No.

(Thurston Cty. Super. Ct. No. 26-2-04498-34)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ARTHUR WEST,
Appellant,
vs.
SECRETARY OF STATE STEVE HOBBS, et al,
Respondents.

Review of a decision made by the Honorable Judge Lanese of the Thurston County Superior Court

EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION

Arthur West
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Olympia, Washington, 98501

I. INTRODUCTION AND RELIEF REQUESTED

Appellant Arthur West respectfully moves this Court, pursuant to RAP 8.1 and RAP 8.3, for an order enjoining Defendants Steve Hobbs, in his official capacity as Secretary of State, and Nicholas W. Brown, in his official capacity as Attorney General, from certifying, transmitting, printing, or causing to be printed the Public Investment Impact Disclosure for Initiative Measure No. 645, pending this Court's determination of the direct review sought in the concurrently filed Notice of Discretionary Review and Statement of Grounds for Direct Review.

Time is dispositive. Defendants represented to the superior court that a ruling was needed “no later than August 21” to permit ballot translation and printing. Once ballots are printed, no remedy can restore the original presentation of IP26-645 or undo whatever electoral effect the challenged disclosure has.

7 Plaintiff requests that this motion be presented for immediate consideration under RAP 17.4(b), en bank or to a panel as the Court's practice allows, with an expedited briefing schedule and a ruling requested no later than August 21st .

8 As required by RAP 17.4(b), Plaintiff files concurrently the Affidavit of Notice (Appendix A) and sets out the emergency justification in Section IV, below.

9 *This Court has already charted the path this motion follows.* In Walsh v. Hobbs, No. 103174-2 (Wash. Oct. 24, 2024), this Court held that injunctive relief — not an extraordinary writ — is the “plain, speedy, and adequate remedy” for a challenge to a Public Investment Impact Disclosure.

10 Confronted with that same category of claim on an equally compressed election timeline, this Court itself retained the appeal and resolved it at a special en

banc conference because the election was fast approaching. Id. ¶¶ 3, 15, 18. Section III.B, below, explains why that precedent be followed in the timing of review here.

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II. STATEMENT OF FACTS

12 ***A. The Underlying Facts Concerning the Constitutional Claims***

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14 Plaintiff signed and circulated IP26-645 and solicited signatures under its certified ballot title, which describes repeal of the 9.9 percent tax on individual income over $1 million.

15 After the initiative qualified, pursuant to RCW 29A.72.027, the Attorney General appended a second sentence to the ballot presentation — the PIID — stating that the measure "would decrease funding for public K-12 education, higher education (including universities and community colleges), and human services (primarily healthcare)."

16 That sentence sits immediately before the enactment question, in the ballot title's own declarative voice, without attribution.

17 The Office of Financial Management's own fiscal note for IP26-645 shows no general-fund revenue impact in the first two years, identifies roughly $150.5 million in offsetting state-agency savings over the five-year window, and expressly excludes any assumption about the actions of a future Legislature.

18 The PIID omits every one of those qualifications and states as certain what OFM declined to state as certain. Independent survey evidence (the Change Research study) shows that materially similar PIID-style language shifted voter support and opposition by double digits across three separate 2024 initiatives.

19 On these facts, Plaintiff's Motion and Memo for a Preliminary Injunction and reply argued at length that:

(1.) RCW 29A.72.027 is a content-based restriction on political speech that fails strict scrutiny under *Reed v. Town of Gilbert* and the compelling-interest/narrow-tailoring test of Citizens United v. FEC;

(2.) the statute, as applied, abridges the right of expression and petition under Const. art. I, § 4, and invades the people's reserved and independent legislative power under Const. art. II, § 1; and

(3.) the PIID independently violates the Separation of Powers Doctrine as recently expansively defined in *Nixon* and *West*.

B. A Related Ruling the Same Day Is Diametrically Opposed to the Lanese Ruling

Coincidentally, on the very same day, in a related case concerning IP26-645, a different Thurston County Judge reached the opposite conclusion on an analogous accuracy question.

27 Superior Court Judge Anne Egeler rejected language proposed for the initiative's explanatory statement that would have described tax revenue as “directed” to specific spending categories, holding that such language would be “both inaccurate and misleading to voters” because only the Legislature can appropriate general-fund revenue: “It doesn't direct. It has hopes.”[1]

28 The full written order is pending at the time of this filing and will be obtained and filed once available.

29 Judge Egeler's ruling that the Legislature is responsible for specific funding decisions directly echoed West's identical argument that was rejected by Judge Lanese, and the ruling at issue here is diametrically opposed to the contemporaneous ruling of Judge Egeler.

30 Judge Egeler held that describing a discretionary, unappropriated revenue stream in certain,

[1] See WA judge rejects bid to ditch description of income tax initiative’s budget effects, Jerry Cornfield, Wash. State Standard (Aug. 7, 2026, updated 5:24 p.m.), https://washingtonstatestandard.com/2026/08/07/wa-judge-rejects-bid-to-ditch-description-of-income-tax-initiatives-budget-effects/.

directive language misleads voters — even though the proposed language was offered to make the initiative's tax look more beneficial to the programs it funds.

31 The PIID at issue here uses the same kind of certain, directive language — “would decrease funding” — to describe the identical discretionary, unappropriated revenue stream, in the opposite political direction.

32 If certainty language describing what the general fund will do is inaccurate when it favors the tax, it is equally inaccurate when it disfavors the tax's repeal.

33 Two judges in the same courthouse reached contrary results on the same underlying fiscal mechanism, on the same day, applying inconsistent standards depending on which side of the initiative the certainty language served. This dichotomy strongly favors review.

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35 C. The Record of the August 7 Hearing
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37 The Honorable Judge Lanese denied Plaintiff's Motion from the bench on August 7, 2026, explaining that the PIID "ensures voters are aware of trade-offs" and that "[t]here's nothing unconstitutional about giving voters more information."

38 The same hearing included additional statements by the court, reported as follows:

39 • questioning whether tax-reduction initiatives are themselves "not neutral" when they do not identify the government services that might be affected;

40 • suggesting that identifying services affected by a measure is what renders the ballot presentation neutral, because doing so shows voters "both sides of the ledger";

41 • referencing the risk of a "downward regressive spiral" in the state's tax structure if disclosures such as the PIID were omitted from the ballot to discourage voters from cutting taxes, and characterizing the State's recurring budget shortfalls as a consequence of taxpayers

wanting spending maintained while resisting the taxes that fund it;

42 • acknowledging that IP26-645 works “no direct cut” to any of the three named service categories; and

43 • rejecting the characterization that the disclosure places “a finger on the scale,” on the stated ground that voters should be made to confront the possibility of reduced funding because they might otherwise be more inclined to support the tax reduction.

44 Plaintiff has ordered the verbatim report of proceedings for the August 7, 2026 hearing for expedited production on Tuesday, August 11, and will supplement the record with the certified transcript, and precise page-and-line citations, as soon as it is available.

45

46 III. ARGUMENT

47 A. The Standard for Relief Pending Review

RAP 8.3 authorizes this Court, before or after acceptance of review, to issue orders — including injunctive relief — “to insure effective and equitable review.”

48 Relief under RAP 8.1 and RAP 8.3 exists to preserve the Court's ability to render a meaningful decision, and to prevent a party's right to a remedy from becoming moot before the merits can be reached.

49 The relevant considerations parallel those already before the superior court: (1) whether the appeal raises serious, debatable questions going to the merits; (2) irreparable harm absent relief; (3) the balance of hardships; and (4) the public interest.

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51 B. This Court's Own Decision in Walsh v. Hobbs Confirms That Speedy Review Must Accompany the Remedy It Requires

52 This Court has already told litigants challenging public investment impact disclosures which remedy to use, and it has already shown what speedy review of that remedy looks like.

53 *In Walsh v. Hobbs,* No. 103174-2 (Wash. Oct. 24, 2024), sponsors of three other initiatives sought writs of prohibition and mandamus to keep public investment impact disclosures off the 2024 general election ballot.

54 This Court held those extraordinary writs unavailable precisely because an adequate remedy already existed: “Declaratory or injunctive relief are adequate legal remedies when seeking to prevent an action or determine its legality.” Id. ¶ 15; accord id. ¶ 18 (“There has been no showing that declaratory or injunctive relief is inadequate.”).

55 Plaintiff followed exactly that instruction below, seeking a preliminary injunction rather than an extraordinary writ.

56 Walsh does not merely describe injunctive relief as adequate in the abstract; this Court demonstrated what makes it adequate.

57 Confronted with the same category of claim on the same compressed election timeline, this Court "retained the appeal, considered it on the merits at a special en banc conference, and affirmed by order with opinion to follow" specifically because the election was fast approaching. Id. ¶ 3; see also id. ¶ 9 (en banc conference held August 9, 2024, weeks before the general election).

58 This Court did not require Walsh to proceed through the Court of Appeals first, and it did not allow ordinary briefing schedules to consume the time remaining before ballots were finalized.

59 If injunctive relief is the adequate remedy this Court held it to be in Walsh, that holding carries a correlative obligation: review of a denial of that injunctive relief must itself be speedy and adequate enough to make the remedy meaningful.

60 An "adequate" remedy that arrives after ballots are printed is not adequate at all — it is not a remedy in any real sense, but the memory of one.

61 This Court's own practice in *Walsh* — direct retention, expedited en banc resolution, decision before entry of a full opinion — is the standard this case requires, on a timeline that is, if anything, more compressed than the one Walsh presented.

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63 C. Plaintiff Raises Serious, Debatable Constitutional Questions

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65 RCW 29A.72.027 applies only to initiatives that concern a tax or fee and show a net revenue change — a classification defined entirely by subject matter.

66 Under *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015), that alone makes the statute content-based, triggering strict scrutiny for burdens on political speech under *Citizens United v. FEC,* 558 U.S. 310, 340 (2010).

67 Neither judge Lanese nor the defendants' answer below ever engaged Reed, ever applied strict or exacting scrutiny, or ever addressed *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021) — the case requiring narrow tailoring even for exacting-scrutiny disclosure regimes.

68 Defendants' primary authority, *Doe v. Reed*, 561 U.S. 186 (2010), expressly recognized the expressive activity inherent in petitioning and supports the plaintiff's arguments.

69 Doe upheld disclosure of signatures the signers themselves supplied, before a measure qualified, to detect fraud — a rule Justice Stevens called "not a hard case" precisely because it was content-neutral, required no new words from anyone, and did not alter the content of any message. Id. at 220–21 (Stevens, J., concurring).

70 In contrast, RCW 29A.72.027 is triggered by content, supplies new misleading words the Attorney

General alone drafts, and changes what the ballot itself says, in the ballot title's own voice, after the petition already qualified.

71 The statute is also not narrowly tailored, because a less restrictive alternative already exists and is already doing the work the State says it needs the PIID to do: RCW 29A.72.025 requires a comprehensive, neutral fiscal note for every certified initiative, published in the voters' pamphlet and online.

72 If the government's own alternative already discloses an accurate revenue estimate, the PIID cannot be necessary to inform voters — only to politically characterize the measure at the moment of maximum electoral effect.

73 Independently, Article I, section 4 protects the right of petition from abridgment, not merely outright prohibition, and Article II, section 1 reserves the initiative power to the people "independent of the legislature."

74 Appending an adverse, unattributed government characterization to a petition's official ballot presentation, after the petition has already qualified under a different title, diminishes the value of every signature gathered and intrudes, in violation of the Doctrine of Separation of Powers, (See *West v. Legislature*) on the right of political expression recognized by the majority in *Doe,* as well as coordinate legislative power the people elected to withhold from the Legislature.

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76 D. The Hearing Record Independently Warrants This Court's Close Scrutiny

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78 Due process requires not merely an unbiased decisionmaker in fact, but one who appears unbiased: “justice must satisfy the appearance of justice.” In re Murchison, 349 U.S. 133, 136 (1955). Disqualification is constitutionally compelled where “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable” — an objective inquiry that does not require proof of subjective

prejudice. *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868, 872 (2009).

79 Washington applies the same objective standard to judicial proceedings: whether a reasonably prudent, disinterested observer, apprised of all the facts, would conclude the parties did not receive a fair, impartial, and neutral hearing. *State v. Post*, 118 Wn.2d 596, 618–19, 826 P.2d 172 (1992); accord *State v. Solis-Diaz*, 187 Wn.2d 535, 540, 387 P.3d 703 (2017).

80 The Code of Judicial Conduct codifies the same principle: a judge must disqualify when the judge's “impartiality might reasonably be questioned,” including where the judge has a personal view of the merits of the policy the litigation concerns. CJC 2.11(A).

81 Appended to this Motion for context are a few pictures of the Honorable Judge Lanese taken while he was expounding his political beliefs.

82 1. The court's own explanation for its ruling establishes the discriminatory, voter-directed effect of the PIID that grounds Plaintiff's substantive claims.
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84 Plaintiff's motion argued that RCW 29A.72.027 is a content-based statute whose object is to influence how voters respond to tax-reduction measures specifically, and that the PIID for IP26-645 is not a neutral disclosure but a persuasive counter-argument embedded in the ballot title's own voice.

85 The court's own stated rationale for denying that motion supplies the proof. On the confirmed record, the court explained that the PIID "ensures voters are aware of trade-offs" and that "there's nothing unconstitutional about giving voters more information."

86 That explanation does not describe a fiscal disclosure; it describes an act of state sponsored propaganda.

87 A disclosure is not necessary to "ensure(s) voters are aware" of a trade-off when the measure's own presentation, together with the neutral fiscal note already available to every voter under RCW 29A.72.025, would otherwise leave voters unaware of it.

88 The assumption that voters need additional and misleading information inserted into the ballot title after it has been circulated, signed, and certified to forestall a downward regressive tax spiral is a partizan, content-based, persuasive purpose that exceeds constitutional bounds.

89 Plaintiff attributes to the statute that: it does not treat all initiatives alike, and it does not treat the existing fiscal note as sufficient; it treats tax-reduction initiatives specifically as measures voters need to be corrected about. No other State has a similar process.

90 A ruling that upholds the PIID by describing its function as ensuring voters weigh a trade-off they would not otherwise weigh does not rebut Plaintiff's discriminatory-effect and viewpoint-influencing claims — it establishes them, in the government's own judicial adjudicative voice.

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92 2. The court's own articulated fiscal-policy premises show the court measured the statute against its own views rather than against the statute's text.
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94 The same hearing reflects the court explaining its ruling by reference to its subjective view of the risk of a "downward regressive spiral" in Washington's tax structure, and by characterizing the State's recurring budget shortfalls as a problem of taxpayers wanting spending maintained while resisting the taxes that fund it[2].

95 Plaintiff asked a narrow question: whether inserting the certified language into the ballot title based upon content was unconstitutional.

96 The Honorable Judge Lanese in determining this narrow question was not required to ask whether Washington's tax structure is sound, whether current

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[2] See: ***Judge's own words expose the bias in Washington's income-tax repeal impact disclosure***, Ryan Frost, Wash. Pol'y Ctr. (Aug. 7, 2026), https://www.washingtonpolicy.org/publications/detail/judges-own-words-expose-the-bias-in-washingtons-income-tax-repeal-impact-disclosure.

budgeting practices are sustainable, or whether voters who favor tax reductions have adequately weighed trade-offs the court subjectively believes they are inclined to discount.

97 The court did not measure the certified PIID against the Constitution and Separation of Powers; it measured the PIID against the court's own subjective view that tax-reduction initiatives require correction, and found the PIID lawful because it supplied that subjective correction.

98 A decisionmaker who treats a subjective particular fiscal-policy position as the baseline from which everything else is measured has not applied the Law— they have enforced the very prejudice the Constitution forbids the government from injecting into the ballot.

99 Taken together, these two points do more than describe a debatable legal conclusion; reasonable

jurists can disagree about difficult questions without any appearance-of-fairness problem.

100 The concern here is narrower and more concrete: on a motion whose central question was whether the State's language was free of unconstitutional intrusion into the People’s constitutional expressive legislative activity, the court's own reasoning — as set out in Section II.C — both adopted the premise that voters need to be persuaded against tax initiatives and treated that premise as the baseline for a determination of legality.

101 Under these circumstances, a reasonably prudent, disinterested observer who heard that tautological reasoning could reasonably question whether Plaintiff received a neutral adjudication.

102 Judge Egeler's ruling the same day, in the related case described in Section II.B, confirms that a less misleading course was readily available and that another judge in the same courthouse took it.

103 Presented with an analogous question — whether certain, directive language describing the fate of I-645 discretionary general-fund revenue was accurate — Judge Egeler held that it was not, regardless of which side of the initiative the language favored, because "it doesn't direct, it has hopes."

104 Judge Egeler applied the accuracy-first approach; the court below applied the opposite approach and justified it by reference to the court's own subjective views about tax policy and the State's budget.

105 Two judges in the same building, considering the same initiative on the same day, did not merely reach different results — they applied different standards. That divergence is itself evidence that the standard applied below was not appropriate, and it corroborates, from an independent source, the appearance-of-fairness concern this record otherwise establishes.

106 This record independently supports this Court's close review and, at minimum, informs the equities of the interim relief requested here: the superior court's own reasoning cannot be relied upon to preserve the status quo while the constitutional questions are resolved by an actually neutral tribunal.

107 E. Plaintiff Faces Irreparable, Imminent Harm

108 RCW 29A.72.027(6) requires the Secretary of State to transmit the certified PIID for inclusion on the ballot on a fixed timeline, and Defendants represent that ballots must be finalized for printing no later than August 21, 2026.

109 Once printed, no remedy can restore IP26-645's original ballot presentation or undo the disclosure's effect on the electorate. Loss of these rights,

even briefly, is itself irreparable injury. Elrod v. Burns, 427 U.S. 347, 373 (1976).

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111 F. The Balance of Hardships and the Public Interest Favor Interim Relief

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113 Plaintiff has no political axe to grind in regard to hypothetical, subjectively prognosticated progressive or regressive tax spirals: he merely seeks to ensure the People's Initiative powers are not unfairly eviscreated by a blatantly unconstitutional law.

114 The requested order would not touch the fiscal note, the voters' pamphlet, or any other channel through which the State informs voters about IP26-645's fiscal consequences; it would omit only the challenged sentence from the ballot itself, pending review.

115 Defendants have no legitimate interest in implementing a mechanism a reviewing court may ultimately hold unconstitutional, and the administrative burden of omitting one sentence before printing does not

outweigh the irreversible loss of the citizens of the State of Washington and Plaintiff's rights if review comes too late to matter.

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117 IV. REQUEST FOR EXPEDITED CONSIDERATION UNDER RAP 17.4(b)

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119 Pursuant to RAP 17.4(b), Plaintiff requests that this motion be decided on an emergency, expedited basis, or, in the alternate, transferred to the Court of Appeals for exedited review, and files concurrently the Affidavit of Notice required by that rule (Appendix A), stating the type and timing of notice given to Defendants' counsel.

120 Both elements RAP 17.4(b) requires before a commissioner or clerk may decide a motion on an emergency basis are satisfied here.

121 First, adequate relief cannot be given if this motion is considered in the normal course.

122

123 The State has represented that ballots must be finalized for printing by August 21, 2026, to permit

translation and distribution for the November general election.

124 Ordinary motion practice under RAP 17.4(a) and (e) — which contemplates ten days for an answer and further time for reply — cannot be completed before that date.

125 As set out in Section III.B, this Court's own decision in Walsh v. Hobbs confirms that a compressed timeline of this kind warrants direct retention and expedited resolution rather than ordinary sequencing.

126 Absent emergency consideration, the printing deadline will pass, the PIID will be irreversibly included on the ballot, and no order this Court could later enter would restore the status quo or provide Plaintiff an effective remedy.

127 Second, Plaintiff has taken reasonable steps under the circumstances to give notice to persons who would be affected by the ruling sought.

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129 As set out in the concurrently filed Affidavit of Notice, Plaintiff notified counsel for Defendants of his

intent to seek this relief on August 11, 2026, identifying the nature of the relief sought and the date by which Plaintiff intended to file.

130 This notice was given as promptly as practicable following the superior court's ruling on August 7, 2026, and affords Defendants a meaningful opportunity to respond notwithstanding the compressed timeline.

131 Plaintiff accordingly requests that the Clerk present this motion to a panel for immediate consideration on August 20; that any answer Defendants elect to file and the plaintiff’s response thereto be ordered on an expedited schedule; and that the Court rule no later than August 21, 2026.

V. CONCLUSION

132 Plaintiff respectfully requests that the Court grant this emergency motion and enjoin Defendants from certifying, transmitting, printing, or causing to be printed the Public Investment Impact Disclosure for IP26-645

pending this Court's determination of the direct review sought herein.

Respectfullysubmitted this day of August 10, 2026.

s/Arthur West

ARTHUR WEST

CERTIFICATE OF SERVICE

I hereby certify that on July 6th, 2026, I caused to be served a true and correct copy of Appellant's Notice of Appeal and Notice and Statement of Grounds and Enmergency Motion upon counsel for Respondents Karl Smith by the following method: electronic service.

s/Arthur West

ARTHUR WEST

CERTIFICATE OF COMPLIANCE

I hereby certify that the Appellant’s Motion above contains 3,823 words, in accord with the Supreme Court’s Rules.

s/Arthur West

ARTHUR

WEST

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