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FILED
SEP 01 2009
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

VOTERS WANT MORE CHOICES, Tim D. Eyman, M. (Mike) J. Fagan, and Leo J. (Jack) Fagan,

Plaintiffs,

v.

SAM REED, in his official capacity as Secretary of State of the State of Washington; and VICTOR MOORE, in his official capacity as Director of the Office of Financial Management,

Defendants.

No. _____
09-2-02122-5
PETITION FOR WRIT OF MANDATE AND WRIT OF PROHIBITION

I. INTRODUCTION

1. The action challenges the Defendants' decision to include with the Voters Pamphlet for the statewide election to be held in November, 2009, a Fiscal Impact Statement that includes erroneous and misleading information related Initiative 1033 (I-1033). Because the printing of the Voters Pamphlet is imminent, Plaintiffs request the Court to expeditiously



1 hear this matter and require the Defendants to include impartial, accurate, and non-misleading
2 information coming from public officers of the State of Washington.

3 4 II. PARTIES

5 2. Plaintiffs, Voters Want More Choices, Tim Eyman, M. (Mike) J. Fagan, and
6 Leo J. (Jack), Fagan are the official sponsors of Initiative 1033. With the exception of Voters
7 Want More Choices, Petitioners are also registered voters in the State of Washington.

8 3. Defendant Victor Moore is the Director of the Office of Financial Management
9 (OFM) and is sued in his official capacity in that role. As Director of OFM, Defendant Moore
10 is responsible for preparing fiscal impact statements regarding initiatives and fiscal impact
11 statements for initiatives are required by law to be included in the voters pamphlet for the
12 election at which the initiative will be decided.

13 4. Defendant Sam Reed is the Secretary of State of the State of Washington and is
14 sued in his official capacity in that role. As Secretary of State, Respondent Reed is the chief
15 election official in the State of Washington and is responsible for preparing a Voters Pamphlet
16 for distribution to the voters for the November 2009 election.

17 III. JURISDICTION AND VENUE

18 5. The Court has jurisdiction over this matter under RCW 7.16.160 and RCW
19 7.16.300.

20 6. Venue is properly in this Court because both Defendants reside and have their
21 offices in Thurston County.

1 IV. FACTS

2 7. Petitioners are the sponsors of I-1033, a copy of which is attached hereto as
3 Exhibit A. I-1033 was supported by sufficient signatures of Washington voters to be placed
4 on the November 2009 ballot.

5 8. In general terms, the initiative requires that revenues to the state's general fund
6 and related funds are limited in growth to the prior year's revenue plus adjustments for
7 population growth and inflation. Exceptions exist for voter-approved revenues, revenues
8 required to be transferred by Article 7, Section 12 of the State Constitution (the rainy day
9 fund), and revenues received from the federal government. If enacted, any increase over the
10 limit would be used to reduce property taxes.

11 9. Additionally, I-1033 provides a similar, but not identical scheme for cities and
12 counties. Their general fund revenues (referred to as "current expense funds") are limited to
13 the prior year's revenue, subject to an adjustment for inflation and population change. As
14 with the state, increases in revenue above the limit must be used to reduce property taxes.
15 Unlike the state, however, the only exemption from the revenues to be included in the limit
16 are revenues that have been approved by the voters. Cities and counties do not have a
17 constitutionally mandated rainy day fund, nor do they have identical multiple funds for
18 current expenses which receive revenues from the federal government.

19 10. RCW 29A.72.060 requires the Attorney General to prepare a ballot title and
20 description of the measure for every statewide initiative. The ballot title for I-1033 is attached
21 hereto as Exhibit B. Additionally, RCW 29A.32.050 requires the Attorney General to prepare
22 an explanatory statement for each measure. The explanatory statement for I-1033 is also part
23 of Exhibit B.

1 11. RCW 29A.32.010 requires the Secretary of State to prepare a voters pamphlet.
2 RCW 29A.32.070 requires the voters pamphlet to include the text of the measure, the ballot
3 title and description of the measure, statements in support and in opposition to the measure, an
4 explanatory statement prepared by the Attorney General pursuant to RCW 29A.32.050, and a
5 fiscal impact statement prepared by OFM pursuant to RCW 29A.72.025.

6 12. On August 10, 2009, OFM submitted a Fiscal Impact Statement for I-1033 to
7 the Secretary of State, a true and correct copy of which is attached hereto as Exhibit C.

8 13. Upon seeing the Fiscal Impact Statement, Plaintiffs realized that it was based
9 in part on a series of assumptions which inaccurately describe I-1033. Consequently, on
10 August 13th, Plaintiffs' counsel wrote Defendant Moore the letter attached hereto as Exhibit
11 D. Mr. Moore's response, received on August 25, 2009, is attached hereto as Exhibit E.

12 14. Challenges to a ballot title or explanatory statement have specific statutory
13 authority for the filing of appeals, which are required by law to be expedited. Plaintiffs are
14 unaware of any specific statutory authority for challenges to a Fiscal Impact Statement that
15 would include expedited hearing by the Court. Therefore, Plaintiffs rely on RCW 7.16.150
16 and RCW 7.16.300 authorizing petitions for writs of mandate and prohibition. Because this
17 action affects the voters pamphlet, Petitioners urge the Court to treat this as an expedited
18 matter, similar to that applicable to ballot title challenges or explanatory statements.

19 15. Plaintiffs are informed and believe that the text of the voters pamphlet must be
20 completed by September 18, 2009 in order to provide adequate time for printing and
21 distribution prior to the election. Hence, this Petition is filed and a request for hearing is
22 made for September 11, 2009 to decide whether Defendant Moore should rewrite the Fiscal
23 Impact Statement without the inaccurate and misleading assumptions about I-1033.

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V. CLAIMS

**FIRST CAUSE OF ACTION:
PETITION FOR WRIT OF MANDAMUS
(RCW 7.16.160)**

16. Plaintiffs reallege the facts contained in paragraphs 1 through 15 by reference as if fully set forth herein.

17. Defendant Victor Moore has a duty to provide accurate information in a Fiscal Impact Statement for I-1033, especially since it will be included with the voters' pamphlet.

18. Defendant has failed to perform his duties by drafting a Fiscal Impact Statement for I-1033 which is inaccurate in the following manner:

- a. The Fiscal Impact Statement erroneously assumes that the initiative's reference to "taxes fees or other governmental charges" limits the types of revenue included within the revenue limit applicable to the state;
- b. The Fiscal Impact Statement erroneously assumes that government charges for publications and documents are not included in the revenue limit;
- c. The Fiscal Impact Statement is misleading in excluding "grant and loan repayments", "indirect and prior cost recoveries," and "unclaimed property" because it gives the impression that revenues to the applicable funds will not be treated as revenues to the applicable funds;
- d. The Fiscal Impact Statement is erroneous in excluding "federal and state direct and indirect grants" from the revenue limits applicable to counties and cities;
- e. The Fiscal Impact Statement is erroneous and misleading in excluding from the revenues of counties and cities "charges for contracted services

1 performed by counties or cities” and “charges for enterprise activities that are
2 not governmental in nature;”

3 f. The Fiscal Impact Statement is erroneous and misleading in excluding
4 “inter-fund and inter-departmental charges;” and

5 g. The Fiscal Impact Statement’s assertion that this measure is applicable
6 to towns is erroneous.

7 19. Plaintiffs have no other adequate remedy in the ordinary course of law.

8 20. As the official sponsors of I-1033, they are beneficially interested in the writ
9 sought herein.

10 **SECOND CAUSE OF ACTION:**
11 **PETITION FOR WRIT OF PROHIBITION**
12 **(RCW 7.16.290)**

13 21. Plaintiffs reallege the facts contained in paragraphs 1 through 20 by reference
14 as if fully set forth herein.

15 22. Defendant Sam Reed has the duty of preparing a voters pamphlet for the
16 November 2009 election at which the voters will be presented with I-1033. The voters
17 pamphlet must not include information which is inaccurate or misleading to the voters when
18 provided by public officials, such as the Attorney General, the Secretary of State, or the
19 Office of Fiscal Management. Inclusion of inaccurate or misleading information prepared by
20 public officials is in excess of his jurisdiction.

21 23. Defendant Victor Moore is responsible for the preparation of the Fiscal Impact
22 Statement. His duties include preparation of a Fiscal Impact Statement that is accurate and
23 not misleading. Preparing a fiscal impact statement based on assumptions which are directly
contrary to the wording of I-1033 is in excess of his jurisdiction.

24. Plaintiffs have no plain, speedy and adequate remedy in the ordinary course of
2 law.

3 25. As the official sponsors of I-1033, Plaintiffs are beneficially interested in the
4 relief sought herein.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray the Court enter:

7 A. That the Court issue

8 1. A writ of mandate requiring Defendant Victor Moore to reissue a Fiscal
9 Impact Statement for I-1033 that does not contain the errors complained of
10 herein, namely, the Fiscal Impact Statement may not assume:

11 a. the initiative's reference to "taxes fees or other governmental
12 charges" limits the types of revenue included within the revenue limit
13 applicable to the state;

14 b. that government charges for publications and documents are not
15 included in the revenue limit;

16 c. the initiative excludes "grant and loan repayments", "indirect
17 and prior cost recoveries," and "unclaimed property"
18 from the applicable revenue limits;

19 d. the initiative excludes "federal and state direct and indirect
20 grants" from the revenue limits applicable to counties and cities;

21 e. the initiative excludes "charges for contracted services
22 performed by counties or cities" and "charges for enterprise activities that are
23 not governmental in nature;" from the revenue limits of counties and cities;

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2 f. the initiative excludes "inter-fund and inter-departmental
charges;" from the revenue limits of counties and cities; and

3 g. the initiative is applicable to towns.

4 2. A writ of prohibition prohibiting Defendant Sam Reed from including
5 the Fiscal Impact Statement for I-1033 given to him on August 10, 2009, by
6 Defendant Victor Moore.

7 3. A writ of prohibition prohibiting Defendant Victor Moore from
8 continuing to rely on the Fiscal Impact Statement for I-1033 previously
9 prepared as the fulfillment of his duties;

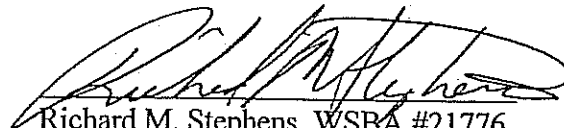
10 B. For costs and attorneys fees; and

11 C. For such other and further relief as the Court deem just and equitable.

12
13 RESPECTFULLY submitted this 1st day of September, 2009.

14 GROEN STEPHENS & KLINGE LLP

15
16 By:



17 Richard M. Stephens, WSBA #21776
18 Attorneys for Plaintiffs
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