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**STATE OF WASHINGTON
KITITAS COUNTY SUPERIOR COURT**

BRAD HABERMAN and JANE DOE HABERMAN, a marital community; MARK CHARLTON and JANE DOE CHARLTON, a marital community; WILLIAM WIRTH and JANE DOE WIRTH, a marital community; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, a corporation; WASHINGTON FARM BUREAU, a corporation; WASHINGTON RETAIL ASSOCIATION, a corporation; and NORTHWEST FOOD PROCESSORS ASSOCIATION, a corporation,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

NO. 17-2-00041-1

STATE OF
WASHINGTON'S
RESPONSE TO
PLAINTIFFS'
MOTION FOR
SUMMARY
JUDGMENT

I. INTRODUCTION

Initiative 1433 (I-1433) was approved by more than 57 percent of voters in the November 2016 general election. The initiative adopted labor standards for the benefit of workers including incremental minimum wage increases over a four-year period, a paid sick leave requirement with provisions that define what paid sick leave can be used for, and related laws.

1 I-1433 complies with article II, section 19 of the Washington Constitution. It contains a
2 single subject—labor standards. The subject is general and the challenged components,
3 increased minimum wage and paid sick leave, have rational unity. If that were not the case,
4 then the Washington Supreme Court would have had said so in *Filo Foods, LLC v. City of*
5 *SeaTac*, 183 Wn.2d 770, 357 P.3d 1040 (2015). Instead, the *Filo Foods* Court held that a
6 similar local initiative containing a minimum wage increase and a paid sick leave requirement
7 did not violate the single subject rule.

8 The initiative’s subject is also reflected in the title, which covers both the increased
9 minimum wage and paid sick leave, as well as a general reference to related laws. The text of
10 the initiative predictably gives detail regarding what paid sick leave can be used for, but this
11 does not constitute a subject outside of the title. There is no subject that is absent from the title.

12 Finally, I-1433 complies with article II, section 37 of the Washington Constitution. The
13 initiative is an independent act that supplements workers’ rights under preexisting law, and
14 the voters could readily understand its impact by reading the text of the initiative. It did not
15 render other statutes erroneous and it did not alter preexisting rights or duties to an
16 impermissible degree.

17 This Court should deny the plaintiffs’ motion for summary judgment. Because there are
18 no issues of disputed fact and the plaintiffs’ challenge fails as a matter of law, this Court
19 should instead grant summary judgment to the State, since judgment in favor of the nonmoving
20 party is permitted in these circumstances. *See Impehoven v. Dep’t of Revenue*, 120 Wn.2d 357,
21 365, 841 P.2d 752 (1992); *see also In re Estate of Toland*, 180 Wn.2d 836, 852-53, 329 P.3d
22 878 (2014) (court can direct summary judgment in favor of the nonmoving party if there are no
23 disputed material facts and as a matter of law, that party is entitled to summary judgment).

1 **II. FACTUAL BACKGROUND**

2 Washington voters adopted I-1433 in the 2016 general election. The ballot title, which
3 appeared on Washington ballots and consisted of a statement of subject and a concise
4 description, was:

5 Statement of Subject: Initiative Measure No. 1433 concerns labor standards.

6 Concise Description: This measure would increase the state minimum wage to
7 \$11.00 in 2017, \$11.50 in 2018, \$12.00 in 2019, and \$13.50 in 2020, require
8 employers to provide paid sick leave, and adopt related laws.

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

9 Glasgow Decl., Ex. A at 1.

10 Washington voters also received a Voters’ Pamphlet which, for each initiative on the
11 ballot, provided an explanatory statement summarizing the relevant preexisting law, followed
12 by a description of the anticipated effect of the initiative.

13 The explanatory statement for I-1433 first explained the preexisting minimum wage
14 requirements for both adults and minors. Glasgow Decl., Ex. A at 1. Under preexisting law, the
15 minimum wage could increase each year by a cost of living adjustment tied to the rate of
16 inflation. Glasgow Decl., Ex. A at 2.

17 The Voters’ Pamphlet also explained preexisting law related to leave. Absent a local
18 law requiring it, paid sick leave was a benefit that an employer could choose to provide under
19 an agreement or policy, but it was not legally required under state law. Glasgow Decl., Ex. A at
20 2. Under the federal Family Medical Leave Act and the state Family Leave Act, qualifying
21 workers may take up to twelve weeks of unpaid leave and still keep their jobs. Glasgow Decl.,
22 Ex. A at 2. Where a worker qualifies, this unpaid leave can be used to recover from a worker’s
23 own serious illness, to care for a child, spouse, or parent with a serious health condition, or to
24 care for a newborn child, a newly adopted child, or a foster child. Glasgow Decl., Ex. A at 2.
25 The Family Care Act requires employers to allow employees to use earned paid leave to care
26 for a sick family member if the employer already provides such leave. Glasgow Decl., Ex. A

1 at 2. Under Washington’s domestic violence leave law, victims of domestic violence, sexual
2 assault, or stalking, and their family members can take reasonable leave related to escaping
3 domestic violence. Glasgow Decl., Ex. A at 2. “The law does not require that domestic
4 violence leave be paid leave, but an employee may choose to use paid leave if he or she has it.”
5 Glasgow Decl., Ex. A at 2.

6 The Voters’ Pamphlet then described the effect of the measure. Glasgow Decl., Ex. A
7 at 3. First, the initiative incrementally increases over a four-year period the hourly minimum
8 wage for employees who are at least 18 years old. Glasgow Decl., Ex. A at 3; RCW
9 49.46.020(1);¹ I-1433 § 3(1). The first minimum wage increase to \$11.00 per hour took effect
10 on January 1, 2017. Glasgow Decl., Ex. A at 3; RCW 49.46.020(1)(a); I-1433 § 3(1)(a).
11 Additional specific minimum wage increases will occur on January 1 of 2018, 2019, and 2020.
12 Glasgow Decl., Ex. A at 3; RCW 49.46.020(1)(b)-(d); I-1433 § 3(1)(b)-(d). After 2020,
13 Washington’s minimum wage rate will again be adjusted each year according to the rate of
14 inflation. Glasgow Decl., Ex. A at 3. If a local law requires a higher minimum wage, the local
15 minimum wage still applies. Glasgow Decl., Ex. A at 3; RCW 49.46.120 (more favorable
16 federal, state, or local laws shall remain in full force and effect); I-1433 § 9.

17 Second, I-1433 adopted a requirement that beginning January 1, 2018, employers must
18 provide paid sick leave to the employees covered by the Minimum Wage Act. Glasgow Decl.,
19 Ex. A at 3. Employers will be required to pay sick leave either at the increased minimum wage
20 rate or the employee’s regular and normal wage, whichever is greater. Glasgow Decl., Ex. A at
21 3; RCW 49.46.200; RCW 49.46.210; I-1433 §§ 4, 5. An employee will accrue at least one hour
22 of paid sick leave for every 40 hours worked, but employers could provide more generous paid
23 leave. Glasgow Decl., Ex. A at 3; RCW 49.46.210(1)(a); I-1433 § 5(1)(a).

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¹ I-1433 is codified in RCW 49.46.

1 The initiative also provides when and for what reasons a covered employee would be
2 entitled to take their accrued paid sick leave. Glasgow Decl., Ex. A at 3; RCW 49.46.210;
3 I-1433 § 5. Paid sick leave can be used to meet an employee’s own medical needs or to care for
4 certain family members’ medical needs. Glasgow Decl., Ex. A at 3; RCW 49.46.210(1)(b);
5 I-1433 § 5(1)(b). Paid sick leave can be used when an employee’s place of business or their
6 child’s school or childcare is ordered to be closed for a health related reason. Glasgow Decl.,
7 Ex. A at 3; RCW 49.46.210(1)(b)(iii); I-1433 § 5(1)(b)(iii). Paid sick leave can also be used for
8 domestic violence leave. Glasgow Decl., Ex. A at 3; RCW 49.46.210(1)(c); I-1433 § 5(1)(c).

9 The new law allows employers to require reasonable notice when employees want to
10 take paid sick leave. Glasgow Decl., Ex. A at 3; RCW 49.46.210(1)(f); I-1433 § 5(1)(f).
11 Employers may require verification that an employee is taking leave for an authorized
12 purpose if an absence will last longer than three days. Glasgow Decl., Ex. A at 3;
13 RCW 49.46.210(1)(g); I-1433 § 5(1)(g). The initiative also provides restrictions on an
14 employer’s ability to require an employee to find a replacement worker before taking paid sick
15 leave, notice requirements, carryover, and what happens to paid sick leave when an
16 employee leaves a job and returns. Glasgow Decl., Ex. A at 3; RCW 49.46.210(1)(h)-(k);
17 I-1433 § 5(1)(h)-(k).

18 Finally, I-1433 requires the Department of Labor and Industries to “adopt and
19 implement rules to carry out and enforce this act, including but not limited to procedures for
20 notification to employees and reporting regarding sick leave, and protecting employees from
21 retaliation for the lawful use of sick leave and exercising other rights under this chapter.”
22 Glasgow Decl., Ex. A at 4; RCW 49.46.810; I-1433 § 10. The Department is in the process of
23 rulemaking, and by the date of the hearing in this matter, draft rules will have been circulated
24 to stakeholders, and stakeholders will be providing feedback in advance of the draft rules being
25 published for public comment. Glasgow Decl. ¶ 3.

1 **III. EVIDENCE RELIED UPON**

2 The State relies upon the pleadings filed in this case, as well as the Declaration of
3 Rebecca Glasgow and the attached Exhibit A.

4 **IV. ISSUES**

- 5 **1. Does I-1433 contain a single subject as required by article II, section 19 because its**
6 **general title is “labor standards,” and the initiative’s minimum wage increases**
7 **and paid sick leave requirements are germane to this title and to each other?**
- 8 **2. Did I-1433’s ballot title reflect the subject of the initiative as required by article II,**
9 **section 19 because it addressed paid sick leave, and it is reasonable to expect that**
10 **the initiative would include provisions about what the paid leave can be used for?**
- 11 **3. Is I-1433 an independent act under article II, section 37 because a voter could**
12 **discern its effect by reading the initiative alone, and it merely supplements and**
13 **references related laws?**

14 **V. ARGUMENT**

15 Washington courts have long recognized that the legislative power is unrestrained
16 unless specifically limited by the constitution. *Moses Lake Sch. Dist. 161 v. Big Bend Cmty.*
17 *Coll.*, 81 Wn.2d 551, 555, 503 P.2d 86 (1972). “An exercise of the initiative power is an
18 exercise of the reserved power of the people to legislate.” *Amalg. Transit Union Local 587 v.*
19 *State*, 142 Wn.2d 183, 204, 11 P.3d 762, 27 P.3d 608 (2000). Thus, the Supreme Court has
20 long held that statutes, including those adopted by the people, are presumed constitutional, and
21 the plaintiffs must prove the new law unconstitutional beyond a reasonable doubt. *See, e.g.,*
22 *Wash. Ass’n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 654, 278
23 P.3d 632 (2012); *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 626, 71
24 P.3d 644 (2003). This means that challengers “must, by argument and research, convince the
25 court that there is no reasonable doubt that the statute violates the constitution.” *Island County*
26 *v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998) (describing the standard as “demanding”).
A court should not strike down a statute unless it is “fully convinced, after a searching legal

1 analysis, that the statute violates the constitution.’” *Sch. Dist. All. for Adequate Funding of*
2 *Special Educ. v. State*, 170 Wn.2d 599, 605-606, 244 P.3d 1 (2010) (quoting *Island County*,
3 135 Wn.2d at 147).

4 **A. I-1433 Complies With Article II, Section 19**

5 **1. I-1433 has a single subject: labor standards**

6 Plaintiffs first claim that I-1433 violates the single subject provision in article II,
7 section 19. They assert that the initiative constituted impermissible logrolling because a voter
8 who wanted a minimum wage increase had to also vote for paid sick leave and vice versa.
9 What plaintiffs fail to overcome, however, is that an initiative can accomplish more than one
10 thing or address more than one subtopic, so long as those subdivisions have rational unity to
11 each other and to the ballot title. *See, e.g., Wash. Fed’n of State Emps. v. State*, 127 Wn.2d
12 544, 556, 901 P.2d 1028 (1995). Here, minimum wage protections and paid sick leave both
13 relate to employee compensation and they have rational unity with the subject expressed in the
14 title: labor standards.

15 The Washington Supreme Court recently rejected a similar argument in *Filo Foods*,
16 183 Wn.2d at 781-85. There, the Court analyzed whether a local initiative increasing the
17 minimum wage and requiring paid sick leave in SeaTac contained more than a single
18 subject. *Filo Foods*, 183 Wn.2d at 781-85.² The *Filo Foods* Court first considered whether the
19 ballot title was general or restrictive. When a title suggests a “‘general, overarching subject
20 matter for the initiative’” it is general. *Id.* at 782 (quoting *Wash. Ass’n of Neigh. Stores v.*
21 *State*, 149 Wn.2d 359, 369, 70 P.3d 920 (2003)). Even where a title contains a list of different
22 provisions, this does not create a restrictive rather than a general title. *Wash. Ass’n of Neigh.*
23 *Stores*, 149 Wn.2d at 369.

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25 ² While the Court was applying a statutory single subject requirement, the Court applied the same
26 constitutional analysis single subject requirement appearing in case law. *Filo Foods*, 183 Wn.2d at 782.

1 “‘[G]reat liberality will be indulged to hold that any subject reasonably germane to [a
2 general] title may be embraced.’” *Filo Foods*, 183 Wn.2d at 782 (quoting *Amalg. Transit*, 142
3 Wn.2d at 207). A court must only find rational unity among the matters covered by the
4 initiative, and rational unity exists “when the matters within the body of the initiative are
5 germane to the general title and to one another.” *Filo Foods*, 183 Wn.2d at 782-83.

6 In contrast, a restrictive title is narrow and specific, rather than broad and generic. *Id.* at
7 783 (citing *State v. Broadaway*, 133 Wn.2d 118, 127, 942 P.2d 363 (1997)). Laws with
8 restrictive titles are valid if their substantive provisions fall fairly within the restrictive
9 language. *Id.* (citing *Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 633).

10 The *Filo Foods* Court found the title in that case to be general, rather than restrictive.
11 *Id.* at 784. The ballot title included: “Proposition No. 1 concerns labor standards for certain
12 employers.” *Id.* at 783. In relevant part, the local ballot title also explained that the ordinance
13 would require “‘certain hospitality . . . employers to pay specified employees a \$15.00 hourly
14 minimum wage, adjusted annually for inflation, and pay sick and safe time of 1 hour per
15 40 hours worked. . . . Other labor standards are established.’” *Id.* (quoting ballot title for
16 Proposition 1).

17 The challengers in *Filo Foods* argued that because the local initiative also imposed a
18 90-day worker retention policy on successor employers after a business acquisition or merger,
19 the initiative had more than one subject. *See Filo Foods*, 183 Wn.2d at 783. The Washington
20 Supreme Court disagreed, holding that the initiative “satisfie[d] the single subject rule.” *Id.* at
21 784. “Although the title list[ed] various provisions, it also state[d] that Proposition 1 generally
22 ‘concerns labor standards for certain employers.’” *Id.* The Court concluded that this language
23 was sufficiently broad to place voters on notice of its contents, including the worker-retention
24 policy. *Id.* The retention policy concerned labor standards and was reasonably germane to the
25 other minimum employee benefits contained in the initiative. *Id.* at 785. This was true, even
26 though the Court did not conclude that any of the elements of Proposition 1 was necessary to

1 implement the other elements. *See id.* at 783-85.³ Nine justices agreed that Proposition 1
2 survived the single subject challenge. *Id.* at 818 (Stephens, J., dissenting on other grounds).
3 Had the Washington Supreme Court believed that legislation that included both paid sick leave
4 and a minimum wage increase would violate the single subject rule, it would not have decided
5 *Filo Foods* as it did.

6 Similarly, in *Washington Association for Substance Abuse*, 174 Wn.2d at 655, the
7 Washington Supreme Court upheld Initiative 1183, which (among other things) privatized
8 liquor sales in Washington. Challengers argued that various aspects of Initiative 1183,
9 including a \$10 million earmark for public safety, were not germane to the subject of liquor
10 privatization. *Id.* at 656. The statement of subject was: “Initiative Measure No. 1183 concerns
11 liquor: beer, wine, and spirits (hard liquor).” *Id.* at 647. The court found that the title was
12 general because the title indicated that the measure “generally pertain[ed] to the broad subject
13 of liquor.” *Id.* at 655. Importantly, the Court reasoned that “[t]here is no violation of article II,
14 section 19 even if a general subject contains several incidental subjects or subdivisions.” *Id.* at
15 656. The Court found that the broader public safety earmark did not create a separate subject
16 because “liquor has an obvious connection” to broader public safety concerns. *Id.* at 657.
17 Considering, in part, the Legislature’s prior recognition that liquor regulation and public safety
18 are related, the Court found the inclusion of the earmark did not violate the single subject rule.
19 *Id.* at 659-60. Nor did the deregulation of private wine distribution or the regulation of liquor
20 advertising create a separate subject. *Id.* at 658-59.

21 In contrast, the Washington Supreme Court has found that initiatives violated the single
22 subject rule when, for example: I-1366 forced a choice between a reduction in the current sales
23 tax rate or a change in the way that all future tax increases are approved; I-695 set license tab

24 ³ *See also Wash. Ass’n of Neigh. Stores*, 149 Wn.2d at 370 (rejecting an argument that incidental
25 subdivisions of an initiative share rational unity only if they are necessary to one another); *Citizens for*
26 *Responsible Wildlife Mgmt.*, 149 Wn.2d at 638 (noting that incidental subjects need not be necessary to implement
each other, although that may be one way to conclude they are germane); *Amalg. Transit*, 142 Wn.2d at 209.

1 fees at \$30 and required voter approval of all future state and local tax increases; and I-722
2 reversed and restricted various tax increases and provided a one-time refund, while also
3 changing the method of assessing property taxes. *Id.* at 658-59 (describing *Amalg. Transit*, 142
4 Wn.2d at 191; *City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001)); *see also Lee v.*
5 *State*, 185 Wn.2d 608, 622, 374 P.3d 157 (2016).

6 Here, like the ballot title in *Filo Foods*, the ballot title for I-1433 included as the
7 statement of subject: “Initiative Measure No. 1433 concerns labor standards.” Like the title in
8 *Filo Foods*, this is a title indicating that the initiative generally pertains to the broad subject of
9 “labor standards.” Moreover, the general subject of establishing labor standards is reasonably
10 germane to the establishment of specific laws about compensation: a state minimum wage and
11 a paid sick leave requirement. And because both the minimum wage and paid sick leave
12 requirement address compensation, they are germane to each other. Indeed, if a 90-day worker
13 retention policy, a provision unrelated to compensation, did not destroy the single subject of
14 Proposition 1 in *Filo Foods* when it was adopted along with a minimum wage increase and a
15 paid sick leave requirement, then certainly those two compensation elements together do not
16 violate the single subject rule.

17 Finally, even if the court were to find that the title of I-1433 was restrictive, both the
18 minimum wage and paid sick leave fall “fairly within” the title addressing labor standards. *See*
19 *Filo Foods*, 183 Wn.2d at 783. Under even the plaintiffs’ narrower view of the initiative’s
20 subject matter, the initiative’s subjects are fairly related because they ultimately concern
21 employee compensation.

22 The plaintiffs claim that I-1433 logrolled the minimum wage increase and the paid sick
23 leave requirement, forcing voters who wanted one to accept the other. But this ignores that the
24 Supreme Court has accepted multiple incidental subjects or subdivisions that are related to a
25 general title, so long as they have rational unity. *E.g.*, *Wash. Ass’n for Substance Abuse*, 174
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1 Wn.2d at 656. Here, there is the required rational unity among the labor standards related to
2 employee compensation.

3 The plaintiffs also assert that because the Legislature has regulated the minimum wage
4 in RCW 49.46, but has regulated sick leave in RCW 49.12, then minimum wage and paid sick
5 leave must be two separate subjects. But there are three problems with this argument. First, the
6 plaintiffs fail to appreciate that the Legislature's prior treatment of a topic or topics is only one
7 factor that the Supreme Court considers when determining rational unity. *See Wash. Ass'n for*
8 *Substance Abuse*, 174 Wn.2d at 657; Pls.' Mot. Summ. J. at 8-9 (listing multiple other
9 potentially relevant factors.⁴) The Legislature's prior treatment of a topic has particular
10 strength when two portions of the initiative have previously failed to pass separately, and they
11 passed only after being joined. *Wash. Fed'n of State Emps.*, 127 Wn.2d at 575 (Talmadge, J.,
12 concurring/dissenting) (discussing *Power, Inc. v. Huntley*, 39 Wn.2d 191, 235 P.2d 173
13 (1951)). That is not the case here.⁵

14 Second, the plaintiffs fail to acknowledge that there are no subject-matter firewalls
15 between the chapters in RCW Title 49. Pls.' Mot. Summ J. at 3. Title 49 of the Revised Code
16 of Washington establishes labor regulations. There is often crossover among chapters in
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19 ⁴ Not all of the factors listed in the plaintiffs' briefing have been emphasized in majority opinions of the
20 Supreme Court. For example, the lack of a public hearing process, has been articulated in a concurrence/dissent,
21 but not a majority opinion of the Washington Supreme Court. Pls.' Mot. Summ. J. at 8-10 (discussing a
22 concurrence/dissent in *Wash. Fed'n of State Emps.*, 127 Wn.2d 544, 573-575 (Talmadge, J.,
23 concurring/dissenting); *see also Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 631 (noting that this
24 discussion occurred in a minority opinion and was not adopted by a majority of the court). Lack of a public
25 *drafting* process should not be a factor weighing against constitutionality of an initiative. Indeed, as the
26 concurrence/dissent in *Washington Federation* acknowledged, debate about the pros and cons of a particular
initiative necessarily occurs in public because it is the voters who ultimately decide whether to adopt or reject a
measure.

⁵ The minimum wage initiatives discussed in the Talmadge Declaration would have required statewide
minimum wage uniformity, so they would have lowered the minimum wage for some people and would not have
raised it for anyone. As the declaration acknowledges, the one proposed initiative that the plaintiffs raise related to
leave was about vacation leave, not paid sick leave.

1 Title 49 and it is not uncommon for a topic like minimum wages to be addressed in multiple
2 chapters. For instance, RCW 49.46 covers minimum standards for working conditions and
3 wages, which means “compensation due to an employee by reason of employment.”
4 RCW 49.46.120, .010(7). But RCW 49.12, the preexisting chapter that addresses sick leave,
5 also contains sections regarding certain minimum wage requirements. *See* RCW 49.12.091
6 (providing the Department of Labor & Industries authority to promulgate regulations that set
7 certain minimum wages); *see also* RCW 49.12.150 (civil action for payment of less than the
8 legal minimum wage). Minimum wage requirements are also administratively enforced using
9 the procedures outlined in RCW 49.48.

10 Third, it makes sense for the drafters to have put the paid sick leave requirement in
11 RCW 49.46 because that chapter addresses compensation, while RCW 49.12’s sick leave
12 provisions do not require sick leave to be paid. *See, e.g.,* RCW 49.12.270(1). Indeed, the
13 mutual element of compensation is also why the minimum wage and a paid sick leave
14 requirement are rationally unified.

15 Finally, the plaintiffs point to cases that have invalidated initiatives in part because they
16 contain a one-time change like a tax or fee reduction, coupled with a permanent systemic
17 change. *See, e.g., Lee*, 185 Wn.2d at 622-23. But I-1433 is different because it adopted two
18 ongoing changes: incremental minimum wage increases over a four-year period followed by
19 increases tied to inflation, and a paid sick leave requirement.

20 In sum, I-1433’s ballot title is general and its incidental subdivisions regarding the
21 minimum wage and paid sick leave are related both to the general title (“labor standards”) and
22 to each other. I-1433 must, therefore, survive a single subject challenge.

23 **2. I-1433’s subject is accurately reflected in its title**

24 The plaintiffs also claim that the initiative addresses family leave and domestic
25 violence leave, but those items are not mentioned in the title, and thus, plaintiffs argue, article
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1 II, section 19's subject in title rule is violated. But the plaintiffs' argument depends upon a
2 misunderstanding of what I-1433 accomplishes.

3 The purpose of the subject in title rule is to notify the members of the public of the
4 subject matter of the measure. *Wash. Ass'n for Substance Abuse*, 174 Wn.2d at 660. "[A] title
5 complies with the constitution if it gives notice that would lead to an inquiry into the body of
6 the act or indicate to an inquiring mind the scope and purpose of the law.'" *Id.* (alteration in
7 original) (quoting *Wash. Fed'n of State Emps.*, 127 Wn.2d at 555). "The title need not be an
8 index to the contents, nor must it provide details of the measure." *Id.* at 660. A title must not be
9 misleading or false, but any objections to the title must be "grave" and the constitutional
10 problem "palpable" for the court to hold an act violates this constitutional provision. *Id.* at 661.

11 Moreover, even when an aspect of the initiative is not mentioned in the title, the
12 Washington Supreme Court has still upheld the law against a subject in title challenge if the
13 omitted provision flows logically from the rest of the initiative. *See Citizens for Responsible*
14 *Wildlife Mgmt.*, 149 Wn.2d at 640. In *Citizens for Responsible Wildlife Management*, the
15 subject expressed in the title was banning particular methods of trapping and killing animals.
16 *Id.* at 632, 639-40. The title did not mention the initiative's related ban on raw fur trade for
17 pelts obtained through illegal trapping or poisoning. *Id.* at 639-40. The Court recognized that
18 the impact on the fur trade was a reasonable consequence that flowed from the elements
19 mentioned in the title. *Id.* Thus failure to mention the fur trade in the title was not fatal to the
20 initiative. *Id.* at 640.

21 Here, the plaintiffs misunderstand what the initiative does. I-1433 does not change or
22 alter the circumstances under which an employee can take family leave or domestic violence
23 leave under the statutes governing those types of leave. *See RCW 49.12.270(1); RCW 49.76;*
24 *RCW 49.78.* Instead, the initiative imposes a new *paid* sick leave requirement, and in doing so
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1 defines for what purposes or reasons that paid sick leave can be used. RCW 49.46.200, .210.
2 The initiative also provides that where other provisions of law, including other provisions of
3 state law, are more generous, the more generous provision governs. RCW 49.46.120. An
4 employee's paid sick leave can be used to care for certain family members and for absences
5 that qualify for leave under the domestic violence leave act. RCW 49.46.210(1)(b). Once an
6 employee's paid sick leave is exhausted, his or her rights to unpaid family leave or domestic
7 violence leave under preexisting statutes remain intact. RCW 49.76; RCW 49.78.

8 Like in *Citizens for Responsible Wildlife Management*, 149 Wn.2d at 640, leaving out
9 the attendant ability to use paid sick leave when an employee's family member is ill or for
10 qualifying domestic violence leave in the title is "not unreasonable" and the absence of this
11 level of detail in the title is not fatal to the initiative. This is especially true because it would
12 not be surprising to voters that the newly-required paid sick leave can be used to take leave to
13 care for family members or to address domestic violence because, under existing law, an
14 employee who is entitled to paid leave can generally use that paid leave for these purposes.
15 RCW 49.12.270(1); RCW 49.76.040(6); RCW 49.78.240(2).

16 I-1433's ballot title is not "palpably misleading or false." *Wash. Ass'n for Substance*
17 *Abuse*, 174 Wn.2d at 664. The title alerts the reader within the 33-word limit that the initiative
18 would both impose a paid sick leave requirement and adopt related laws. Glasgow Decl.,
19 Ex. A. This would lead an inquiring mind to look to the text of the initiative to learn more
20 about when and for what reason paid sick leave could be used. The adoption of the paid sick
21 leave requirements supplements the protections of domestic violence leave, family care leave,
22 and family leave, which still exist independent of the initiative and can be taken unpaid. This
23 Court should reject the plaintiffs' argument that the initiative contains a subject not reflected in
24 its title.

1 **B. I-1433 Complies With Article II, Section 37 Because It Is a Complete Act**

2 Finally, the plaintiffs assert that I-1433 violates article II, section 37, which provides
3 that “no act shall ever be revised or amended by mere reference to its title, but the act revised
4 or the section amended shall be set forth at full length.” The purpose of article II, section 37 is
5 to avoid fraud and deception, but it should not “trammel or hamper” the enactment of laws.
6 *Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 640. The constitutional provision
7 sought to remedy the practice of amending laws by addition or alteration where, absent a full
8 view of the language of the existing law, the changes were unintelligible. *State v. Tessema*, 139
9 Wn. App. 483, 490-91, 162 P.3d 420 (2007) (citing *Yelle v. Bishop*, 55 Wn.2d 286, 299, 347
10 P.2d 1081 (1959)).

11 An act is exempt from article II, section 37’s requirement if the act is “complete in
12 itself, independent of prior acts, and stand[s] alone as the law on the particular subject.”
13 *Tessema*, 139 Wn. App. at 490 (alteration in original); *see also Citizens for Responsible*
14 *Wildlife Mgmt.*, 149 Wn.2d at 640-41. The Washington Supreme Court has established a two-
15 part test for determining whether a piece of legislation is a complete act: (1) is the new law
16 such a complete act that the scope of the rights and duties created or affected can be
17 determined without reference to any other law, and (2) would a straightforward determination
18 of the scope of rights or duties under the existing statutes be rendered erroneous by the new
19 enactment. *Tessema*, 139 Wn. App. at 491; *Citizens for Responsible Wildlife Mgmt.*, 149
20 Wn.2d at 644-45.

21 The Washington Supreme Court has explained that courts should avoid an approach to
22 article II, section 37 that applies the constitutional restriction too broadly. *Citizens for*
23 *Responsible Wildlife Mgmt.*, 149 Wn.2d at 645. Article II, section 37 was not intended to
24 prohibit the adoption of a law “which declares fully its provisions without direct reference to
25 any other act, even though the legislation incidentally or impliedly amends other statutes.”
26 *Tessema*, 139 Wn. App. at 490-91. “Nearly every legislative act of a general nature changes

1 or modifies some existing statute, either directly or by implication’ but this, alone, does not
2 inexorably violate [article II,] section 37.” *Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d
3 at 640-41. Complete acts that “(1) repeal prior acts . . . , (2) adopt by reference provisions of
4 prior acts, (3) supplement prior acts or sections thereof without repealing them, or
5 (4) incidentally or impliedly amend prior acts are excepted from section 37.” *Citizens for*
6 *Responsible Wildlife Mgmt.*, 149 Wn.2d at 642. Significantly for purposes of this case, “[a]n
7 act which is supplementary rather than amendatory need not set forth in full the section of the
8 act it supplements.” *Tessema*, 139 Wn. App. at 491 (citing *City of Bellingham v. Hite*,
9 37 Wn.2d 652, 655-56, 225 P.2d 895 (1950)).

10 Applying the first prong of the test for determining whether legislation is a complete
11 act, the effect of I-1433 is readily ascertainable from the words of the initiative alone. An
12 employer must provide a certain amount of paid sick leave and it must permit an employee to
13 use that leave for certain reasons. RCW 49.46.210. The scope of the rights created or affected
14 by the statute can be readily ascertained without referring to any other statute. *See Citizens for*
15 *Responsible Wildlife Mgmt.*, 149 Wn.2d at 642-43.

16 Applying the second prong, I-1433 imposes a new *paid* sick leave entitlement and it
17 defines for what reasons an employee’s paid sick leave can be used. The new law does not
18 require that *all* sick leave, family leave, or domestic violence leave be paid. To the contrary,
19 the initiative simply mandates a certain amount of paid sick leave and provides that the benefit
20 can be used for certain purposes. RCW 49.46.210. I-1433 does not diminish an employee’s
21 preexisting rights to take unpaid family or domestic violence leave as provided in RCW 49.76
22 and RCW 49.78, or use paid leave already provided by employers for family care purposes
23 under RCW 49.12. The initiative expressly provides that where another provision of law is
24 more favorable to an employee, that law will continue to apply. RCW 49.46.120. And once an
25 employee’s paid sick leave is exhausted, his or her rights to leave under preexisting statutes
26 remain intact. RCW 49.12.270(1); RCW 49.76; RCW 49.78. Finally, it would not be surprising

1 to voters that the newly-required paid sick leave can be used to take leave to care for family
2 members or to address domestic violence because, under existing law, an employee who is
3 already entitled to paid leave through an employer policy or collective bargaining agreement,
4 for example, can generally use that paid leave for these purposes. RCW 49.12.270(1); RCW
5 49.76.040(6); RCW 49.78.240(2).

6 Furthermore, RCW 49.46.120 explains exactly how RCW 49.46 interacts with other
7 laws: “This chapter . . . is in addition to *and supplementary to* any other federal, *state*, or local
8 law or ordinance, or any rule or regulation issued thereunder.” (Emphasis added.) Thus, to the
9 extent that RCW 49.46 provides additional benefits or protections for workers, including an
10 entitlement to some paid sick leave, the voters intended the new laws to supplement the
11 preexisting leave provisions in other statutes. Any more favorable federal, state, or local laws
12 are not affected and remain in full force and effect. RCW 49.46.120. I-1433 thus supplements
13 prior acts or statutes, and does not violate article II, section 37, even if it does not set forth
14 those statutes in full. *See Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 642.

15 The new law also authorizes an employee “to use paid sick leave for absences that
16 qualify for leave under the domestic violence leave act, chapter 49.76 RCW.”
17 RCW 49.46.210(1)(c). This new statute does not conflict with anything in RCW 49.76. It
18 simply incorporates by reference and supplements the Domestic Violence Leave Act by
19 allowing an employee to use paid sick leave to receive compensation when taking leave under
20 that act. *See Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 642. Adopting preexisting
21 statutory provisions by reference without setting them forth in full also does not violate article
22 II, section 37. *Id.*

23 In sum, I-1433 is a complete act that, at most, supplements and incorporates by
24 reference preexisting statutes. It does not alter preexisting rights or duties to an impermissible
25 degree. *See Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d at 643.

1 **VI. CONCLUSION**

2 This court should deny the plaintiffs' motion for summary judgment and instead grant
3 summary judgment to the State because, as a matter of law, I-1433 does not violate article II,
4 section 19 or article II, section 37.

5 RESPECTFULLY SUBMITTED this 30th day of March 2017.

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7 ROBERT W. FERGUSON
Attorney General

8 

9 REBECCA R. GLASGOW, WSBA 32886
10 CALLIE A. CASTILLO, WSBA 38214
Deputy Solicitors General

11 Office ID 91029
12 PO Box 40100
13 Olympia, WA 98504-0100
14 360-753-6245
15 RebeccaG@atg.wa.gov
16 CallieC@atg.wa.gov
17
18
19
20
21
22
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24
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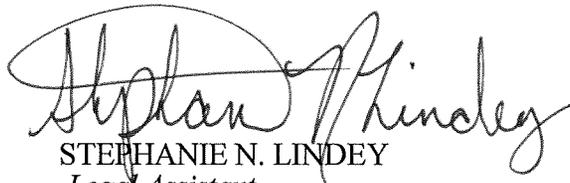
1 **CERTIFICATE OF SERVICE**

2 I certify, under penalty of perjury under the laws of the state of Washington, that on this
3 date I served a true and correct copy of the foregoing document via the United States Postal
4 Service postage prepaid and electronic mail on the following:

5 Phillip A. Talmadge
6 Thomas M. Fitzpatrick
7 Talmadge/Fitzpatrick/Tribe
8 2775 Harbor Avenue SW, Third Floor, Suite C
9 Seattle, WA 98126
10 phil@tal-fitzlaw.com
11 tom@tal-fitzlaw.com

Paul J. Lawrence
Greg Wong
Pacifica Law Group LLP
1191 2nd Avenue, Suite 2000
Seattle, WA 98101-3404
paul.lawrence@pacificallawgroup.com
greg.wong@pacificallawgroup.com

9 DATED this 5th day of April 2017.

10 
11 STEPHANIE N. LINDEY
12 *Legal Assistant*