

The Honorable Scott R. Sparks
Motion Date & Time: Friday, April 21, 2017 @ 2:00 p.m.
With Oral Argument
Moving Party's Paperwork

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITTITAS COUNTY

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;
NORTHWEST FOOD PROCESSORS
ASSOCIATION, a corporation; and
WASHINGTON FOOD INDUSTRY
ASSOCIATION, a corporation,

Plaintiffs,

vs.

STATE OF WASHINGTON,

Defendant.

No. 17-2-00041-1

PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

A. INTRODUCTION

The plaintiffs, individuals or organizations that must pay the increased minimum wage rate or provide paid employee leave, challenge the constitutionality of Initiative 1433 ("I-1433"), a

measure that purports to increase Washington's minimum wage and to simultaneously make extensive changes in Washington's employee leave laws. I-1433 makes these changes without complying with the important requirements in Washington's Constitution for notifying voters regarding the contents of the measure, and is therefore unconstitutional.

I-1433 violates article II, § 19 of the Washington Constitution by containing more than a single subject, and by failing to adequately describe the measure's contents in its title. The initiative also failed to comply with article II, § 37 because its provisions relating to employee leave effectively amend statutes relating to those issues without specifically identifying them.

The constitutional provisions at issue here stand as a bulwark to efforts in the Legislature and in voting on initiatives to logroll disparate measures and to slip changes in the law past decision makers without adequate notice of them. While the disparate provisions of I-1433 may be worthy public policy decisions, their worthiness should be fairly presented to voters, standing on their own without logrolling, after proper notice of what the initiative intended to accomplish. That did not occur here.

B. ISSUES PRESENTED FOR REVIEW

1. Is I-1433 unconstitutional under article II, § 19 because it contained two or more distinct subjects that historically have been treated as separate issues in the Legislature?

2. Is I-1433 unconstitutional under article II, § 19 because its title failed to give adequate notice to the voters of its contents?

3. Is I-1433 unconstitutional under article II, § 37 because it fundamentally amended a number of statutes pertaining to employee leave without specifically setting forth the statutes so amended?

C. EVIDENCE RELIED UPON

Declaration of Philip A. Talmadge.

D. FACTUAL BACKGROUND

Initiative 1433 is “AN ACT relating to fair labor standards...” It proposed to raise the state’s minimum wage progressively each year until 2020 and to require employers to provide paid employee leave (denominated in the ballot title only as “sick leave”) at least at that minimum wage rate. Moreover, it contained a number of additional sections relating to the treatment of tips and gratuities, and enforcement.

The ballot title for the voters was as follows:¹

Initiative Measure No. 1433 concerns labor standards.

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

Should this measure be enacted into law?

As noted in the Talmadge declaration, the Legislature has historically treated the hourly rate for the minimum wage and employee leave issues as distinct policy matters. Prior to I-1433, nothing in RCW 49.46, the Minimum Wage Act (“MWA”), addresses employee leave. Similarly, nothing in RCW 49.12, 49.76, 49.78 relating to leave policy in Washington addressed the minimum wage. Indeed, Washington employee leave policy is found in at least three distinct statutory chapters. Generally, prior to I-1433, the Legislature has addressed these policy matters – minimum wage rates and employee leave policy – as distinct policy matters. Additionally, prior

¹ A copy of the lengthier explanatory statement that accompanied the ballot title is in Exhibit A of the Talmadge declaration.

to 2016, going back to at least 2012, initiatives to the Legislature and to the people have treated the matters as distinct.

E. ARGUMENT

(1) Standards for Constitutional Challenge

The Washington Constitution is not a grant of, but a restriction, on legislative power. The power of the Legislature to enact all reasonable laws is unrestrained except where, either expressly or by fair inference, it is prohibited by the language of the Constitution. *Clark v. Dwyer*, 56 Wn.2d 425, 431, 353 P.2d 941, 945 (1960).² Where the validity of a statute is challenged, the enactment is presumed constitutional. *Id.* The challenger has the burden of proving a violation beyond a reasonable doubt. *Id.*; *Port of Tacoma v. Parosa*, 52 Wn.2d 181, 324 P.2d 438 (1958). But the precise nature of that phrase is sometimes misunderstood in this context. It is not a burden of proof as in criminal cases. Rather, as the Supreme Court has explained, the standard is an interpretative principle, indicating a court must give deference to a co-equal branch of government. *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998); *see also, Sch. Dist.'s Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 59, 606, 244 P.3d 1 (2010) (“...when we say ‘beyond a reasonable doubt,’ we do not refer to an evidentiary standard.”).

That standard does not prevent this Court from exercising its constitutional role of declaring what our Constitution means and finding a statute wanting, as the Supreme Court did in

² Words in the Constitution must be given their common and ordinary meaning. *State ex rel. Albright v. Spokane*, 64 Wn.2d 767, 394 P.2d 231 (1964). Where words of the constitution are unambiguous and in their commonly understood sense lead to a reasonable conclusion, they should be read according to their natural and most obvious import, without resorting to subtle and forced construction for the purpose of limiting or extending their operation. *State ex rel. O'Connell v. Slavin*, 75 Wn.2d 554, 452 P.2d 943 (1969).

Island County. This Court should conclude here that I-1433 violates the Washington Constitution in several respects.

(2) I-1433 Violates the Constitution’s Fairness and Transparency Requirements

Washington’s constitutional Framers were suspicious of the Legislature’s exercise of its powers, opting to restrict legislative prerogatives in proposing and enacting legislation; to ensure that the Legislature conducted its business fairly and transparently, the Framers adopted a number of restrictions on how legislation must be adopted to implement that overall policy. *Kristen L. Fraser, Method, Procedure, Means, and Manner: Washington’s Law of Law-Making*, 39 *Gonz. L. Rev.* 447, 447-51 (2003/2004) (“*Fraser*”). *Wash. Federation of State Employees v. State* (“*WFSE*”), 127 *Wn.2d* 544, 569-70, 901 *P.2d* 1028 (1995) (Talmadge, J., concurring/dissenting). For example, to prevent rider amendments so often used in Congressional decisionmaking, the Framers adopted article II, § 38 forbidding amendments expanding the scope and object of measures. Similarly, article II, § 19 forbids multi-subject legislation that invites legislative logrolling and a forest of unrelated issues in a single bill. *See generally*, Dustin Buehler, *Washington’s Title Match: The Single-Subject and Subject-in-Title Rules of Article II, Section 19 of the Washington State Constitution*, 81 *Wash. L. Rev.* 595 (2006). Article II, §§ 19 and 37 facilitate information to legislators about the contents of a bill before any vote on the bill occurs. *See generally*, *Fraser, supra* at 460-70, 471-75. As will be noted *infra*, there is no question these same policy imperatives carry over to voters as they make their decisions on initiatives.

(a) Article II, § 19 of the Washington Constitution – Single Subject

Article II, § 19 of the Washington Constitution states: “No bill shall embrace more than one subject, and that shall be expressed in the title.” This provision imposes procedural

requirements on the enactment of legislation designed to facilitate public and legislator knowledge of the legislation's content. *Wash. Ass'n for Substance Abuse and Violence Prevention v. State*, 174 Wn.2d 642, 654, 278 P.3d (2012) (“*WSAVP*”). § 19 bars more than a single subject in a bill and requires the bill's title to reveal its contents. The single subject rule prevents “logrolling:” the surreptitious inclusion of controversial legislation among more favorable provisions. *City of Fircrest v. Jensen*, 158 Wn.2d 384, 400-01, 143 P.3d 776 (2006) (Owens, J., concurring).³

Initiative measures, like legislative enactments, are subject to article II, § 19. *WFSE* at 548. However, for the constitutional analysis, the courts look not to the formal title of the legislation in the initiative, but rather to the ballot title upon which the voters voted. *Id.* at 555. The ballot title consists of the statement of the subject of the measure, a concise description of the measure, and a ballot question, appearing in the Voters' Guide. RCW 29A.72.050.

The starting place in any article II, § 19 single subject analysis is, as noted in *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207-211, 11 P.3d 762 (2000), whether the title is general or restrictive. A restrictive title, which carves out a particular part or branch of a subject, must be construed more narrowly, and “provisions not fairly within it will not be given force.” *Id.*

³ Logrolling has also been described as “the practice of drafting and submitting a bill to the legislature in such a form that a legislator is required to vote for something of which he disapproves to obtain approval of another unrelated law.” *State v. Waggoner*, 80 Wn.2d 7, 9, 490 P.2d 1308 (1971). The Supreme Court has indicated that article II, § 19 came about because

there had crept into our system of legislation a practice of engrafting upon measures of great public importance foreign matters for local or selfish purposes, and the members of the Legislature were often constrained to vote for such foreign provisions to avoid jeopardizing the main subject or to secure new strength for it, whereas if these provisions had been offered as independent measures they would not have received such support.

State ex rel. Wash. Toll Bridge Auth. v. Yelle, 54 Wn.2d 545, 550-51, 342 P.2d 588 (1959) (quoting *Neuenschwander v. Wash. Suburban Sanitary Comm'n*, 187 Md. 67, 48 A.2d 593, 598-99 (1946)).

at 210. General titles, such as “an act relating to violence prevention,” may be utilized by the Legislature but there must be a rational unity between the subtopics in the bill. *Id.* at 208-09.

Here, I-1433’s title is restrictive in scope. It addresses two distinct issues – the minimum wage and “sick leave.” As the ballot title is restrictive,⁴ I-1433 fails article II, § 19’s one-subject mandate as it carves out *two* distinct subject matters – increasing the minimum wage and addressing “sick leave.”

Even if this Court deems I-1433’s ballot title to be general, for example, relating to labor standards, it still violates article II, § 19. Our Supreme Court has invalidated initiatives in single subject challenges where a rational unity is not present. In *Washington Toll Bridge Authority v. State*, 49 Wn.2d 520, 304 P.2d 676 (1956), the Supreme Court first implied the general subject of “toll roads” from a title with multiple subparts. It concluded that rational unity was lacking, however, because one provision created a state agency that was long-term and continuing in nature, while another provision provided one-time funding of a specific toll road linking Tacoma, Seattle, and Everett. *Id.* at 523-25. More recently, in *Amalgamated Transit*, the Court declared an initiative in violation of the single subject rule because it contained provisions establishing \$30 car registration tabs and also required voter approval for future new taxes. *Amalgamated Transit*, 142

⁴ In *State v. Broadway*, 133 Wn.2d 118, 942 P.2d 363 (1997), the Supreme Court addressed a restrictive title. In 1995, the Legislature approved an act titled “An Act Relating to increasing penalties for armed crimes,” containing various provisions including sections that increased sentencing enhancements and penalties for use of deadly weapons, expanded the scope of various criminal statutes and required the maintenance of public records. The Court classified the bill’s title as restrictive because it contained two limitations. First, the Legislature carved out a subset, armed crime, from the overarching subject of criminal offenses. Second, the Legislature further limited the title’s scope by specifying increased penalties for armed crime. Because the Legislature carved out a subset of an overarching subject as the focus of the legislation and limited the title’s scope, the bill had a restrictive title. *Id.* at 127-28. *See also, Charron v. Miyahara*, 90 Wn. App. 324, 330, 950 P.3d 532, 536 (1998) (finding that the title “AN ACT Relating to the use of examinations in the credentialing of health professionals” is restrictive because it carves out a specific subset, credentialing of health professionals, and further limits its scope to the use of examinations).

Wn.2d at 216. The Court reasoned that neither provision was germane to the other, and that the fact that both involved the general subject of taxation did not create a rational unity between them. *Id.* See also, *City of Burien v. Kiga*, 144 Wn.2d 819, 825-26, 31 P.3d 659 (2001) (invalidating initiative that sought to nullify 1999 tax increases, provide a one-time tax refund, and limit increases in future property taxes); *Lee v. State*, 185 Wn.2d 608, 374 P.3d 157 (2016) (tax initiative had two unrelated operative provisions only one of which would go into effect – an immediate decrease in the sales tax was required unless the Legislature enacted a constitutional amendment to require a supermajority legislative vote to approve increased taxes or fees). In validating Initiative 1366, the *Lee* court quoted the trial court’s statement: “It is impossible to determine how many people voted for this initiative because they desired adoption of the constitutional amendment at its heart and how many voted for it because they desired the short-term relief of the immediate reduction in the sales tax.” *Id.* at 612. It is *no different* here as to the minimum wage rate and “sick leave” provisions of I-1433.

Ultimately, the concept of “rational unity,” the critical factor for the article II, § 19 analysis of a general ballot title, is one of germaneness. *WFSE* at 555-56. The sub-subjects of the general subject of the legislation must relate rationally to the measure’s overall purpose.⁵ This can be analyzed in a number of ways. For example, as noted in a concurring opinion in *WFSE*, courts should consider the openness of the process by which the measure was developed, public notice

⁵ An example of legislation that fails this rational unity test is described in *Fraser, supra* at 462-63:

A classic example of the single subject rule is the “dognapping” case *Barde v. State*. The bill in that case was entitled “AN ACT relating to the taking or withholding of property.” One portion of the bill specifically criminalized dognapping, and the other section authorized attorneys’ fees in civil replevin cases against pawnbrokers. While both sections fit technically within the title of the bill, it violated the single subject rule due to the lack of a “nexus” connecting the two subparts.

of the measure's contents, how the issues were handled historically in the Legislature,⁶ the measure's subject matter, and the measure's actual title. *Id.* at 573-76 (Talmadge, J., concurring/dissenting).

Applying the *WFSE* criteria mentioned above, it is plain that the portions of I-1433 do not have a "rational unity." There was certainly no public hearing process or public discussion of I-1433, as was true of Initiative 276, as described in *WFSE* at 574. As documented in the Talmadge declaration, the Legislature itself has generally treated the topics of the minimum wage and employee leave policy in recent years as *independent* subjects.

At its core, the title of I-1433 gives an objective observer no real hint as to the measure's actual contents, or how the various provisions of the measure rationally interrelate. If the title of I-1433 pertains to "labor standards," that title really discloses virtually nothing to the reasonable observer. It is difficult to discern how a "rational unity" applies to such disparate subjects as the minimum wage *rate* and paid employee leave policy.⁷ For example, nothing in the MWA addresses employee leave. I-1433 is a classic instance of "logrolling." Voters who were interested in a minimum wage rate increase were compelled to accept fundamental policy changes in Washington's employee leave statutes in the bargain, or vice versa. As stated in *Lee*, "neither

⁶ If the issues have been addressed together historically in Legislature, that favors rational unity. *Fritz v. Gorton*, 83 Wn.2d 275, 284-85 (Initiative 276); *Scott v. Cascade Structures*, 100 Wn.2d 537, 545-46, 673 P.2d 179 (1983) (tort reform and product liability components of 1981 Product Liability and Tort Reform Act). Where they have been treated historically in separate bills, that suggests the subjects are disparate.

⁷ By this same rationale, a measure relating to "labor standards" could be "loaded up" with provisions as disparate as prevailing wage standards, overtime wage policy, or policy on health care benefits and still pass "single subject" constitutional muster.

subject was necessary to implement the other.” 185 Wn.2d at 621. That is constitutionally unacceptable.⁸

In sum, § 1433 violates article II, § 19 by containing more than a single subject.

(b) Article II, § 19 of the Washington Constitution – Title of the Measure

The second component of article II, § 19 is the requirement that the bill’s subject must be expressed in its title in order to give the Legislature or the public a general awareness of what the new law will accomplish. *Lee*, 185 Wn.2d at 620. Generally, this means that the measure’s title must give “notice to voters which would lead to an inquiry into the body of the act or indicates the scope and purpose of the law to an inquiring mind.” *Citizens for Responsible Wildlife Mgmt.*, 149 Wn.2d 622, 639, 71 P.3d 644 (2003). The title need not be an index of the measure’s contents, *id.*, but it must contain a few well-chosen words suggesting the measure’s general topic. *Lee*, 185 Wn.2d at 620-21.

With respect to initiatives, the title of the act for purposes of article II, § 19 is not the usual “AN ACT Relating to...” but rather is the so-called ballot title developed for the Voter’s Pamphlet. *WSAVP*, 174 Wn.2d at 640. There, the Supreme Court outlined the rule for challenges to a title:

The purpose of the subject-in-title rule is to notify members of the legislature and the public of the subject matter of a measure. *Power, Inc. v. Huntley*, 39 Wn.2d 191, 198, 235 P.2d 173 (1951). “ ‘[A] title complies with the constitution if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law.’ ” *WFSE*, 127 Wn.2d at 555, 901 P.2d 1028 (alteration in original) (quoting *Young Men’s Christian Ass’n v. State*,

⁸ It is likely that the State may contend that the decision on Sea-Tac’s minimum wage initiative, *Filo Foods LLC v. City of Sea-Tac*, 183 Wn.2d 770, 357 P.3d 1040 (2015), resolves this issue. There, a split Supreme Court concluded that Sea-Tac’s minimum wage increase ordinance did not offend article II, § 19 in *Filo Foods*. That ordinance applied only to workers in the transportation and hotel industries in Sea-Tac. It did contain a number of additional labor topics beyond the minimum wage increase. There is no indication, however, in that litigation that the initiative challengers discussed the legislative history of treating the various topics in the measure. Moreover, the focus of the litigation appeared to center more directly on state/federal preemption questions.

62 Wn.2d 504, 506, 383 P.2d 497 (1963)). The title need not be an index to the contents, nor must it provide details of the measure. *Amalgamated Transit*, 142 Wn.2d at 217, 11 P.3d 762, 27 P.3d 608 (citing *WFSE*, 127 Wn.2d at 555, 901 P.2d 1028). Although a measure’s title can be broad and general – without any particular expressions or words required – the material representations in the title must not be misleading or false, which would thwart the underlying purpose of ensuring that “no person may be deceived as to what matters are being legislated upon.” *Seymour v. City of Tacoma*, 6 Wash. 138, 149, 32 Pac. 1077 (1893); *Howlett v. Cheetham*, 17 Wash. 626, 635, 50 Pac. 522 (1897) (“[A] title which is misleading or false is not constitutionally framed.”). Any “objections to the title must be grave and the conflict between it and the constitution palpable before we will hold an act unconstitutional.” *Wash. Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 372, 70 P.3d 920 (2003) (internal quotation marks omitted) (quoting *Nat’l Ass’n of Creditors v. Brown*, 147 Wash. 1, 3, 264 Pac. 1005 (1928)).

Id. at 660-61. I-1433’s reference to “labor standards” and its passing reference to “paid sick leave” fail to meet the constitutional mandate, particular where any reference to family and employee leave matters is omitted. Under the terms of I-1433, as will be discussed *infra*, the “sick leave” can be utilized for caring for family members – family leave – and where the recipient is victimized by domestic violence – domestic violence leave. I-1433 decidedly affects far more than “sick leave” in the traditional sense.

I-1433 fails of the constitutional imperative that its ballot title fairly notify the voters of the measure’s contents.

(c) Article II, § 37

Article II, § 37 of the Washington Constitution states:

No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.

This constitutional provision, applicable to initiative measures, is designed to protect the public from fraud and deception by avoiding confusion, ambiguity, and uncertainty. *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 631, 62 P.3d 470 (2003). In particular,

it seeks to prevent the confusion that would result from disconnected legal standards scattered throughout the RCW. It applies when a proposed bill or initiative is amendatory, rather than a complete act, independent of other prior acts, and can stand on its own. *Id.* at 632. Our Supreme Court has applied a two-part test for an article II, § 37 violation:

(1) the court must determine whether the bill is such a complete act that the scope of the rights created or affected by the bill can be ascertained without referring to any other statute or enactment; and (2) whether a determination of the scope of the rights under the existing statutes would be made erroneous by the bill.

Id. The Court of Appeals in *State v. Tessema*, 139 Wn. App. 483, 162 P.3d 420 (2007) reaffirmed those principles, noting at 489:

The mischief designed to be remedied by article II, section 37 was the enactment of amendatory statutes in terms that sometimes caused legislators and the public to be deceived in regard to their effect, due to the difficulty in making the necessary examination and comparison to existing statutes when not apprised of changes made in other laws.

I-1433 is unconstitutional under the 2-part test for article II, § 37 set forth above. The traditional title to I-1433 provides that it is:

AN ACT Relating to fair labor standards; amending RCW 49.46.005, 49.46.020, 49.46.090, 49.46.100, and 49.46.120; adding new sections to chapter 49.46 RCW; prescribing penalties; and providing an effective date.

That traditional title *nowhere* addresses *any* employee leave statute. Moreover, its ballot title on leave matters references only “*paid sick leave.*” Its contents do *far more*. Sections 1, 2 and 4 of I-1433 acknowledge that the measure actually affects *family leave* policy as well as sick leave. The measure then makes this even more explicit in its substantive provisions. Section 5(1)(b)(i) authorizes use of paid leave for *an employee’s illness*:

(i) An absence resulting from an employee’s mental or physical illness, injury, or health condition; to accommodate the employee’s need for medical

diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

That is traditional sick leave addressed in RCW 49.12.⁹ However, that statutory sequence is nowhere referenced in I-1433.

More critically, § 5(1)(b)(ii) and (iii) addresses use of *paid leave* for family-related purposes:

(ii) To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care; and

(iii) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a reason.

That is family leave, as provided for in RCW 49.12 and RCW 49.78. But again, neither RCW 49.12 and RCW 49.12.030 nor RCW 49.78 and RCW 49.78.220 specifically are mentioned in I-1433's amendatory section, even though § 5(1)(b) effectively *amends* both by requiring *paid* family leave when RCW 49.12.030 and RCW 49.78.240 presently authorize *unpaid* family leave.¹⁰

Finally, § 5(c) provides:

(c) An employee is authorized to use paid sick leave for absences that qualify for leave under the domestic violence leave act, chapter 49.76 RCW.

That is leave related to domestic violence as addressed in RCW 49.76, but, again, I-1433 nowhere indicates that it is amending RCW 49.76.030, the core provision of that statute enacted in 2008. I-

⁹ RCW 49.12.265-95, the Family Care Act, was enacted in 1988 and amended subsequently. *Honeycutt v. Wash. State, Dep't of Labor & Indus.*, __ Wn. App. __, __ P.3d __, 2017 WL 398687 (2017). Its provision parallel RCW 49.76 and RCW 49.78.

¹⁰ I-1433 also amends RCW 49.78.220 by allowing family leave when a child's school or an employee's place of business closes.

1433 *amends* that statute that presently makes it *discretionary* for an employer to provide *paid* domestic violence leave, making such paid leave *mandatory*.

The employee leave discussed in I-1433 is not only compensated time for the employee herself or himself who is ill, but compensation when that employee cares for other family members or is the subject of domestic violence. This segment of the legislation is not so much “sick leave” in the traditional sense, but effectively an amendment to RCW 49.12, RCW 49.76, and RCW 49.78, mandating paid domestic violence and family leave. As such, the initiative amends those statutes without specifically referencing them, as is required by article II, § 37 of the Washington Constitution.

F. ORDER

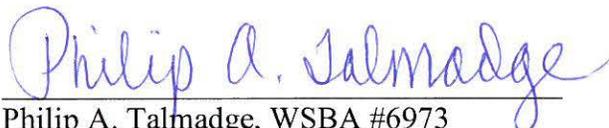
A proposed order is attached to this motion.

G. CONCLUSION

This Court should rule that I-1433 violates article II, §§ 19 and 37 for the reasons set forth herein, and it should therefore enjoin its enforcement. Costs should be awarded to the plaintiffs.

DATED this 15th day of March, 2017.

Respectfully submitted,



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