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

LEAGUE OF EDUCATION VOTERS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; LAURIE JINKINS, an individual taxpayer and Washington State Representative; DAVID FROCKT, an individual taxpayer and Washington State Representative; JAMIE PEDERSEN, an individual taxpayer and Washington State Representative; ROBERT UTTER, an individual taxpayer and former Chief Justice of the Washington Supreme Court; KIM BIELSKI, an individual taxpayer; ANDY BUNN, an individual taxpayer; REBECCA BUNN, an individual taxpayer; REUVEN CARLYLE, an individual taxpayer and Washington State Representative; JOHN CHESBROUGH, an individual taxpayer; DEB EDDY, an individual taxpayer and Washington State Representative; SAM HUNT, an individual taxpayer and Washington State Representative; AMY MCKENNEY, an individual taxpayer; KURT MILLER, an individual taxpayer and President of the Tacoma Public Schools Board of Directors; JIM MOELLER, an individual taxpayer and Washington State Representative; TIMM ORMSBY, an individual taxpayer and Washington State Representative; RYAN PAINTER, an individual taxpayer; ERIC PETTIGREW, an individual taxpayer and Washington

No.
COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

1 State Representative; CHRIS REYKDAL,
2 an individual taxpayer, Washington State
3 Representative and Tumwater School
4 Board Member; CINDY RYU, an
5 individual taxpayer and Washington State
6 Representative; MIKE SELLS, an
7 individual taxpayer and Washington State
8 Representative; KRISTIN SKANDERUP,
9 an individual taxpayer,

6 Plaintiffs,

7 v.

8 The STATE OF WASHINGTON;
9 CHRISTINE GREGOIRE, in her official
10 capacity as Governor of the State of
11 Washington,

10 Defendants.

12 I. INTRODUCTION

13 1. The Washington State Constitution is the fundamental plan for the operation
14 of Washington State's government. It establishes the basic framework under which the
15 Washington Legislature and the people of the State of Washington enact laws. The
16 Washington Constitution cannot be amended, revised or altered except by way of
17 amendment as set forth in the Constitution. It cannot be amended, revised or altered by
18 exercise of the initiative or referendum power. The Washington Constitution provides in
19 Article II, § 22 that bills are enacted as law by a vote of a majority of the members elected
20 to each house of the Legislature. RCW 43.135.034, enacted in 2010 by Initiative 1053
21 ("I-1053" or the "Initiative"), unconstitutionally imposes a two-thirds supermajority vote
22 of the members elected to each house to enact laws that raise taxes. Article II, § 1(b) of
23 the Washington Constitution sets forth the means through which the people's referendum
24 power can be exercised. RCW 43.135.034 unconstitutionally mandates public votes on
25 bills without adhering to the constitutional requirements for public referenda. Article II, §

1 1 of the Washington Constitution sets forth the Legislature’s power to enact bills and
2 Article VII, § 1 sets forth its power to tax. RCW 43.135.034’s two-thirds supermajority
3 provisions unconstitutionally infringe on these powers. As a result of these constitutional
4 violations, RCW 43.135.034 impairs our State’s ability to fund essential services such as
5 public education, public safety, elder care, and the justice system. Accordingly, RCW
6 43.135.034 is unconstitutional in its entirety. Plaintiffs seek declaratory and injunctive
7 relief against the State of Washington to prevent continued enforcement of RCW
8 43.135.034.

9 II. PARTIES

10 2. Plaintiff League of Education Voters (“LEV”) is a Washington non-profit
11 corporation that represents the interests of Washington’s schoolchildren and its taxpayer
12 members across Washington State. LEV works to create an educational system in which
13 every child in Washington has an equal and adequate opportunity to succeed in college,
14 work, and life. In 2000, Washington voters approved Initiative 728 with an almost 72%
15 “yes” vote. Initiative 728 promised to lower class sizes and provide more learning
16 opportunities such as preschool and all-day kindergarten for students. The writers and
17 sponsors of Initiative 728 went on to found LEV in 2001 to further their efforts. Among
18 other activities, LEV promotes and lobbies for legislation and policy to accomplish its
19 organizational goals and further the interests of its members. LEV has been an advocate
20 for enactment of bills that raise revenue to improve the State’s education system. The
21 two-thirds supermajority requirement harms LEV’s efforts in this regard, both because
22 legislation it promotes that would raise revenue is not furthered in the legislative process
23 due to the two-thirds supermajority requirement and because successful bills for which
24 LEV has lobbied are then not funded. For example, LEV was the leading proponent of
25 HB 2261, passed in 2009, which sets forth a new, more robust basic education formula.

1 HB 2776, passed in 2010, which LEV also supported, required the Legislature to ramp up
2 funding for the new basic education formula beginning in 2011-2013. Instead, the 2011
3 Legislature cut funding for teacher salaries by 1.9% and severely cut K-3 class size
4 reduction funding. Further, year after year LEV has advocated for increasing the number
5 of students who earn BA degrees in our state by reducing barriers to participation.

6 However, in order to reduce the impact of cuts to higher education institutions, the 2011
7 Legislature passed HB 1795, which authorizes annual 16% tuition increases at the
8 University of Washington, Washington State University and Western Washington
9 University, which will make it harder for many students to pursue four-year degrees.

10 These increases came on top of the 2011 Legislature's reduction of work study funding,
11 which many students depend on, by almost 70%. In sum, the Legislature's inability to
12 raise revenue results in budget cuts that directly affect LEV's organizational efforts and
13 members. The Legislature's budget cuts result in funding reductions to school districts,
14 and LEV's members are directly affected by teacher and staff layoffs, furlough days, loss
15 of professional development opportunities, fewer resources in the schools, and more
16 crowded classrooms and schools, which creates a more difficult learning environment.

17 LEV works and has members throughout Washington State. For example, Plaintiff
18 Kristin Skanderup is a taxpayer member of LEV. Kristin has been a supporter of LEV for
19 many years, including by way of regular donations and volunteering. LEV represents
20 Kristin's and its other supporters' desire to create a stronger public education system in
21 Washington through its advocacy and lobbying, including by its participation in this
22 action. LEV's principal place of business is in Seattle, Washington.

23 3. Plaintiff Washington Education Association ("WEA") is a Washington non-
24 profit corporation that represents the interests of its approximately 82,000 taxpayer
25 members across Washington State. WEA's mission is to advance the professional

1 interests of its members in order to make public education the best it can be for students,
2 staff, and communities. WEA's goal is to build confidence in public education and
3 increase support for Washington's public school system. WEA does so by a variety of
4 means, including promoting and lobbying for legislation and policy that furthers its
5 organizational goals and the interests of its members. WEA has been an advocate for
6 enactment of bills that raise revenue to improve the State's education system. The two-
7 thirds supermajority requirement harms WEA's efforts in this regard, both because
8 legislation it promotes that would raise revenue is not furthered in the legislative process
9 due to the two-thirds supermajority requirement and because laws for which WEA has
10 lobbied are then not funded. For example, WEA has consistently advocated for the full
11 funding of Initiative 728 (as described above) and Initiative 732. Washington's citizens
12 passed Initiative 732 with a 63% "yes" vote in 2000. Initiative 732 provides that public
13 school teachers and other school district employees must receive annual cost of living
14 adjustments. The Legislature has not fully funded either Initiative. Further, the
15 Legislature's inability to raise revenue results in budget cuts that directly affect WEA's
16 organizational efforts and public school teacher and employee members. The
17 Legislature's budget cuts result in funding reductions to school districts, and WEA's
18 members are directly affected by layoffs, furlough days, reduction in salary, revocation of
19 planned salary increases, loss of professional development opportunities, fewer resources
20 with which to do their jobs, and more crowded classrooms and schools, which creates a
21 more difficult teaching and learning environment. WEA works and has members
22 throughout Washington State. For example, Plaintiffs Kim Bielski and Ryan Painter are
23 members of WEA. WEA represents Kim's, Ryan's and its other members' desire to
24 create a stronger public education system in Washington through its advocacy and
25

1 lobbying, including by its participation in this action. WEA's principal place of business
2 is in Federal Way, Washington.

3 4. Plaintiff Laurie Jinkins is a resident of Washington State who lives in
4 Tacoma, Washington. She is a taxpayer in Washington State and also a Washington State
5 Representative for the 27th Legislative District.

6 5. Plaintiff David Frockt is a resident of Washington State who lives in Seattle,
7 Washington. He is a taxpayer in Washington State and also a Washington State
8 Representative for the 46th Legislative District.

9 6. Plaintiff Jamie Pedersen is a resident of Washington State who lives in
10 Seattle, Washington. He is a taxpayer in Washington State and also a Washington State
11 Representative for the 43rd Legislative District.

12 7. Plaintiff Robert Utter is a resident and taxpayer of Washington State who
13 lives in Olympia, Washington. He is a former Justice of the Washington Supreme Court,
14 of which he was Chief Justice. Justice Utter also was a King County Superior Court
15 Judge, Washington State Court of Appeals Judge, and a professor at the University of
16 Puget Sound School of Law.

17 8. Plaintiff Kim Bielski is a resident and taxpayer of Washington State who lives
18 in Bothell, Washington.

19 9. Plaintiff Andy Bunn is a resident and taxpayer of Washington State who lives
20 in Bellingham, Washington.

21 10. Plaintiff Rebecca Bunn is a resident and taxpayer of Washington State who
22 lives in Bellingham, Washington.

23 11. Plaintiff Reuven Carlyle is a resident of Washington State who lives in
24 Seattle, Washington. He is a taxpayer in Washington State and also a Washington State
25 Representative for the 36th Legislative District.

1 12. Plaintiff John Chesbrough is a resident and taxpayer of Washington State who
2 lives in Bellingham, Washington.

3 13. Plaintiff Deb Eddy is a resident of Washington State who lives in Bellevue,
4 Washington. She is a taxpayer in Washington State and also a Washington State
5 Representative for the 48th Legislative District.

6 14. Plaintiff Sam Hunt is a resident of Washington State who lives in Olympia,
7 Washington. He is a taxpayer in Washington State and also a Washington State
8 Representative for the 22nd Legislative District.

9 15. Plaintiff Amy McKenney is a resident and taxpayer of Washington State who
10 lives in Bellingham, Washington.

11 16. Plaintiff Kurt Miller is a resident of Washington State who lives in Tacoma,
12 Washington. He is a taxpayer in Washington State and President of the Tacoma Public
13 Schools Board of Directors.

14 17. Plaintiff Jim Moeller is a resident of Washington State who lives in
15 Vancouver, Washington. He is a taxpayer in Washington State and also a Washington
16 State Representative for the 49th Legislative District.

17 18. Plaintiff Timm Ormsby is a resident of Washington State who lives in
18 Spokane, Washington. He is a taxpayer in Washington State and also a Washington State
19 Representative for the 3rd Legislative District.

20 19. Plaintiff Ryan Painter is a resident and taxpayer of Washington State who
21 lives in Arlington, Washington.

22 20. Plaintiff Eric Pettigrew is a resident of Washington State who lives in Seattle,
23 Washington. He is a taxpayer in Washington State and also a Washington State
24 Representative for the 37th Legislative District.

1 21. Plaintiff Chris Reykdal is a resident of Washington State who lives in
2 Tumwater, Washington. He is a taxpayer in Washington State, a Member of the
3 Tumwater School District Board of Directors, and also a Washington State Representative
4 for the 22nd Legislative District.

5 22. Plaintiff Cindy Ryu is a resident of Washington State who lives in Shoreline,
6 Washington. She is a taxpayer in Washington State and also a Washington State
7 Representative for the 32nd Legislative District.

8 23. Plaintiff Mike Sells is a resident of Washington State who lives in Everett,
9 Washington. He is a taxpayer in Washington State and also a Washington State
10 Representative for the 38th Legislative District.

11 24. Plaintiff Kristin Skanderup is a resident and taxpayer of Washington State
12 who lives in Seattle, Washington.

13 25. Defendants are the State of Washington and Christine Gregoire, the Governor
14 of Washington.

15 **III. JURISDICTION AND VENUE**

16 26. This Court has jurisdiction over this matter pursuant to chapter 2.08 RCW,
17 and chapter 7.24 RCW.

18 27. Venue is proper in this Court pursuant to RCW 4.92.010 because the
19 residence or principal place of business of one or more of the plaintiffs is in King County,
20 Washington.

21 **IV. STANDING**

22 28. Plaintiffs include individual Washington taxpayers, elected Representatives,
23 and organizations that represent their own and their members' interests. Plaintiffs have
24 standing to bring this action on multiple alternative grounds.
25

1 29. On June 17, 2011, plaintiffs made a demand upon Attorney General Rob
2 McKenna to investigate the unconstitutional requirements of RCW 43.135.034 and initiate
3 legal proceedings on behalf of all Washington taxpayers. A copy of this demand is
4 attached as Exhibit 1. Plaintiffs made this demand despite the fact that Attorney General
5 McKenna's prior position on the constitutionality of the statute rendered such a request
6 futile. On June 24, 2011, Attorney General McKenna declined to investigate and initiate
7 legal proceedings. A copy of Attorney General McKenna's letter is attached as Exhibit 2.

8 30. Plaintiffs have standing because this matter is of serious public importance,
9 immediately affects substantial segments of the population and its outcome will have a
10 direct bearing on commerce, finance, labor, industry or agriculture generally.

11 31. Further, the legislative plaintiffs are injured because the two-thirds
12 supermajority requirement prevents legislators from exercising their constitutional right as
13 elected officials to advance bills through the legislative process, and prevents the public
14 from receiving the benefit of such bills. Thus, RCW 43.135.034 unconstitutionally
15 impairs the Legislature's ability to enact legislation, make policy and fund services, and
16 Washington taxpayers' ability to receive the benefit of such legislation, policy and
17 services.

- 18 a. For example, in 2009 the House of Representatives voted on Second
19 Substitute House Bill 2029 ("SSHB 2029"). The bill would have provided
20 increased public safety by creating an enhanced 911 emergency
21 communication system funded by fees on certain communication devices,
22 including cellular phones. SSHB 2029 received 58 yeas votes in the House
23 of Representatives. But because a two-thirds supermajority was required,
24 the bill failed and was not sent to the Senate. In 2010, the Legislature
25 temporarily suspended the two-thirds supermajority requirement. A bill

1 that was substantively the same as SSHB 2029 passed the House of
2 Representatives with 56 yea votes, two less than the year before, and
3 subsequently became law. *See* Substitute Senate Bill 6846 (2010). The
4 only reason that legislators could not enact, and the public could not benefit
5 from, the bill a year earlier was the two-thirds supermajority requirement.

6 b. Another example is Senate Bill 6931 (2008), which would have provided
7 additional emphasis patrols for DUI enforcement and chemical dependency
8 treatment funded by a tax on certain types of liquor. The bill received a
9 majority of yea votes in the Senate, 25, but did not receive the two-thirds
10 supermajority. As a result, the bill failed and was not sent to the House of
11 Representatives.

12 c. Finally, as described more fully below, in 2011, Substitute House Bill 2078
13 would have funded the K-3 class size reductions approved by the voters in
14 Initiative 728 by closing a tax loophole for large banks. The bill received a
15 majority of yea votes for passage in the House of Representatives, but
16 failed to receive the required two-thirds supermajority. The bill failed as a
17 result and was not sent to the Senate.

18 32. In the alternative, the legislative plaintiffs have standing to bring this action in
19 a representative capacity on behalf of their constituents.

20 33. Plaintiffs are also directly and individually harmed by the continued
21 unconstitutional application of RCW 43.135.034. For example:

22 a. Plaintiffs Andy and Rebecca Bunn are parents of children who attend the
23 Bellingham School District's public schools. The Bunns have children
24 entering second and fourth grade at Larabee Elementary School, and a
25 child in preschool. Andy volunteers as a chess coach at Larabee

1 Elementary School through the school's PTA. Rebecca frequently
2 volunteers in their children's classrooms. The Legislature has been unable
3 to pass legislation that funds I-728's reduction in K-3 class size in part due
4 to the two-thirds approval requirement. The Bunns' children have
5 experienced class sizes resulting in a more difficult teaching environment
6 for teachers, and impacting the children's educational experience.

7 b. Plaintiffs John Chesbrough and Amy McKenney are parents of a child who
8 attends the Bellingham School District's public schools. John and Amy
9 have a child who is entering second grade at Parkview Elementary School,
10 and a child in preschool. Amy is active in the Parkview Elementary School
11 PTA. Amy is in charge of fundraising for the PTA and has experienced a
12 heightened pressure to raise funds for programs that have been eliminated
13 or reduced as a result of state budget cuts to the school district. For
14 example, state budget cuts resulted in the loss or reduction of arts programs
15 at Parkview Elementary School. The burden for funding such programs
16 has been shifted onto the PTA and parents at the school to backfill the state
17 budget cuts.

18 c. Further, John Chesbrough is also a public high school science teacher in
19 Sedro-Wooley, Washington. John has taught Advanced Placement
20 physics, physics and physical science. The two-thirds approval
21 requirement has forced the State to make budget cuts to his school district.
22 The number of full time equivalent employees has been reduced as a result.
23 Consequently, students are offered fewer choices in available courses. For
24 example, John will no longer be teaching Advanced Placement physics
25 because he would not have a full class of students and there is not enough

1 staff to teach less than full classes. Students at his high school no longer
2 will be given the opportunity to take this rigorous science course. The loss
3 of such courses contrasts with the State's recent emphasis on quality
4 science and math education as essential to student success. *See, e.g.,*
5 Washington State Board of Education, *2010-2011 Strategic Plan*, available
6 at [http://www.sbe.wa.gov/documents/2010.09.22%20Strategic%20Plan](http://www.sbe.wa.gov/documents/2010.09.22%20Strategic%20Plan%20Final.pdf)
7 [%20Final.pdf](http://www.sbe.wa.gov/documents/2010.09.22%20Strategic%20Plan%20Final.pdf) (stating that one of the State Board of Education's five
8 strategic goals is to "Promote Effective Strategies to Make Washington's
9 Students Nationally and Internationally Competitive in Math and
10 Science").

- 11 d. Plaintiff Kurt Miller is President of the Tacoma Public Schools Board of
12 Directors and Director of the REACH Center in Tacoma, Washington.
13 Kurt has served for eight years on the Tacoma Public Schools Board of
14 Directors. As a result of the State's inability to pass legislation that raises
15 revenue (and consequential budget cuts), Kurt is forced to make decisions
16 in his capacity as a Board Member that undercut the quality education
17 Tacoma Public Schools strives to provide its students. For example, the
18 Board of Directors recently closed two elementary schools due to budget
19 cuts. One of those schools, Wainwright Elementary, had been named a
20 "Blue Ribbon School" by the United States Department of Education.
21 Plaintiff Rep. Laurie Jinkins' child attended Wainwright Elementary prior
22 to its closure. In addition, the Board of Directors has had to reduce
23 paraeducator hours, cut professional development for staff, increase class
24 and school size, and, due to the State's most recent 1.9% reduction in
25 funding for teacher salaries, either cut or freeze teacher salaries or cut

1 general fund spending on other educational services. Further, Kurt is the
2 Director of the nonprofit REACH (Resources for Education and Career
3 Help) Center. The REACH Center provides career, education, and
4 personal development services for young adults, ages 16-24, in the
5 Tacoma/Pierce County area. Kurt has seen and experienced major cuts in
6 safety net funding from the State for nonprofits such as the REACH
7 Center. As a result, his organization is unable to provide essential services
8 to its clients, 60% of whom are high school dropouts. Without these
9 services, many needy young adults disengage from the work force.

10 e. Plaintiff Chris Reykdal is a member of the Tumwater School District
11 School Board in addition to being a State Representative. Rep. Reykdal
12 has been a School Board member since 2007. This past year's legislative
13 actions are resulting in additional budget cuts to the Tumwater School
14 District for the third year in a row. Substitute House Bill 2078, which
15 received a constitutional majority of yea votes to pass out of the House of
16 Representatives but failed to receive the required two-thirds supermajority,
17 would have provided the Tumwater School District approximately
18 \$225,000 in Financial Year 2012 ("FY 2012") and approximately \$300,000
19 for Financial Year 2013 ("FY 2013"). These are significant resources in
20 Tumwater and would have allowed the Tumwater School District to retain
21 three teaching positions in FY 2012 and four positions in FY 2013 in
22 grades K-3. With three and four additional teachers in each of the next two
23 years, the Tumwater School District would have reduced student faculty
24 ratios in K-3 grades by 1.0 student in year one and 1.3 students in year two.
25 At the Tumwater School District's current student to faculty ratio of 22.55

1 in grades K-3, a one student reduction in each class is equal to
2 approximately 5% additional teacher contact time for every single student
3 in grades K-3 across the entire district. In the alternative, Tumwater
4 School District could have done more with its all-day kindergarten. The
5 Tumwater School District currently has one all-day kindergarten class in
6 each of its six elementary schools. If the above mentioned resources had
7 been forthcoming, the district could have made a choice to leave student
8 faculty ratios untouched and instead made the choice to offer three
9 additional all-day kindergarten classes in the first year and four additional
10 all-day kindergarten classes in the second year. In the Tumwater School
11 District, board members, students and faculty have been, and will continue
12 to be, harmed as a direct result of requiring a two-thirds supermajority to
13 raise taxes or close tax preferences.

- 14 f. Plaintiff Kim Bielski is an elementary school teacher in the Snohomish
15 School District. Kim has taught four years at Little Cedars Elementary
16 School in kindergarten and fourth grade classrooms. Kim received a
17 Reduction in Force (“RIF”) notice in May 2011, informing her that she no
18 longer would be employed with the Snohomish School District. The
19 Snohomish School District was forced to RIF teachers due to the State’s
20 inability to raise revenue and the resulting budget cuts. In addition to her
21 job loss, Kim experienced significant stress and emotional impact
22 associated with the RIF. While Snohomish School District was able to re-
23 hire Kim, she has been relocated to a new school and her current
24 assignment is for fewer hours than her previous teaching assignment.
25 Unless Kim receives more hours in her job she will be forced to find a

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second job to pay her bills. Indeed, the anticipated loss of income has already caused Kim to renegotiate her student loan payments so they are manageable. As a teacher, Kim has experienced many other effects from the State's inability to raise revenue to fund public education. Many of the supports she receives as a teacher that enable her to focus on her primary job of educating students have been cut. For example, education assistant hours have been cut, providing her with less resources and one-on-one time with struggling students. Hours for custodial and secretarial staff have also been cut. Kim has had to spend time outside of her contractual work day cleaning her room and helping with administrative tasks due to budget cuts that affected the custodial and office staff. This has adversely affected her students' educational experience and parents' connection with the school.

g. Plaintiff Ryan Painter is an elementary school teacher. Ryan taught second and fourth grade for three years at Dutch Hill Elementary School in the Snohomish School District. Ryan received a RIF notice in May 2011, informing him that he no longer would be employed with the Snohomish School District. The Snohomish School District was forced to RIF teachers due to the State's inability to raise revenue and the resulting budget cuts. In addition to his job loss, Ryan experienced significant stress and emotional impact associated with the RIF. Ryan's first child was born shortly after receiving his RIF notice. The economic uncertainty and job search caused by the RIF has been emotionally taxing on Ryan. While Ryan is hopeful that the Snohomish School District will find a new job for him after retirements in the District, he has no formal teaching contract as of the time of filing this Complaint. As a teacher, Ryan has experienced

1 many other effects from the State's inability to raise revenue to fund public
2 education. For example, education assistant hours have been cut, providing
3 him with less resources and one-on-one time with struggling students.
4 Further, he does not receive any additional money or support for teaching
5 larger classes. His second grade class in the 2010-2011 school year was 25
6 students, one over the cap of 24 students. Ryan, however, did not receive
7 extra funding for teaching the larger class as he had previously. State
8 budget cuts have also resulted in Ryan paying significantly more in health
9 care premiums and costs.

10 34. This Court's grant of declaratory and injunctive relief will directly redress the
11 harms caused to the Plaintiffs by continued application of RCW 43.135.034.

12 V. FACTS

13 35. I-1053 represents the latest in a series of initiatives that have imposed
14 unconstitutional restrictions on our State's ability to fund essential public services. The
15 first of these measures, Initiative 601, was passed in 1993. Initiative 601 included a
16 provision that "any action or combination of actions by the legislature that raises state
17 revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-
18 thirds vote of each house...." Former RCW 43.135.035(1) (1994) (Laws of 1994, ch. 2, §
19 4(1)). If such action resulted in "expenditures in excess of the state expenditure limit, then
20 the action of the legislature shall not take effect until approved by a vote of the people at a
21 November general election." *Id.* § 4(2).

22 36. In the years following the passage of Initiative 601, the Legislature reenacted
23 and suspended the two-thirds supermajority requirement on various occasions.

24 37. In 2007, Initiative 960 was enacted. That measure provided:

25 [A]ny action or combination of actions by the legislature that

1 raises taxes may be taken only if approved by a two-thirds
2 vote of each house of the legislature, and then only if state
3 expenditures in any fiscal year, including the new revenue,
4 will not exceed the state expenditure limits established
5 under this chapter. Pursuant to the referendum power set
6 forth in Article II, section 1(b) of the state Constitution, tax
7 increases may be referred to the voters for their approval or
8 rejection at an election.

6 If the legislative action under subsection (1) of this section
7 will result in expenditures in excess of the state expenditure
8 limit, then the action of the legislature shall not take effect
9 until approved by a vote of the people at a November general
10 election.

10 Laws of 2008, ch. 1, § 5.

11 38. In the November 2010 general election, the voters approved I-1053. I-1053
12 was written to re-enact the requirements of Initiative 960. A true and correct copy of I-
13 1053 is attached as Exhibit 3.

14 39. Both RCW I-1053 and 43.135.035 (the codification of Initiative 960)
15 contained the same relevant language, including the requirement of a two-thirds
16 supermajority for the Legislature to pass any bill that “raises taxes” and a public vote on
17 such bills in some circumstances.

18 40. I-1053 included two versions of the same statutory language, one of which
19 amended RCW 43.135.035, and one of which purported to repeal RCW 43.135.035 and
20 replace it with a new section that was identical to the amended language. Which section
21 took effect was contingent on whether the Legislature amended or repealed RCW
22 43.135.035 in the 2010 legislative session.

23 41. The Legislature amended RCW 43.135.035 in the 2010 legislative session to
24 suspend its requirements until after July 1, 2011. *See* Engrossed Substitute Senate Bill
25 6130, Ch. 4 Laws 2010. As a consequence, when I-1053 was approved, it added a new

1 section to the Revised Code of Washington, which is codified at RCW 43.135.034. RCW
2 43.135.034 took effect on January 1, 2011. Laws of 2011, ch. 1.

3 42. RCW 43.135.034(1) requires that “any action or combination of actions by
4 the Legislature that ‘raises taxes’ may be taken only if approved by at least two-thirds
5 legislative approval in both the house of representatives and the senate.”

6 43. RCW 43.135.034(6) defines “raises taxes” as “any action or combination of
7 actions by the legislature that increases state tax revenue deposited in any fund, budget, or
8 account, regardless of whether the revenues are deposited into the general fund.”

9 44. RCW 43.135.034(2)(a) requires that if a bill that raises taxes “will result in
10 expenditures in excess of the state expenditure limit, then the action of the legislature shall
11 not take effect until approved by a vote of the people at a November general election.”

12 45. On May 24, 2011, the House of Representatives voted on Substitute House
13 Bill 2078. Consistent with the Legislature’s paramount duty to provide for education
14 under Article IX, § 1 of the Washington Constitution, SHB 2078 would have funded the
15 reductions in kindergarten through third grade class size approved by the voters in
16 Initiative 728. A true and correct copy of SHB 2078 is attached and incorporated as
17 Exhibit 4. Funding for these class size reductions would have come from narrowing a tax
18 deduction for large banks and other financial institutions.

19 46. Prior to the House vote on SHB 2078, several legislators raised points of
20 order with Speaker of the House Frank Chopp. Speaker Chopp stated that SHB 2078
21 would “raise taxes” and therefore was subject to the two-thirds supermajority approval
22 requirement of RCW 43.135.034. Speaker Chopp also noted that only the courts can
23 resolve the question of whether RCW 43.135.034 is constitutional. A true and correct
24 transcript of these points of parliamentary inquiry and the ensuing debate on SHB 2078
25 on the House floor is attached and incorporated as Exhibit 5.

1 47. SHB 2078 received a constitutional majority of 52 out of 98 votes to pass out
2 of the House and advance in the legislative process. A true and correct copy of the
3 legislative history of SHB 2078 is attached and incorporated as Exhibit 6. Absent a
4 specific constitutional provision requiring a higher voting threshold, bills that receive a
5 constitutional majority are sent from the House to the Senate. SHB 2078 did not,
6 however, receive the two-thirds supermajority required by RCW 43.135.034. Thus,
7 Speaker Chopp declared that SHB 2078 failed, and the bill did not advance to the Senate.

8 48. In 2011, six new initiatives were submitted that contained the same relevant
9 language as I-601, I-960 and I-1053, including the requirement of a two-thirds
10 supermajority for the Legislature to pass any bill that “raises taxes” and a public vote on
11 such bills in some circumstances. Initiatives 1111, 1131, 1133, 1136, 1151, and 1181
12 were submitted for potential inclusion on the November 2011 ballot by the same three
13 individuals, some of whom were also sponsors of I-601, I-960, and I-1053.

14 **VI. CONSTITUTIONAL VIOLATIONS**

15 49. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully
16 set forth herein.

17 50. Plaintiffs’ Complaint challenges the constitutionality of RCW 43.135.034, the
18 relevant statute currently in effect. Plaintiffs also challenge, however, the identical
19 requirements of RCW 43.135.035 if and when that statute is given effect.
20 Notwithstanding that challenge, citations in this Complaint are to the statute currently in
21 effect: RCW 43.135.034.

22 51. Plaintiffs bring both facial and as-applied challenges to RCW 43.135.034.

23 **A. ARTICLE II, § 22 OF THE WASHINGTON CONSTITUTION**

24 52. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully
25 set forth herein.

1 53. Article II, § 22 of the Washington Constitution provides that bills require only
2 a majority vote in both houses of the Legislature to become law:

3 No bill shall become a law unless on its final passage the vote be taken by
4 yeas and nays, the names of the members voting for and against the same
5 be entered on the journal of each house, and a majority of the members
6 elected to each house be recorded thereon as voting in its favor.

7 54. RCW 43.135.034(1)'s requirement that any bill that "raises taxes" must
8 receive a two-thirds supermajority approval in both houses of the Legislature to become
9 law violates Article II, § 22's requirement that bills need only a simple majority to pass.

10 55. For example, SHB 2078 should have passed out of the House and been sent to
11 the Senate because it received a constitutional majority. But the bill failed to advance to
12 the Senate solely because it did not receive the statutory two-thirds supermajority imposed
13 by RCW 43.135.034(1).

14 56. Constitutional requirements may not be amended by statute or initiative.
15 RCW 43.135.034(1)'s additional vote requirements for certain bills violate Article II, §
16 22.

17 **B. ARTICLE II, § 1 OF THE WASHINGTON CONSTITUTION**

18 57. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully
19 set forth herein.

20 58. Article II, § 1 of the Washington Constitution vests legislative authority in the
21 Legislature and allows the people to enact or reject laws only in certain circumstances:

22 The legislative authority of the state of Washington shall be vested in the
23 legislature, consisting of a senate and house of representatives, which shall
24 be called the legislature of the state of Washington, but the people reserve
25 to themselves the power to propose bills, laws, and to enact or reject the
same at the polls, independent of the legislature, and also reserve power, at
their own option, to approve or reject at the polls any act, item, section, or
part of any bill, act, or law passed by the legislature.

...

1 (b) Referendum. The second power reserved by the people is the
2 referendum, and it may be ordered on any act, bill, law, or any part thereof
3 passed by the legislature, except such laws as may be necessary for the
4 immediate preservation of the public peace, health or safety, support of the
5 state government and its existing public institutions, either by petition
6 signed by the required percentage of the legal voters, or by the legislature
7 as other bills are enacted: Provided, That the legislature may not order a
8 referendum on any initiative measure enacted by the legislature under the
9 foregoing subsection (a). The number of valid signatures of registered
10 voters required on a petition for referendum of an act of the legislature or
11 any part thereof, shall be equal to or exceeding four percent of the votes
12 cast for the office of governor at the last gubernatorial election preceding
13 the filing of the text of the referendum measure with the secretary of state.

14 59. The Legislature's power to enact legislation is plenary.

15 60. No bill, whether enacted by the Legislature or by initiative, may bind a future
16 Legislature or otherwise limit its power to act.¹

17 61. RCW 43.135.034(1)'s requirement that any bill that "raises taxes" must
18 receive a two-thirds supermajority vote in both houses of the Legislature to become law is
19 an unconstitutional impairment of the Legislature's plenary power to pass laws. Thus, the
20 two-thirds supermajority approval requirement violates Article II, § 1.

21 62. Further, RCW 43.135.034(2)(a)'s requirement that if a bill that raises taxes
22 "will result in expenditures in excess of the state expenditure limit, then the action of the
23 legislature shall not take effect until approved by a vote of the people at a November
24 general election" violates Article II, § 1 because it constrains the ability of future
25 Legislatures to govern. Specifically, RCW 43.135.034(2)(a) conditions a state law solely
on voter approval and requires future legislatures to submit a class of legislation for a
public vote.

63. RCW 43.135.034(2)(a)'s vote requirement for every bill that would result in
expenditures in excess of the state expenditure limit also violates Article II, § 1(b), which

¹ An exception to this rule is that the Legislature only may amend a law enacted by
initiative by a two-thirds vote for the two year period after its passage. Article II, § 1(c).

1 specifies the conditions under which a bill may be subject to referendum. A bill may be
2 referred only if a petition is circulated and signed by the required percentage of legal
3 voters or if the Legislature votes to refer the bill. “[L]aws as may be necessary for the
4 immediate preservation of the public peace, health or safety, support of the state
5 government and its existing public institutions” are also exempt from referendum. RCW
6 43.135.034(2)(a) disregards the Constitutional requirements of Article II, § 1(b).

7 64. Further, RCW 43.135.034(2)(a)’s referendum requirement removes the
8 Governor’s traditional role in approving or vetoing revenue legislation in a manner other
9 than that constitutionally allowed under Article II, § 1. *See* Article III, § 12.

10 **C. ARTICLE VII, § 1 OF THE WASHINGTON CONSTITUTION**

11 65. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully
12 set forth herein.

13 66. Article VII, § 1 of the Washington Constitution provides in relevant part that:
14 “The power of taxation shall never be suspended, surrendered or contracted away.”

15 67. The State’s power to tax is plenary and subject only to constitutional
16 limitation.

17 68. RCW 43.135.034’s limitations on the power of the Legislature to pass any bill
18 that “raises taxes” violate Article VII, § 1 by effectively suspending and surrendering the
19 power of taxation.

20 **D. ARTICLE XXIII OF THE WASHINGTON CONSTITUTION**

21 69. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully
22 set forth herein.

23 70. Article XXIII of the Washington Constitution provides a specific procedure
24 through which the Constitution may be amended:
25

1 Any amendment or amendments to this Constitution may be proposed in
2 either branch of the legislature; and if the same shall be agreed to by two-
3 thirds of the members elected to each of the two houses, such proposed
4 amendment or amendments shall be entered on their journals, with the
5 ayes and noes thereon, and be submitted to the qualified electors of the
6 state for their approval, at the next general election; and if the people
7 approve and ratify such amendment or amendments, by a majority of the
8 electors voting thereon, the same shall become part of this Constitution,
9 and proclamation thereof shall be made by the governor: Provided, That if
10 more than one amendment be submitted, they shall be submitted in such a
11 manner that the people may vote for or against such amendments
12 separately. The legislature shall also cause notice of the amendments that
13 are to be submitted to the people to be published at least four times during
14 the four weeks next preceding the election in every legal newspaper in the
15 state: Provided, That failure of any newspaper to publish this notice shall
16 not be interpreted as affecting the outcome of the election.

17 71. The Constitution may not be amended by statute or initiative.

18 72. RCW 43.135.034 is unconstitutional because it amends the Constitution by
19 initiative, and contrary to the requirements of Article XXIII.

20 73. Specifically, and as detailed above, RCW 43.135.034 amends Article II, § 22
21 by imposing a two-thirds supermajority vote on certain legislation instead of the
22 constitutional majority.

23 74. Further, and as detailed above, RCW 43.135.034's referendum requirement
24 changes the plenary power granted to the Legislature in Article II, § 1 and the referendum
25 process established in Article II, § 1(b).

75. RCW 43.135.034 attempts to change how funding bills become law. These
changes affect the existing constitutional requirements related to the power of the
Legislature over legislation and taxation, and the Constitution's requirements for
referenda. Thus, RCW 43.135.034 goes beyond the power of legislation by amending the
Constitution without regard for the requirements of Article XXIII.

1 **E. ARTICLE II, § 19 OF THE WASHINGTON CONSTITUTION**

2 76. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully
3 set forth herein.

4 77. Article II, § 19 of the Washington Constitution provides that: “No bill shall
5 embrace more than one subject, and that shall be expressed in the title.”

6 78. Article II, § 19 contains two separate requirements. The first is that every bill
7 (including initiatives) may contain only a single subject. The second is that the single
8 subject of the bill or initiative must be reflected in the bill or ballot title.

9 79. I-1053 and its predecessors (Initiative 601 and Initiative 960) each contained
10 at least two subjects: (1) a two-thirds supermajority vote to pass bills that raise taxes, and
11 (2) a mandatory referendum before a bill that exceeds the state expenditure limit may take
12 effect. These subjects lack rational unity and, therefore, violate the single subject
13 requirement of Article II, § 19.

14 **F. ARTICLE I, § 32 OF THE WASHINGTON CONSTITUTION**

15 80. Article I, § 32 of the Washington Constitution provides: “A frequent
16 recurrence to fundamental principles is essential to the security of individual right and the
17 perpetuity of free government.” Article I, § 29 of the Washington Constitution adds: “The
18 provisions of this Constitution are mandatory, unless by express words they are declared
19 to be otherwise.”

20 81. RCW 43.135.034 is contrary to fundamental principles established by our
21 constitution. The statute attempts to undo the checks and balances carefully put into place
22 by our constitution’s framers, and substantially alter the structure of state government in
23 disregard of the constitutional safeguards of representative democracy.

24 82. RCW 43.135.034, therefore, violates Article I, § 32 of the Washington
25 Constitution.

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VII. FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT

83. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully set forth herein.

84. For reasons including but not limited to those stated herein, an actual dispute exists between Plaintiffs and Defendants, which parties have genuine and opposing interests, which interests are direct and substantial, and of which a judicial determination would be final and conclusive.

85. Plaintiffs are, therefore, entitled to a declaratory judgment that RCW 43.135.034 is unconstitutional, as well as such other and further relief as may follow from the entry of such a declaratory judgment.

VIII. SECOND CAUSE OF ACTION: INJUNCTIVE RELIEF

86. Plaintiffs repeat and re-allege each of the foregoing allegations as though fully set forth herein.

87. For reasons including but not limited to those stated herein, Plaintiffs are entitled to prevent and enjoin continued enforcement of RCW 43.135.034.

88. Plaintiffs have clear legal rights to prevent and enjoin continued enforcement of RCW 43.135.034 as described herein, which rights are and continue to be invaded by Defendants, resulting in actual and continuing injury. No adequate remedy at law exists to remedy this invasion of Plaintiffs' rights.

89. Plaintiffs are, therefore, entitled to an injunction restraining and prohibiting further enforcement of RCW 43.135.034.

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IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. That the Court enter a declaratory judgment that RCW 43.135.034 violates Article II, § 1; Article II, § 22; Article VII, § 1; Article XXIII and Article I § 32 of the Washington Constitution;
2. Such other and further relief as may follow from the entry of a declaratory judgment;
3. Entry of an injunction prohibiting further enforcement of RCW 43.135.034;
4. Reasonable attorney’s fees, expenses and costs, to the fullest extent allowed by law and equity; and
5. Any further relief as this Court may deem necessary and proper.

DATED this 25th day of July, 2011.

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