The Honorable Michael R. Scott
Noted for Hearing: June 4, 2024 at 2:00 pm
With Oral Argument

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

LEGAL COUNSEL FOR YOUTH AND CHILDREN, a nonprofit organization, et al., Plaintiffs, v. STATE OF WASHINGTON, Defendant.	NO. 24-2-11540-4 SEA DEFENDANT STATE OF WASHINGTON'S ANSWER TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

If Plaintiffs' interpretation of Initiative 2081 (I-2081) were accurate, they might have a plausible claim for injunctive relief. But it is not, and they do not. They have failed their burden of showing the criteria necessary to obtain a Temporary Restraining Order (TRO), and the Court should deny their motion.

First, Plaintiffs cannot show a clear legal right to relief. Plaintiffs bring a facial challenge to I-2081, in which they must show beyond a reasonable doubt that there is no scenario in which the law is constitutional. In the context of their claim here, that means they must show that the only possible way to read I-2081 violates article II, section 37. They cannot make that showing. It is not only possible to read I-2081 to comply with the Washington State Constitution, but it is the most plausible reading of the measure. Contrary to Plaintiffs' claim that I-2081 must be read to amend far-flung provisions of state law dealing with everything from hospitals to homeless

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Drive SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

shelters, the measure is entirely focused on public schools and is codified solely in the chapter dealing with public schools. I-2081 does not violate section 37—it is a complete act and does not render any straightforward reading of pre-existing rights or obligations erroneous.

Second, the Court should not grant Plaintiffs a TRO because they allege no actual and substantial injury. Their asserted injuries are expressly speculative, claiming only that they do not know how I-2081 will be implemented, or how youth and their parents will behave once it takes effect. But to obtain an injunction the movant needs to show that actual and substantial injury *will occur* without an injunction, not merely that such injury could possibly occur.

Finally, Plaintiffs' emergency motion for a TRO was entirely avoidable. I-2081 was enacted three months ago. Plaintiffs could have, but did not, move for a preliminary injunction on a normal briefing schedule. A lack of planning on Plaintiffs' part does not constitute an emergency on the Court's, and this Court should not reward Plaintiffs' tardiness by granting a TRO.

II. STATEMENT OF FACTS

A. The Legislature Passes I-2081 to Clarify Existing Parental Rights

The Legislature passed I-2081 on March 4, 2024, with a unanimous vote in the Senate and a vote of 82 to 15 in the House. Laws of 2024, ch. 4. The measure will become effective on June 6, 2024. *Id.* It sets forth certain rights held by the parents and legal guardians of public school children. *Id.* § 1(2). These include the right to inspect their child's academic, medical, disciplinary, attendance, and school counseling records. *Id.* § 1(2)(b). Such rights already exist under the federal Family Educational and Privacy Rights Act (FERPA). 20 U.S.C. § 1232g. Rights enumerated by I-2081 also include the right to be notified if the child is offered medical services in certain circumstances (*id.* § 1(2)(c)-(e)), to be notified of particular kinds of public school activities and to opt their children out of such activates (*id.* § 1(2)(j) (k)), and to receive notice if their child is removed from the school without parental permission (*id.* § 1(2)(h)). The measure's sponsors testified that the purpose of the measure was to clarify for parents the "full

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Complex Litigation Division
7141 Cleanwater Drive SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

scope of parental rights ***that already exist***" in law, because "they're not easily accessible or published in one space." *See* TVW, https://tvw.org/video/jt-early-learning-k-12-education-weducation-2024021426/?eventID=2024021426 at 2:50 (emphasis added) (accessed June 3, 2024).

B. Plaintiffs' Lawsuit

Plaintiffs filed this lawsuit on May 23, 2024—more than two months after I-2081 passed. Plaintiffs then filed a Motion for TRO (Mot.) on May 29, 2024, set for an *ex parte* hearing on June 4. Plaintiffs ask the Court to issue an order preventing I-2081 "from going into effect on June 6, 2024" and enjoining the State from implementing it. Mot. at 15.

III. STATEMENT OF ISSUES

Whether the Court should grant Plaintiffs a TRO preventing the implementation of I-2081.

IV. EVIDENCE RELIED UPON

This response relies on material in the court file and material of which the Court may take judicial notice.

V. ARGUMENT

The Court should deny Plaintiffs' motion. A TRO is an "extraordinary remedy" to be used "sparingly and only in a clear and plain case," *Huff v. Wyman*, 184 Wn.2d 643 (2015); it "will not issue in a doubtful case." *Tyler Pipe Indus. v. State, Dep't of Revenue*, 96 Wn.2d 785 (1982).To obtain an order enjoining I-2081, Plaintiffs "must establish (a) a clear legal or equitable right, (b) a well-grounded fear of immediate invasion of that right, and (c) that the act complained of will result in actual and substantial injury." *Huff*, 184 Wn.2d at 651. "Failure to establish any one of these requirements results in a denial of the injunction." *Id*. The court should evaluate these criteria "'in light of equity, including the balancing of the relative interests of the parties and the interests of the public.'" *Id.* (quoting *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998)). Here, Plaintiffs have not met their burden to show that I-2081 is

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7141 Cleanwater Drive SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

facially unconstitutional beyond a reasonable doubt, nor that I-2081 will cause immediate actual and substantial injury. Moreover, the public interest and equities weigh against enjoining a duly enacted law, especially when Plaintiffs waited until the eleventh hour to file this motion and ask the court to invalidate this law without the benefit of full briefing.

A. Plaintiffs Have No Clear Legal Right Because they Cannot Meet Their Heavy Burden to Show that I-2081 is Unconstitutional Beyond a Reasonable Doubt

First, and fatal to their motion, Plaintiffs have not shown a clear legal right to invalidate I-2081. When "determining whether there is a clear legal or equitable right, 'the court examines the likelihood that the moving party will prevail on the merits.'" *Id*. at 652 (quoting *Rabon*, 135 Wn.2d at 285). "A doubtful case will not warrant an injunction." *Id.* Because Plaintiffs seek to invalidate a duly-enacted statute in a facial constitutional challenge, their burden of proof is very high. They can only have a "clear legal right" to invalidate I-2081 if they can prove beyond a reasonable doubt that it cannot constitutionally be applied in any circumstance. *Lummi Indian Nation v. State*, 170 Wn.2d 247, 258, 241 P.3d 1220 (2010). This they cannot do.

1. Statutes are presumed constitutional

Courts presume that statutes are constitutional, "and the burden is on the party challenging the statute to prove its unconstitutionality beyond a reasonable doubt." *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000); *Quinn v. State*, 1 Wn.3d 453, 471 n.9, 526 P.3d 1 (2023) (challenger must, "by argument and research, convince[] the court that there is no reasonable doubt that the statute violates the constitution") (quoting *Island Cnty. v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998)). This demanding standard reflects "great deference" to the judgment of "a co-equal branch of government." *Id.*

2. Facial challenges are disfavored

Facial challenges are "generally disfavored." *Woods v. Seattle's Union Gospel Mission*, 197 Wn.2d 231, 240, 481 P.3d 1060 (2021). While an as-applied challenge prohibits application of a statute in certain circumstances, a successful facial challenge completely invalidates the law and prohibits it from being applied in *any* circumstances. *Lummi Indian Nation*, 170 Wn.2d at

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7141 Cleanwater Drive SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

258. Facially invalidating a statute "short circuit[s] the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008). As a result, a stringent standard applies for facially invalidating a statute, requiring plaintiffs to establish that there is "*no set of circumstances* in which the statute[, as currently written,] can constitutionally be applied." *Woods*, 197 Wn.2d at 240.

3. I-2081 Satisfies Article II, Section 37

"An act complies with article II, section 37 if it (1) is a complete act and (2) does not render erroneous a straightforward determination of the scope of rights or duties under the existing statutes." *Associated Gen. Contractors of Washington v. State*, __ Wn.2d __, 544 P.3d 486, 491 (2024) (quoting *Wash. Educ. Ass'n v. State*, 93 Wn.2d 37, 40-41, 604 P.2d 950 (1980) (internal quotation marks omitted)). "Nearly every legislative act of a general nature changes or modifies some existing statute, either directly or by implication, but that does not necessarily mean that the legislation is unconstitutional." *Id.* (cleaned up).

Here, Plaintiffs do not have a clear legal or equitable right to invalidation of I-2081 because the act is complete and does not render any straightforward reading of prior law erroneous.

a. I-2081 Is a Complete Act

An act is complete when "the new enactment is such a complete act that the scope of the rights or duties created or affected by the legislative action can be determined without referring to any other statute or enactment." *Washington State Assoc. of Counties v. State*, 199 Wn.2d 1, 15, 502 P.3d 825 (2022) (cleaned up). "An act is exempt from this constitutional analysis when it is complete in itself and stands alone as the law on the particular subject of which it treats, even if it impacts other existing statutes." *Id.* (cleaned up). "[C]omplete acts which adopt by reference provisions of prior acts or incidentally or impliedly amend prior acts are excepted from

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Complex Litigation Division
7141 Cleanwater Drive SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

section 37." *Black v. Cent. Puget Sound Reg'l Transit Auth.*, 195 Wn.2d 198, 207, 457 P.3d 453 (2020) (quoting *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 642, 71 P.3d 644 (2003)) (cleaned up).

Here, I-2081 straightforwardly states the rights of parents with respect to their children in public schools, and it is fully comprehensible on its face. Nothing in I-2081 requires a reader to know the content of a different law. Plaintiffs object that other statutes address similar subjects and so I-2081's "effects cannot be understood by reading the Initiative alone." Mot. at 11. But Plaintiffs conflate the first and second prongs of the test. They argue that because I-2081 "conflicts with currently existing" statutes, including by "fail[ing] to mention RCW 70.02" it is not complete. *Id.* As explained below, I-2081 does not conflict with anything in RCW 70.02, or any statute, but that is not the question under prong one of the test. To determine whether an act is complete, courts ask whether the rights created by the statute are "readily ascertainable from the words of the statute alone." *Citizens*, 149 Wn.2d at 642. Here, I-2081 clearly gives parents the right to copies of their children's public school records, to receive notice of certain kinds of public school activities, and to opt their children out of those activities, among other things. "[B]ecause the rights" provided by I-2081 "can be understood by reading only the Act," it is complete and satisfies prong one of the test. *See El Centro De La Raza v. State*, 192 Wn.2d 103, 129, 428 P.3d 1143 (2018) (holding collective bargaining law for charter school employees was a complete act "because the rights of charter school employees can be understood by reading only the Act.").

b. I-2081 does not render a straightforward reading of any prior law erroneous

I-2081 also complies with the second prong of the test, because it does not render erroneous any straightforward reading of prior law. Plaintiffs' arguments to the contrary all depend on misreading I-2081, and ignore the court's duty to interpret statutes harmoniously and to avoid constitutional doubt. Given that I-2081 is a complete act, any incidental effect that I-

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7141 Cleanwater Drive SW
PO Box 40111
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(360) 709-6470

2081 may have on prior acts would not rise to level of a constitutional violation in any event. *Black*, 195 Wn.2d at 207; *Washington Educ. Ass'n v. State*, 97 Wn.2d 899, 906, 652 P.2d 1347 (1982) (holding that act's "fail[ure] to articulate how it relates" to other statutes was "not of constitutional magnitude" because it was a complete act).

The second prong of the section 37 test asks whether the new law "renders erroneous a straightforward determination of the scope of rights or duties imposed under an existing statute." *Associated Gen. Contractors of Washington*, 544 P.3d at 497. "[T]he inquiry under [the second] prong is more a matter of degree than an absolute." *Washington State Legis. v. Inslee*, 198 Wn.2d 561, 594, 498 P.3d 496 (2021). In determining whether a new act conflicts with an old one for purposes of section 37, courts must harmonize statutes where possible. *Associated Gen. Contractors of Washington*, 544 P.3d at 497. This coincides with the rule that courts will give statutes a reasonable construction that avoids constitutional doubt. *See Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d 398, 434, 341 P.3d 953 (2015).

Plaintiffs argue that I-2081 modifies three categories of youth rights: a) medical privacy and decision making; b) certain curricula; and c) to seek services at a youth shelter without parental notification. Mot. at 3-4, 12-13. None of these arguments hold water.

(1) I-2081 does not conflict with adolescents' rights to medical privacy and decision making

I-2081 does not require medical providers to disclose any records contrary to RCW 70.02. Nor does it strip minors of the right to consent to medical care for those limited areas that minors have the ability to consent. Instead, it mirrors currently existing law.

I-2081 gives parents the right to "inspect their child's public school records," where such records include "medical or health records" and "records of any mental health counseling." I-2081, § 1(2). FERPA already gives parents exactly this right. 20 U.S.C. § 1232g (providing that public schools receiving federal funds must give parents "the right to inspect and review the education records of their children" where "education record" does not exclude health or mental

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PO Box 40111
Olympia. WA 98504-0111
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health counseling records). Nothing in Washington's statutes can contradict federal law (U.S. Const. art. VI, cl. 2), and therefore nothing in I-2081's requirement that schools disclose "medical or health records" or "records of any mental health counseling" can contradict pre-existing Washington law either. In fact, RCW 70.02.900 specifically provides that chapter 70.02 "does not restrict" any entity covered by the chapter "from complying with obligations imposed by . . . federal or state law." I-2081's requirement that schools provide records they may have about students' health does not conflict with RCW 70.02.130 because parents already have the right to receive such records.

I-2081 sections 1(2)(c), (d), and (e) then require schools to notify parents anytime "medical services are being offered to their child" by the school, when "any medical service or medications have been provided to their child that could result in any financial impact to the parent's or legal guardian's health insurance payments or copays," and when "the school has arranged directly or indirectly for medical treatment that results in follow-up care beyond normal school hours." For the vast majority of healthcare provided to public school students under the age of 18, this obviously does not conflict with any pre-existing state law because only a parent or other legal guardian can consent. *See* RCW 26.28.010 (age of majority is 18).

I-2081 also does not render erroneous any law granting minors the ability to consent to their own medical care. Minors above the age of 13 or 14, generally referred to as "adolescents" (*e.g.* RCW 71.34.020(2)), may consent to certain kinds of medical care such as mental health care (*e.g.*, RCW 71.34.500) and treatment of sexually transmitted diseases (RCW 70.24.110). Nothing about any of I-2081's provisions deny adolescents these rights. It merely requires schools to notify parents when the school itself offers or arranges for such care. It does not obligate other healthcare providers to do so.

And while Plaintiffs make no attempt to delineate those circumstances in which schools themselves are healthcare providers, such delineation is important. Schools do not have the statutory authority to operate healthcare clinics. *See* Op. Att'y Gen. No. 2 at 2 (2023) ("[S]chool

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PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

districts lack express authority to operate healthcare clinics, and without such authority, districts may not do so."); *McGilvra v. Seattle Sch. Dist. No. 1*, 113 Wash. 619, 626 (1921). Instead, the legislature has authorized "school-based health centers," which are health centers operated by a sponsoring agency, not the school itself, "located in or adjacent to a school that provides integrated medical, behavioral health, and other health care services such as dental care." RCW 43.70.825(3). I-2081 would not apply to such school-based health centers.

This matters because only healthcare providers, or others in the healthcare industry, such as insurance companies, are required to keep healthcare information confidential. *E.g.* RCW 70.02.020. And it is only public schools that are governed by I-2081. So when a student goes to a school-based health center, even if it is located on school property, for mental health treatment, STI treatment, or for anything else that the student may have the legal right to consent to, the school-based health center would not be under any obligation to notify parents or disclose its records under I-2081 (or FERPA). In fact, information held by school-based health centers is subject to the same confidentiality rules as would govern any other medical provider.[1] But, just as before I-2081's enactment, any information held by the school itself about a student's health is accessible to parents. *See* 20 U.S.C. § 1232g.

(2) I-2081 does not render erroneous any prior law regarding school curricula

I-2081 also requires schools to provide parents with notification of certain school activities and allow parents to opt their children out of them. I-2081 § 1(2)(j), (k). These parental rights are similar to, but more expansive than, rights that currently exist for parents to opt their children out of comprehensive sexual health education (RCW 28A.300.475) and AIDS education (RCW 28A.230.070). But just because I-2081 provides for additional parental rights does not

[1] These laws are complicated. For example, mental health information can be disclosed to parents without the adolescent's consent (RCW 71.34.430), but a mental health provider may not proactively exercise their discretion to release such information to parents, except in some circumstances (RCW 70.02.265). I-2081 does not change these laws.

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7141 Cleanwater Drive SW
PO Box 40111
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(360) 709-6470

mean that it amends these other statutes. I-2081 does not render a reading of either of the other opt-out statutes erroneous.

Plaintiffs are also incorrect that I-2081 "amends" Senate Bill 5462 (SB 5462). Preliminarily, I-2081 was passed first, on March 5, 2024, whereas SB 5462 passed on March 18. *Compare* I-2081 *with* Laws of 2024, ch. 157. I-2081 could not have "amended" a law that did not yet exist. Moreover, the statutes simply speak to different subjects. I-2081 provides parents notice and opt-out rights for certain sorts of curricula and activities, and SB 5462 mandates that schools "adopt inclusive curricula and select diverse, equitable, inclusive, age-appropriate instructional materials" that promote a diversity of perspectives. SB 5462, § 2(2). Nothing in I-2081 instructs schools to adopt non-diverse curricula and nothing in SB 5462 prohibits parents from opting their children out of any particular school subject. I-2081 does not, therefore, render a straightforward reading of SB 5462 erroneous (nor vice-versa). *See Citizens*, 149 Wn.2d at 643-44 (holding that act regulating the sorts of traps landowners could set was not amendatory of separate act permitting landowners to set traps).

(3) I-2081 does not conflict with laws about youth shelters

Finally, I-2081 does not render erroneous any straightforward reading of Substitute House Bill 1406 (SHB 1406) or Engrossed Substitute Senate Bill 5599 (ESSB 5599) as argued by Plaintiffs. Mot. at 13. Again, Plaintiffs fail to account for the precise subjects addressed in I-2081 in comparison to pre-existing law.

I-2081 requires public schools to notify parents whenever "their child is taken or removed from the public school campus without parental permission, including to stay at a youth shelter or 'host home' as defined in RCW 74.15.020." I-2081 § 1(2)(h). SHB 1406 and ESSB 5599 generally require youth shelters to notify parents if a youth is staying there, but permit the shelter to notify the Department of Children, Youth, and Families instead in certain limited circumstances. Laws of 2023, ch. 151 § 2(1)(b); Laws of 2023, ch. 408 § 2. I-2081 speaks to

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Complex Litigation Division
7141 Cleanwater Drive SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

schools. SHB 1406 and ESSB 5599 speak to youth shelters. I-2081 does not render a straightforward reading of either prior law erroneous.

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I-2081 is a complete act that does not render a straightforward reading of any pre-existing law erroneous. It is therefore fully compliant with article II, section 37, and Plaintiffs have failed to show a clear legal or equitable right to I-2081's invalidation.

B. Plaintiffs Have Not Shown Actual or Substantial Injury

Plaintiffs' motion must also be denied because they have not established that an "actual and substantial" injury "will result" if the injunction is denied—a "necessary precondition[] for injunctive relief[.]" *Tyler Pipe*, 96 Wn.2d at 792; *Kucera v. State, Dep't of Transp.*, 140 Wn.2d 200, 220-21, 995 P.2d 63 (2000); *see, e.g.*, *Agronic Corp. of Am. v. deBough*, 21 Wn. App. 459, 464, 585 P.2d 821 (1978) ("irreparable injury" is among the "essential elements which must be shown before an injunction will be granted"). The harm cannot be "speculative" in nature. *See id.* at 464-65; *Kucera*, 140 Wn.2d at 221 (purpose of injunction is "not to protect a plaintiff from . . . speculative and insubstantial injury").

Here, Plaintiffs' declarations do not allege that substantial harm will occur if the law goes into effect—instead, they assert only "confusion" and "uncertainty" about how the law will operate. *See, e.g.*, Doe ¶ 16; Lombard ¶¶ 26-27 (notice requirements are "vague and create uncertainty"); LCYC ¶ 52 (initiative "creates confusing regarding its effect on a myriad of laws . . . everyone is confused about Initiative 2081 and how it will interact with" existing laws); LRP ¶ 41 (program staff "unsure about the reach of this law"); Humphreys ¶ 30 ("unclear whether Initiative 2081 is meant to expand the existing rights or is simply a restatement of these rights"); SVLC ¶¶ 45-46; Oasis ¶¶ 41, 48, 49, 57. On this basis, Plaintiffs claim that they will have to expend resources educating staff, service users, and others about the implications of the law and answering questions about the law. *See, e.g.*, LRP ¶¶ 40, 42; Humphreys ¶ 50; POCAAN ¶ 39; SVLC ¶¶ 38-39; SWEC ¶ 38.

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7141 Cleanwater Drive SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

Confusion about how a law might operate is not substantial harm that can support the extraordinary remedy of a TRO. *See, e.g.*, *KM Enter. Inc. v. McDonald*, No. 11-CV-5098 (ADS)(ETB), 2012 WL 540955, at *4 (E.D.N.Y. Feb. 16, 2012) (finding that alleged "lack of clarity" in regulations that could lead to the "possibility of future injury" is "not a basis for irreparable harm"); *Nat'l Ass'n of Mortg. Brokers v. Bd. of Governors of Fed. Rsrv. Sys.*, 773 F. Supp. 2d 151, 180 (D.D.C. 2011) (allegations that regulation's "lack of clarity" created an "environment of noncompliance" insufficient to show irreparable harm). Plaintiffs claim that students *may* be discouraged from speaking to staff about sensitive issues, depending on the "potential" of I-2081 being read expansively to conflict with existing protections regarding adolescent healthcare. *See, e.g.*, LCYC ¶¶ 46-49, 64; Humphreys ¶ 41; SVLC ¶ 52; Oasis ¶¶ 44, 54, 67. This does not suffice to show that substantial harm is likely, given the principles requiring statutes to be read in harmony.

C. The Public Interest and Equities Weigh Against Enjoining I-2081

This Court should also deny Plaintiffs' motion because the equities tip strongly against invalidation on an emergency basis. *See Tyler Pipe*, 96 Wn.2d at 792.

First, "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012)) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S 1345, 1351 (1977) (Rehnquist, J., in chambers)) (internal quotation marks omitted). The Legislature is a "co-equal branch of government," so courts impose the demanding standard of "beyond a reasonable doubt" to invalidate a law. *Island Cnty.*, 135 Wn.2d at 147. The Legislature also "speaks for the people," so courts "are hesitant to strike a duly enacted statute unless fully convinced, after a searching legal analysis, that the statute violates the constitution." *Id*. The irreparable harm caused to the People's interest in majoritarian government warrants denial of a TRO in all but the most obvious cases of unconstitutionality.

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Complex Litigation Division
7141 Cleanwater Drive SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

Second, Plaintiffs have known about this law and its effective date for months. *See Holmes Harbor Water Co., Inc. v. Page*, 8 Wn. App. 600 (1973) (courts may weigh "the delay, if any, in bringing suit" in considering whether to grant injunction). The Legislature passed I-2081 on March 4, 2024. The measure's effective date—June 6, 2024—was known at least as far back as the law's passage. *See* Wash. Const. art. II, § 1(c); *see also* Op. Att'y Gen. No. 5, at 12 (1971). If Plaintiffs had filed this action sooner and sought prospective relief under a standard briefing schedule, there would be no need for these rushed proceedings and briefing. Instead, Plaintiffs waited until the last minute. A TRO was completely avoidable. This Court should not reward preventable delays in bringing a challenge like this one.

VI. CONCLUSION

The Court should deny Plaintiffs' motion.

DATED this 3rd day of June 2024.

ROBERT W. FERGUSON
Attorney General

/s/ William McGinty
WILLIAM McGINTY, WSBA #41868
KELSEY ENDRES, WSBA #39409
Assistant Attorneys General
NOAH G. PURCELL, WSBA #43492
Solicitor General
ALICIA O. YOUNG, WSBA #35553
EMMA GRUNBERG, WSBA #54659
Deputy Solicitors General
7141 Cleanwater Drive SW
PO Box 40111
Olympia, WA 98504-0111
(360) 709-6470
William.McGinty@atg.wa.gov
Kelsey.Endres@atg.wa.gov
Noah.Purcell@atg.wa.gov
Alicia.Young@atg.wa.gov
Emma.Grunberg@atg.wa.gov
Counsel for Defendant State of Washington

I certify that this memorandum contains 4,189 words, in compliance with the Local Civil Rules.

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be served, via electronic mail, on the following:

J. Denise Diskin
QLaw Foundation of Washington
400 East Pine Street, Suite 225
Seattle, WA 98122
denise@qlawfoundation.org

Julia Marks
Legal Voice
907 Pine Street, Ste. 500
Seattle, WA 98101
jmarks@legalvoice.org

Adrien Leavitt
Taryn Darling
La Rond Baker
ACLU of Washington Foundation
PO Box 2728
Seattle, WA 98111
aleavitt@aclu-wa.org
tdarling@aclu-wa.org
baker@aclu-wa.org
Counsel for Plaintiffs

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

DATED this 3rd day of June 2024, at Olympia, Washington.

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General