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

TIM EYMAN Plaintiff, vs. KIM WYMAN, in her capacity as the Secretary of State; THE STATE OF WASHINGTON; THE WASHINGTON STATE LEGISLATURE, Defendants.	NO. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR ISSUANCE OF WRIT OF MANDAMUS, SEEKING TO ENFORCE THE CONSTITUTIONAL AND VOTING RIGHTS OF WASHINGTON STATE CITIZENS AND SUPPORTERS OF THE CONSTITUTION AND THE PEOPLE'S RIGHT TO INITIATIVE

1.0 INTRODUCTION

1.1 On Thursday, March 8, 2018, the Legislature effectively eliminated initiatives to the legislature even though they are a guaranteed right under the state Constitution. Their scheme was well-described in a News Tribune story: "The measure is expected *to stop Initiative 940 from reaching the November ballot* and implement the new bill instead, which tweaks the initiative's sweeping reforms … The strategy took some

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legislative hopscotch to skirt constitutional rules restricting how lawmakers can amend initiatives to the Legislature."[1]

1.2 There's a more succinct way to describe what legislators did: they violated the Constitution. Plaintiff asks the court to not let them get away with it.

1.3 From an Associated Press story on Friday: "… concerns remain about the constitutionality of the way lawmakers approved it. Many said that under the state Constitution, the compromise measure and the original proposal should both appear on the November ballot."[2] Plaintiff asks the court to correct their error and order that both measures be put on the ballot and let the voters decide.

1.4 COMES NOW, Tim Eyman, asserting standing as a voter and a taxpayer and present the following claims for declaratory, injunctive and additional relief, and for issuance of a Writ of Mandamus.

2.0 PRELIMINARY STATEMENT OF APPLICABLE FACTS

2.1 359,895 registered Washington state voters signed petitions to put Initiative 940 before the 2018 Legislature. The measure seeks legislative changes regarding law enforcement. A true and correct copy of Initiative 940 is attached to this Complaint as "Attachment A".

2.2 Instead of following the Constitution and abiding by the requirements for initiatives to the legislature, the Legislature went rogue, disrespecting the initiative petition signers and preventing voters from exercising their right to vote.

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[1] Source: The News Tribune, March 9, 2018, https://tinyurl.com/ybepu42y
[2] Source: Associated Press, March 8, 2018, https://tinyurl.com/yadrlcfl

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2.3 Rather than proposing an alternative to the initiative and allowing the people to make this choice in November, the Legislature engaged in a protracted, convoluted, too-clever-by-half effort to rob the people of the chance to vote for the original initiative or the Legislature's alternative Engrossed Substitute House Bill 3003 (hereafter referred to as ESHB 3003. A true and correct copy of ESHB 3003 is attached to this Complaint as "Attachment B".

2.4 This is wrong and must not be allowed to stand.

2.5 The state Constitution is very clear what the Legislature must do when citizens qualify an initiative to the legislature. They can take no action (or reject the initiative) and the initiative automatically appears on the November ballot. They can adopt the initiative "without change" and it becomes law as soon as the House and Senate pass it (no governor's signature required). Or they can put the Legislature's alternative on the ballot side-by-side with the initiative and let the voters choose between them. Here, the Legislature instead manufactured an extra constitutional fourth alternative, robbing the people of their right to vote by adopting the initiative and then amending it with ESHB 3003. Their actions are an illegal and unconstitutional corruption of the initiative process.

2.6 Unless enjoined now, the Legislature will have succeeded in unprecedented tampering with language endorsed by 359,895 registered voters and in permanently altering the people's constitutional right to do an initiative to the legislature without legislative interference.

2.7 In his senate floor speech on ESHB 3003, Senator Phil Fortunato highlighted one of the many problems with this manufactured process: "So I agree with Senator

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Dhingra this is a good piece of legislation. I just simply don't know what piece of legislation, which piece of law, this amends. We are amending something in the future that hasn't happened yet … It changes something we have not done yet. The initiative has not passed yet. So we are changing something that hasn't happened yet. How are we supposed to vote on that?" (TVW recording: https://tinyurl.y9qrcv95)

2.8 And Senator Mike Padden, in his floor speech, summarized the situation very well: "It's just the method we're going to take. And this method, the good gentleman from the 43rd district indicated in our committee, the Law and Justice committee, that it was precedent-setting and may also result in future initiatives to the legislature being handled this way. And that's what troubles me. Because even though I strongly agree with the policy, I think that people who go to get signatures, I think there were actually 350,000 some signatures to put this initiative to the legislature with the understanding that there were three possible outcomes. Either the Legislature would adopt it in its entirety and it would become law. Or, that the Legislature would reject it, or not take action on it and it would go to the people for a vote at the general election in November. Or, that the people would send that measure, Initiative 940, and an alternative to the ballot. And while I agree that it may be divisive, it may be troubling, it may be inconvenient, it may cost a lot of money for both sides to get their message out to the people, that's what the initiative process is all about. *And I think it is somewhat presumptuous for those of us here to change that process by coming up with a fourth alternative when the Constitution says there's only three.* I mean, in the Constitution, in our state especially, it talks about the people and the people's rights. And we're here as representatives of the people. I don't

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think we're here to reduce the people's rights. And I'm afraid that what this process does, again, great policy, it's tremendous that both sides were able to get together and come up with this ... But unfortunately, I think our greater duty is to the people and to protect the sanctity of the initiative process and protect the Constitution." (TVW recording: https://tinyurl.com/y9qtbrtu).

2.9 Allen Hayward, former Chief Clerk for the House of Representatives and a student of the state Constitution, state history, and legislative process wrote on his Facebook post: "As a fan of the legislative process over the Initiative process I kind of wish the plan was constitutional. But alas, when someone tells you they have come up with an idea that sounds too good to be true. It probably ain't true. The legislature passed ESHB 3003 as an amended Initiative 940. They argue that neither Initiative 940 or the alternative bill ESHB 3003 will appear on the 2018 ballot because the issue had been solved. They do recognize the constitution requires that an Initiative passed by the legislature as they claim to have done with I-940 must be available for voter referendum. Under the legislature's argument the only way that the proponents of Initiative 940 can get their ballot certified initiative on the 2018 ballot is if they now file a referendum petition and gather the necessary signatures for that referendum to go forward. *It is absurd to suggest that if an Initiative has qualified for the ballot as I-940 has, and the legislature did not pass it without amendment, that the only way supporters can get a clean vote on their initiative is to file more signatures.* While I might personally like the result in this instance, the process is both absurd and unconstitutional. I believe that the Supreme Court may very well order, if it is asked to rule, that both the I-940 and ESHB 3003 will appear on the

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2018 ballot, with the latter being the alternative to the Initiative." (Source: Washington State Wire, March 9, 2018, "I-940 and HB 3003: From unconstitutional to a mockery in twenty-four hours" https://tinyurl.com/yb87c7oz).

2.10 The Emperor has no clothes.

2.11 More than two centuries ago in The Social Contract, Jean Jacques Rousseau observed that "in order that the social pact shall not be an empty formula, it is tacitly implied in the commitment—*which alone can give force to all others*—that whoever refuses to obey the general will shall be constrained to do so by the whole body. ….. it is the condition which shapes both the design and the working of the political machine, and which alone bestows justice on civil contracts. *Without it, such contracts would be absurd, tyrannical and liable to the grossest abuse*."[3]

2.12 Rousseau's fundamental observation on the nature of the relationship between government and governed is neither archaic nor inconsequential. The validity of democratic government and the required constraint of the actors—political leaders and elected officials—within institutions of government, to act within the law and not to change the "rules of the game" which form the basis of the contract between citizen and government, is critical to the on-going legitimacy of government. If an official or legislative body acts illegally once, the bounds of what is permissible expand and future political tampering with fundamental constraints required for democratic governance become easier and are eventually tolerated in a redefined system that eventually tolerates

[3] Rousseau, Jean-Jacques, *The Social Contract* , "Book 1, Chapter 7, The Social Pact". First published 1762: Translation: Maurice Cranston (1968); London; Penguin (1968).

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such action. ."[4] Under the longstanding doctrine first announced in *Marbury v. Madison,* 1 Cranch 137, 177, 2 L.Ed 60 (1803), "...it is the province and duty of the judicial department to say what the law is".

2.13 The most disturbing aspect of the Legislature's changes to Initiative 940 specifically, and to initiatives to the legislature generally, is the precedent it sets unless the Court intervenes. If legislators succeed in *modifying* an initiative this time, there is no legal justification to stop them from *completely eliminating* an initiative next time. If the Legislature's changes to this initiative, and to the initiative process generally, are allowed to stand, no future initiative to the legislature will be safe from this type of interference.

2.14 Accordingly, Plaintiff's claims and request for relief follow.

3.0 PLAINTIFF HAS STANDING AS A TAXPAYER AND A VOTER

3.1 Taxpayer standing is asserted by plaintiff, and it is frequently recognized for these purposes. *State ex rel. Tattersall v. Yelle,* 52 Wn.2d 856, 859, 329 P.2d 841 (1958). Standing has long been recognized to challenge governmental acts on the basis of status as a taxpayer. See, e.g., *Tacoma v. O'Brien,* 85 Wn.2d 266, 269, 534 P.2d 114 (1975); *Calvary Bible Presbyterian Church v. Board of Regents,* 72 Wn.2d 912, 917-18, 436 P.2d 189 (1967), *cert. denied*, 393 U.S. 960 (1968); *Fransen v. Board of Natural Resources,* 66 Wn.2d 672, 404 P.2d 432 (1965).

3.2 Plaintiff seeks declaratory judgment pursuant to RCW 7.24.020, as a voter, a taxpayer, and a person whose rights, status or other legal relations are affected by

[4] Hay, Colin, "Structure and Agency". From: Theory and Methods in Political Science). New York, St. Martin's Press (1995).

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Initiative 940 and ESHB 3003, and who is aggrieved as a voter with the Legislature ignoring the clear language of the state Constitution and preventing a public vote on an initiative that was rejected by the Legislature and therefore had qualified for such a vote. As a consequence, the action is ripe for review.

4.0 PARTIES

4.1 Plaintiff Tim Eyman is now and at all times pertinent to the subject matter of this lawsuit has been a registered voter and was also a plaintiff in a case that is shockingly similar to the instant case. In 2003, after the King County Corrections Guild qualified their initiative to reduce the size of the King County Council from 13 members to nine, the King County Council adopted the initiative "as is." But, at a different council meeting months later, before the public vote on the initiative was held, they altered it (delaying its' implementation date by two years). Calling the Council's action into doubt, then King County Councilmember Bob Ferguson opined: "I think we're swimming in shark-infested waters. I would advise against it."[5] The County Council's attorney, James Brewer, appeared to acknowledge the questionable legal footing of the Council's action, adding that the Council had moved into legally "uncharted territory".

4.2 Similar to the instant case, the initiative's sponsors and financial backers accepted the change. But Tim Eyman and others, recognizing the dangerous precedent this would set, sued the King County Council in Snohomish County Superior Court on August 2, 2004 *on behalf of the 71,000 voters who had signed petitions endorsing only the proposed*

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[5] Source: The Seattle Times, July 20, 2004, Reporter: Keith Ervin.

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language printed on the back of those petitions. On September 9, 2004, after listening to two hours of oral argument, Snohomish County Superior Court Judge James H. Allendoerfer ruled, "I begin with the concept of initiatives generally. Our state Constitution, in Article 2 Section 1(a), states that 'the first power reserved by the people is the initiative.' Our state Supreme Court has stated that 'the power of initiative is one of the foremost rights of the citizens.' ... Our state Supreme Court has recognized the initiative power of the citizens as the power of exercising sovereign authority over their governance. ... During the political process in anticipation of the election, an ordinance proposing a charter amendment should not be subject to amendment ... Such proposals are an exercise of the people's sovereign authority, and must be submitted to the electorate without revisions thought to be more appropriate or more politically correct by government officials. ... In the instant case, Initiative 18 asked the King County Council to let the voters decide upon a charter amendment. The King County Council responded favorably and passed Ordinance 14767 adopting that proposal as their own. ... Ten months later, the King County Council adopted Ordinance 14965, attempting to amend their previous favorable response to Initiative 18. I find that the County Council acted improperly. They acted during the political window of time when they should have been campaigning either for or against the charter amendment that had been proposed by the people. This was not a time to be tampering with the language of a proposal that was already in the political arena. The King County Council was, in effect, intruding upon the initiative process. ... I find that the King County Council crossed that line from a legislative standpoint when, after they had passed Ordinance 14767 and had placed a charter amendment on the ballot for November 2004, they intruded into the

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initiative process and tried to change the language of the proposal after-the-fact. I find that to be legally ineffective. … If the persons who sign initiatives in King County are exercising the sovereign power of being a legislative authority parallel to the sovereign power of the King County Council itself, it's my conclusion that the King County Council can't change, or tweak, or tamper with the language that the initiative authors settled upon. … So it is my ruling that the charter amendment proposed by the initiative, which is now in the form of Ordinance 14767, will go to the voters on November 2, 2004 as it's written with all its alleged flaws. It is further the order of this Court that the charter amendment as proposed by the King County Council in Ordinance 14965 will also go to the voters on November 2, 2004. The political process as contemplated by those who wrote the state Constitution and those who wrote the King County Charter will now go into effect, and it's appropriate that in the political arena these two alternative proposals will be dissected and compared to one another and arguments will be dissected and compared to one another and arguments will be made for and against the same. I'm declining to intrude on that process, and I am signing a writ of mandamus which prohibits the King County Council from intruding on that process either." A true and correct certified copy of the "TRANSCRIPT OF PROCEEDINGS, Court's Ruling" is attached to this Complaint as "Attachment C". A true and correct certified copy of the signed WRIT OF MANDAMUS ON ORDER TO SHOW CAUSE AND ALTERNATIVE WRIT (RCW 7.16.160 Et Seq.) is attached to this Complaint as "Attachment D".

4.3 It is certainly analogous to the instant case. But here, the Legislature has been even more audacious – unlike the King County Council, the Legislature is not letting the

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voters decide on the modified version ESHB 3003, they've unilaterally adopted it themselves. And the King County Council at least changed the initiative months later at a different council session, while this Legislature has passed Initiative 940 and amended it with ESHB 3003 in the same session.

4.4 Plaintiff acknowledges that a Thurston County judge is in no way bound by a ruling by a Snohomish County judge. That 2004 case is not controlling, but it is persuasive and worthy of judicial notice.

4.5 Also worthy of judicial notice is a very relevant Attorney General's opinion AGO 1971 No. 5 (http://www.atg.wa.gov/print/7530). It makes clear that the legislature has three options with regard to an initiative to the legislature: (1) adopt the initiative as proposed; (2) reject or do nothing, in which case the initiative will be placed on the ballot; or (3) approve an alternative, in which case both the original proposal and the alternative must be placed on the ballot. Question (1) addresses whether the legislature may make any change to an initiative to the legislature without being required to submit the altered version to the ballot; the opinion clearly states that "any alteration in the text of an initiative to the legislature would … of necessity constitute a rejection of the initiative and a proposal of an alternative measure on the same subject." A true and correct copy of Attorney General's opinion AGO 1971 No. 5 is attached to this Complaint as "Attachment E".

5.0 JURISDICTION AND VENUE

5.1 The Plaintiff presents claims requiring adjudication of the infringements upon the constitutional rights of Washington state voters affected by the wrongful actions of named Defendants. This Court has subject matter jurisdiction over the Plaintiff's claims for

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declaratory relief under authority of RCW 7.24.010, and subject matter jurisdiction over the Plaintiff's claims for injunctive relief pursuant to RCW 7.40.020. This Court has subject matter jurisdiction to issue a Writ of Mandamus pursuant to RCW 7.16.150 et seq, as there is no alternative adequate remedy at law.

5.2 Venue is proper in Thurston County Superior Court as this action involves claims against the State of Washington, the Washington State Legislature, and agencies therein and within Thurston county.

6.0 ALLEGATIONS OF FACTS RELATED TO CLAIMS

6.1 Prior to the deadline for submission of initiative petitions, 359,895 registered voters in the state of Washington signed petitions for Initiative 940. Initiative 940 had been filed and signatures submitted for its timely consideration by the 2018 Legislature.

6.2 Under the authority of the state Constitution, the only options available to the Legislature were: (1) accept "without change" Initiative 940; (2) take no legislative action or reject Initiative 940 which would result in an unaltered Initiative 940 appearing on the November ballot; or (3) place a competing measure alongside Initiative 940 on the ballot for the voters to choose from.

6.3 Contrary to law, including, *inter alia*, provisions of the Washington state Constitution, the Legislature adopted Initiative 940 and then modified it with ESHB 3003. The Legislature's actions negate the rights of the voters to vote on the original initiative or the Legislature's alternative. Rather than letting the voters decide, the Legislature decided for them.

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6.4 The actions of the Defendants State of Washington and the Washington State Legislature complained of herein were committed in violation of existing law, including, without limitation, the Washington State Constitution.

7.0 CLAIM FOR DECLARATORY RELIEF

7.1 The allegations contained within the foregoing Sections I, II and III are incorporated here by reference as though fully repeated.

7.2 The remedies available at law to Plaintiff are inadequate.

7.3 Plaintiff is entitled to a declaratory judgment and decree, pursuant to RCW 7.24.010, et seq, which declares any and all action by Defendants State of Washington and the Washington State Legislature and its members resulting in the alteration or change of the language of Initiative 940 in the form attached to this Complaint as "Attachment A" to be void *ab inititio*, without effect, and contrary to the Constitution and the laws of the State of Washington.

8.0 CLAIM FOR DECLARATORY RELIEF

8.1 The allegations contained within the foregoing Sections I, II, III and IV are incorporated here by reference as though fully repeated.

8.2 The remedies available at law to Plaintiff are inadequate.

8.3 Plaintiff is entitled to injunctive relief, pursuant to RCW 7.40.020 et seq., which temporarily and permanently restrains and enjoins Defendants State of Washington, Washington State Legislature and its Members, and Defendant Kim Wyman from placing on any electoral ballot any initiative measure or other proposed measure under or associated with the identifying name "Initiative 940" other than the proposed measure

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containing original measure language, in the form attached to this Complaint as "Attachment A" alongside the Legislature's alternative Engrossed Substitute Senate Bill 3003, in the form attached to this Complaint as "Attachment B".

9.0 REQUEST FOR ISSUANCE OF WRIT OF MANDAMUS

9.1 The allegations contained within the foregoing Sections I, II, III, IV and V are incorporated here by reference as though fully repeated.

9.2 The remedies available at law to Plaintiff are inadequate.

9.3 Plaintiff is entitled to issuance of a Writ of Mandamus pursuant to RCW 7.16.150, et seq, which instructs and compels Defendant Kim Wyman to place on the November 2018 General Election ballot the original form and language of Initiative 940 as filed with the Office of Secretary of State (Attachment A) alongside the Legislature's alternative Engrossed Substitute Senate Bill 3003 (Attachment B).

10.0 REQUEST FOR RELIEF

10.1 As noted above, the most disturbing aspect of the Washington State Legislature's actions is the precedent it sets unless the Court intervenes. If the members of the Legislature accomplish their *modification* of Initiative 940 contrary to the state Constitution, there is no legal justification to stop them from *completely eliminating* a future initiative to the Legislature. If the Legislature's changes to the hundred plus year procedures for processing initiatives to the legislature, *no future initiative to the legislature will be safe from the Legislature's interference.*

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10.2 WHEREFORE, Plaintiff requests that the Court enter such declaratory, injunctive and other relief as is contained and set forth in the within and foregoing Complaint, including, without limitation the following:

A. A declaratory judgment and decree, pursuant to RCW 7.24.010, et seq, which declares any and all action by Defendants State of Washington and the Washington State Legislature and its members resulting in the alteration or change of the language of Initiative 940 in the form attached to this Complaint as "Attachment A" to be void *ab inititio*, without effect, and contrary to the Constitution and the laws of the State of Washington;

B. Injunctive relief, pursuant to RCW 7.40.020 et seq., which temporarily and permanently restrains and enjoins Defendants State of Washington, the Washington State Legislature and its members, and Defendant Kim Wyman from placing on any electoral ballot any initiative measure or other proposed measure under or associated with the identifying name "Initiative 940" other than the proposed measure containing original measure language, in the form attached to this Complaint as "Attachment A", alongside the Legislature's alternative ESHB 3003, in the form attached to this Complaint as "Attachment B";

C. Issuance of a Writ of Mandamus pursuant to RCW 7.16.150, et seq, which instructs and compels Defendant Kim Wyman to place on the November 2018 General Election ballot the original form and language of Initiative 940 as filed with the Office of Secretary of State, in the form attached to this Complaint as "Attachment A", alongside the

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Legislature's alternative ESHB 3003, in the form attached to this Complaint as "Attachment B".

DATED this 12th day of March 2018.

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Attachment A

Initiative Measure No. 940, filed May 23, 2017

LAW ENFORCEMENT VERSION 2

(DRAFT SUBMISSION)

AN ACT Relating to law enforcement; amending RCW 9A.16.040; adding new sections to chapter 43.101 RCW; adding new sections to chapter 36.28A RCW; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

PART I

TITLE AND INTENT

NEW SECTION. **Sec. 1.** This act may be known and cited as the law enforcement training and community safety act.

NEW SECTION. **Sec. 2.** The intent of the people in enacting this act is to make our communities safer. This is accomplished by requiring law enforcement officers to obtain violence de-escalation and mental health training, so that officers will have greater skills to resolve conflicts without the use of physical or deadly force. Law enforcement officers will receive first aid training and be required to render first aid, which will save lives and be a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts. Finally, the initiative adopts a "good faith" standard for officer criminal liability in those exceptional circumstances where deadly force is used, so that officers using deadly force in carrying out their duties in good faith will not face prosecution.

PART II

REQUIRING LAW ENFORCEMENT OFFICERS TO RECEIVE VIOLENCE DE-ESCALATION TRAINING

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.101 RCW to read as follows:

(1) Beginning one year after the effective date of this section, all law enforcement officers in the state of Washington must receive violence de-escalation training. Law enforcement officers beginning employment after the effective date of this section must successfully complete such training within the first fifteen months of employment. The commission shall set the date by which other law enforcement officers must successfully complete such training.

(2) All law enforcement officers shall periodically receive continuing violence de-escalation training to practice their skills, update their knowledge and training, and learn about new legal requirements and violence de-escalation strategies.

(3) The commission shall set training requirements through the procedures in section 5 of this act.

PART III

REQUIRING LAW ENFORCEMENT OFFICERS TO RECEIVE MENTAL HEALTH TRAINING

NEW SECTION. **Sec. 4.** A new section is added to chapter 43.101 RCW to read as follows:

(1) Beginning one year after the effective date of this section, all law enforcement officers in the state of Washington must receive mental health training. Law enforcement officers beginning employment after the effective date of this section must successfully complete such training within the first fifteen months of employment. The commission shall set the date by which other law enforcement officers must successfully complete such training.

(2) All law enforcement officers shall periodically receive continuing mental health training to update their knowledge about mental health issues and associated legal requirements, and to update and practice skills for interacting with people with mental health issues.

(3) The commission shall set training requirements through the procedures in section 5 of this act.

PART IV

TRAINING REQUIREMENTS SHALL BE SET IN CONSULTATION WITH LAW ENFORCEMENT AND COMMUNITY STAKEHOLDERS

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.101 RCW to read as follows:

(1) Within six months after the effective date of this section, the commission must consult with law enforcement agencies and community stakeholders and adopt rules for carrying out the training requirements of sections 3 and 4 of this act. Such rules must, at a minimum:

(a) Adopt training hour requirements and curriculum for initial violence de-escalation trainings required by this act;

(b) Adopt training hour requirements and curriculum for initial mental health trainings required by this act, which may include all or part of the mental health training curricula established under RCW 43.101.227 and 43.101.427;

(c) Adopt training hour requirements and curricula for continuing trainings required by this act;

(d) Establish means by which law enforcement officers will receive trainings required by this act; and

(e) Require compliance with this act's training requirements as a condition of maintaining certification.

(2) In developing curricula, the commission shall consider inclusion of the following:

(a) De-escalation in patrol tactics and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence;

(b) Alternatives to jail booking, arrest, or citation in situations where appropriate;

(c) Implicit and explicit bias, cultural competency, and the historical intersection of race and policing;

(d) Skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities and/or behavioral health issues;

(e) "Shoot/don't shoot" scenario training;

(f) Alternatives to the use of physical or deadly force so that deadly force is used only when unavoidable and as a last resort;

(g) Mental health and policing, including bias and stigma; and

(h) Using public service, including rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

(3) The initial violence de-escalation training must educate officers on the good faith standard for use of deadly force established by this act and how that standard advances violence de-escalation goals.

(4) The commission may provide trainings, alone or in partnership with private parties or law enforcement agencies, authorize private parties or law enforcement agencies to provide trainings, or any combination thereof. The entity providing the training may charge a reasonable fee.

PART V

ESTABLISHING LAW ENFORCEMENT OFFICERS' DUTY TO RENDER FIRST AID

NEW SECTION. **Sec. 6.** A new section is added to chapter 36.28A RCW to read as follows:

(1) It is the policy of the state of Washington that all law enforcement personnel must render first aid to save lives.

(2) Within one year after the effective date of this section, the Washington state criminal justice training commission, in consultation with the Washington state patrol, the Washington

association of sheriffs and police chiefs, organizations representing state and local law enforcement officers, health providers and/or health policy organizations, tribes, and community stakeholders, shall develop guidelines for implementing the duty to render first aid adopted in this section. The guidelines must: (a) Adopt first aid training requirements; (b) assist agencies and law enforcement officers in balancing competing public health and safety duties; and (c) establish that law enforcement officers have a paramount duty to preserve the life of persons whom the officer comes into direct contact with while carrying out official duties, including providing or facilitating immediate first aid to those in agency care or custody at the earliest opportunity.

PART VI

ADOPTING A "GOOD FAITH" STANDARD FOR LAW ENFORCEMENT OFFICER USE OF DEADLY FORCE

Sec. 7. RCW 9A.16.040 and 1986 c 209 s 2 are each amended to read as follows:

(1) Homicide or the use of deadly force is justifiable in the following cases:

(a) When a public officer applies deadly force ((~~is acting~~)) in obedience to the judgment of a competent court; or

(b) When necessarily used by a peace officer meeting the good faith standard of this section to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty((~~.~~)); or

(c) When necessarily used by a peace officer meeting the good faith standard of this section or person acting under the officer's command and in the officer's aid:

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

(ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; ((~~or~~))

(iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or

(iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given, provided the officer meets the good faith standard of this section.

(3) A public officer ((~~or peace officer~~)) covered by subsection (1)(a) of this section shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

(4) A law enforcement officer shall not be held criminally liable for using deadly force if such officer meets the good faith standard adopted in this section.

(5) The following good faith standard is adopted for law enforcement officer use of deadly force:

(a) The good faith standard is met only if both the objective good faith test in (b) of this subsection and the subjective good faith test in (c) of this subsection are met.

(b) The objective good faith test is met if a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

(c) The subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance.

(d) Where the use of deadly force results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform the determination of whether the use of deadly force met the objective good faith test established by this section and satisfied other applicable laws and policies.

(6) For the purpose of this section, "law enforcement officer" means any law enforcement officer in the state of Washington, including but not limited to law enforcement personnel and peace officers as defined by RCW 43.101.010.

(7) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.

PART VII

MISCELLANEOUS

NEW SECTION. **Sec. 8.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes

of this act. Nothing in this act precludes local jurisdictions or law enforcement agencies from enacting additional training requirements or requiring law enforcement officers to provide first aid in more circumstances than required by this act or guidelines adopted under this act.

NEW SECTION. **Sec. 9.** Except where a different timeline is provided in this act, the Washington state criminal justice training commission must adopt any rules necessary for carrying out the requirements of this act within one year after the effective date of this section. In carrying out all rule making under this act, the commission shall seek input from the attorney general, law enforcement agencies, tribes, and community stakeholders. The commission shall consider the use of negotiated rule making. The rules must require that procedures under RCW 9A.16.040(5)(d) be carried out completely independent of the agency whose officer was involved in the use of deadly force; and, when the deadly force is used on a tribal member, such procedures must include consultation with the member's tribe and, where appropriate, information sharing with such tribe. Where this act requires involvement of community stakeholders, input must be sought from organizations advocating for: Persons with disabilities; members of the lesbian, gay, bisexual, transgender, and queer community; persons of color; immigrants; non-citizens; native Americans; youth; and formerly incarcerated persons.

NEW SECTION. **Sec. 10.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 11.** For constitutional purposes, the subject of this act is "law enforcement."

--- END ---

Attachment B

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 3003

65th Legislature
2018 Regular Session

Passed by the House March 7, 2018
Yeas 73 Nays 25

Speaker of the House of Representatives

Passed by the Senate March 8, 2018
Yeas 25 Nays 24

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 3003** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 3003

Passed Legislature - 2018 Regular Session

State of Washington 65th Legislature 2018 Regular Session

By House Public Safety (originally sponsored by Representatives Goodman and Hayes)

READ FIRST TIME 03/06/18.

AN ACT Relating to law enforcement; amending RCW 43.101.---, 36.28A.---, and 9A.16.040; amending 2018 c ... s 9 (uncodified); adding a new section to chapter 9A.16 RCW; adding a new chapter to Title 10 RCW; and providing a contingent effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 43.101.--- and 2018 c ... s 5 (Initiative Measure No. 940) are each amended to read as follows:

(1) Within six months after June 7, 2018, the commission must consult with law enforcement agencies and community stakeholders and adopt rules for carrying out the training requirements of RCW 43.101.--- and 43.101.--- (sections 3 and 4, chapter . . . (Initiative Measure No. 940), Laws of 2018). Such rules must, at a minimum:

(a) Adopt training hour requirements and curriculum for initial violence de-escalation trainings required by chapter . . . (Initiative Measure No. 940), Laws of 2018;

(b) Adopt training hour requirements and curriculum for initial mental health trainings required by chapter . . . (Initiative Measure No. 940), Laws of 2018, which may include all or part of the mental health training curricula established under RCW 43.101.227 and 43.101.427;

(c) Adopt annual training hour requirements and curricula for continuing trainings required by chapter . . . (Initiative Measure No. 940), Laws of 2018;

(d) Establish means by which law enforcement officers will receive trainings required by chapter . . . (Initiative Measure No. 940), Laws of 2018; and

(e) Require compliance with chapter . . . (Initiative Measure No. 940), Laws of 2018's training requirements ((~~as a condition of maintaining certification~~)).

(2) In developing curricula, the commission shall consider inclusion of the following:

(a) De-escalation in patrol tactics and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence;

(b) Alternatives to jail booking, arrest, or citation in situations where appropriate;

(c) Implicit and explicit bias, cultural competency, and the historical intersection of race and policing;

(d) Skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities and/or behavioral health issues;

(e) "Shoot/don't shoot" scenario training;

(f) Alternatives to the use of physical or deadly force so that de-escalation tactics and less lethal alternatives are part of the decision-making process leading up to the consideration of deadly force ((~~is used only when unavoidable and as a last resort~~));

(g) Mental health and policing, including bias and stigma; and

(h) Using public service, including rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

(3) The initial violence de-escalation training must educate officers on the good faith standard for use of deadly force established by chapter . . . (Initiative Measure No. 940), Laws of 2018 and how that standard advances violence de-escalation goals.

(4) The commission may provide trainings, alone or in partnership with private parties or law enforcement agencies, authorize private parties or law enforcement agencies to provide trainings, or any combination thereof. The entity providing the training may charge a reasonable fee.

Sec. 2. RCW 36.28A.--- and 2018 c ... s 6 (Initiative Measure No. 940) are each amended to read as follows:

(1) It is the policy of the state of Washington that all law enforcement personnel must ((~~render first aid to save lives~~)) provide or facilitate first aid such that it is rendered at the earliest safe opportunity to injured persons at a scene controlled by law enforcement.

(2) Within one year after June 7, 2018, the Washington state criminal justice training commission, in consultation with the Washington state patrol, the Washington association of sheriffs and police chiefs, organizations representing state and local law enforcement officers, health providers and/or health policy organizations, tribes, and community stakeholders, shall develop guidelines for implementing the duty to render first aid adopted in this section. The guidelines must: (a) Adopt first aid training requirements; (b) address best practices for securing a scene to facilitate the safe, swift, and effective provision of first aid to anyone injured in a scene controlled by law enforcement or as a result of law enforcement action; and (c) assist agencies and law enforcement officers in balancing ((~~competing public health and safety duties; and (c) establish that law enforcement officers have a paramount duty to preserve the life of persons whom the officer comes into direct contact with while carrying out official duties, including providing or facilitating immediate first aid to those in agency care or custody at the earliest opportunity~~)) the many essential duties of officers with the solemn duty to preserve the life of persons with whom officers come into direct contact.

Sec. 3. RCW 9A.16.040 and 2018 c ... s 7 (Initiative Measure No. 940) are each amended to read as follows:

(1) Homicide or the use of deadly force is justifiable in the following cases:

(a) When a public officer applies deadly force in obedience to the judgment of a competent court; or

(b) When necessarily used by a peace officer meeting the good faith standard of this section to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or

(c) When necessarily used by a peace officer meeting the good faith standard of this section or person acting under the officer's command and in the officer's aid:

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

(ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility;

(iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or

(iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given, provided the officer meets the good faith standard of this section.

(3) A public officer covered by subsection (1)(a) of this section shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

(4) A ((~~law enforcement~~)) peace officer shall not be held criminally liable for using deadly force ((~~if such officer meets the good faith standard adopted in this section~~)) in good faith, where "good faith" is an objective standard which shall consider all the

facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

(5) ((~~The following good faith standard is adopted for law enforcement officer use of deadly force:~~

~~(a) The good faith standard is met only if both the objective good faith test in (b) of this subsection and the subjective good faith test in (c) of this subsection are met.~~

~~(b) The objective good faith test is met if a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.~~

~~(c) The subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance.~~

~~(d) Where the use of deadly force results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform the determination of whether the use of deadly force met the objective good faith test established by this section and satisfied other applicable laws and policies.~~

~~(6) For the purpose of this section, "law enforcement officer" means any law enforcement officer in the state of Washington, including but not limited to law enforcement personnel and peace officers as defined by RCW 43.101.010.~~

~~(7)~~)) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.

Sec. 4. 2018 c ... s 9 (Initiative Measure No. 940) (uncodified) is amended to read as follows:

(1) Except where a different timeline is provided in ((~~this act~~)) chapter . . . (Initiative Measure No. 940), Laws of 2018, the Washington state criminal justice training commission must adopt any

rules necessary for carrying out the requirements of ((~~this act~~)) chapter . . . (Initiative Measure No. 940), Laws of 2018 within one year after June 7, 2018. In carrying out all rule making under ((~~this act~~)) chapter . . . (Initiative Measure No. 940), Laws of 2018, the commission shall seek input from the attorney general, law enforcement agencies, the Washington council of police and sheriffs, the Washington state fraternal order of police, the council of metropolitan police and sheriffs, the Washington state patrol troopers association, at least one association representing law enforcement who represent traditionally underrepresented communities including the black law enforcement association of Washington, de-escalate Washington, tribes, and community stakeholders. The commission shall consider the use of negotiated rule making. ((~~The rules must require that procedures under RCW 9A.16.040(5)(d) be carried out completely independent of the agency whose officer was involved in the use of deadly force; and, when the deadly force is used on a tribal member, such procedures must include consultation with the member's tribe and, where appropriate, information sharing with such tribe.~~))

(2) Where ((~~this act~~)) chapter . . . (Initiative Measure No. 940), Laws of 2018 requires involvement of community stakeholders, input must be sought from organizations advocating for: Persons with disabilities; members of the lesbian, gay, bisexual, transgender, and queer community; persons of color; immigrants; noncitizens; native Americans; youth; and formerly incarcerated persons.

NEW SECTION. **Sec. 5.** Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The investigation must be completely independent of the agency whose officer was involved in the use of deadly force. The criminal justice training commission must adopt rules establishing criteria to determine what qualifies as an independent investigation pursuant to this section.

NEW SECTION. **Sec. 6.** Whenever a law enforcement officer's application of force results in the death of a person who is an enrolled member of a federally recognized Indian tribe, the law enforcement agency must notify the governor's office of Indian affairs. Notice by the law enforcement agency to the governor's office of Indian affairs must be made within a reasonable period of time, but not more than twenty-four hours after the law enforcement agency has good reason to believe that the person was an enrolled member of a federally recognized Indian tribe. Notice provided under this section must include sufficient information for the governor's office of Indian affairs to attempt to identify the deceased person and his or her tribal affiliation. Nothing in this section requires a law enforcement agency to disclose any information that could compromise the integrity of any criminal investigation. The governor's office of Indian affairs must establish a means to receive the notice required under this section, including outside of regular business hours, and must immediately notify the tribe of which the person was enrolled.

NEW SECTION. **Sec. 7.** A new section is added to chapter 9A.16 RCW to read as follows:

(1) When a peace officer who is charged with a crime is found not guilty or charges are dismissed by reason of justifiable homicide or use of deadly force under RCW 9A.16.040, or by reason of self-defense, for actions taken while on duty or otherwise within the scope of his or her authority as a peace officer, the state of Washington shall reimburse the defendant for all reasonable costs, including loss of time, legal fees incurred, and other expenses involved in his or her defense. This reimbursement is not an independent cause of action.

(2) If the trier of fact makes a determination of justifiable homicide, justifiable use of deadly force, or self-defense, the judge shall determine the amount of the award.

(3) Whenever the issue of justifiable homicide, justifiable use of deadly force, or self-defense under this section is decided by a judge, or whenever charges against a peace officer are dismissed based on the merits, the judge shall consider the same questions as must be answered in the special verdict under subsection (4) of this section.

(4) Whenever the issue of justifiable homicide, justifiable use of deadly force, or self-defense under this section has been submitted to a jury, and the jury has found the defendant not guilty, the court shall instruct the jury to return a special verdict in substantially the following form:

	answer yes or no
1. Was the defendant on duty or otherwise acting within the scope of his or her authority as a peace officer?	.....
2. Was the finding of not guilty based upon justifiable homicide, justifiable use of deadly force, or self-defense?	.....

(5) Nothing in this section precludes the legislature from using the sundry claims process to grant an award where none was granted under this section or otherwise where the charge was dismissed prior to trial, or to grant a higher award than one granted under this section.

NEW SECTION. **Sec. 8.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 9.** Sections 5 and 6 of this act constitute a new chapter in Title 10 RCW.

NEW SECTION. **Sec. 10.** This act takes effect June 8, 2018, only if chapter . . . (Initiative Measure No. 940), Laws of 2018, is passed by a vote of the legislature during the 2018 regular legislative session and a referendum on the initiative under Article II, section 1 of the state Constitution is not certified by the secretary of state. If the initiative is not approved during the 2018 regular legislative session, or if a referendum on the initiative is

certified by the secretary of state, this act is void in its entirety.

--- **END** ---

Attachment C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

FAY PULLEN, et al.,

Plaintiffs,

-vs-

KING COUNTY, et al.,

Defendants.

No. 04-2-11687-1

TRANSCRIPT OF PROCEEDINGS
Court's Ruling

DATE: September 2, 2004

APPEARANCES:

For the Plaintiffs: MARK KIMBALL
MICHELLE FARRIS
Attorneys at Law

For the Defendants: THOMAS KUFFEL
JANINE JOLY
King County Prosecutors Office

For the King County Council: JAMES BREWER

The Honorable James H. Allendoerfer
Department 9

04-2-11687-1 25

William Meek, CSR
Official Court Reporter
CSR No. 2696
Department No. 9
Snohomish County Courthouse
Everett, Wa 98201
(425)388-3282

ORIGINAL

25

BE IT REMEMBERED that on the 2nd day of September, 2004, the above-entitled and numbered cause came regularly on for Motion and Ruling before the Honorable JAMES H. ALLENDOERFER, one of the Judges of the above-entitled Court, sitting in Department No. 9 thereof, at the Snohomish County Courthouse, in the City of Everett, County of Snohomish, State of Washington.

The Plaintiffs appeared by and through its attorneys, MARK KIMBALL and MICHELLE FARRIS;

The Defendants appeared by and through its attorneys, THOMAS KUFFEL and JANINE JOLY;

The King County Council was represented by attorney, JAMES BREWER;

WHEREUPON, both sides having announced they were ready to begin, the following proceedings were had, to-wit:

THE COURT: This is the case of Pullen v. King County, coming before the court on a petition for a writ of mandamus. We've just finished about two hours of oral argument, and let me begin by saying that I appreciated the quality of the briefing and the quality of the oral argument from both sides. My style during motions of this nature is to be somewhat adversarial from the bench. That's not a reflection of disrespect for the attorneys. It's just my way of trying to sharpen the argument and sharpen my own thinking. Our animated discussions for the past two hours have been very helpful to me. Thank you.

What I am struggling for in this case is an intellectually honest answer to a very troubling puzzle. I'm not sure that I've accomplished that in the decision that I have reached, but I believe that my decision is one which is consistent with the law and is a practical way to treat the citizens of King County with respect.

I begin with the concept of initiatives generally. Our state Constitution, in Article 2 Section 1(a), states that "the first power reserved by the people is the initiative." Our state Supreme Court has stated that "the power of initiative is one of the foremost rights of the citizens." The King County Charter honors

that priority status as well, and in Section 230.50 grants the citizens of King County the power of initiative; the power to enact ordinances as if the people were a legislative authority of their own. Our state Supreme Court has recognized the initiative power of the citizens as the power of exercising sovereign authority over their own governance.

The next principle that I'm influenced by is one stated in the case of Maleng v. King County, also stated in the case of Ford v. Logan: initiative proposals are to be liberally construed to give them effect and to avoid hypertechnical construction.

In King County, ordinances which adopt initiatives verbatim are generally accorded the status of any other ordinance adopted by the King County Council. They don't go to the ballot to be thereafter approved by the voters, and they may be later amended by the King County Council at any time by a simple majority vote.

I find that this general principle, however, is not directly applicable to ordinances which propose charter amendments. Those are a special category of ordinances. They are required to go before the voters for approval. That is specified in Article 8 Section 800 of the King County Charter, and it's also specified in Article 2 Section 230.50 of the King County Charter.

When an ordinance proposing a charter amendment is passed, it is only conditionally effective. It merely marks the beginning of a political process. It is put on the ballot, and at least 45 days thereafter it is voted on by the people as a charter amendment. It will ultimately either pass or fail by their will alone. If it passes, the ordinance is affirmed. If it is rejected by the people, the ordinance is effectively repealed.

In the meantime, during the political process in anticipation of the election, an ordinance proposing a charter amendment should not be subject to amendment, at least to the extent that the language of the charter amendment was proposed by initiative of the people and not by the County Council itself. Such proposals are an exercise of the people's sovereign authority, and must be submitted to the electorate without revisions thought to be more appropriate or more politically correct by government officials.

In the instant case, Initiative 18 asked the King County Council to let the voters decide upon a charter amendment. The King County Council responded favorably and passed Ordinance 14767 adopting that proposal as their own. Unfortunately, they adopted it too late to be put on the November 4, 2003 ballot. But it was still alive and was still placed into the political arena in

anticipation of the November 2, 2004 general election.

Ten months later, the King County Council adopted Ordinance 14965, attempting to amend their previous favorable response to Initiative 18. I find that the County Council acted improperly. They acted during the political window of time when they should have been campaigning either for or against the charter amendment that had been proposed by the people. This was not a time to be tampering with the language of a proposal which was already in the political arena. The King County Council was, in effect, intruding upon the initiative process.

The courts have scrupulously avoided intruding upon the initiative process over the years, and have agreed that they will not review the general legality of an initiative, or interpret the language included therein, until after it's gone to a vote of the people. That principle was restated recently in the case of Maleng v. King County. I find that the King County Council crossed that line from a legislative standpoint when, after they had passed Ordinance 14767 and had placed a charter amendment on the ballot for November 2004, they intruded into the initiative process and tried to change the language of the proposal after-the-fact. I find that to be legally ineffective. The charter amendment

proposed by Ordinance 14767 must go to the vote of the King County electorate on November 2, 2004 as it was first passed by the King County Council in September 2003.

Ordinance 14965, the amending ordinance, can still survive, however. I find that it can survive under Article 8 Section 800 of the King County Charter. That charter provision allows the County Council on its own to propose amendments to the County Charter and to submit their proposed amendments to the voters as long as the election day is at least 45 days away. Ordinance 14965 meets all of those criteria. Therefore, under Article 8 Section 800, I find that the County Council has put an alternative charter amendment on the ballot for November 2, 2004. The first alternative will appear on the ballot in the language proposed by 14767; the second alternative will appear in the language proposed by 14965.

It was argued by the County attorneys that if I were to rule that the County Council cannot amend a proposal submitted by initiative that I am rewriting Section 230.50 of the King County Charter because there's nothing in the charter language that says that initiatives are sacrosanct and cannot be changed by the County Council. The County's attorneys are accurate in

pointing out that the phrase "without change" appears only in the laws of the state of Washington relating to initiatives presented to the state legislature, and those words were not carried over into the King County Charter when the citizens adopted their charter years ago. That argument, frankly, gave me considerable pause.

I've ultimately concluded, however, that a restriction prohibiting the County Council from changing the words of an initiative is inherent in Section 230.50, and it is consistent with the sanctity of the initiative process. If the persons who sign initiatives in King County are exercising the sovereign power of being a legislative authority parallel to the sovereign power of the King County Council itself, it's my conclusion that the King County Council can't change, or tweak, or tamper with the language that the initiative authors have settled upon. We don't need to have the words "without change" in Section 230.50 of the King County Charter. They're inherently included already.

Finally, I've been asked by the plaintiffs to tweak the language going to the King County voters by changing a single date that is no longer correct on the very last line of the charter amendment. I decline to do that. I think that after I've been so critical of the King

County Council for making technical amendments to this initiative it would be two-faced for the Court to turn around and do the same thing itself.

So, it will be my ruling that the charter amendment proposed by the initiative, which is now in the form of Ordinance 14767, will go to the voters on November 2, 2004 as it's written with all its alleged flaws. It is further the order of this Court that the charter amendment as proposed by the King County Council in Ordinance 14965 will also go to the voters on November 2, 2004. The political process as contemplated by those who wrote the state constitution and those who wrote the King County Charter will now go into effect, and it's appropriate that in the political arena these two alternative proposals will be dissected and compared to one another and arguments will be made for and against the same. I'm declining to intrude on that process, and I am signing a writ of mandamus which prohibits the King County Council from intruding on that process either.

The form of the writ of mandamus that was proposed by Mr. Kimball may need some modification. I want to make sure that it's clear that what will appear on the ballot will be the charter amendment and not the ordinance proposing a charter amendment. I'm not sure that language is clear in the draft presented by Mr.

Kimball.

I think another change that would be helpful would be at paragraph 3, so that it clearly states that the charter amendment proposed by Ordinance 14965 will also be on the ballot.

If the parties can agree upon the language, that can be presented to me by mail and I'd be happy to sign it and return it immediately.

Are there any questions or clarifications that may be needed by either side?

MR. KIMBALL: Your Honor, given the fact that deadlines are approaching, not only for getting the matter on the ballot but for organizing campaigns and that kind of thing, I think it's important to have a final version of this document as soon as possible, and, therefore, I would request that to the extent that counsel and I are unable to agree on a form that we both be directed to come back here perhaps with competing forms, perhaps even e-copies for Your Honor to alter as you see fit sometime on Monday of this coming week or -- excuse me, Tuesday.

THE COURT: Could you meet that schedule, counsel?

MR. KUFFEL: Not Monday, but Tuesday, yes.

THE COURT: You'd rather come Tuesday?

MR. KUFFEL: Monday is Labor Day, so --

THE COURT: All right. The calendar that I'm now sitting on has the afternoons after 1:30 open, so, if you want to be on my 1:30 calendar, or I could do it at your convenience at 2:30 or 3:30 if that would work better.

MR. KIMBALL: Your Honor, can we just stipulate perhaps to 1:30 on Tuesday, unless in advance counsel and I are able to agree on the form?

THE COURT: That's fine. You have my fax number. If you don't, my clerk can give it to you so I can look them over in advance if you're going to have a dispute. If you're not going to have a dispute, I'll sign whatever the two of you come up with.

MR. KIMBALL: Thank you.

THE COURT: Okay. Thank you. That completes this matter for today. Court is in recess.

(The proceedings were concluded.)

STATE OF WASHINGTON
COUNTY OF SNOHOMISH } ss.

I, SONYA KRASKI, Clerk of the above entitled Court, do hereby certify that the foregoing instrument is a true and correct copy of the original now on file in my office.

In witness whereof, I hereunto set my hand and the Seal of the said Court this MAR 09 2018 day of, 20

SONYA KRASKI, County Clerk

M. Deidar Deputy

Attachment D

FILED

2004 SEP -7 PM 1:56

PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH.

CERTIFIED COPY

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

FAY PULLEN, TIM EYMAN, ALBERT W. SCHAEFER, CLEM PAPPENFUS, and SCOTT FOOTE, **Plaintiffs,** **vs.** **KING COUNTY, A Home Rule Political Subdivision of the State of Washington; THE KING COUNTY COUNCIL, An Agency or Governing Body or Entity of KING COUNTY; and DEAN LOGAN, In his capacity as Director of the King County Division of Records and Elections; and The KING COUNTY DIVISION OF RECORDS AND ELECTIONS, An Agency, Division or Entity of KING COUNTY,** **Defendants,**	**No. 04-2-11687-1** **WRIT OF MANDAMUS ON ORDER TO SHOW CAUSE AND ALTERNATIVE WRIT (RCW 7.16.160 Et Seq.)** **Clerk's Action Required** 04-2-11687-1 24

TO: DEFENDANTS KING COUNTY, KING COUNTY COUNCIL, DEAN LOGAN and KING COUNTY DIVISION OF RECORDS AND ELECTIONS:

This matter having come on for hearing pursuant to the Order to Show Cause and Alternative Writ entered in this matter on August 12, 2004, and under authority of RCW 7.16.160 ET. SEQ.:

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SKYLINE TOWER
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YOU ARE HEREBY COMMANDED AND DIRECTED TO UNDERTAKE THE FOLLOWING ACTS:

1. You will place on the November 2, 2004 General Election Ballot within King County, Washington the proposed Charter Amendment contained in King County Ordinance No. 14767.

2. You will also place on the November 2, 2004 General Election Ballot within King County, Washington the proposed Charter Amendment contained in King County Ordinance No. 14965. In accord with the provisions of King County Charter Section 230.50, the proposed Charter Amendment contained in Ordinance No. 14965 shall be identified as a substitute measure.

3. The Proposed Charter Amendment contained in King County Ordinance No. 14767 shall, within the preamble to the ballot title, be identified as follows: "The following proposed King County Charter Amendment is the original Amendment proposed by Initiative 18, and is designed to be implemented in 2005" The ballot title thereof shall be: "Shall the King County Charter be amended to reduce the size of the King County Council from thirteen to nine members, effective in 2005?" The Proposed Charter Amendment contained in King County Ordinance No. 14965 shall, within the preamble to the ballot title, be identified as follows: "The following substitute or alternative King County Charter Amendment is a substitute or alternative to the original Amendment proposed by Initiative 18, and was enacted by the King County Council as an alternative; it is designed to be implemented in 2007." The title shall fairly reflect the content of the measure and the effective date of the reduction in council size if passed.

4. As specified in ~~the instructions to be included within the November 2, 2004 ballot~~ § 230.50 of the King County Charter, the voters shall first be given the choice of accepting either of the two proposed Charter Amendments or rejecting both, and shall then be given the choice of accepting one and rejecting

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the other. If a majority of the voters voting on the first issue is for either, then the proposed Charter Amendment receiving the majority of the votes cast on the second issue shall be deemed approved. If a majority of those voting on the first issue is for rejecting both, then neither proposed Charter Amendment shall be approved regardless of the vote on the second issue.

5. Nothing herein is intended to prohibit the Metropolitan King County Council from amending the proposed Charter Amendment contained in King County Ordinance No. 14965, prior to the November 2, 2004 election should it choose to do so in the ordinary exercise of its legislative authority, subject to any applicable election timelines and subject to applicable provisions of the King County Charter.

6. The King County Official Voters Pamphlet shall include, without limitation, space and provision for the arguments ~~of both~~ of the proponents favoring the provisions of Ordinance No. 14767, and ~~Ordinance No. 14965~~. The arguments of the proponents favoring Ordinance No. 14965.

HEREIN FAIL NOT.

Service of this Writ shall be had upon Defendants as provided in RCW 7.16.270.

DONE IN OPEN COURT this 7th day of September, 2004.

HON. JAMES ALLENDOERFER

PRESENTED BY

MARK D. KIMBALL WSBA # 13146
Mark Douglas Kimball P.S.
Attorney for Plaintiffs
425 455-9610

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APPROVED FOR ENTRY
~~NOTICE OF PRESENTATION WAIVED~~

NORM MALENG
King County Prosecuting Attorney

By: Thomas W. Kuffel

THOMAS KUFFEL, WSBA #20178
Senior Deputy Prosecuting Attorney
Attorneys for King County Defendants

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STATE OF WASHINGTON } ss.
COUNTY OF SNOHOMISH }

I, SONYA KRASKI, Clerk of the above entitled Court, do hereby certify that the foregoing instrument is a true and correct copy of the original now on file in my office.

In witness whereof, I hereunto set my hand and the Seal of the said Court this MAR 09 2018 day of, 20

SONYA KRASKI, County Clerk

M. Linder Deputy

Attachment E

Attorney General Slade Gorton

INITIATIVE AND REFERENDUM -- LEGISLATURE -- AMENDING INITIATIVE ENACTED BY THE LEGISLATURE -- SUBMISSION OF ALTERNATIVE PROPOSAL

Consideration of various alternatives which are available to the legislature under Article II, § 1 (Amendments 7 and 30) and Article II, § 41 (Amendment 26) of the Washington Constitution upon certification and transmittal to it of an initiative to the legislature; adoption and amendment; rejection and submission of alternative proposal to voters; time for certification of initiative to legislature.

January 26, 1971

Honorable Thomas L. Copeland
State Representative, District 11-B
Honorable Irving Newhouse
State Representative, District 8-A
Legislative Building
Olympia, Washington 98501

Cite as: AGO 1971 No. 5

Dear Sirs:

This is written in response to your recent request for our opinion on several questions relating to the legislature's powers with respect to - and in response to - the transmittal to it of an initiative to the legislature under Article II, § 1 (Amendments 7 and 30) and Article II, § 41 (Amendment 26) of our state Constitution. Because of the number of questions which you have posed, we will respond on the basis of a "question" and "answer" format within the body of this opinion.

ANALYSIS

The constitutional provisions which bear upon your questions, Article II, §§ 1 and 41, are set forth in full as an appendix to this opinion. Essentially, they provide for referendum by the people against all but certain specified categories of laws enacted by the legislature, and for initiatives (a) to the people and (b) to the legislature. [[Orig. Op. Page 2]] All of your questions pertain to the second of these two types of initiatives.

The critical language of Article II, § 1, which sets forth the procedures to be followed with respect to an initiative to the legislature, reads as follows:

". . . If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. . . ." (Emphasis supplied.)

We paraphrase, and answer, your questions regarding these provisions as follows:

Question (1):

May the legislature make any changes in the text of an initiative to the legislature without, thereby, being required to submit its altered version of the initiative to the people as an alternative for the original initiative?

Answer:

Article II, § 1,supra, is explicit that the initiative [[Orig. Op. Page 3]] "shall be either enacted or rejectedwithout change or amendment by the legislature . . ." (Emphasis supplied.) In light of that language any alteration in the text of an initiative to the legislature would therefore of necessity constitute a rejection of the initiative and a proposal of an alternative measure on the same subject. Under the provisions of Article II, § 1 (a), supra, both measures would then have to be submitted to the voters. Accord,Farris v. Goss, 143 Me. 227, 60 A.2d 908 (1948), discussed in more detail below.

Question (2):

Can an initiative to the legislature have an emergency clause?

Answer:

Although some legislative acts are not subject to referendum under Article II, § 1 (b) (see cases cited in State ex rel. Humiston v. Meyers, 61 Wn.2d 772, 380 P.2d 735 (1963)), all initiatives to the legislature, regardless of content, are subject to referendum if enacted by the legislature. This conclusion is dictated by the fact that Article II, § 1 (a) specifically provides:

". . . If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, . . ."

An emergency clause is, of course, simply a legislative declaration that an act take effect prior to the time set forth in Article II, § 41, which provides as follows:

"No act, law, or billsubject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. . . ." (Emphasis supplied.)

Therefore, an initiative to the legislature cannot have an emergency clause, and if it purports to have such a clause, the clause is ineffective. See,State ex rel. Humiston, supra, in which the court invalidated the emergency clause which the legislature had included in the adoption of chapter 37, Laws of 1963.

Question (3):

[[Orig. Op. Page 4]]

May the legislature add an emergency clause to an initiative?

Answer:

The legislature may not add an effective emergency clause to an initiative - both for the reasons set forth above in responding to question (2), and, as well, because the addition of an emergency clause to an initiative would constitute an alteration in the original which would, in any event, thus have to be submitted to the voters as an alternative measure.

Question (4):

Can the legislature pass a statute relating to a particular section, or sections, in the initiative so as to make corrections to an initiative that has been submitted to the legislature?

Answer:

We would answer this question in essentially the same manner as question (1),supra. Any such "corrective" legislation would constitute an alternative proposal which would have to be submitted to the voters along with the original initiative itself.

Question (5):

Must the secretary of state transmit the initiative as soon as the legislature convenes and organizes?

Answer:

Article II, § 1 (a),supra, states that:

". . . If such petitions are filed not less than ten days before any regular session of the legislature, he [the secretary of state] shall transmit the same to the legislature as soon as it convenes and organizes. . . ."

This provision has been implemented by a statute, RCW 29.79.200, which provides in pertinent part:

"Upon filing the volumes of an initiative petition proposing a measure for submission to the legislature at its next regular session, the secretary of state shall forthwith in the presence of at least one person representing the advocates and one person representing the opponents of the proposed

measure, should either desire to be present, proceed to canvass and count the names of the legal voters thereon. . . . If the petition is found to be sufficient, the secretary of state shall transmit a certified [[Orig. Op. Page 5]] copy of the proposed measure to the legislature at the opening of its session together with a certificate of the facts relating to the filing of the petition and the canvass thereof."

InState ex rel. Evich v. Superior Court, 188 Wash. 19, 61 P.2d 143 (1936), the Washington supreme court held that it was not proper for the secretary of state to certify an initiative to the legislature before having completed his canvass of the signatures. Therefore, although RCW 29.79.200 and the Constitution itself, as well, contemplate the certification of an initiative to the legislature at the commencement of its session, about all that can be said, in terms of practicalities, is that the secretary of state is supposed to complete the canvass as quickly as possible, and only when he has completed the canvass and determined the sufficiency of the signatures is the initiative to be certified to the legislature for its action.

Question (6):

When is an initiative formally before the legislature?

Answer:

An initiative is formally before the legislature only when it has been certified to the legislature as aforesaid. Accord,State ex rel. Evich v. Superior Court,supra.

Question (7):

Prior to the time that an initiative is formally certified to the legislature by the secretary of state, may the legislature enact a statute relating to the same subject as a prospective, but as yet uncertified, initiative without having it become affected by the initiative?

Answer:

Since, underState ex rel. Evich v. Superior Court, supra, the legislature is without jurisdiction over an initiative until it is certified by the secretary of state, it is technically arguable that until that time occurs, the legislature remains totally free to enact any constitutionally permissible [[Orig. Op. Page 6]] legislation on any subject without being required to submit it to the voters as an alternative to some later certified initiative.

However, we regard it considerably more probable that a court would consider the effective date of the certification of an initiative, once it occurs, as relating back to the first day of the regular session when, under the directives of both the Constitution and statute, supra, it was supposed to have occurred. Cf., the equitable maxim which regards as done that which the law requires to be done.1/ We therefore answer this question in the negative. Basically, we are of the opinion that the mechanical problems of checking the signatures on initiative petitions cannot be effective to give the legislature a "free period" in which it can pass substantive measures and avoid having those measures submitted to the people as alternatives for an initiative.

Question (8):

In essence, this question relates to the ability of the legislature to enact a substitute for an initiative which will be effective prior to its submission to the voters as an alternative for the initiative.

We have paraphrased this question so as to cause it to encompass all of your questions 10-12 and 14. The question to be considered is as follows:

If the legislature enacts a measure relating to the same subject as an initiative but rejects the initiative -

(a) What test is to be applied in determining whether an act passed by the legislature during the same session at which an initiative is certified to it constitutes a substitute measure?

(b) Does the substitute measure take effect prior to a vote by the people on the initiative?

(c) If yes, does the substitute measure become inoperative in the event that the initiative, rather than the substitute, [[Orig. Op. Page 7]] is approved by the voters?

(d) If a substitute measure cannot take effect until approved by the voters (in lieu of the initiative), may the legislature nevertheless enact a law on the same subject as the initiative and specify that it shall be in effect only during the interim between its enactment and the election at which the initiative is to be voted upon?

Answer:

No Washington cases have considered any of the aspects of this question; nor, so far as our research has disclosed, have any cases from other jurisdictions done so - save only one, Farris v. Goss, 143 Me. 227, 60 A.2d 908 (1948), briefly noted in answering question (1), above.

On March 25, 1947, an initiative to the Maine legislature was duly certified and transmitted to both houses where, instead of being enacted, it was submitted to the voters under Article XXXI, § 18 of the Maine Constitution providing that:

"Any measure thus proposed by not less than twelve thousand electors, unless enacted without change by the Legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the Legislature, and in such manner that the people can choose between the competing measures or reject both."

The title of this initiative (identifying its subject matter) was "'An Act to Protect the Right to Work and to Prohibit Secondary Boycotts, Sympathetic Strikes, and Jurisdictional Strikes.'" During this same session, however, the legislature also had under consideration a number of other bills relating to labor relations. One of these was a bill, known as the "Tabb Bill" which, although apparently already under consideration before the initiative was transmitted to the legislature, was not enacted until afterwards (and then, it was the only one of the several which was passed by the legislature).

[[Orig. Op. Page 8]]

Following adjournment, an action was brought by the attorney general (Farris) against the secretary of state (Goss) to require the latter to place the "Tabb Bill" on the September, 1948 election ballot as a substitute for the initiative (also known as the "Barlow Bill") in accordance with Article XXXI, § 18 of the state Constitution, supra. The trial judge before whom the case was tried ruled in favor of the attorney general and issued a writ of mandamus, and an appeal followed.

On appeal the Maine Supreme Court, with one judge dissenting, affirmed the trial court's ruling. Its opinion to this effect reads, in pertinent part, as follows:

"If the 'Tabb Bill' is a substitute for the 'Barlow Bill,' the writ of mandamus was properly issued. . . .2/

". . .

"The right of the people, as provided by Article XXXI of the Constitution,to enact legislation and approve or disapprove legislation enacted by the legislature is an absolute one and cannot be abridged directly or indirectly by any action of the Legislature. . . .

"There is a clear distinction between a provision abridging the power of the Legislature to enact certain classes of legislation pending an initiated measure, and a provision requiring that if such class of legislation be enacted, the same be submitted to the people, together with the initiated measure. As we have said, Sec. 18 places no curb on the enactment of legislation; but a bill enacted which is a substitute for the initiated measure must go to the electors with the initiated measure, and does not become a law until they approve it under the provisions of Sec. 18.

[[Orig. Op. Page 9]]

". . .

"Is the 'Tabb Bill' a substitute for the 'Barlow Bill'? In answering this question we are not concerned, as we have tried to point out above, with how the Legislature may have regarded it. We must decide only what it is in fact.

"A bill which deals broadly with the same general subject matter, particularly if it deals with it in a manner inconsistent with the initiated measure so that the two cannot stand together, is such a substitute as was referred to in Article XXXI. This is the test laid down in Starbird v. Brown, 84 Me. 238, to determine whether one statute may either have amended or repealed an existing law. The court there said, page 240: 'Can the new law and the old law be each efficacious in its own sphere?' . . . The 'Tabb Bill,' . . . did cover the same subject matter as the 'initiated measure' and was inconsistent with it in essential respects. By parity of reasoning with thePalmyra opinion, the 'Tabb Bill' must be regarded as a substitute for the 'initiated measure' and must be submitted to the people as a 'competing measure' in accordance with Article XXXI.

". . .

"In other words, the effective parts of the two measures cannot stand together. Under these circumstances, the ruling of the sitting justice that the 'Tabb Bill' was a substitute for the 'Barlow Bill' was correct, and the order that the peremptory writ issue was not error." (Emphasis supplied.)

In view of this case, together with the pertinent language of our own Constitution, we answer part (a) of this question (concerning the test to be applied in determining whether an act of the legislature is a substitute for an initiative) by simply repeating the critical language of [[Orig. Op. Page 10]] the court's decision, as follows:

"A bill which deals broadly with the same general subject matter, particularly if it deals with it in a manner inconsistent with the initiated measure so that the two cannot stand together, is such a substitute as was referred to in Article XXXI. . . ."

Parts (b) - (d) we answer as follows:

If the legislature simply enacts a substitute measure, and says nothing more in terms of when it is to be effective, then it will not be effective until and unless it is approved by the voters.

However, we see nothing in the Maine decision - or in the language of our own Constitution - which forecloses the legislature from effectively expressing an intent to have the substitute measure become effective prior to the election.3/ Manifestly, such an answer to your question is in no way foreclosed by the decision inFarris v. Goss, supra, for there the legislature had made no attempt, by appropriate limiting language, to limit the effectiveness of the substitute measure to the period between its enactment and the election. Moreover, if the substitute measure were to "die" on the basis of its own terms with the ultimate adoption by the people of the initiative it could hardly be characterized as being in conflict with the initiative because the two could never be in effect at the same time.

Likewise, there would be no conflict if, instead, the substitute measure were to contain language making it effective prior to the election but further providing that it would continue in effect thereafter only if approved by the voters in lieu of the initiative.

[[Orig. Op. Page 11]]

Either of these two approaches - that of a strictly interim measure or that of an interim measure with continuing effect on the basis of voter approval - would serve to avoid the "hand-tieing" effect which the single dissenting judge inFarris v. Goss, feared the majority opinion therein would produce. The legislature would be free to deal, immediately, with an emergent matter which was also the subject of an initiative - but without in any way curtailing or undermining the right of the people to choose which version to enact on a more permanent basis at the next regular election.

However, going now to the point raised by part (c) of this question, it seems clear to us thatboth the initiative and the substitute must be submitted to the voters (if the substitute is to have any continuing effect). The legislature could not provide for continuation of the substitute solely on the basis of voter rejection of the initiative, for under the Constitution the voters have the right to reject both the initiative and the substitute. Further, if the initiative is approved, then the substitute must become inoperative.

Questions (9) and (10):

These two questions we devise from your questions 8 and 13. Divided and paraphrased, these questions are as follows:

(9) Do the provisions of Article II, § 41 (Amendment 26) of the state Constitution, requiring a two-thirds majority of both houses of the legislature in order to amend an initiative measure approved by the voters during the initial two-year period following its enactment, apply to an initiative to the legislature which is enacted into law by the legislature?

(10) If question (9) is answerable in the negative, may an initiative which has been enacted by the legislature be amended prior to the expiration of the time for filing of a referendum petition against the enactment?

Answers:

We answer both of these questions in the negative, as follows:

[[Orig. Op. Page 12]]

The first of these two questions assumes that upon transmittal to it of an initiative to the legislature for which the requisite number of signatures have been obtained, the legislature pursues the first of the several alternatives which are open to it under subsection (a) of Article II, § 1, supra; namely, it enacts the measure into law. Under this circumstance, you ask whether the enactment in question is subject to those limitations upon the amendatory powers of the legislature stated in that portion of Article II, § 41 (Amendment 26) which we have underscored in quoting it in the Appendix to this opinion. Our negative answer to this question is based upon the plain, clear and unambiguous language of this constitutional provision. By its own terms, these limitations are applicable only to an ". . . act, law, or bill approved by a majority of the electors voting thereon. . . ." Yet under the facts contemplated by your question, the enactment which you have in mind would not have ever been submitted to, or approved by a majority of the voters prior to its becoming law. Therefore, the limitations upon the amendatory process which are set forth in this constitutional provision are inapplicable to an enactment such as you have described.

This does not mean, however, that the legislature's power to amend an initiative which it has previously enacted is totally unlimited, as our answer to the second of the foregoing two questions dealing with this subject will now indicate.

If the legislature enacts an initiative measure as contemplated by your question, subsection (a) of Article II, § 1, supra, states that ". . . it shall be subject to the referendum petition . . ." Therefore, in accordance with the first sentence of Article II, § 41 (Amendment 26), such an enactment takes no effect ". . . until ninety days after the adjournment of the session at which it was enacted." In addition, if during this period a referendum petition complying with the requirements of the Constitution is, in fact, filed against the measure its operative effect is further suspended until the thirtieth day after the election at which it is approved by the voters. See, Wynand v. Dept. of Labor & Ind., 21 Wn.2d 805, 153 P.2d 302 (1944).

The "thing" which is the subject of all these procedures is, of course, the specific and exact proposed law in support of which the initiative to the legislature was first filed - and not some legislatively enacted alternative proposal. If the legislature rejects it or takes no [[Orig. Op. Page 13]] action upon it, it automatically goes to the people for their approval or rejection; and if the legislature approves it, the people may still "veto" it through the referendum process if a majority of them are not in favor of the measure.

Thus, if the legislature were entitled to amend the measure after enacting it but before the time period for filing a referendum petition against it had elapsed, it could by so doing place the people in a position of either commencing a referendum campaign against the original measure or allowing not the original but an altered version thereof to become law.4/ This, however, is simply not the set of alternatives between which the framers of the governing constitutional provisions intended the people to be requested to choose at this stage in the proceedings.

Accordingly, while we have discovered no cases from this or any other state which are squarely in point, we believe that from the standpoint of reason - and in order to give effect to the apparent intent of the framers - it must be concluded in response to question (10) that an initiative measure which has been enacted by the legislature, while not being subject to the amendatory limitations which apply to a measure enacted by the people under Article II, § 41 (Amendment 26),supra, is, nevertheless, immune from amendment prior to the expiration of the time for filing a referendum petition against it.

Question (11):

After an initiative, having been rejected by the legislature, has been submitted to and approved by the people, may the legislature then amend the initiative?

Answer:

Having been approved by the people, the initiative at this juncture will be amenable to amendment only to the extent of, and in the manner provided by, the "two-thirds majority" requirements of Article II, § 41 (Amendment 26),supra, for the first two years following its approval.

[[Orig. Op. Page 14]]

Question (12):

Your final question (numbered 15 in your letter) reads as follows:

What happens when the title of an initiative is defective if the legislature cannot amend?

Answer:

Presumably, this question involves a possibility of a "defect" under the provisions of Article II, § 19 of the Constitution, which provides that:

"No bill shall embrace more than one subject, and that shall be expressed in the title."

However, the Washington court has held that this constitutional provision is inapplicable to initiatives. See,Senior Citizens League Inc. v. Dept. of Soc. Sec., et al., 38 Wn.2d 142, 228 P.2d 478 (1951).5/

We trust the foregoing will be of assistance to you.

Very truly yours,

SLADE GORTON
Attorney General

PHILIP H. AUSTIN
Deputy Attorney General

APPENDIX

§ 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature. (a) Initiative: The first power reserved by the people is the initiative. TEN PER CENTUM, BUT IN NO CASE MORE THAN FIFTY THOUSAND, OF THE LEGAL VOTERS SHALL BE REQUIRED TO PROPOSE ANY MEASURE BY SUCH PETITION, and every such petition shall include the full text of the measure so proposed. [Note: Signature requirements superseded by Art. 2 Sec. 1 (A), AMENDMENT 30.] Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law. (b) Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted. SIX PER CENTUM, BUT IN NO CASE MORE THAN THIRTY THOUSAND, OF THE LEGAL VOTERS SHALL BE REQUIRED TO SIGN AND MAKE A VALID REFERENDUM PETITION. [Note: Signature requirements superseded by Art. 2 Sec. 1 (A), AMENDMENT 30.] (C) NO ACT, LAW, OR BILL SUBJECT TO REFERENDUM SHALL TAKE EFFECT UNTIL NINETY DAYS AFTER THE ADJOURNMENT OF THE SESSION AT WHICH IT WAS ENACTED. NO, ACT, LAW OR BILL APPROVED BY A MAJORITY OF THE ELECTORS VOTING THEREON SHALL BE AMENDED OR REPEALED BY THE LEGISLATURE WITHIN A PERIOD OF TWO YEARS FOLLOWING SUCH ENACTMENT. BUT SUCH ENACTMENT MAY BE AMENDED OR REPEALED AT ANY GENERAL REGULAR OR SPECIAL ELECTION BY DIRECT VOTE OF THE PEOPLE THEREON. [Note: Subsection (c) is expressly superseded by Art. 2 Sec. 41, AMENDMENT 26.] (d) The filing of a referendum petition against one or more items, sections or parts of any act, law or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filed with the secretary of state not later than ninety

days after the final adjournment of the session of the legislature which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular elections, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon: PROVIDED, That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the State of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. THE WHOLE NUMBER OF ELECTORS WHO VOTED FOR GOVERNOR AT THE REGULAR GUBERNATORIAL ELECTION LAST PRECEDING THE FILING OF ANY PETITION FOR THE INITIATIVE OR FOR THE REFERENDUM SHALL BE THE BASIS ON WHICH THE NUMBER OF LEGAL VOTERS NECESSARY TO SIGN SUCH PETITION SHALL BE COUNTED. [Note: Cf. Art. 2 Sec. 1 (A), AMENDMENT 30.] All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation. THE LEGISLATURE SHALL PROVIDE METHODS OF PUBLICITY OF ALL LAWS OR PARTS OF LAWS, AND AMENDMENTS TO THE CONSTITUTION REFERRED TO THE PEOPLE WITH ARGUMENTS FOR AND AGAINST THE LAWS AND AMENDMENTS SO REFERRED, SO THAT EACH VOTER OF THE STATE SHALL RECEIVE THE PUBLICATION AT LEAST FIFTY DAYS BEFORE THE ELECTION AT WHICH THEY ARE TO BE VOTED UPON. [Note: This paragraph is expressly superseded by subsection (e) of this section, which was added by AMENDMENT 36.] (e) The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred. The secretary of state shall send one copy of the publication to each individual place of residence in the state and shall make such additional distribution as he shall determine necessary to reasonably assure that each voter will have an opportunity to study the measures prior to election. These provisions supersede the provisions set forth in the last paragraph of section 1 of this article as amended by the seventh amendment to the Constitution of this state. [AMENDMENT 7, approved Nov. 1912 (L. 1911 p. 136 § 1): Subsection (e) added by AMENDMENT 36, approved Nov. 1962 (L. 1961 p. 2751, S.J.R. No. 9).] Original text--Art. 2, § 1. Legislative Powers, Where Vested--THE LEGISLATIVE POWERS SHALL BE VESTED IN A SENATE AND HOUSE OF REPRESENTATIVES, WHICH SHALL BE CALLED THE LEGISLATURE OF THE STATE OF WASHINGTON. Note: Art. 2, Sec. 31 was also stricken by AMENDMENT 7.

§ 1A INITIATIVE AND REFERENDUM, SIGNATURES REQUIRED. Hereafter, the number of valid signatures of legal voters required upon a petition for an initiative measure shall be equal to eight percentum of the number of voters registered and voting for the office of governor at the last preceding regular gubernatorial election. Hereafter, the number of valid signatures of legal voters required upon a petition for a referendum of an act of the legislature or any part thereof, shall be equal to four percentum of the number of voters registered and voting for the office of governor at the last preceding regular gubernatorial election. These provisions supersede the requirements specified in section 1 of this article as amended by the seventh amendment to the Constitution of this state. [Added by AMENDMENT 30, approved Nov. 1956 (L. 1955 p. 1860, S.J.R. No. 4.)]

§ 41 LAWS, EFFECTIVE DATE. INITIATIVE, REFERENDUM --AMENDMENT OR REPEAL. No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: PROVIDED, That any such act, law or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon. These provisions supersede the provisions of subsection (c) of section 1 of this article as amended by the seventh amendment to the Constitution of this state. [Added by AMENDMENT 26, approved Nov. 4, 1952 (L. 1951 p. 959, Sub. S.J.R. No. 7.)] (Emphasis supplied.)

***** FOOTNOTES *****

1/27 Am.Jur.2d, Equity, § 126.

2/I.e., requiring the "Tabb Bill" to go on the ballot as an alternative to the initiative.

3/As stated in Clark v. Dwyer, 56 Wn.2d 425, 431, 353 P.2d 941 (1960), it is, of course, fundamental

". . . that the state Constitution is not a grant, but a restriction on the law-making power, and the power of the legislature to enact all reasonable laws is unrestrained except where, either expressly or by fair inference, it is prohibited by the state and federal Constitutions. . . ."

4/Subject only to the possibility of a referendum against the amendatory act to the extent that it is subject thereto under Article II, § 1 (b) of the Constitution dealing with the referendum.

5/Under this decision, a legislative title to an initiative (as distinguished from the official ballot title prepared by the attorney general) is mere surplusage without any legal significance or effect.