definition of "raises taxes" is very broad: "*raises taxes' means any action or*  
2 *combination of actions by the state legislature that increases state tax revenue*  
3 *deposited in any fund, budget, or account, regardless of whether the revenues*  
4 **are deposited into the general fund."** **The Office of Financial Management,**  
5 **guided by this broad definition, has already determined that the bill's**  
6 **revenue increase fits the statutory definition of "raising taxes as defined**  
7 **by RCW 43.135.034."**

7 This year, on Friday, July 15th, 2022, the Attorney General notified the  
8 Secretary of State of the bills that would be subject to a tax advisory vote.  
9 Plaintiff contacted the Attorney General and explained that the \$3.9 billion  
10 increase should also be subject to an advisory vote. The Attorney General  
11 disagreed, and has elected to move forward without a public vote on it even  
12 though OFM has already determined it fits the statutory definition of "raises  
13 taxes as defined by RCW 43.135.034" and even though the passage of E2SSB  
14 5126 and E2SSB 5842 are clearly a "combination of actions by the state  
15 legislature" and thus are subject to an advisory vote.

15 Therefore, Plaintiff Tim Eyman is asserting standing as a taxpayer, seeks  
16 a Declaratory Judgment that the decision of the Attorney General to not require  
17 an advisory vote for this \$3.9 billion increase is unlawful for the purposes of the  
18 mandatory advisory vote required by RCW 43.135.041.

18 Taxpayer standing is asserted by plaintiff, and it is frequently  
19 recognized for these purposes. *State ex rel. Tattersall v. Yelle*, 52 Wn.2d  
20 856,859,329 P.2d 841 (1958). A taxpayer need not allege a personal stake  
21 in the matter, but may bring claim on behalf of all taxpayers. *Tacoma v.*  
22 *O'Brien*, 85 Wn.2d 266,269,534 P.2d 114 (1975). Standing has long been  
23 recognized to challenge governmental acts on the basis of status as a



1 taxpayer. See, e.g., *Tacoma v. O'Brien*, 85 Wn.2d 266, 269, 534 P.2d 114  
2 (1975). *Calvary Bible Presbyterian Church v. Board of Regents*, 72 Wn.2d 912,  
3 917-18, 436 P.2d 189 (1967), cert. denied, 393 U.S. 960 (1968); *Fransen v.*  
4 *Board of Natural Resources*, 66 Wn.2d 672, 404 P.2d 432 (1965). Generally,  
5 the taxpayer is required first to request action by the Attorney General and  
6 refusal of that request before action is begun by the taxpayer. See e.g., *Tacoma*  
7 *v. O'Brien*, supra; *Citizens Council Against Crime v. Bjork*, 84 Wn.2d 891, 893,  
8 529 P.2d 1072 (1975). Even that requirement may be waived when such a  
9 request would have been useless, *Farris v. Munro*, 99 Wn.2d 326, 329-30, 662  
10 P.2d 821 (1983).

11 Plaintiff seeks declaratory judgment pursuant to RCW 7.24.020, as a  
12 person whose rights, status or other legal relations are affected by this \$3.9  
13 billion increase not appearing on the ballot as an advisory vote, and who is  
14 aggrieved as a taxpayer by the Attorney General ignoring the language of RCW  
15 43.135.041 and 43.135.034 and hiding this increase from the public. This  
16 complaint for Declaratory Judgment is supported by the Tim Eyman Declaration  
17 which illustrates that the Plaintiff did contact the Attorney General prior to  
18 bringing this complaint to seek redress for this grievance and was rebuffed. As  
19 a consequence, the action is ripe for review.

## 20 2.0 FACTUAL SUMMARY

21 2.1 RCW 43.135.041 provides in applicable part that "(1)(a) After July  
22 1, 2011, if legislative action raising taxes as defined by RCW 43.135.034 is  
23 blocked from a public vote or is not referred to the people by a referendum  
24 petition found to be sufficient under RCW 29A.72.250, a measure for an  
advisory vote of the people is required and shall be placed on the next general  
election ballot under this chapter."

1  
2 2.2 RCW 43.135.034 provides in applicable part that “raises taxes’  
3 means any action or combination of actions by the state legislature that  
4 increases state tax revenue deposited in any fund, budget, or account,  
5 regardless of whether the revenues are deposited into the general fund.”

6 2.3 The “combination of actions by the state legislature” – their  
7 passage of E2SSB 5126 and E2SSB 5842 – has resulted in, according to  
8 OFM, a cost to taxpayers of \$3.9 billion and an increase in revenues to the  
9 government of this same amount.

10 2.4 The Attorney General construes RCW 43.135.041 to not have this  
11 huge increase subjected to an advisory vote.

12 2.5 According to the statute, an advisory vote “is required” for any  
13 increase unless on the ballot due to a referendum (RCW 43.135.041).

14 2.6 Pursuant to RCW 7.24.050, the court in its decision declaring the  
15 failure to provide a tax advisory vote for this increase to be unlawful, the  
16 decision would terminate the controversy.

17 2.7 There are no material issues of fact, pursuant to RCW 7.24.090.

18 2.8 The Attorney General and the Secretary of State have been  
19 served with this Petition, pursuant to RCW 7.24.110.

20 **PRAYER FOR RELIEF**



1 WHEREFORE, Petitioner prays:

2 a. For Declaratory Judgment declaring that this "combination of actions  
3 by the state legislature" – the Legislature's passage of last year's E2SSB 5126  
4 and this year's E2SSB 5842 – is legislation "raising taxes as defined by RCW  
5 43.135.034" which OFM has determined will cost the taxpayers \$3.9 billion.

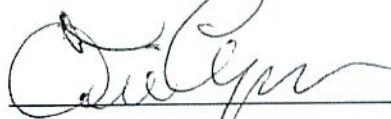
6 b. For Declaratory Judgment declaring that this increase is required to be  
subject to an advisory vote and placed on the November 2022 ballot.

7 c. For Declaratory Judgment declaring that the Attorney General's  
8 decision to not seek an advisory vote for this "combination of actions by the  
state legislature" is therefore unlawful.

9 d. For the costs for bringing this action.

10 e. A temporary restraining order prohibiting the Defendants, their  
11 agencies, and vendors from printing ballots and voters pamphlets until the court  
12 issues a final ruling on this matter.

13 DATED this 21st day of July, 2022.)

14   
15 TIM EYMAN, pro se Petitioner