

Hearing date: _____
Hearing time: _____
Judge/Calendar: _____

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

In Re:

No. 18-2-01924-34

BALLOT TITLE AND SUMMARY FOR
INITIATIVE NO. 1634

PETITION TO APPEAL BALLOT
TITLE AND SUMMARY FOR
INITIATIVE NO. 1634

On behalf of AMERICAN HEART
ASSOCIATION, CHILDHOOD
OBESITY PREVENTION COALITION,
and ANTI-HUNGER AND NUTRITION
COALITION

Pursuant to RCW 29A.72.080, Petitioners appeal the ballot title and summary formulated by the Attorney General for Initiative Measure No. 1634 (“I-1634”) and respectfully petition this Court to review and amend the same. Petitioners intend this Petition to serve as their opening brief under LCR 5(d)(1)(G).

I. PARTIES

1. Petitioner American Heart Association (“AHA”) is a national organization devoted to saving people from heart disease and stroke—the two leading causes of death in the world. AHA teams with volunteers to fund innovative research, fight for stronger public health policies, and provide lifesaving tools and information to prevent and treat these diseases in the City of Seattle (“Seattle”) and beyond. AHA believes in the power and courage of local governments to address their communities’ needs with innovative, forward-thinking policy

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1 solutions, just as Seattle did by passing a small tax on sugary drinks to address the
2 overconsumption of these beverages and the related incidence of debilitating chronic disease.

3 2. Petitioner Childhood Obesity and Prevention Coalition (“COPC”) is a public
4 health organization dedicated to supporting healthier physical and social environments, including
5 the imposition of taxes on sugary drinks. COPC believes that municipalities should maintain
6 their legal authority to impose taxes on sugary drinks to improve public health and is therefore
7 greatly concerned about the potential passage of I-1634.
8

9 3. Petitioner Anti-Hunger and Nutrition Coalition (“AHNC”) is a statewide coalition
10 that brings together the voices of hungry people and community leaders to advocate for strategic
11 state and federal policies and appropriations to maximize the federal nutrition programs. AHNC
12 believes I-1634 is misleading because it would not actually address the affordability of food, and
13 that I-1634 is harmful because it would stop local governments from being able to implement
14 innovative strategies to raise significant funds to address access to healthy food.
15

16 4. Pursuant to RCW 29A.72.080 and LCR 40(b)(2)(A)(ii), a copy of this Petition
17 and accompanying Notice of Appeal are being served upon the Attorney General, the Secretary
18 of State, and the sponsor of I-1634.

19 **II. JURISDICTION AND VENUE**

20 5. This Court has jurisdiction over this action pursuant to RCW 29A.72.080 because
21 Petitioners are filing this Petition within the statutory 5-day time period from the filing of the
22 measure’s proposed ballot title with the Secretary of State (not including weekends and
23 holidays). This Court also has jurisdiction pursuant to Article IV, Sections 4 and 6 of the
24 Washington State Constitution, Title 29A RCW, and Title 7 RCW.
25

26 6. Venue for this action lies in this Thurston County Superior Court pursuant to
27

1 RCW 29A.72.080 and RCW 4.92.010.

2 **III. DESCRIPTION OF MEASURE**

3 7. As relevant background, Seattle adopted a sweetened beverage tax (“soda tax”)
4 that went into effect on January 1, 2018. *See* Seattle Municipal Code 5.53.030 (“There is
5 imposed a privilege tax on every person engaging within the City in business as a distributor of
6 sweetened beverages.”); Seattle, Wash., Ordinance 125324 at 22. The tax funds several of
7 Seattle’s general revenue needs, including addressing public health concerns caused by
8 unhealthy food and drink options. *See* Daniel Beekman, *Prices Going Up for Sugary Drinks as*
9 *Seattle Tax Kicks In*, THE SEATTLE TIMES, Dec. 31, 2017.¹ In response, the American Beverage
10 Association (“ABA”), the soda industry special interest group, helped fund a campaign to create
11 negative publicity for the soda tax. *Id.*²
12

13
14 8. Shortly thereafter, Yes! To Affordable Groceries registered as a political
15 committee and the official “yes” campaign in support of I-1634. I-1634 was filed with the
16 Secretary of State on March 26, 2018 and on April 2, 2018, the Attorney General returned a
17 ballot title and summary for the measure. A copy of I-1634 and its corresponding ballot title and
18 summary from the Attorney General is attached as Exhibit A.

19 9. I-1634 purports to keep “groceries” affordable by prohibiting any new or
20 increased local taxes, fees, or assessments on “groceries” after January 15, 2018 unless the tax,
21 fee, or assessment applies generally to businesses and does not classify by grocery type.
22

23 10. But I-1634 really is an effort to stop other Washington jurisdictions from adopting
24

25 ¹ Available at <https://www.seattletimes.com/seattle-news/politics/promoting-health-at-a-hefty-price-seattles-soda-tax-starts-jan-1/>.

26 ² The ABA also was the primary funder behind a 2010 referendum that repealed a statewide soda and candy tax; a
27 campaign that received “more than \$16 million, almost all of it from the [ABA].” Andrew Garber, *Voters Reject State Income Tax, Candy-Soda Tax*, THE SEATTLE TIMES, Nov. 2, 2010, available at <https://www.seattletimes.com/seattle-news/voters-reject-state-income-tax-candy-soda-tax/>.

1 soda taxes similar to Seattle's. The Seattle Times reported that: "After watching Seattle's soda
2 tax take effect last month, the beverage industry and its allies have begun an initiative campaign
3 aimed at stopping other Washington communities from adopting similar taxes." Daniel
4 Beekman, *Beverage Industry, Allies Start Campaign to Stop Seattle's Soda Tax from Spreading*,
5 THE SEATTLE TIMES, Feb. 28, 2018.³ And this also is evident from both the measure itself and
6 the organization behind the measure.
7

8 11. First, the measure defines "groceries" as "any raw or processed food or beverage,
9 or any ingredient thereof, intended for human consumption except alcoholic beverages,
10 marijuana products, and tobacco." As noted above, Seattle's soda tax is on sweetened beverages,
11 which by definition contain "one or more caloric sweeteners." Seattle Municipal Code 5.53.020.
12 By including beverage ingredients in the definition of "groceries," I-1634 ensures beverages
13 which contain caloric sweeteners cannot be taxed.
14

15 12. Second, as noted above, Yes! To Affordable Groceries is the political committee
16 formed in support of I-1634. The committee's Public Disclosure Commission C1pc registration
17 report, which is attached as Exhibit B, explicitly states that the committee is "sponsored by the
18 American Beverage Association." C1 Report (Feb. 26, 2018), *available at*
19 <http://web.pdc.wa.gov/rptimg/default.aspx?docid=4702025>. This statement is required by law
20 when an organization provides 80% or more of the support for a political committee.
21 RCW 42.17A.005(42)(b)(i), .205(5). I-1634 is therefore a soda industry measure at heart.
22

23 IV. BALLOT TITLE

24 13. On April 2, 2018, the Attorney General's office filed with the Washington
25 Secretary of State the following proposed ballot title and summary for I-1634:
26

27 ³ Available at <https://www.seattletimes.com/seattle-news/politics/beverage-industry-allies-start-campaign-to-stop-seattles-soda-tax-from-spreading/>.

1 **Ballot Title**

2 Initiative Measure No. 1634 concerns taxation of groceries.

3 This measure would prohibit new or increased local taxes, fees, or assessments on
4 “groceries,” with exceptions, but allow taxes, fees, or assessments in effect
5 January 15, 2018, to continue. The measure defines “groceries.”

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

7 **Ballot Measure Summary**

8 This measure would prohibit any new or increased local tax, fee, or assessment on
9 “groceries,” unless it is generally applicable and does not result in a higher tax
10 rate on “groceries.” Collection of local sales and use taxes, and of taxes, fees, and
11 assessments on “groceries” that were in effect January 15, 2018, may continue.
“Groceries” is defined to include all foods and beverages intended for human
consumption except alcoholic beverages, marijuana products, and tobacco.

12 **V. STATEMENT OF CLAIMS AND OBJECTIONS**

13 14. Washington’s ballot title statute requires the ballot title for an initiative measure
14 to include a “statement of subject,” which “must be sufficiently broad to reflect the subject of the
15 measure, sufficiently precise to give notice of the measure’s subject matter, and not exceed ten
16 words.” RCW 29A.72.050(1). The ballot title must also state a “concise description” of the
17 measure that “must contain no more than thirty words, be a true and impartial description of the
18 measure’s essential contents, clearly identify the proposition to be voted on, and not, to the
19 extent reasonably possible, create prejudice either for or against the measure.” *Id.* Washington’s
20 ballot title statute also requires a summary of the measure, not to exceed seventy-five words.
21
22 RCW 29A.72.060.

23 15. The ballot title and measure summary proposed by the Attorney General for
24 I-1634 are in part not true and impartial descriptions of the measure’s essential contents as
25 required by RCW 29A.72.050.

26 16. First, the ballot title and measure summary for I-1634 are misleading and
27

1 prejudicial because they use the term “groceries.” In the ballot title context, the Washington
2 Supreme Court has held “[w]ords in a title must be taken in their common and ordinary
3 meanings.” *See Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 226, 11 P.3d
4 762 (2000) (internal quotations omitted). The dictionary defines “groceries” as “the food and
5 supplies sold by a grocer.” *Groceries Definition*, MERRIAM-WEBSTER.COM,
6 [https://www.merriam-](https://www.merriam-webster.com/dictionary/groceries?utm_campaign=sd&utm_medium=serp&utm_source=jsonld)
7 [webster.com/dictionary/groceries?utm_campaign=sd&utm_medium=serp&utm_source=jsonld](https://www.merriam-webster.com/dictionary/groceries?utm_campaign=sd&utm_medium=serp&utm_source=jsonld)
8 (last visited Apr. 3, 2018); *see also* WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE
9 ENGLISH LANGUAGE (1993) (defining “groceries” as “articles of food and other goods sold by a
10 grocer”). A “grocer” is “a dealer in staple foodstuffs (as coffee, sugar, flour) and usu. meats and
11 other foods (as fruits, vegetables, dairy products) and many household supplies (as soap,
12 matches, paper napkins).” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE
13 ENGLISH LANGUAGE (1993).

14
15
16 17. In contrast, I-1634 re-defines “groceries” as “any raw or processed food or
17 beverage, or *any ingredient thereof*, intended for human consumption” (emphasis added). This is
18 both overbroad and too narrow for the average voter. It is overbroad because it includes all
19 ingredients of any raw or processed food or beverage, which includes items that no average voter
20 would consider as items they would purchase from a grocer. For instance, I-1634’s definition of
21 groceries includes food ingredients such as: caffeine; preservatives such as ascorbic acid;
22 sweeteners such as high fructose corn syrup; color additives; artificial flavors; flavor
23 enhancements such as MSG; fat replacers such as xanthan gum; emulsifiers such as soy lecithin;
24 humectants such as sorbitol; firming agents such as calcium chloride; gases in oil cooking spray
25 and whipped cream such as carbon dioxide; liquid smoke; and pink slime. For the Court’s
26
27

1 convenience, a table produced by the Food and Drug Administration listing food ingredients by
2 type is attached as Exhibit C.

3 18. In addition, the definition of “groceries” in I-1634 is misleadingly too narrow
4 because it excludes household supplies, which are commonly bought at a grocer, such as soap,
5 matches, and paper towels.
6

7 19. Because the word “groceries” implies items a person goes to the store to buy from
8 a grocer, the phrase “taxation of groceries” in the statement of subject is misleading. An average
9 voter would read “taxation of groceries” to mean a tax paid when purchasing groceries—that is a
10 sales tax. But the measure defines “[t]ax, fee, or other assessment on groceries” in much broader
11 terms: “includ[ing], but . . . not limited to, a sales tax, gross receipts tax, business and occupation
12 tax, business license tax, excise tax, privilege tax, or any other similar levy, charge, or exaction
13 of any kind on groceries or the manufacture, distribution, sale, possession, ownership, transfer,
14 transportation, container, use, or consumption thereof.” The average voter would not read
15 “taxation of groceries” and understand it to apply to a manufacturer of color additives or a
16 distributor of artificial flavors. But that is the true scope of the measure. The statement of
17 subject should be corrected to make the subject more accurate and fair.
18

19 20. Further, it is clear that the ABA chose the term “groceries” in order to create
20 prejudice in favor of the measure—a tax on “groceries” would be disfavored, but a tax on
21 sweeteners may not (as Seattle’s soda tax demonstrates). The Court should reject the ABA’s
22 attempt to create prejudice in favor of the measure by altering the definition of a commonly-
23 understood term.
24

25 21. To ensure that voters are informed of the true content and scope of the measure in
26 a non-prejudicial way, the term “groceries” should be removed from the ballot title and
27

1 summary. A reasonable substitution is to use words from the initiative itself: the measure
2 concerns certain items that are “intended for human consumption” (includes ingredients such as
3 sweeteners not commonly thought of as groceries and excludes supplies). And where there is
4 space in the concise description and summary, the more expanded language from the measure
5 should be used: “raw or processed foods or beverages, or any ingredients thereof.”
6

7 22. Second, the ballot title and measure summary do not make clear that the measure
8 exempts new or increased local taxes, fees, or assessments that apply to all businesses and do not
9 rely on a subset of “groceries.” The ballot title and measure summary should be corrected to
10 inform voters that local taxes, fees, or assessments of general applicability may be imposed and
11 collected.
12

13 23. Petitioners propose the following ballot title and measure summary as one that is
14 fair and impartial and accurately describes the essential contents of I-1634:
15

Proposed Ballot Title

16 Initiative Measure No. 1634 concerns taxation of certain items intended for
17 human consumption.

18 This measure would prohibit new local taxes, fees, or assessments on raw or
19 processed foods or beverages, or any ingredients thereof, unless in effect as of
January 15, 2018 or of general applicability.

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

Proposed Ballot Measure Summary

22 This measure would prohibit new or increased local taxes, fees, or assessments on
23 raw or processed foods or beverages, or any ingredients thereof, unless they apply
24 to all businesses and do not classify based on raw or processed foods or
25 beverages, or any ingredients thereof. Collection of local sales and use taxes, and
of taxes, fees, and assessments on raw or processed foods or beverages, or any
26 ingredients thereof, that were in effect January 15, 2018, may continue.
27

1 A copy of the proposed ballot title and summary is attached as Exhibit D. For the Court's
2 convenience, a redline that shows the differences from the Attorney General's ballot title and
3 summary is also attached in Exhibit D.

4 **VI. PRAYER FOR RELIEF**

5 WHEREFORE, having stated the above appeal and objections, Petitioners respectfully
6 request this Court examine the proposed ballot title and measure summary for I-1634 and grant
7 the following relief:
8

- 9 A. An Order amending the ballot title and summary to comply with the Washington
10 ballot title statute's requirements as set forth in Exhibit D; and
11 B. Such other and further relief as this Court deems just and equitable.
12

13
14
15 RESPECTFULLY SUBMITTED this 9th day of April, 2018.
16

17 PACIFICA LAW GROUP LLP
18

19 By: s/ Shae Blood

20 Gregory J. Wong, WSBA #39329

21 Shae Blood, WSBA #51889

22 Attorneys for Petitioners American Heart
23 Association, Childhood Obesity Prevention
24 Coalition, and Anti-Hunger and Nutrition
25 Coalition
26
27

1 **CERTIFICATE OF SERVICE**

2 I am and at all times hereinafter mentioned was a citizen of the United States, a resident
3 of the State of Washington, over the age of 21 years and not a party to this action. On the 9th
4 day of April, 2018, I caused to be served, a true copy of the Petition to Appeal Ballot Title and
5 Summary for Initiative No. 1634 upon the parties listed below:
6

7 VIA HAND DELIVERY:

8 Washington Secretary of State
9 Corporations Division
10 801 Capitol Way S
11 Olympia WA 98501
12 initiativesupport@sos.wa.gov

13 VIA EMAIL:

14 Initiative Sponsors:
15 Heidi Schultz and Tom Gurr
16 P.O. Box 50705
17 Bellevue, WA 98015
18 initiative@yestoaffordablegroceries.com

19 VIA EMAIL PER AGREEMENT:

20 Peter B. Gonick
21 Stephanie Lindey
22 Attorney General of Washington
23 7141 Cleanwater Drive SW
24 Olympia WA 98504-0113
25 peterg@atg.wa.gov
26 stephanieL1@atg.wa.gov

27 I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct.

DATED this 9th day of April, 2018.



Sydney Henderson