

ARTHUR WEST, plaintiff,	)	
	)	
	)	
	)	
Vs.	)	No.
	)	
STEVE HOBBS, in his official capacity	)	MEMORANDUM
as Secretary of State of the State of	)	IN SUPPORT OF
Washington; NICHOLAS W. BROWN,	)	PLAINTIFF’S MOTION
in his official capacity as Attorney	)	FOR A PRELIMINARY
General of the State of Washington;	)	INJUNCTION
and THE STATE OF WASHINGTON,	)	
defendants.	)	
	)	

I. INTRODUCTION.....6

II. STATEMENT OF FACTS AND
PROCEDURAL BACKGROUND.....6

A. The Statutory Mechanism6

B. Plaintiff’s Petitioning and
the Post-Certification Insertion.....7

C. The Certified Disclosure for
Initiative IP26-645.....7

1		
2	D. The Empirical Record.....	8
3	E. The <i>Walsh</i> Precedent — What	
4	It Held, and What It Did Not.....	8
5	III. STANDARD OF REVIEW.....	9
6	IV. ARGUMENT	
7	A. Plaintiff Has a Clear Likelihood	
8	of Success on Count I — the Right	
9	of Petition Has Been Abridged	11
10	1. “Abridge” Means Diminish,	
11	Not Merely Prohibit.....	11
12	2. The State Severed the Fixity	
13	a Completed Petition Guarantees	11
14	3. Settled Indirect-Burden Doctrine	
15	Confirms the Point	12
16	4. Independent State Constitutional	
17	Grounds Confirm This Reading	13
18	B. Plaintiff Has a Clear Likelihood	
19	of Success on Count II — the People’s	
20	Reserved Power Under Article II, Section 1.....	16
21	C. Plaintiff Has a Clear Likelihood of	
22	Success on Count III — the	
23	Separation of Powers.....	16
24	1. The Separation of Powers Protects	
25	Functions, Not Just Branches.....	16
26	2. The People Are a Coordinate	
	Source of Legislative Power.....	17
	3. Core-Political-Speech Status	
	Reinforces the Structural Claim.....	18
	4. Independent State Constitutional	
	Grounds Exist.....	19

1	5. Two Anticipated Objections,	
2	Answered	19
3	D. Plaintiff Has a Clear	
4	Likelihood of Success	
5	on Count IV — the Statutory	
6	Neutrality Requirement	21
7	E. Plaintiff Has a Well-	
8	Grounded Fear of Immediate	
9	and Irreparable Injury.....	22
10	F. The Balance of Equities and	
11	the Public Interest Favor	
12	Narrow Injunctive Relief	22
13	V. THE COURT’S DECISION IN <i>WALSH</i>	
14	DOES NOT FORECLOSE RELIEF.....	22
15	VI. CONCLUSION: LEGISLATIVE	
16	HISTORY CONFIRMS THAT THE	
17	PIID IS INTENDED TO FUNCTION	
18	AS PART OF THE BALLOT TITLE	24

II. TABLE OF AUTHORITIES

18	<i>Arizona State Legislature v. Arizona</i>	
19	<i>Independent Redistricting Comm’n,</i>	
20	576 U.S. 787 (2015).....	17
21	<i>Bates v. City of Little Rock,</i>	
22	361 U.S. 516 (1960).....	13
23	<i>Branzburg v. Hayes,</i>	
24	408 U.S. 665 (1972).....	13
25	<i>Eyman v. Wyman,</i>	
26	191 Wn.2d 581, 424 P.3d 1183 (2018).....	18, 20
	<i>Gallivan v. Walker,</i>	
	2002 UT 89, 54 P.3d 1069	17
	<i>In re Estate of Thompson,</i>	

1	103 Wn.2d 292, 692 P.2d 807 (1984).....	15
2	<i>League of Women Voters of</i>	
3	<i>Utah v. Utah State Legislature,</i>	
	2024 UT 21, 554 P.3d 872.....	18
4	<i>Meyer v. Grant,</i>	
5	486 U.S. 414 (1988).....	18-19
6	<i>Miami Herald Publishing</i>	
7	<i>Company v. Tornillo,</i>	
	418 U.S. 241 (1974).....	13
8	<i>NAACP v. Alabama,</i>	
9	357 U.S. 449 (1958).....	13
10	<i>Pacific Gas & Electric Company</i>	
11	<i>v. Public Utilities Commission,</i>	
	475 U.S. 1 (1986).....	13
12	<i>Rabon v. City of Seattle,</i>	
13	135 Wn.2d 278, 957 P.2d 621 (1998).....	9
14	<i>Riddle v. Elofson,</i>	
	193 Wn.2d 423, 439 P.3d 647 (2019).....	23
15	<i>State ex rel. Berry v. Superior Court,</i>	
16	92 Wash. 16, 159 P. 92 (1916).....	19
17	<i>State v. Coe,</i>	
18	101 Wn.2d 364, 679 P.2d 353 (1984).....	15
19	<i>State v. Gunwall,</i>	
	106 Wn.2d 54, 720 P.2d 808 (1986).....	13, 15, 19
20	<i>Tyler Pipe Industries, Inc.</i>	
21	<i>v. Department of Revenue,</i>	
	96 Wn.2d 785, 638 P.2d 1213 (1982).....	9, 10
22	<i>Walker v. Munro,</i>	
23	124 Wn.2d 402, 879 P.2d 920 (1994).....	23
24	<i>Walsh v. Hobbs,</i>	
25	No. 103174-2 (Wash. Oct. 24, 2024).....	8, 9, 21-3
26	<i>Wash. Fed’n of State Emps. v. State,</i>	
	127 Wn.2d 544, 901 P.2d 1028 (1995).....	15

1 *West v. Washington State Legislature*,
No. 60104-4-II (Wash. Ct. App. 2026).....16, 18-20

2 *Yelle v. Bishop*,
3 55 Wn.2d 286, 347 P.2d 1081 (1959).....14

4 **Constitutional Provisions**

5 Wash. Const. art. I, § 4.....10–12, 14–15

6 Wash. Const. art. II, § 1.....passim

7 U.S. Const. amend. I.....19

8 **Statutes**

9 RCW 7.24.....23

10 RCW 29A.72.025.....7

11 RCW 29A.72.027.....passim

12 RCW 29A.72.028.....21

13 RCW 29A.72.050.....7, 21-22

14
15 **Other Authorities**

16 *Anthony Johnstone, The Separation of*
17 *Legislative Powers in the Initiative Process*,
101 Neb. L. Rev. 125 (2022).....8, 11

18 Black’s Law Dictionary (defining “abridge”).....11

19 *Change Research, Ballot Measure*
20 *Survey Memorandum*(Oct. 18, 2023).....8, 21

21 Merriam-Webster’s Collegiate Dictionary (defining “abridge”).....11

I. INTRODUCTION

This case turns on a distinction the State would prefer this Court not draw too finely: the difference between telling voters something and telling *petitioners* something else. RCW 29A.72.027 does the latter. It permits the government to append its own language to the official presentation of a citizen initiative only after the citizens who wrote and circulated that initiative have finished the one constitutional act the statute cannot reach — their signatures. The State calls this “disclosure.” Plaintiff, who signed and circulated Initiative IP26-645 before any such disclosure existed, calls it something else: a government edit to a document the government had no further authority to touch.

Washington has been here before, or nearly so. Two years ago, other litigants brought this same statute before the Washington Supreme Court and asked for extraordinary relief in the form of a writ. The Court declined to issue one — not because the statute was constitutional, but because it found writs are not the right remedy, and the Court said so in terms that all but drew Plaintiff a map. *See* Section V, *infra*. Plaintiff has followed that map. This is the “declaratory or injunctive action” the Court identified as the adequate remedy the prior litigants never sought. *Walsh v. Hobbs*, No. 103174-2, slip op. at 10 (Wash. Oct. 24, 2024).

Four independent constitutional and statutory theories support the relief requested: the right of petition guaranteed by Article I, section 4; the people’s reserved legislative power under Article II, section 1; the separation of powers doctrine, which protects the people’s coordinate lawmaking function on the same structural terms this Court’s own recent precedent uses to protect the Legislature’s; and, in the alternative, RCW 29A.72.027’s own statutory command that the disclosure be neutral.

Plaintiff addresses each in turn, together with the showing of irreparable harm and the balance of equities that support preliminary relief now, before the certified disclosure for IP26-645 completes its work on the ballot Plaintiff already signed.

II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

A. The Statutory Mechanism

RCW 29A.72.027 requires the Attorney General to prepare a “public investment impact disclosure” (“PIID”) for any initiative that repeals, levies, or modifies a tax or fee with a net effect on state revenue. RCW 29A.72.027(1).

1 The disclosure must use language that “cannot reasonably be expected to prejudice the
2 vote.” RCW 29A.72.027(4). The statute simultaneously declares that the disclosure is “not...part
3 of the ballot title.” RCW 29A.72.027(7).

4 RCW 29A.72.050(2), however, requires the disclosure to appear on the ballot “in the
5 middle of the ballot title, after the concise description and before the question” — inside the
6 same block of official text as the Attorney General’s concise description and the statutory ballot
7 question. Although the statute as adopted states the PIID is not part of the Ballot Title, the
8 original Senate Bill Report stated that it was a part of the Ballot Title, demonstrating intent.

9 The Legislature thus created a disclosure that is, by definition, allegedly not part of the
10 ballot title, but, by mandatory placement, is physically, apparently, and rationally inseparable
11 from it. Plaintiff does not ask this Court to resolve that tension as a matter of technical statutory
12 drafting minutia. Plaintiff asks the Court to recognize what every voter who reads a ballot
13 already knows: the disclosure functions as part of the one continuous governmental message the
14 ballot presents, regardless of the label RCW 29A.72.027(7) assigns it.

15 B. Plaintiff’s Petitioning and the Post-Certification Insertion

16 Plaintiff signed the petition for Initiative IP26-645 and personally circulated it, obtaining
17 at least one additional signature, based on the ballot title and concise description then in
18 existence. No PIID existed for IP26-645 at that time; the PIID is generated only after the fiscal-
19 impact process required by RCW 29A.72.025 concludes, which necessarily occurs after petition
20 circulation.

21 After petition circulation concluded and sufficient signatures were certified, the Attorney
22 General prepared and certified a PIID for IP26-645, and the Secretary of State placed it into the
23 official ballot presentation pursuant to RCW 29A.72.050(2).

24 C. The Certified Disclosure for Initiative IP26-645

25 The July 23 certified PIID for IP26-645 states as follows:

26 Pursuant to RCW 29A.72.050, the ballot title and public investment impact
disclosure should be
displayed on the ballot substantially as follows:

Initiative Measure No. IP26-645 concerns state and local taxes. This measure would
repeal a 9.9% tax on annual individual income over \$1,000,000; prohibit taxes
measured by individual income and taxes on individual income or the receipt of
individual income; and define “income.” ***This measure would decrease funding for***

public K-12 education, higher education (including universities and community colleges), and human services (primarily healthcare). (emphasis added)

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

The italicised portion of the Ballot Title above is the language Plaintiff never petitioned for, and the language no signer of Plaintiff’s petition ever saw.

D. The Empirical Record

The effect of this mechanism is not a matter of speculation. A survey conducted by Change Research on behalf of SEIU 775 and Washington Conservation Action, dated October 18, 2023, tested voter response to three 2024 ballot measures — Initiative 2117, Initiative 2109, and Initiative 2124 — with and without the accompanying public investment impact disclosure. The results showed double-digit shifts in voter support attributable to the disclosure’s inclusion: support for Initiative 2109 fell from 40% in favor / 46% opposed without the disclosure to 31% in favor / 56% opposed with it, a fifteen-point swing; Initiative 2117 showed a comparable fifteen-point swing; and Initiative 2124 showed a nineteen-point swing.

Change Research, *Ballot Measure Survey Memorandum* (Oct. 18, 2023).¹ Plaintiff does not offer this survey just to prove IP26-645’s specific disclosure is unfair; Plaintiff offers it to establish, as a matter of demonstrated fact rather than argument, that the mechanism RCW 29A.72.027 created does not operate as neutral background information. It moves votes, on the order of fifteen to nineteen points, every time it has been measured.

E. The *Walsh* Precedent — What It Held, and What It Did Not

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

The Washington Supreme Court affirmed dismissal of that action, but on grounds considerably narrower than the State is likely to represent them. The Court held only that prohibition and mandamus — “ancient, rare, and extraordinary” remedies — were unavailable because the *Walsh* plaintiffs had made “no effort to show that [they] lack[ed] a plain, speedy, and

¹ Filed as Exhibit A

adequate remedy in the ordinary course of legal proceedings, such as a declaratory or injunctive action.” *Id.* at 8–9.

The Court did not reach, and expressly declined to reach, the constitutionality of RCW 29A.72.027 itself: a motion for leave to file an amicus brief from a notorious initiative advocate addressing that question was denied because the brief’s constitutional argument was “outside the scope of the issues properly before this court.” *Id.* at 10 n.2.

This present action is the supposedly plain, speedy, and adequate “declaratory or injunctive action” *Walsh* identified, brought by a plaintiff whose standing rests on his own completed act of petitioning rather than on generalized dissatisfaction with a statute’s wisdom. *Walsh* is discussed further in Section V, *infra*.

III. STANDARD OF REVIEW

A party seeking a preliminary injunction in Washington must show “(1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.” *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998) (quoting *Tyler Pipe Indus., Inc. v. Dep’t of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982)).

The first element turns on the likelihood that the moving party will prevail on the merits. *Id.* Because these criteria sound in equity, the Court also weighs the relative interests of the parties and the public. *Id.* Plaintiff addresses the merits of each claim first, then irreparable injury and the balance of equities.

The “clear legal right” prong warrants a preliminary observation, because it is easy to conflate two different questions: whether the *right* is clearly established, and whether its *application* to these facts is settled. Only the first inquiry belongs at this threshold, and only the first inquiry is at issue here.

The right of petition is not a creature of the initiative process, and it does not borrow its content, its clarity, or its limits from that process. Its lineage runs through Magna Carta’s security clause in 1215, which let the barons petition for redress of grievances against the Crown and enforce that redress if refused; through the Provisions of Oxford in 1258 and the Petition of Right in 1628; and it crystallizes into its modern, settled form in the English Bill of Rights of

1 1689 — “it is the right of the subjects to petition the king, and all commitments and prosecutions
2 for such petitioning are illegal.”

3 That 1689 formulation is the direct textual ancestor of the petition clauses adopted by
4 Pennsylvania, Maryland, North Carolina, and Vermont roughly a decade before the federal Bill
5 of Rights existed at all, and of Article I, section 4 itself. Few rights in Anglo-American law carry
6 a more uninterrupted pedigree or a clearer claim to settled status.

7 Nothing about the right’s existence, its scope in the abstract, or its standing as a
8 fundamental guarantee is genuinely contestable — which is precisely why Defendants’ defense
9 of RCW 29A.72.027 will not attack the right itself. It will attack whether *this particular*
10 *application* abridges it.

11 That is the correct issue in dispute, and Plaintiff meets it in Section IV below. But it is not
12 a fight about clarity at the threshold, and it should not be recast as one. A right does not become
13 unclear merely because it is being applied to a new fact pattern for the first time; if it did, no
14 constitutional right could ever satisfy *Tyler Pipe*’s first prong on a question of first impression,
15 and preliminary injunctions would exist only to enforce rights already fully litigated elsewhere
16 — precisely the cases least in need of preliminary relief.

17 The initiative power Plaintiff exercised through this ancient right is, by contrast, a
18 comparatively recent addition to Washington’s Constitution, proposed by the legislature in 1911
19 and ratified by the voters in 1912.

20 The right to petition is older than the vehicle of initiative by roughly seven centuries.
21 That asymmetry is not incidental; it confirms that Article I, section 4 is not a procedural feature
22 grafted onto the initiative apparatus, dependent on that apparatus for its scope or its force. The
23 initiative is simply the mechanism Plaintiff chose to exercise a right whose protections were
24 settled long before Washington, or the United States, existed to grant them.

25 Defendants’ theory — that whatever the State permits the initiative process to become, the right
26 of petition must accommodate — inverts that history. The right does not bend to the vehicle. The
vehicle operates within the right, and it has operated within rights considerably older than itself
since the day it was created.

IV. ARGUMENT

A. Plaintiff Has a Clear Likelihood of Success on the Merits of Count I — the Right of Petition Has Been Abridged

Article I, section 4 of the Washington Constitution provides that “[t]he right of petition and of the people peaceably to assemble for the common good shall never be abridged.” The question this case presents — whether the State may materially alter the official presentation of an initiative after citizens have completed the constitutional act of petitioning for it — is one of first impression in Washington. Plaintiff submits that every relevant interpretive tool answers it in his favor.

1. “Abridge” Means Diminish, Not Merely Prohibit

The threshold question is not whether Defendants prevented Plaintiff from signing, circulating, or submitting his petition. He does not allege that they did. The question is whether Defendants’ *subsequent* conduct “abridged” his right of petition, and that question turns on what “abridge” means.

In ordinary usage, “abridge” means to diminish, reduce in scope, or curtail — not to eliminate outright. *See* Merriam-Webster’s Collegiate Dictionary; Black’s Law Dictionary. Constitutional usage of the word follows the same pattern.

The First Amendment’s command that Congress make no law “abridging” the freedom of speech has never been read to reach only outright bans; burdens that diminish a right without eliminating it have long been understood to abridge that right. Washington’s use of “abridged” in Article I, section 4 employs the identical verb, and there is no textual basis to read it more narrowly here than the word is read elsewhere in constitutional usage.

2. The State Severed the Fixity a Completed Petition Guarantees

The right of petition in the initiative context guarantees something specific: that signing and circulating a petition triggers a defined legal consequence — placement of the measure before the electorate exactly as the people, and only the people, authored it. The value of the

completed petitioning act lies precisely in that fixity. RCW 29A.72.027 severs it. By authorizing the government to insert new, state-drafted content into the official ballot presentation after petitioning concludes, the statute allows the government to become a co-author of the outcome the petition was supposed to produce, at the one stage in the process when the Constitution places authorship exclusively in the people’s hands.

That is the abridgment, and it answers the objection Defendants will likely raise — that Plaintiff suffered no injury because he “successfully” signed and circulated his petition. Success in the mechanical sense of obtaining a signature is not the same as completing the constitutional act of petitioning on the terms Article I, section 4 protects.

What Plaintiff could not do — what no signer of any initiative petition can do once RCW 29A.72.027 operates — is finish exercising the right of petition free of subsequent government authorship of its result. A contracting party whose signed agreement is altered by the other side after signature has not consented to the final document merely because nothing restrained his hand when he signed; the impairment lies in what his completed act was later permitted to mean, not in whether he was free to perform it.

The same is true here. Plaintiff’s completed petition was diminished — its guarantee of exclusive popular authorship curtailed — the moment the government added its own content to the presentation of the measure he had already finished petitioning in regard to.

3. Settled Indirect-Burden Doctrine Confirms the Point

The principle of indirect burdens applies with particular force to initiative petitioning itself. In *Meyer v. Grant*, 486 U.S. 414 (1988), Colorado did not prohibit anyone from circulating an initiative petition — it banned only paying circulators.

The proponents remained free to gather signatures by other means, precisely the argument Defendants are likely to make here. The Supreme Court rejected that framing. It held that circulating an initiative petition is “core political speech,” that a burden on the effectiveness of that speech is itself an abridgment regardless of whether other avenues remain open, and — critically — that a state’s authority to create the initiative process in the first place does not give it authority to impose whatever conditions it wishes on how that process operates once created.

Id. at 421–25.

1 The same logic forecloses any argument that Article II's reservation of the initiative
2 power to the people gives the Legislature unlimited authority to condition or burden that power
3 through RCW 29A.72.027.

4 The specific mechanism RCW 29A.72.027 employs — inserting government-authored
5 content into a citizen's own completed presentation rather than banning any of that citizen's
6 speech — has been struck down in closely analogous circumstances.

7 In *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), Florida required
8 newspapers to publish a candidate's reply alongside editorials criticizing that candidate; the
9 newspaper's own editorial content was never touched, yet the compelled insertion of
10 government-mandated content into the newspaper's own presentation was unanimously held
11 unconstitutional.

12 The Supreme Court reached the same result where a state ordered a utility to include a
13 third party's rebuttal inside its own billing envelope, holding that “the danger that [the speaker]
14 will be required to alter its own message as a consequence of the government's coercive action is
15 a proper object of First Amendment solicitude.” *Pacific Gas & Elec. Co. v. Public Utilities*
16 *Comm'n*, 475 U.S. 1, 16 (1986).

17 RCW 29A.72.027 works the identical mechanism on Plaintiff's completed petition: it
18 does not ban the initiative's text, but it inserts government-authored content into the single
19 official Ballot Title presentation through which that text reaches the electorate. *Accord Bates v.*
20 *City of Little Rock*, 361 U.S. 516, 523–25 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958);
21 *Branzburg v. Hayes*, 408 U.S. 665, 700 (1972) (even an indirect burden on constitutionally
22 protected rights requires the government to demonstrate a compelling or paramount
23 justification).

24 4. Independent State Constitutional 25 Grounds Confirm This Reading

26 To the extent confirmation is required that Count I rests on grounds independent of
federal Petition Clause doctrine, the six nonexclusive criteria of *State v. Gunwall*, 106 Wn.2d 54,
720 P.2d 808 (1986), applied to Article I section 4, so confirm.

Textual language. Article I, section 4 provides that “[t]he right of petition . . . shall never
be abridged.” That is categorical language, unqualified by any limitation to a particular

1 governmental actor or a particular class of grievance. This factor favors independent
2 interpretation.

3 *Differences from the federal text.* The First Amendment provides that “Congress shall
4 make no law . . . abridging . . . the right of the people . . . to petition the Government for a
5 redress of grievances” — a restriction on one enumerated federal actor’s lawmaking power.

6 Article I, section 4 instead protects the right itself, without limitation to Congress or to
7 redress of grievances specifically. This is a meaningful textual divergence, not stylistic variation,
8 and it is a maxim of constitutional interpretation that where different language is consciously
9 chosen, a different meaning was intended. This factor favors independent interpretation.

10 *Constitutional and convention history.* Washington’s constitutional history supplies more
11 than background color here; it supplies the interpretive key. “In determining the meaning of a
12 constitutional provision, the intent of the framers, and the history of the events and proceedings
13 contemporaneous with its adoption may properly be considered.” *Yelle v. Bishop*, 55 Wn.2d 286,
14 291, 347 P.2d 1081 (1959).

15 That history shows a state whose founding generation regarded the Legislature itself with
16 a documented, historically unusual degree of suspicion. The 1878 Walla Walla constitutional
17 convention — drafted before statehood and used extensively in preparing the 1889 Constitution
18 — extended legislators only an abbreviated, criminal-liability-only privilege, reflecting what
19 commentators have described as a historic distrust of legislatures difficult to reconcile with any
20 broader immunity from public accountability.

21 That distrust, rooted in a political climate former Justice James Dolliver identified as
22 centrally concerned with “the private abuse of public office,” “the private use of public funds,”
23 and “concentrations of power,” carried directly into the 1889 convention and, critically, did not
24 dissipate with statehood. It persisted through the Progressive-era populist movement and found
25 its clearest expression in the 1912 amendment of Article II to reserve direct lawmaking power to
26 the people themselves — the same constitutional moment, and the same underlying distrust of
the representative branch, that gives Count III its structural foundation.

Article I, section 4 and Article II, section 1 are not separate strands of Washington constitutional
history; they are two expressions of the same founding judgment that the Legislature’s authority
over the people’s political participation must be construed narrowly, not expansively. This factor
strongly favors independent interpretation.

1 *Preexisting state law.* Washington case law preexisting this dispute already construes the
2 initiative and referendum provisions liberally in favor of facilitating their exercise. *Wash. Fed’n*
3 *of State Emps. v. State*, 127 Wn.2d 544, 555, 901 P.2d 1028 (1995); *In re Estate of Thompson*,
4 103 Wn.2d 292, 294–95, 692 P.2d 807 (1984).

5 This factor favors independent interpretation.

6 *Structural differences.* Washington’s Constitution does not merely mirror the federal
7 design; it operates as a limitation on otherwise plenary state authority and separately reserves
8 sovereign legislative power to the people.

9 As Justice Utter explained, “state courts have a duty to independently interpret and apply
10 their state constitutions that stems from the very nature of our federal system and the vast
11 differences between the federal and state constitutions.” *State v. Coe*, 101 Wn.2d 364, 373, 679
12 P.2d 353 (1984).

13 That duty does not yield to a preference for uniformity with federal doctrine; the United
14 States Supreme Court has itself recognized that non-uniformity among the states is not a defect
15 in the federalist design but a structural feature of it, and state courts construing their own organic
16 law owe it the same independent fidelity they already extend to state statutes construed without
17 regard to parallel federal enactments. This factor favors independent interpretation.

18 *Matters of particular state concern.* The initiative process is purely a creature of
19 Washington’s Constitution; ballot titles and public investment impact disclosures exist solely by
20 virtue of Washington statutes. The relationship between Article I, section 4 and the mechanics of
21 Washington’s initiative process is a matter of exclusively state concern. This factor favors
22 independent interpretation.

23 Every *Gunwall* factor bearing on this claim favors independent state constitutional
24 analysis. Count I accordingly rests on adequate and independent grounds under the Washington
25 Constitution, whatever the outer boundaries of federal Petition Clause doctrine may be.
26

 B. Plaintiff Has a Clear Likelihood
 of Success on Count II — the People’s
 Reserved Power Under Article II, Section 1

Article II, section 1 reserves to the people the power to propose and enact laws “independent of the legislature.” The initiative power is not a legislative privilege the Legislature administers by grace; it is a constitutional reservation of authority the Legislature may facilitate but not burden. The Legislature may adopt procedural statutes that genuinely facilitate the orderly administration of the initiative process — filing deadlines, signature verification, petition formatting.

What it may not do is intrude on the people’s independent reservation by imposing substantive burdens inconsistent with that reservation. RCW 29A.72.027 does the latter: it requires insertion of substantive, government-selected content into the completed measure’s official presentation, at the Legislature’s chosen timing and in the Legislature’s chosen placement. Those are choices about substance, not administration, and Article II does not authorize them once petitioning is complete.

C. Plaintiff Has a Clear Likelihood
of Success on Count III —
the Separation of Powers

1. The Separation of Powers Doctrine
Protects Functions, Not Just Branches

The Separation of Powers doctrine is broadly recognized in Washington as protecting each branch of government from incursion by the others upon its core constitutional function. Coincidentally, this division’s own appellate court has recently and emphatically applied that doctrine to shield the Legislature itself.

In *West v. Washington State Legislature*, No. 60104-4-II (Wash. Ct. App. 2026), Division II held that “the separation of powers doctrine creates a legislative privilege” protecting internal legislative deliberations from compelled disclosure, because the privilege is “necessary to protect the integrity of the legislature’s decision-making process and to maintain the boundaries between the different branches of government.”

The Separation of Powers doctrine, in other words, is not confined to policing conflicts among the traditional three branches; it operates whenever one governmental actor threatens the core function of another. It is, at bottom, a doctrine about functions, and it does not become unavailable simply because the function under threat belongs to an actor the Legislature would rather not think of as a branch at all.

1 2. The People Are a Coordinate
2 Source of Legislative Power

3 Article II, section 1 vests the people with legislative authority “independent of the
4 legislature.” That text constitutes the people, acting through the initiative, as a source of
5 legislative authority separate from and coordinate with the Legislature itself — not a subordinate
6 one.

7 The United States Supreme Court, construing Arizona’s initiative provision, described
8 the electorate as “a coordinate source of legislation” whose “legislative power is coextensive
9 with the state legislature’s authority.” *Arizona State Legislature v. Arizona Indep. Redistricting*
10 *Comm’n*, 576 U.S. 787, 792, 813 (2015).

11 The Utah Supreme Court has gone further, holding that “[t]he power of the legislature
12 and the power of the people to legislate through initiative and referenda are coequal, coextensive,
13 and concurrent and share equal dignity,” *Gallivan v. Walker*, 2002 UT 89, ¶ 23, 54 P.3d 1069,
14 1080, and that direct lawmaking by the people is, in some respects, structurally superior to
15 legislation enacted by the representative body precisely because it operates as a check the
16 ordinary legislative process cannot override. *Id.* ¶ 59 n.11 (quoting *Utah Power & Light Co. v.*
17 *Provo City*, 94 Utah 203, 235–36, 74 P.2d 1191, 1205 (1937) (Larson, J., concurring)).

18 Washington’s own courts have already recognized as much, if not yet in so many words.
19 In *Eyman v. Wyman*, 191 Wn.2d 581, 424 P.3d 1183 (2018), the Legislature passed a conditional
20 bill purporting to amend Initiative 940 in the moments after its passage. This Court held that
21 maneuver violated “the explicit language and carefully constructed allocation of legislative
22 power contained in article II, section 1 of the Washington Constitution,” and ordered the
23 initiative enforced as the people enacted it. *Id.*

24 If the Legislature cannot use its own lawmaking power to reach into and alter a citizen
25 initiative in the instant *after* enactment, it follows *a fortiori* that RCW 29A.72.027 cannot
26 authorize the Legislature to reach into and alter the official presentation of a citizen initiative
27 *before* enactment, while the measure is still moving through the very constitutional process the
28 Court in *Eyman* held the Legislature may not disturb.

29 This structural principle finds further support in courts confronting the mirror-image
30 problem — legislative alteration of a completed initiative after enactment.

1 In *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, 554 P.3d
2 872, the Utah Supreme Court held that citizen initiatives reforming the structure of government
3 are protected from legislative alteration absent a showing that the change is narrowly tailored to
4 a compelling government interest, grounding that limitation in the principle that the Legislature’s
5 authority is bounded “by all other applicable provisions of the Constitution, including the
6 separation of powers requirement.”

7 If the Constitution restrains legislative alteration of a completed initiative after
8 enactment, the same restraint applies with at least equal force before enactment.

9 Recent scholarship has urged courts to analyze exactly this relationship in exactly these
10 terms. Anthony Johnstone, *The Separation of Legislative Powers in the Initiative Process*, 101
11 Neb. L. Rev. 125 (2022), argues that legislatures in initiative states “must share the legislative
12 power with the people,” and that a legislature’s proper constitutional role with respect to a citizen
13 initiative is to facilitate it, not to specify, supplement, or limit its content once the people have
14 invoked it. *Id.* At 125–26.

15 That scholarship reinforces what *Gallivan*, *Utah Power*, and *West v. Washington State*
16 *Legislature* independently establish: a legislature’s authority over an initiative is bounded by the
17 same structural logic that bounds any branch’s authority over a function the Constitution reserves
18 to another coordinate branch.

19 3. Core-Political-Speech Status 20 Reinforces the Structural Claim

21 The status of initiative petitioning as core political speech independently confirms that
22 the people’s coordinate legislative function warrants the same structural protection the
23 Legislature enjoys. In *Meyer*, the United States Supreme Court held that circulating an initiative
24 petition constitutes “core political speech,” entitled to the highest level of constitutional
25 protection, because it “involves both the expression of a desire for political change and a
26 discussion of the merits of the proposed change.” 486 U.S. at 421.

That designation is not incidental to the separation-of-powers analysis; it reinforces it.
The Legislature’s own deliberative function is protected because it sits at the core of the
legislative process. See *West v. Washington State Legislature*, *supra*.

1 The people's exercise of the initiative power sits at that same core, and the Supreme
2 Court has recognized it as such using the same vocabulary courts use to describe activity
3 meriting the strongest constitutional insulation from governmental interference.

4 A function already identified as occupying the highest tier of constitutional protection
5 cannot simultaneously be treated as unworthy of the structural protection the separation of
6 powers doctrine affords the Legislature's comparatively ordinary deliberative work.

7 4. Independent State Constitutional 8 Grounds Support Plaintiff's Claim

9 To the extent confirmation is required that this claim rests on adequate and independent
10 state constitutional grounds, the six nonexclusive criteria of *State v. Gunwall*, 106 Wn.2d 54, 720
11 P.2d 808 (1986), so confirm.

12 Article II, section 1's text has no federal counterpart; the federal Constitution creates no
13 popular initiative power at all, U.S. Const. art. I, § 1; the 1912 adoption of the initiative reflected
14 a Progressive-era judgment that the people's reserved power was to function as a check
15 independent of the Legislature, *see State ex rel. Berry v. Superior Court*, 92 Wash. 16, 22, 159 P.
16 92 (1916); Washington's Constitution vests legislative authority in the Legislature in the same
17 clause that reserves a portion of that authority to the people, unlike the federal Constitution's
18 exclusive vesting clauses; and the internal allocation of state lawmaking authority is a matter of
19 distinctly state, not federal, concern. Every factor favors independent analysis under the
20 Washington Constitution.

21 5. Two Anticipated Objections, 22 Answered and Refuted

23 Defendants will likely raise two objections to Count III specifically, and both answer
24 themselves once stated plainly.

25 *The Separation of Powers doctrine is not confined to three branches.*

26 Defendants may argue that separation of powers, by its traditional formulation, polices
conflicts only among the legislative, executive, and judicial branches, and that recognizing "the
people" as a protected coordinate source of power is a doctrinal innovation.

1 That argument mistakes the doctrine's traditional application for its underlying rationale.
2 As *West v. Washington State Legislature* makes clear, the doctrine exists to protect the core
3 constitutional function of a governmental actor from incursion by another; it was applied there to
4 protect the Legislature's deliberative process in enacting legislation specifically because doing so
5 was seen as necessary to preserve the integrity of that process and the boundaries between
6 governmental actors.

7 Count III does not ask this Court to invent a new branch of government. It asks the Court to
8 recognize what Article II, section 1 already provides: that the people's reserved legislative power
9 sits within the same constitutional vesting clause as the Legislature's own authority, *Eyman v.*
10 *Wyman*, 191 Wn.2d 581, and that a doctrine protecting core constitutional functions from
11 incursion applies with equal force to a function the Constitution itself places on coordinate
12 footing with the Legislature.

13 *This is not a nonjusticiable political question.*

14 Defendants may also contend that Count III asks the Court to referee an inherently
15 political dispute between the Legislature and the electorate. It does not. The political question
16 doctrine bars judicial resolution of disputes committed by the Constitution to a coordinate
17 branch's discretion, or that lack judicially manageable standards.

18 Neither circumstance is present. This Court, not the Legislature, is the body
19 constitutionally assigned to interpret the scope of Article II, section 1, just as this Court's own
20 precedent already resolves disputes about the boundaries the separation of powers doctrine
21 places on the Legislature's conduct. See *West v. Washington State Legislature, supra*; *Eyman v.*
22 *Wyman, supra*.

23 And the standard for resolving Count III is judicially manageable: whether RCW
24 29A.72.027 permits the Legislature to insert governmental content into the official Ballot Title
25 presentation of an initiative after petition's circulation has concluded and it has been certified is a
26 discrete legal question, not a policy judgment about whether such content is wise.

27 D. Plaintiff Has a Clear Likelihood
28 of Success on Count IV — the
29 Statutory Neutrality Requirement

30 This claim requires no constitutional holding at all. RCW 29A.72.027(4) requires the
31 disclosure to use language that "cannot reasonably be expected to prejudice the vote." The

certified disclosure for IP26-645 drafted by the Attorney General appears as part of the Ballot Title² and does not meet that standard by including optional charged terms in parentheses.

That the mechanism as a class produces exactly the prejudicial effect the statute forbids is independently confirmed by the Change Research survey discussed in Section II.D, which found double-digit shifts in voter support attributable to the disclosure's inclusion across three separate 2024 measures — a magnitude of effect inconsistent with any plausible construction of “cannot reasonably be expected to prejudice the vote.”

RCW 29A.72.028's three-day appeal window to this Court does not preclude this claim or displace this Court's authority to grant declaratory and injunctive relief under chapter 7.24 RCW. RCW 29A.72.028 authorizes a court to amend defective disclosure language; it does not authorize removal of the disclosure from its statutorily mandated position inside the ballot title block under RCW 29A.72.050(2), and it does not adjudicate the placement mechanism's lawfulness.

A wording amendment obtained under that provision would not remedy the injury alleged in Counts I through III, which concerns integration into the official ballot presentation rather than word choice alone. And to the extent RCW 29A.72.028 supplied an available remedy for the narrower question of this specific disclosure's neutrality, that statutory remedy does not displace the declaratory action the Washington Supreme Court has already identified as the adequate ordinary vehicle for challenges of this kind. *See Walsh*, slip op. at 9; Section V, *infra*.

E. Plaintiff Faces a Well-
Grounded Fear of Immediate
and Irreparable Injury

The injury alleged here is not speculative; it has already occurred, and it recurs with every ballot printed and every day that passes before the election. Once ballots are printed and

² Pursuant to RCW 29A.72.050, the ballot title and public investment impact disclosure should be displayed on the ballot substantially as follows:

Initiative Measure No. IP26-645 concerns state and local taxes. This measure would repeal a 9.9% tax on annual individual income over \$1,000,000; prohibit taxes measured by individual income and taxes on individual income or the receipt of individual income; and define “income.” *This measure would decrease funding for public K-12 education, higher education (including universities and community colleges), and human services (primarily healthcare).* (Emphasis supplied)

1 mailed, no remedy can restore the petition Plaintiff signed to the form in which he signed it, and
2 no remedy can undo the votes cast under a ballot presentation that includes language Plaintiff
3 never petitioned for. Constitutional injury of this character is presumptively irreparable, and the
4 compressed election calendar makes delay itself a form of denial: relief granted after ballots are
5 printed is no relief at all.

6 F. The Balance of Equities
7 and the Public Interest Favor
8 Narrow Injunctive Relief

9 The relief Plaintiff requests is deliberately narrow. Plaintiff does not ask this Court to
10 prevent the State from informing voters of an initiative's fiscal consequences; he asks only that
11 the State do so through a channel that does not alter the official Ballot presentation of a
12 completed petition.

13 In the alternative, without waiver, Plaintiff asks the Court to sever and enjoin only the
14 ballot-placement requirement of RCW 29A.72.050(2), leaving the State free to publish the
15 identical fiscal information in the voters' pamphlet or elsewhere.

16 Either form of relief fully accommodates the State's stated informational interest while
17 eliminating the constitutional defect. The public interest favors an injunction that preserves both
18 the integrity of the initiative process and the flow of fiscal information to voters, rather than one
19 that sacrifices the former to protect a placement choice the Legislature could as easily have made
20 elsewhere.

21 **V. THE DECISION IN**
22 ***WALSH* DOES NOT**
23 **FORECLOSE RELIEF**

24 The State will likely lean on *Walsh v. Hobbs* as though it settled something. It settled a
25 narrower question than that. The *Walsh* plaintiffs asked for a writ of prohibition and a writ of
26 mandamus — remedies this Court has described as “ancient, rare, and extraordinary,” available
only where no ordinary remedy exists. *Walsh*, slip op. at 8 (citing *Riddle v. Elofson*, 193 Wn.2d
423, 428, 439 P.3d 647 (2019)).

1 The Walsh Court held, correctly, that an ordinary declaratory or injunctive action was
2 available to the *Walsh* plaintiffs and that they had made no effort to show otherwise. *Id.* at 9. It is
3 a curious feature of that litigation that its proponents chose the writ — historically reserved for
4 the rare case with no other remedy — to challenge a statute that, on this record, plainly permitted
5 one.

6 Clearly, a lawsuit built entirely around the absence of an adequate remedy tends to fare
7 poorly in the face of an adequate remedy available in chapter 7.24 RCW.

8 That choice of vehicle in *Walsh* had a further consequence the State would prefer not to
9 dwell on: it meant the Washington Supreme Court never reached the constitutional question at
10 all. A motion for leave to file an amicus brief from a notorious Initiative advocate addressing the
11 constitutionality of RCW 29A.72.027 was denied in *Walsh* because the brief’s argument was, in
12 the Court’s own words, “outside the scope of the issues properly before this court.” *Walsh*, slip
13 op. at 10 n.2.

14 The constitutional question the State would now like this Court to believe was settled in
15 2024 was, in fact, the one question the 2024 Court went out of its way not to touch. It arrives
16 before this Court for the first time not through a brief the prior Court had no occasion to open,
17 but through the ordinary declaratory action the prior Court identified as the appropriate door —
18 and through it walks a plaintiff whose injury is his own completed act of petitioning, not a mere
19 disagreement with the wisdom of a statute he never invoked.

20 *Walsh* also considered, in a different context, the deference courts owe when asked to
21 direct the conduct of another branch.

22 Mandamus, the Court observed, requires respect for “the historical and constitutional
23 rights” of the branch whose conduct is at issue. *Walsh*, slip op. at 7 (citing *Walker v. Munro*, 124
24 Wn.2d 402, 407, 879 P.2d 920 (1994)). Plaintiff takes no issue with that principle; he asks only
25 that it be applied evenhandedly. Article II, section 1 identifies two sources of legislative
26 authority in this state, and the historical and constitutional rights of the one the Legislature did
not create — the one that, if anything, created it — merit no less respect than the Legislature’s
own.

**VI. CONCLUSION:
LEGISLATIVE HISTORY AND CURRENT
PRACTICE CONFIRM THAT THE PIID IS INTENDED TO
FUNCTION AS AN INTEGRAL PART OF A BALLOT TITLE**

The legislative history of Substitute House Bill 1876, enacted as Laws of 2022, chapter 114, confirms the Legislature's own understanding of how the disclosure was originally intended to operate. The uncodified legislative findings accompanying the 2022 act recite that "the people are entitled to know the fiscal impact that their vote will have on public investments at the time they cast their ballots" — a purpose that can be achieved only if the disclosure is read by voters together with, and as part of, the ballot presentation itself.

Senate committee reports prepared during the bill's consideration repeatedly described the disclosure as part of the ballot title, notwithstanding the disclaimer ultimately codified at RCW 29A.72.027(7). *"Brief Summary of Bill ("As Amended by Senate) – Requires a public investment impact disclosure to appear on the ballot as part of the ballot title for certain ballot measures that describe the state investments that will be affected if the measure is adopted."* *"Summary of Amended Bill: Public Investment Impact Disclosure . A public investment impact disclosure must appear on the ballot as part of the ballot title ..."*.

Although legislative history cannot override unambiguous statutory text, it remains relevant to legislative understanding, legislative purpose, and the practical operation of a statute. The Legislature's own contemporaneous characterization of the disclosure as part of the ballot title undermines any claim that disclaimer reflects the constitutional reality of how the disclosure operates on the ballot voters actually see, as demonstrated by the footnote on page 21 above.

Courts are not bound by legislative labels when adjudicating constitutional questions; they examine governmental action according to its actual operation and practical effect. Here, the governmental presentation of the Ballot Title appearing before voters differs substantially and materially from that printed on petitions and circulated during petition gathering, and that difference did not exist when Plaintiff exercised his constitutional right to petition.

The integrated Ballot Title for IP26-645 now includes a PIID. For the foregoing reasons, Plaintiff respectfully requests that this Court grant a preliminary injunction consistent with the relief requested in Plaintiff's Complaint and Motion, pending final resolution of this action.

Respectfully submitted this 23rd day of July, 2026.

s/ Arthur West