The Honorable Michael R. Scott
Noted for Hearing: To Be Determined
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,

and

LET'S GO WASHINGTON, a political action committee, et al.,

Intervener-Defendants.

NO. 24-2-11540-4 SEA

DEFENDANT STATE OF WASHINGTON'S MOTION FOR SUMMARY JUDGMENT

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

TABLE OF CONTENTS

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

TABLE OF AUTHORITIES

Cases

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

Constitutional Provisions

Statutes

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

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

Regulations

Other Authorities

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

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

I. INTRODUCTION AND RELIEF REQUESTED

Initiative 2081 (I-2081) is a complete act that does not deceive or mislead those reading it. Plaintiffs therefore cannot meet their burden to show beyond a reasonable doubt that I-2081 violates article II, section 37. This Court should grant summary judgment to the State and dismiss Plaintiffs' challenge.

I-2081 established the "parents' bill of rights," which primarily collects and restates rights that parents of public school children have had for decades. Now codified at RCW 28A.605.005, it was introduced as an initiative to the Legislature after being signed by nearly 450,000 Washington voters. It passed the House by a vote of 82 to 15 and passed the Senate unanimously.

Plaintiffs' sole challenge is that I-2081 violates article II, section 37 of the Washington Constitution, but their claim relies on a misreading of the of section 37 test. An act complies with section 37 where 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. Section 37's purpose is to prevent acts that defraud legislators and the public by hiding their true effect. To that end, it is wrong to characterize the step two inquiry as "whether the later enactment changes the prior act in scope and effect," because this "too broadly states the test." *Amalgamated Transit Union Loc. 587 v. State*, 142 Wn.2d 183, 251-52, 11 P.3d 762 (2000). Courts recognize that acts routinely and constitutionally amend existing statutes without directly referencing them. Instead, a violation exists when the act's true effect is hidden. For this reason, acts that survive the first part of the test—i.e., complete acts that are clear on their face—are virtually never invalidated. The State is only aware of one such case in Washington history, and there, the act did the opposite of what it appeared to do.

As this Court has already recognized, I-2081 "is a complete act. It is straightforward. If I were to read it in isolation, I would have no trouble understanding it. It's very plain, so the first part of the test is satisfied . . . ." Decl. of William McGinty (McGinty Decl.), Ex. 1 at 6. That

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

conclusion was clearly correct: I-2081 is simply a list of parental rights requiring public schools to give parents access to certain information, notice of certain things, and control over certain aspects of their children's education. Its meaning is clear without referencing other statutes.

I-2081 is nothing like the lone case in which a complete act was found to amount to fraud or deception and therefore to violate section 37. To the contrary, I-2081's provisions are clear. I-2081 straightforwardly requires schools to give parents access to their child's "medical or health records" and notifications of the child's "medical treatment." The medical privacy law Plaintiffs claim was "amended" has aways incorporated a legislative carve-out for any other laws that require disclosure, even though those laws are not identified in the medical privacy law itself. Plaintiffs claim that I-2081 impermissibly adds to the list of things parents can opt their children out of, but there is no requirement that laws involving similar subjects must be passed at the same time or in the same act. Plaintiffs also claim that I-2081 "frustrates" prior laws providing exceptions for parental notifications by youth shelters in some circumstances. But I-2081 does not impose any requirements on youth shelters.

In sum, Plaintiffs fail to meet their burden to show that I-2081 is a deceptive amendatory act. This Court should reject Plaintiffs' effort. I-2081 satisfies section 37, and the Court should grant summary judgment to the State.

II. STATEMENT OF ISSUE

I-2081 is a complete act, and its legal effect is clear and not hidden. Is it therefore constitutional under article II, section 37 of the Washington Constitution, such that summary judgment should be granted to the State?

III. EVIDENCE RELIED UPON

This motion relies upon the declaration of William McGinty filed herewith, material in the Court file, and material of which the Court may take judicial notice.

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

IV. FACTS

A. The Legislature Passed I-2081 to Clarify the Rights of Public School Parents

I-2081 was filed as an initiative to the Legislature in 2023, pursuant to RCW 29A.72.010.[1] Nearly 450,000 Washingtonians signed petitions to qualify I-2081 for the ballot.[2]

The Legislature passed I-2081 with overwhelming bipartisan support. It passed unanimously in the Senate and by a vote of 82 to 15 in the House. Laws of 2024, ch. 4. Prior to passage, the House and Senate education committees held a joint public hearing, at which various members of the public and stakeholder representatives spoke in support of the initiative, and representatives from two plaintiff organizations, LCYC and Oasis Youth Center, spoke from an "other" position (indicating that they neither supported nor opposed it).[3] No one spoke in opposition.[4] Of the 6,477 non-testifying persons signing in to the hearing, 88 percent supported passage of the initiative.[5]

During the public hearing and subsequent committee meetings, speakers from both parties, including the initiative's sponsor, repeatedly emphasized that I-2081's primary purpose is to collect in one place parental rights that already exist in state and federal law, so that parents have clarity and can more confidently engage with schools.[6] Speakers reported this was

---

[1] Wash. Sec'y of State, Proposed Initiatives to the Legislature – 2023, available at: https://www2.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2023&t=l&_gl=1*hk5x7p*_ga*Mjc3NjQ0NDEwLjE3MDAxNTc0MDA.*_ga_7B08VE04WV*MTcyNDQzNDY1MC4yOC4xLjE3MjQ0MzUxMzcuMC4wLjA (last visited Sept. 17, 2024).

[2] Wash. Sec'y of State, Submitted Signature Statistics, available at: https://www.sos.wa.gov/elections/initiatives-referenda/submitted-signature-statistics (last updated July 24, 2024).

[3] Joint Hearing of the Senate Early Learning & K-12 Educ. Comm. and House Educ. Comm., Feb. 28, 2024, recording available at: https://tvw.org/video/jt-early-learning-k-12-education-weducation-2024021426/?eventID=2024021426 ("Joint Hearing") (remarks of Matthew Wilson, executive director of Oasis Youth Center, begin at 41:05, and remarks of Erin Lovell, executive director of LCYC, begin at 44:50).

[4] *Id*.

[5] *Id*. at 1:00:22-1:01:03.

[6] *Id*. at 2:49-4:01 (Sen. Wellman), 22:43-23:41 (I-2081 sponsor Rep. Walsh); Exec. Session of House Educ. Comm., Mar. 1, 2024, recording available at https://tvw.org/video/house-education-2024031091/?eventID=2024031091 ("House Educ. Comm."), at 1:59-2:23 (Rep. Rude); Exec. Session of Senate Early Learning & K-12 Educ. Comm., Mar. 1, 2024, recording available at: https://tvw.org/video/senate-early-

necessary because there was confusion among some parents about what rights they already had.[7] Speakers emphasized the importance of parental engagement in their children's upbringing and education, including allowing parents to access information about what their child is learning, and prompt parental notification when a child has a problem, to ensure parents participate in addressing their child's needs.[8] Multiple supporters of I-2081 noted that they would monitor implementation so that if any issues arose, particularly with respect to students' well-being, the Legislature could step in to address any amendments that might be necessary.[9]

I-2081 became effective on June 6, 2024. Laws of 2024, ch. 4. It includes findings that parental involvement is a significant factor in increasing student achievement, and that access to student information encourages greater parental involvement. RCW 28A.605.005(1). It sets forth the following rights held by parents and legal guardians of public school students[10] 18 years of age or younger:

- To examine the textbooks, curriculum, and supplemental material used in their child's classroom. RCW 28A.605.005(2)(a).
- To inspect their child's school records, and to receive a copy of such records within 10 business days of submitting a written request. *Id*., § (2)(b)(i)-(iii). School records are defined broadly to "include" academic records, medical or health records, records of any mental health counseling, discipline records, attendance records, and "any

---

learning-k-12-education-2024031089/?eventID=2024031089 ("Senate Educ. Comm."), at 6:11-7:00 (Sen. Dozier), 10:45-11:29 (Sen. Petersen).

[7] Joint Hearing at 2:54-3:07 (Sen. Wellman), 22:21-22:42 (Rep. Walsh), 34:34-35:06 (Tim Garsh, executive director of Wash. School Dirs. Ass'n).

[8] Joint Hearing at 2:29-2:46 (Sen. Wellman), 22:01-22:19, 23:08-23:25 (Rep. Walsh), 33:34-34:15 (Tim Garsh), 35:59-37:28 (Melissa Petrini); House Educ. Comm. at 17:34-18:32 (Rep. Nance), 18:59-19:22 (Rep. Eslick).

[9] House Educ. Comm. at 21:09-21:35 (Rep. Timmons); Senate Educ. Comm. at 11:30-12:00 (Sen. Petersen), 14:00-14:53 (Sen. Wilson).

[10] I-2081 defines "public school" as having the same meaning as in RCW 28A.150.010 (RCW 28A.605.005. § 1(4)), which in turn defines "public school" as "the common schools as referred to in Article IX of the state Constitution, charter schools established under chapter 28A.710 RCW, and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense."

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

other student-specific files maintained by the school." § (2)(b)(iv). Schools are not required to release medical or health records or mental health counseling records to a parent under investigation for child abuse or neglect, without a court order. § (3).

- To receive prior notification when medical services are offered to their child, except where emergency medical treatment is required, in which case the parent or guardian must be notified as soon as practicable post-treatment. § (2)(c). Schools are not required to release any medical, health, or mental health counseling information to a parent under investigation for child abuse or neglect, without a court order. § (3).
- To receive notification when the school provides medical services to their child that could result in any change to the parent's or guardian's health insurance payments. § (2)(d).
- To receive notification when the school has arranged directly or indirectly for medical treatment resulting in follow-up care beyond normal school hours; for example, use of medications or devices such as crutches. § (2)(e).
- To receive immediate notification if a criminal action is deemed to have been committed against their child or by their child, or if law enforcement personnel question their child. The latter right does not apply where the parent or guardian has been accused of abusing or neglecting the child. §§ (2)(f), (2)(g).
- To receive immediate notification if their child is taken or removed from the school campus without parental permission, including to stay at a youth shelter or host home as defined in RCW 74.15.020. § (2)(h).
- To receive assurance that the school will not discriminate against their child based on their family's sincerely held religious beliefs, in accordance with RCW 28A.642. § (2)(i).
- To receive written notice and the option to opt out of any student activities, including surveys or questionnaires, that ask questions about: the child's sexual experiences or

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

attractions; the child's family beliefs, morality, religion, or political affiliations; any mental health or psychological problems of the child or family members; and all surveys, analyses, and evaluations subject to areas covered by the federal Protection of Pupil Rights Amendment. § (2)(j).

- To receive written notice and the option to opt out of instruction on topics associated with sexual activity in accordance with RCW 28A.300.475. § (2)(k).
- To receive the annual school calendar in writing at least 30 days prior to the beginning of the school year, and to be notified in writing as soon as feasible of any revisions. The calendar must be posted to the school website and must include student attendance days and any event requiring parent or student attendance outside normal school hours. § (2)(l).
- To view on the school website, or to receive in writing each year, a list of any required fee and its purpose and use, and a description of how economic hardships may be addressed. § (2)(m).
- To view on the school website, or to receive in writing each year, a description of the required dress code or uniform, if applicable. § (2)(n).
- To be informed if their child's academic performance is such that it could threaten the child's ability to be promoted to the next grade level, and to be offered an in-person meeting with the child's classroom teacher and principal to discuss resources and strategies for the child's academic improvement. § (2)(o).

I-2081 was codified as RCW 28A.605.005, and this motion will refer to the initiative alternatively as I-2081 or by its codified sections.

B. Plaintiffs' Lawsuit

Plaintiffs filed this facial challenge on May 23, 2024, challenging limited aspects of I-2081 under article II, section 37 of the Washington Constitution. First, Plaintiffs claim that the initiative's provisions granting parental access to medical records revise existing laws without

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

properly setting forth its revisions. Compl., Dkt. No. 1 ¶¶ 4.22-4.28. Second, Plaintiffs assert that I-2081 frustrates and interferes with existing laws relating to parental notification when a student is taken to a youth shelter, notice and opt-outs for certain curricula, and neutrality toward families' religious beliefs. *Id.* ¶¶ 4.29-4.41.

Despite the Complaint's challenges to limited sections of I-2081, Plaintiffs sought a temporary restraining order and preliminary injunction enjoining the State from "any further implementation" of the entire initiative. Pltffs.' Mot. Temporary Restraining Order, Dkt. No. 11 at 15; Pltffs.' Mot. for Preliminary Injunction, Dkt. No. 31 at 16. After a commissioner of the Court denied the TRO (*see* Order Denying Mot. Temporary Restraining Order, Dkt. No. 30), this Court issued an order granting the preliminary injunction in part. Order Granting Mot. Preliminary Injunction in Part, Dkt. No. 90 at 3. Despite concluding that I-2081 was "a complete act" (McGinty Decl., Ex. 1 at 6), the Court nonetheless enjoined those parts of the initiative requiring that parents receive a copy of their child's records within 10 business days of submitting a request, and to the extent that the initiative requires disclosure of medical, health, and mental health records and/or information protected by RCW 70.02.020. The Court denied Plaintiffs' motion with respect to the remaining portions of the initiative, including those relating to youth shelter transport and curriculum opt-outs. *Id*.

V. LEGAL STANDARD

Summary judgment should be granted "when the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). Because Plaintiffs raise a purely legal challenge to I-2081, there are no material issues of fact. *See City of Seattle v. Webster*, 115 Wn.2d 635, 640, 802 P.2d 1333 (1990) ("Constitutional analysis is made upon the language of the ordinance or statute itself.").

Statutes are presumed constitutional, and a party challenging the constitutionality of a statute bears the burden of proving otherwise "beyond a reasonable doubt." *Woods v. Seattle's*

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

Union Gospel Mission, 197 Wn.2d 231, 239, 481 P.3d 1060 (2021); *Quinn v. State*, 1 Wn.3d 453, 471, 526 P.3d 1 (2023), *cert. denied*, 144 S. Ct. 680, 217 L. Ed. 2d 381 (2024). "Any reasonable doubts are resolved in favor of constitutionality." *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn. 2d 622, 631, 71 P.3d 644 (2003).

Here, Plaintiffs are not challenging application of I-2081 to any specific person or fact pattern, but rather seek to invalidate the initiative generally, thus raising a facial challenge, presenting a question of law. *City of Redmond v. Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004); *State v. Grocery Mfrs. Ass'n*, 195 Wn.2d 442, 461, 461 P.3d 334 (2020). Facial challenges must be rejected unless "there is no set of circumstances in which the statute, as currently written, can be constitutionally applied." *Woods*, 197 Wn. 2d at 240 (quoting *In re Det. Of Turay*, 139 Wn.2d 379, 417 n.27, 986 P.2d 790 (1999)) (internal punctuation omitted). Facial challenges are disfavored because they risk "short circuit[ing] 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).

VI. ARGUMENT

Plaintiffs have failed to show beyond a reasonable doubt that I-2081 violates Article II, section 37 of the Washington Constitution, because I-2081 is a complete act that does not tend to mislead or deceive readers. Section 37 provides that "No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." Const. art. II, § 37. Washington courts apply a two-prong test to determine the constitutionality of a statute under 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." *Assoc. Gen. Contractors of Wash. v. State*, 2 Wn.3d 846, 853-54, 544 P.3d 486 (2024) (quoting *Wash. Educ. Ass'n v. State*, 93 Wn.2d 37, 40-41, 604 P.2d 950 (1980) (internal quotation marks omitted)).

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

Section 37 was drafted to address a specific harm: deceptive amendatory acts that purport "only to insert certain words, or to substitute one phrase for another in an act or section" without republishing the amended law. *Spokane Grain & Fuel Co. v. Lyttaker*, 59 Wash. 76, 78-79, 109 P. 316 (1910). The "unintelligible" nature of such acts is "well calculated to mislead the careless as to [the amendatory law's] effect." *Id*. at 78-79. By targeting deceptive amendatory acts, Section 37's purpose is to "protect the legislature and the public against fraud and deception." *Black v. Cent. Puget Sound Regional Transit Auth.*, 195 Wn.2d 198, 205, 457 P.3d 453 (2020). Thus, an amendatory act must include the text of the section being amended, showing what has been changed. *See State v. Lawson*, 40 Wash. 455, 458, 82 P. 750 (1905); *see also, e.g.*, Laws of 2024, ch. 3 § 1 (amending prior act by showing which words and phrases were deleted and which were inserted using strikethrough and underlining, respectively).

Crucially, however, section 37 allows acts that are complete in themselves—that is, acts that can be understood on their face—to alter existing law without setting forth the text of the law affected. "A complete act . . . is not rendered unconstitutional by article II, section 37, even though it may by implication operate to change or modify prior acts." *Amalgamated Transit Union Loc. 587*, 142 Wn.2d at 247. In fact, "[n]early every legislative act of a general nature changes or modifies some existing statute, either directly or by implication." *Wash. State Ass'n of Cntys. v. State*, 199 Wn.2d 1, 14, 502 P.3d 825 (2022) (quoting *El Centro de la Raza v. State*, 192 Wn.2d 103, 128, 428 P.3d 1143 (2018) (plurality opinion) (alteration in original) (internal quotation marks omitted)). And section 37's purpose is to prevent deception, "not to trammel or hamper the Legislature in the enactment of laws[.]" *Spokane Grain & Fuel Co.*, 59 Wash. at 82. As our Supreme Court held more than a century ago, "an act complete in itself is not within the mischief designed to be remedied by [section 37], and cannot be held to be prohibited by it without violating its plain intent." *Id*. In other words, "[s]o long as a legislative act is complete in itself and does not tend to mislead or deceive, it is not violative of the constitution." *Id*. at 84. In light of this forgiving test, there is only one case in Washington history of which the State is

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

aware holding that a complete act nonetheless violated article II, section 37. *See El Centro De La Raza* 192 Wn. 2d at 132.

Initiative 2081 passes both prongs of the two-part test. First, as the Court already concluded, it is a complete act: its terms are plain on its face, without reference to other statutes. *See Assoc. Gen. Contractors of Wash.* 2 Wn.3d at 853-54. Second, I-2081 does not fall within the narrow category of complete acts that nonetheless violate section 37 because they "tend to mislead or deceive" by hiding their effect on existing law. *Spokane Grain & Fuel Co.*, 59 Wash. at 84; *see Assoc. Gen. Contractors of Wash.*, 2 Wn.3d at 853-54. Instead, I-2081 sets out its effects plainly and without deception. I-2081 is constitutional, and Plaintiffs' challenge should be dismissed.

A. I-2081 Is A Complete Act

An initiative is a complete act where "the scope of the rights or duties created or affected" by it "can be determined without referring to any other statute or enactment." *Wash. State Ass'n of Cntys.*, 199 Wn.2d at 15. This inquiry "is designed to 'make sure the effect of new legislation is clear.'" *Id*. (quoting *El Centro de la Raza*, 192 Wn.2d at 129). It does not matter if a new law "impacts other existing statutes" if it is "complete in itself … and stands alone as the law on the particular subject of which it treats." *Id*. An act is complete if it "fully declares its terms," even if the effect of the act "may be to enlarge or restrict the operation of other statutes." *Wash. Citizen Action v. Office of Ins. Comm'r*, 94 Wn. App. 64, 69, 971 P.2d 527 (1999) (citing *State v. Manussier*, 129 Wn.2d 652, 665, 921 P.2d 473 (1996)).

Here, as the Court ruled in response to Plaintiffs' Motion for Preliminary Injunction, I-2081 "is a complete act. It is straightforward. If I were to read it in isolation, I would have no trouble understanding it." McGinty Decl., Ex. 1 at 6. I-2081 straightforwardly expresses the rights of parents and the corresponding obligations of public schools.

By contrast, an incomplete act is "virtually incomprehensible" without reference to existing law. *Elford v. City of Battle Ground*, 87 Wn. App. 229, 236-38, 941 P.2d 678 (1997). A

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

vivid example is the deceptive amendatory act in *Elford*, which amended a retirement benefits law to effectively deprive a certain category of public employees of their ability to sue their employers, but without expressly saying so. Instead, the new law obliquely stated: "The code reviser shall recodify RCW 41.26.058 … in chapter 41.26 RCW under the subchapter heading 'Plan I.'" *Id*. at 238. The effect of this recodification was to make the right to sue applicable only to Plan I members and not to Plan II members—but this was "impossible to determine" without reference to the amended retirement benefits law, which the act did not set forth.

By contrast, nothing in I-2081 is hidden, and nothing requires a reader to know the content of a different law. The rights afforded to parents in I-2081 are set forth fully and clearly on the face of the law, and it is therefore a complete act.

B. I-2081 Does Not Render Any Rights or Responsibilities Established in Prior Law Erroneous

I-2081 also passes the second prong of the section 37 test, because it does not fall within the narrow category of complete acts that nonetheless amount to fraud or deception. To the contrary, I-2081's purpose is clear, and its legal effect is obvious from the face of the act.

As the Supreme Court has made clear, section 37 *does not prohibit* complete acts that "enlarge or restrict the operation of some other statutes," even where the act does not make "direct reference" to those statutes. *Wash. Educ. Ass'n v. State*, 97 Wn. 2d 899, 906, 652 P.2d 1347 (1982) ("*WEA* II") (quoting *Spokane Grain & Fuel Co.*, 59 Wash. at 80-81); *see also Naccarato v. Sullivan*, 46 Wn. 2d 67, 75, 278 P.2d 641 (1955) (complete acts which "incidentally or impliedly amend prior acts" do not violate section 37). A complete act "may very well change prior acts and is exempt from the requirement of art. II, § 37," and opinions characterizing the step two inquiry as "whether the later enactment changes the prior act in scope and effect . . . too broadly state[] the test." *Amalgamated Transit Union Loc.*, 142 Wn. 2d at 251-52. The Court has specifically warned that "the second test for when a new enactment must comply with art. II, §

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

37 can sometimes be misleading," *id*. at 253, and "cautioned against too broad of an analysis for [a] section 37 violation." *Citizens for Responsible Wildlife Mgmt*., 149 Wn.2d at 641.

Consistent with section 37's purpose to prevent fraud and deception (*see Black*, 195 Wn.2d at 205), the State is only aware of *one* case where a complete act was nonetheless unconstitutionally amendatory—and there, the act did the opposite of what it appeared to do on its face. *El Centro De La Raza*, 192 Wn. 2d at 132. There, the act (which established charter schools) purported to give charter school employees collective bargaining rights, even though under the prior law they would have already had such rights. *Id.* Worse, "the Act actually significantly reduce[d] their existing [collective bargaining] power." *Id.* at 131. Thus, the act "produce[d] the exact harm article II, section 37 attempts to avoid," because without showing how it related to prior statutes, the text of the act appeared to give employees for the newly created charter schools collective bargaining rights, even though it actually shrunk the rights they would have had without the amendatory language. *See id.* at 131-32.

In contrast, the Washington Supreme Court has repeatedly upheld acts which changed the scope of prior laws in ways that were clear on the face of the act. *E.g.*, *Citizens for Responsible Wildlife Mgmt.*, 149 Wn. 2d at 644 (modification to existing law was "not of constitutional magnitude" because its "purpose was not hidden"); *In re King*, 146 Wn.2d 658, 667-68, 49 P.3d 854 (2002) (act restricting eligibility for early release of convicted prisoners did not unconstitutionally amend separate statute governing the means to earn early release); *State v. Thorne*, 129 Wn. 2d 736, 756-57, 921 P.2d 514 (1996) (act setting out new maximum penalty for persistent offenders was not an unconstitutional amendment of statute setting out maximum penalty for murder); *WEA* II, 97 Wn. 2d at 905-06 (even though new law altered procedural rights for community college personnel in reductions in force terminations, the new law's "infirmities [were] not of constitutional magnitude" because its "purpose was not hidden"); *In re Peterson's Estate*, 182 Wash. 29, 32, 45 P.2d 45 (1935) (act governing a survivor's right to a

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

joint bank account did not unconstitutionally amend prior statute on the same subject, though they were in conflict).

Here, I-2081 does not hide its true effect like the act in *El Centro De La Raza*, and is akin to those upheld in *Citizens for Responsible Wildlife Management*, *King*, *Thorne*, and *WEA* II. Its terms are clear, and no one could be deceived about its effect; thus, the initiative does not violate section 37. Plaintiffs' specific arguments are addressed below.

1. I-2081 does not unconstitutionally amend laws governing youth medical privacy

I-2081 does not amend any rights or responsibilities contained within chapter 70.02 RCW, which governs medical privacy in Washington. And, regardless, any incidental or implied amendment would not rise to a constitutional magnitude because the effect of I-2081 is clear.

I-2081 has two basic effects on students' medical privacy. First, it requires schools to disclose certain "public school records," including "medical or health records" and "records of any mental health counseling," to parents on request. RCW 28A.605.005(2)(b)(iv)(B), (C). As explained below, prior to I-2081's passage, state and federal law already required schools to disclose such records upon parental request. Second, it requires schools to notify parents when the school provides or arranges for certain student health care. RCW 28A.605.005(2)(c), (d), (e).

With certain exceptions, parents have had the longstanding right to student educational records containing medical information. RCW 28A.605.030 (entitling parents to student education records); 20 U.S.C. § 1232g(a)(1)(A) (same). They also have the broader right to medical information about their children not contained in "education records" because youth usually do not have the right to consent to medical treatment on their own. *See* RCW 26.28.010 (age of majority is 18 years old); RCW 70.02.130(1) ("A person authorized to consent to health care for another may exercise the rights of that person under this chapter to the extent necessary to effectuate the terms or purposes of the grant of authority."). However, in certain limited circumstances youth can consent to confidential medical care without their parents' permission.

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

RCW 70.02.130 ("If the patient is a minor and is authorized to consent to health care without parental consent under federal and state law, only the minor may exercise rights of a patient under this chapter as to information pertaining to health care to which the minor lawfully consented."); *see also* RCW 70.02.020 (prohibiting disclosure of "health care information" by a "health care provider"); RCW 70.02.010(17) (defining "health care information"). These limited circumstances include a minor's mental health care (RCW 71.34.500) and treatment for sexually transmitted diseases (RCW 70.24.100).

Plaintiffs assert that I-2081 violates section 37 because it requires schools to disclose student medical information to parents upon request regardless of whether the student has confidentiality rights under chapter 70.02 but does not contain the amended statutory text. Compl. ¶¶ 4.23–4.25. Plaintiffs are wrong for at least three reasons.

First, RCW 70.02.900 expressly disclaims applicability where disclosure is mandated by separate law, so chapter 70.02 RCW required no amendment. RCW 70.02.900 provides: "This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law." Thus, the Legislature expressly provided that any state or federal law that requires disclosure controls, and, in such circumstances, RCW 70.02 would not apply. The Legislature titled this section "conflicting laws," showing that the Legislature intended that specific laws mandating disclosure of health care information should take precedence over the general prohibition of such disclosures in chapter 70.02, regardless of where they are codified. Laws of 1991, ch. 335 § 901; *see also State v. Chhoom*, 162 Wn. 2d 451, 460 n. 3, 173 P.3d 234 (2007) ("[S]ection headings, which are adopted as part of a statute may be referred to as a source of legislative intent."). As such, any law outside of chapter 70.02, such as RCW 28A.605.030, that requires schools to disclose medical information, must be followed despite the otherwise-applicable restriction on disclosure in RCW 70.02.020.

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

I-2081 follows suit. It does nothing to amend RCW 70.02, which, by its own terms, already yields to any other law requiring disclosure.

In considering a section 37 challenge, the court will interpret statutes in a way that "achieve[s] a harmonious statutory scheme" and "avoid[s] . . . creat[ing] conflicts between different provisions." *Assoc. Gen. Contractors*, 2 Wn.3d at 863 (quoting *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 585, 588, 192 P.3d 306 (2008)). Here, reading the statutes together makes clear I-2081 does not impermissibly alter protections in chapter 70.02. RCW 28A.605.005 specifically requires schools to provide parents with certain records and notifications about a student's health care. Therefore, if a school employee is covered by RCW 70.02.020 (for example, a school nurse) but also required to disclose health care information to a student's parents under RCW 28A.605.005, RCW 70.02.900 permits that disclosure.

I-2081 was not required to rewrite RCW 70.02.900 to specifically reference I-2081, because RCW 70.02.900 already refers to any "federal or state law." Notably, I-2081 is not the only law imposing obligations on schools that take precedence over RCW 70.02's confidentiality provisions. As discussed above and further below, both state and federal education law already require schools to disclose health records to parents, and this applies equally to requests for records of treatment to which minors can independently consent under RCW 70.02. 20 U.S.C. § 1232g(a)(1)(A); RCW 28A.605.030.

Thorne is instructive. There, Initiative 593 set a new maximum penalty for persistent offenders (a so-called "three strikes" law). 129 Wn. 2d at 746. A criminal defendant, convicted of murder, challenged the law, arguing that it amended the maximum penalty for murder without setting out that statute in full. *Id.* at 755. After all, prior to I-593, his maximum sentence would have been governed by the more general murder statute, but afterwards it was governed by the initiative, which applied to a subset of murder convictions. The Court rejected the argument, holding that "[the law's] effect, to restrict the effect of the maximum penalty statute, is obvious

from the language which states that a life sentence is to be imposed on persistent offenders 'notwithstanding the maximum sentence under any other law.'" *Id.* at 756 (quoting from the voter's pamphlet in which I-593 appeared). In other words, it was constitutional for the initiative to modify the maximum penalty in one specific context, without amending the general statute which would have controlled otherwise.

Here, like in *Thorne*, the effect of I-2081 is obvious. The law requires public schools to provide certain documents and notifications to parents—regardless of whether those documents or notifications constitute health care information. And, like I-593's "notwithstanding" language, chapter 70.02 "does not restrict a health care provider . . . from complying with obligations imposed by . . . state law." RCW 70.02.900(1). Both here and in *Thorne*, the plain language of the two statutes makes clear how they interact. One does not need to read RCW 70.02 to understand that I-2081 requires disclosure of student medical records, and RCW 70.02 imposes privacy requirements *unless* another law, like I-2081, requires disclosure. *See Amalgamated Transit Union Loc. 587*, 142 Wn.2d at 252 ("[W]here the new law is independent, and no further search is required to know the law which the new act covers, the new act does not come within [section 37]."). The effect of I-2081 to require disclosure of student medical information is straightforward, it does not amend anything about chapter 70.02, and it was not required to set out any text from chapter 70.02 to comply with section 37.

Indeed, it is unclear what text in particular from chapter 70.02 RCW Plaintiffs think I-2081 was required to include. Should it have been RCW 70.02.900, to make it even more clear that I-2081 is a "federal or state law" that requires disclosure of otherwise confidential material? Or should it have been RCW 70.02.130, that extends confidentiality protections to minors in some cases? Or, as yet a third possibility, should it have been RCW 70.02.020, which contains the prohibition on disclosure of health care information for medical providers? In reality, none of these provisions needed to be set out in I-2081, because none of them were amended or needed to be amended.

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

Second, any alteration to the scope of rights in chapter 70.02 does not violate section 37. Plaintiffs' argument seems to be that "[i]n a certain sense," rights and responsibilities provided by chapter 70.02 "are rendered erroneous" by I-2081 because I-2081 mandates disclosure of information that otherwise would have been private. *See WEA* II, 97 Wn. 2d at 904. As discussed above, RCW 70.02.900 resolves any such conflict, meaning I-2081 does not "amend" RCW 70.02. But even regardless of RCW 70.02.900, I-2081 is a complete act and is fully comprehensible on its face. *Supra* § VI.A. Therefore, it will not be rendered unconstitutional unless its language achieves some hidden purpose, like the act at issue in *El Centro De La Raza*.

But I-2081 does not hide its purpose. To the contrary, it straightforwardly states that the records schools are required to produce include "[m]edical or health records" and "[r]ecords of any mental health counseling" (which federal and state law already required schools to produce). RCW 28A.605.005(2)(b)(iv)(B), (C). Similarly, it plainly requires that schools notify parents when providing "medical services" and "medical treatment." RCW 28A.605.005(2)(c), (d), (e). So, unlike the act in *El Centro De La Raza*, which appeared to grant bargaining rights but actually restricted them, I-2081 does exactly what it says on the tin: require schools to provide parents with their child's medical and mental health counseling records upon the parent's request and inform parents when the school administers or arranges medical treatment for their child.

Because its purpose and effect are clear, even if it alters preexisting law, I-2081 does so permissibly, like the laws at issue in *WEA* II and *Citizens for Responsible Wildlife Management*. In *WEA* II, the new law set out procedures for the termination of community college personnel based on reductions in workforce that differed from the procedures under previous law. 97 Wn. 2d 903-04. The Court first held that the law was a complete act. *Id.* at 904. Under the second prong of the test, even though the new law "rendered erroneous" existing "rights and duties" (*id.*), it was still constitutional because "[t]he purpose of [the law] is not hidden" (*id.* at 906). In *Citizens for Responsible Wildlife Management*, the new law required landowners who sought to

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

trap animals damaging their property to obtain a special permit, where a prior law allowed trapping without a license. 149 Wn. 2d at 643. But the Court held that the new law did "not alter preexisting rights or duties to an impermissible degree." *Id.*

I-2081 is even clearer than the laws at issue in *WEA* II or *Citizens for Responsible Wildlife Management*. In both of those cases, certain rights were altered, and there was no statutory text, either in the act or pre-existing law, explaining how the provisions interrelated. *WEA* II, 97 Wn. 2d at 905; *Citizens for Responsible Wildlife Mgmt.*, 149 Wn. 2d at 643. Here, RCW 70.02.900 specifically prioritizes disclosure obligations present in other law, like I-2081, such that the statutory text itself explains how I-2081's new provisions and chapter 70.02's pre-existing requirements interact. Therefore, the rationale employed by the Court in both of those cases should have even more force here. "The purpose of [I-2081] is not hidden and, to the extent it fails to articulate how it relates to [chapter 70.02 RCW], its infirmities are not of constitutional magnitude." *See Citizens for Responsible Wildlife Mgmt.*, 149 Wn. 2d at 644 (quoting *WEA* II, 97 Wn. 2d at 906).

Third, as to public school records, state and federal law already required their disclosure. RCW 28A.605.030, originally enacted in 1997 (Laws of 1997, ch. 119 § 1), provides: "The parent or guardian of a student who is or has been in attendance at a school has the right to review all education records of the student." This provision is designed to comply with the federal Family Educational and Privacy Rights Act (FERPA), codified at 20 U.S.C. § 1232g, which also requires, as a condition for the receipt of federal funds, that public schools must give parents "the right to inspect and review the education records of their children." 20 U.S.C. § 1232g(a)(1)(A). "Education records" under FERPA means "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). While "education records" does not include medical records for "a student who is eighteen years of age or older, or is attending an institution of postsecondary

education," no similar exception applies for students under the age of eighteen enrolled in kindergarten through twelfth grade. 20 U.S.C. § 1232g(a)(4)(B)(iv); *see also* U.S. Dept. of Health and Human Servs. & U.S. Dept. of Educ., Joint Guidance, 4 (2019) ("[A] student's health records, including immunization records, maintained by an educational agency or institution (such as by an elementary or secondary school nurse) would generally constitute education records subject to FERPA.").[11] Therefore, the "medical or health records" and "records of any mental health counseling" covered by I-2081 were already subject to disclosure under RCW 28A.605.030 and FERPA.

Plaintiffs argue that certain notes, excepted from the definition of "education records" under FERPA, must now be disclosed under I-2081 and therefore section 37 was violated. Plaintiffs' Reply in Support of Motion for Preliminary Injunction at 5. This narrow exception applies only to "records of instructional, supervisory, and administrative personnel," and does not apply to medical personnel, such as school nurses or counselors, who are subject to chapter 70.02. 20 U.S.C. § 1232g(a)(4)(B)(i); *see also* WAC 181-79A-140 (medical personnel employed by Washington public schools are "educational staff associates" and are not authorized to teach in or administer schools).

Further, the instructional, supervisory, and administrative personnels' notes excepted from FERPA must be kept "in the sole possession of the maker thereof" and may not be "accessible or revealed to any other person except a substitute." 20 U.S.C. § 1232g(a)(4)(B)(i). Even if a health care provider could be considered "instructional, supervisory, [or] administrative personnel," and they are not, the only notes excepted from FERPA's definition would be those taken solely for their own use and kept private except for use by a temporary substitute. *See* 34 C.F.R. § 99.3 (defining education records). If I-2081 requires the disclosure of those sorts of notes, and they were not subject to mandatory disclosure before, there is still no violation of

[11] Available at: https://www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance.pdf (last accessed Sept. 6, 2024).

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

section 37 because, as argued above, I-2081 is a complete act, does not alter prior law, and is not deceptive. *See supra* p. 15-18.

Moreover, the Washington Supreme Court has confirmed that courts must give statutes a reasonable construction that avoids constitutional doubt. *Utter v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 434, 341 P.3d 953 (2015). I-2081's required disclosure of public school records is constitutional because it does not impermissibly alter the scope of rights or responsibilities under chapter 70.02 RCW. But even if it could be so construed, there are at least two reasonable constructions of the statutes that would completely eliminate any constitutional doubt. First, RCW 28A.605.030 does not define "education records" and there is nothing stopping the Legislature from adopting a broader definition than exists in federal law. So, RCW 28A.605.030's "education records" could easily be construed to have the same meaning as "public school records" in I-2081. *See WEA* II, 97 Wn. 2d at 905 (holding that "general provisions implicitly provide for future legislation to give specificity to the definition of" statutory terms). Second, "public school records" as it is used in I-2081 can be construed synonymously with "education records" as that term is used in FERPA, including its exceptions for notes. In fact, RCW 28A.605.005(2)(a)(iv)(H) defines "public school records" as "[a]ny other student-specific files, documents, or other materials that are maintained by the public school," which is very similar to the definition of "education records" in FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). Both of these constructions are reasonable, and both would eliminate any question that I-2081 violates section 37 with respect to disclosures of records otherwise protected by medical confidentiality laws.

***

I-2081 did not unconstitutionally amend chapter 70.02 RCW. RCW 70.02.900 specifically permits disclosures required by other state law, including I-2081, and any incidental or implied amendment to rights and responsibilities in chapter 70.02 is not of constitutional magnitude because the effect of I-2081 is clear and its purpose is not hidden. With respect to

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

public school records, those records were already subject to mandatory disclosure by RCW 28A.605.030 and FERPA. I-2081 does not alter a straightforward determination of the scope of rights and responsibilities in prior law and is constitutional under section 37.

2. I-2081's requirement to provide records within ten business days is not an unconstitutional amendment

I-2081 requires that schools provide public school records within ten business days of the request. RCW 28A.605.005(2)(b)(i). Nothing in prior state law set out a different deadline for the provision of these records, and it was not a violation of section 37 for I-2081 to impose a ten business day deadline.

I-2081 did not amend RCW 28A.605.030, which requires "compliance with the family educational and privacy rights act." Nothing about I-2081 alters schools' obligation to comply with FERPA. To the contrary, FERPA provides only that student records be disclosed "within a reasonable period of time, but in no case more than forty-five days after the request has been made." 20 U.S.C. § 1232g(a)(1)(A). Further, FERPA specifically requires that "[e]ach educational agency or institution shall establish appropriate procedures" governing the disclosure of these records. *Id.* Washington's decision to establish a 10-day deadline for the disclosure of student records is merely an exercise of an option available under FERPA to define a reasonable time period. The U.S. Department of Education specifically recognizes that "[s]ome states have laws that may require that parents and eligible students be granted access in a shorter time period."[12]

I-2081's ten business day deadline therefore does not change any rights or responsibilities imposed by RCW 28A.605.030, but even if I-2081 could be so construed, it would not violate section 37. The legal effect is clear, and I-2081 is codified in the same chapter of the RCW as 28A.605.030, eliminating any potential for confusion. *See WEA* II, 97 Wn. 2d at

[12] U.S. Dept. of Educ., Protecting Student Privacy, https://studentprivacy.ed.gov/faq/how-long-does-educational-agency-or-institution-have-comply-request-view-records (last accessed Sept. 4, 2024).

906 (holding where new law "will be codified within [the same RCW chapter] and its modification of existing law should be apparent" no violation of section 37 was shown).

I-2081 also did not unconstitutionally amend the Public Records Act, which is the only other provision dealing with timelines for the disclosure of student records. RCW 42.56.520 requires a prompt response to public records requests, including an initial response within five business days. Nothing in chapter 42.56 provides that schools must disclose records on a longer timeline than ten business days. If anything, I-2081 is complementary to the Public Records Act's purpose of requiring a prompt disclosure of records, and not inconsistent with it. *See* RCW 42.56.030. It is not at all unusual for the law to mandate disclosure of specific records or information on short timelines. *See*, *e.g.*, RCW 46.12.725 (law enforcement agencies must provide notice within five days of impoundment of a vehicle); RCW 43.101.095 (requiring disclosure of law enforcement employment information within 30 days); RCW 26.44.030(6) (prosecutors must inform victims of certain crimes of charging decisions within five days). I-2081's ten-day deadline for disclosure of public school records does not violate section 37.

3. I-2081 does not unconstitutionally amend the law regarding parental notice and opt-out rights

Initiative 2081's notice and opt-out provisions are also constitutional. The initiative contains two opt-out provisions. The first pertains only to surveys, questionnaires, and similar activities that ask students questions seeking sensitive information, such as the mental health problems, religious beliefs, or political affiliations of the child or a family member. RCW 28A.605.005(2)(j). In doing so, the initiative mirrors federal law, which requires parental notice and opt-out for survey questions asking about eight similar "protected areas." *See* 20 U.S.C. § 1232h. The second gives parents the right to receive written notice and have the option to opt their child out of "instruction on topics associated with sexual activity in accordance with RCW 28A.300.475." RCW 28A.605.005(2)(k).

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

Neither of these provisions unconstitutionally amends existing state law. As an initial matter, the legislature's decision to expand the list of items for which notice and opt-out is required is perfectly constitutional. A "complete act that merely supplements prior acts or sections thereof without repealing them does not violate section 37." *Assoc. Gen. Contractors*, 2 Wn.3d at 865. There is no law setting forth an exclusive list of each topic or activity for which schools are required to provide parents with notice and out-out opportunities. Instead, when the Legislature requires schools to offer new educational programs, it also occasionally includes parental notice and opt-out provisions. For example, the statutes introducing sexual abuse prevention education included an opt-out provision in 1987 (RCW 28A.300.160(4); Laws of 1987, ch. 489, § 3(4)); AIDS education amendments included an opt-out provision in 1988 (RCW 28A.230.070(4); Laws of 1988, ch. 206, § 402(4)); and comprehensive sexual health education requirements included an opt-out provision in 2007 (RCW 28A.300.475(7); Laws of 2007, ch. 265, § (2)(6)).

Adding to this list does not amend any existing statutes, let alone violate section 37. Readers must "often . . . look to two or more acts to ascertain the full declaration of the legislative will," which poses no constitutional problem. *Amalgamated Transit Union Loc. 587*, 142 Wn.2d at 251 (quoting *Spokane Grain & Fuel Co.*, 59 Wash. at 84) (internal quotation marks omitted). "No one will for a moment doubt" the Legislature's ability to "exempt homesteads by one act, household goods by another . . . and so on"; it was "not [section 37's] object or purpose" to "compel the legislature to embody in a single enactment, or in amendments thereto, all legislation relating to a single subject." *Id*. (quoting *Spokane Grain & Fuel Co.*, 59 Wash. at 84) (internal quotation marks omitted).

For this reason, the initiative's provision covering surveys and questionnaires does not amend any state law. This provision requires written notice to parents and the opportunity to opt the child out of any surveys, questionnaires, role-playing, or similar assignments "that include questions about any of the following: (i) The child's sexual experiences or attractions; (ii) The

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

child's family beliefs, morality, religion, or political affiliations; (iii) Any mental health or psychological problems of the child or a family member; and (iv) All surveys, analyses, and evaluations subject to areas covered by the [federal] protection of pupil rights amendment[.]" RCW 28A.605.005(2)(j).

There is nothing in existing state statutes addressing school administration of surveys or other tools asking students for such sensitive information.[13] Instead, this provision mirrors (and explicitly references) federal law: specifically, the Protection of Pupil Rights Amendment (PPRA). The PPRA requires local education agencies receiving federal funds to provide parents with notice and the opportunity to opt out before administering surveys to students concerning eight protected areas: (1) political affiliations or beliefs of the student or student's parent; (2) mental or psychological problems of the student or student's family; (3) sex behavior or attitudes; (4) illegal, anti-social, self-incriminating, or demeaning behavior; (5) critical appraisals of others with whom respondents have close family relationships; (6) legally recognized privileges or analogous relationships, such as with lawyers, doctors, or ministers; (7) religious practices, affiliations, or beliefs of the student or student's parent; or (8) income, other than as required by law to determine program eligibility. 20 U.S.C. §§ 1232h(b); 1232h(c)(2)(A)-(C). As required by federal law (*id*. § 1232h(c)(1)), school districts already send out annual notifications of rights under that law, including specific surveys the district plans to administer and instructions on how to opt out.[14]

---

[13] There is a state regulation providing that "[n]o written or oral test, questionnaire, survey, or examination shall be used to elicit the personal beliefs or practices of a student or his parents as to religion except with the written consent of a parent or guardian." WAC 392-500-030; *see also* WAC 392-500-035 ("Each school district shall require that there shall be on file the written consent of the parent or guardian prior to the administering of any diagnostic personality test"). Of course, there is no requirement for legislative acts impacting administrative rules to set out the text of the rule. *See Citizens for Responsible Wildlife Mgmt.*, 149 Wn. 2d at 642.

[14] As one example, Seattle Public Schools has adopted Board Policy No. 3232 detailing the rights and obligations of the PPRA, noting that the district "will obtain informed consent from parents/guardians and adult or emancipated minor students in every situation wherein funding from the U.S. Department of Education is used, and which reveals student information concerning" the eight protected areas. Seattle Public Schools also states that it will provide the same notification and opt-out opportunities for these eight categories even where collection of the data is not federally funded. *See* Seattle Public Schools, *Parent/Guardian & Student Rights in Administration of*

I-2081 explicitly adopts the PPRA's eight protected areas into state law (*see* RCW 28A.605.005(2)(j)(4)), and adds three similar categories: the child's sexual experiences or attractions (mirroring the PPRA protected area of "sex behavior or attitudes"); "any mental health or psychological problems of the child or a family member" (mirroring the PPRA's "mental or psychological problems of the student or student's family"); and "the child's family beliefs, morality, religion, or political affiliations" (similar to the PPRA's protected areas of "political affiliations or beliefs of the student or student's parent" and "religious practices, affiliations, or beliefs of the student or student's parent"). The PPRA does not preclude states from adopting similar opt-out provisions; to the contrary, it specifically states that it "shall not be construed to preempt applicable provisions of State law that require parental notification." *Id.* § 1232h(c)(4)(B). More to the point, under the only inquiry relevant to section 37, there are no existing rights or duties in state law that this provision renders erroneous.

In addition to the survey provision, the initiative also gives parents the right to "receive written notice and have the option to opt their child out of instruction on topics associated with sexual activity in accordance with RCW 28A.300.475." RCW 28A.605.005(2)(k). RCW 28A.300.475, in turn, already provides that public schools must provide parents the right to opt their child out of "comprehensive sexual health education," defined as "instruction in human development and reproduction that is age-appropriate and inclusive of all students" and that meets certain statutory requirements. RCW 28A.300.475(7)(a); RCW 28A.300.475(11)(b). Plaintiffs suggest that "topics associated with sexual activity" may be read more broadly than "comprehensive sexual health education." Dkt. No. 1 ¶¶ 4.37-4:39. Even if this provision were read to create a new opt-out provision for any topics associated with sexual activity, it would not

---

Surveys, Analysis or Evaluation, Policy No. 3232 (Aug. 29, 2019), https://www.seattleschools.org/wp-content/uploads/2021/07/3232.pdf. Seattle Public Schools's annual PPRA notification of rights for the 2024-2025 school year is available at: https://www.seattleschools.org/about/official-notices/protection-of-pupil-rights-amendment/.

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

violate section 37 because there is nothing in existing law preventing the legislature from adding to the list of topics requiring notice and opt-out.

In any event, Plaintiffs' interpretation is belied by the plain language of the initiative, which refers to "instruction on topics associated with sexual activity *in accordance with RCW 28A.300.475*." RCW 28A.605.005(2)(k) (emphasis added). Plaintiffs' interpretation would render the phrase "in accordance with RCW 28A.300.475" meaningless. But "[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Spokane Cty. v. Dep't of Fish & Wildlife*, 192 Wn.2d 453, 458, 430 P.3d 655 (2018). Moreover, given the initiative's direct reference to RCW 28A.300.475 and the mandate to read statutes harmoniously, this provision is best interpreted to apply to the "instruction in human development and reproduction" defined in RCW 28A.300.475. *See Am. Legion Post No. 149*, 164 Wn.2d at 588.

RCW 28A.300.475 creates rights for parents to review sexual education curriculum and to opt their children out, but it does not specifically create a right to written notice. The initiative adds comprehensive sexual health education to those items triggering a written notice requirement, *see* RCW 28A.605.005(2)(k), but this does not unconstitutionally amend RCW 28A.300.475 because its effect on that statute is obvious. The Washington Supreme Court is clear that the crux of section 37 is whether the act "*inform[s]* readers how the statute is impacting or modifying a straightforward determination of the scope of rights and duties created by those other statutes." *Black*, 195 Wn.2d at 210 (emphasis added). This is because, as explained above (*see supra* 12-13) section 37 "does not apply in all cases where a new act in effect, amends another; where the new law is independent, and no further search is required to know the law which the new act covers, the new act does not come within the constitutional provision." *Amalgamated Transit Union Loc. 587*, 142 Wn.2d at 252.

For this reason, the act in *Black* was constitutional because it directly referenced the existing statutes (specifically, depreciation schedules) that it affected and made clear how those

schedules interacted with the act at issue. *See Black*, 195 Wn.2d at 211-12. The act itself "provide[d] all the necessary information readers must know to understand their rights affected by the" act. *Id*. at 213. By contrast, the act struck down in *El Centro de la Raza* deceptively modified collective bargaining laws but "did not list out which collective bargaining laws were affected," keeping the public in the dark. *Black*, 195 Wn.2d at 211 (citing *El Centro de la Raza*, 192 Wn.2d at 131-32). This would have required the reader to "conduct a 'thorough search of existing laws' that are unreferenced to understand the statute's effect." *Id*. at 212 (quoting *El Centro de la Raza*, 192 Wn.2d at 131-32); *see also id.* at 212 (court previously struck down proviso because "'[i]n order to understand the effect of the limitation, one must refer to' other provisions that were not listed anywhere in the act.") (quoting *Wash. Educ. Ass'n*, 93 Wn.2d at 40-41.

Like the act in *Black*, and unlike the act in *El Centro de la Raza*, the initiative here directly references the existing statute, it does not "require research into unreferenced statutes" (*Black*, 195 Wn.2d at 210), and its effect is clear from the face of the initiative: parents are entitled to written notice (and, as already provided in law, to opt-out) of sexual education provided in accordance with RCW 28A.300.475. There is no section 37 violation under well-settled law.

4. I-2081 did not unconstitutionally amend prior law regarding notification that a young person is staying at a youth shelter

I-2081's requirement that schools give parents immediate notification "if their child is taken or removed from the public school campus without parental permission, including to stay at a youth shelter or 'host home'" (RCW 28A.605.005(h)), does not render preexisting laws that govern other entities erroneous.

I-2081 does not "frustrate[]" RCW 13.32.082 (Compl. ¶ 4.30), since RCW 13.32.082 imposes parental notification obligations on youth shelters and the Department of Children, Youth, and Families, and I-2081 only applies to public schools. *Compare* RCW 13.32A.082 (requiring youth shelters and the Department of Children, Youth, and Families to provide

parental notifications in most circumstances and providing for exceptions from the parental notification requirement in others) *with* RCW 28A.605.005(h) (requiring public schools to notify parents when children are removed from the school). It is not uncommon for the Legislature to require different things of different entities, and there is nothing unconstitutional about requiring schools to notify parents when their children leave school to go to a youth shelter, even if the youth shelter itself has no duty to do so. RCW 13.32A.082 speaks to youth shelters and a state agency. RCW 28A.605.050(h) speaks to public schools. I-2081, therefore, does not violate section 37. *See In re King*, 146 Wn. 2d at 667-68 (holding that where "statutes apply to entirely different government actors" section 37 was not violated).

Further, I-2081 requires no more than what state and federal law already make accessible to parents upon request. A school's knowledge that an unaccompanied youth lives at (and is transported to or from) a shelter is already, by definition, a student education record under FERPA, and thus disclosable to parents. 42 U.S.C. § 11432(g)(3)(G) ("Information about a homeless child's or youth's living situation shall be treated as a student education record. . . ."); 34 C.F.R. § 99.4. Requiring parental notification when a student leaves school to go to a shelter is also consistent with other state law. If law enforcement reaches out to a school to assist parents in trying to find their runaway child, school employees have been legally required to disclose the child's known whereabouts for at least 20 years. RCW 13.32A.080.

Accordingly, it is not surprising that I-2081 is also consistent with the Legislature's longstanding policy considerations, including that "parents of runaway youth have an interest in knowing their sons and daughters are safe in a shelter, rather than on the streets without protection" and "that law enforcement and the department can notify a parent that the youth is safe, without disclosing the youth's location or compromising the ability of youth services providers to effectively assist youth in crisis." Laws of 2010, ch. 229 § 1. Simply put, I-2081 complements, and does not render erroneous, preexisting law.

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

5. Plaintiffs' remaining arguments lack merit

Plaintiffs' complaint raises alleged violations of section 37 not previously briefed, including an allegation that I-2081 "elevat[es] religious rights over others" (Compl. ¶ 4.39) and that its "vague language" "makes it impossible to identify all the laws it impacts" (Compl. ¶ 4.40). Neither of these allegations have merit.

I-2081 gives parents the right "[t]o receive assurance that their child's public school will not discriminate against their child based upon the sincerely held religious beliefs of the child's family in accordance with chapter 28A.642 RCW." RCW 28A.605.005(2)(i). This does not, of course, render erroneous any pre-existing Washington law, and is complementary of RCW 28A.642.010, RCW 49.60.030, article I, section 11 of the Washington Constitution, and the First Amendment. Restating the right of public school students to be free from religious discrimination does not amend any other anti-discrimination law—just as, for example, a law requiring public school student assessments to be free from bias "toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender" (RCW 28A.655.070(10)) does not conflict with antidiscrimination law by "elevating" racial, ethnic, and gender-based rights "over others."

With respect to I-2081's allegedly "vague language," Plaintiffs have the burden to show that a law is unconstitutional. *Woods* 197 Wash. 2d at 239. Here, Plaintiffs fail to meet their burden by refusing to identify in what way I-2081 allegedly violates section 37.

VII. CONCLUSION

The Court should grant summary judgment to the State.

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

DATED this 18th day of September 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 10,156 words, in compliance with the Order Granting Stipulated Motion for Briefing Schedule on Cross Motions for Summary Judgment and Oral Argument, signed Aug. 7, 2024, entered as Dkt. No. 104.

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

Austin Hatcher
Pete S. Serrano
Emily Ling
Silent Majority Foundation
5238 Outlet Dr.
Pasco, WA 99301
austin@smfjb.org
pete@smfjb.org
emily@smfjb.org
Counsel for Intervener-Defendants

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

DATED this 18th day of September 2024, at Olympia, Washington.

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