

# Initiative Measure No. 1038

## **Hands Off The People's Initiative Stops politicians from taking away our rights**

Filed

JAN 26 2009

SECRETARY OF STATE

AN ACT Relating to protecting citizens' rights to participate in ballot measure processes; amending RCW 29A.72.110, 9A.84.030, 29A.72.120, 29A.72.130, 29A.72.170, 29A.72.150, and 29A.72.030; adding new sections to chapter 29A.72 RCW; creating new sections; and prescribing penalties.

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

### **POLICIES AND PURPOSES**

NEW SECTION. **Sec. 1.** Citizens want to ensure their right to participate fully in ballot measure processes. As guaranteed by the Washington state Constitution: "The first power reserved by the people is the initiative." The right of the people to petition and legislate through the initiative and referendum is a fundamental right protected by the Washington state Constitution. Citizens' participation in the legislative process by initiative and referendum has been subjected to hostility, interference and threats of interference by private and governmental actions. Because the constitutional right and power of initiative and referendum are the core of legislative policy-making, any legislative or regulatory change that restricts the right of people to petition and vote must be viewed with extreme skepticism exactly because these rights are guaranteed by our state Constitution and thus require a constitutional amendment to be valid.

Legislators hostile to ballot measures have continually introduced legislation that either directly repeals the people's right

to initiative and referendum or indirectly repeals our rights by complicating and undermining the process, something the voters do not support. Such restrictions, if enacted, create hurdles and barriers that disproportionately impact and discourage small, grassroots efforts because of the increased costs of compliance. The Washington state Constitution clearly requires that any change that does not facilitate the process requires a constitutional amendment which involves two-thirds legislative majorities and a vote of the people. This act is intended to hold Olympia to that constitutional requirement to avoid unconstitutional changes that impair the people's right to participate.

The people intend that laws and rules adopted regarding the initiative and referendum processes be construed to facilitate and encourage the exercise of initiative and referendum powers. Laws or rules regarding the initiative or referendum process shall be construed narrowly to ensure protection of the citizens' rights to the initiative and referendum processes. The Legislature's placement of an emergency clause on legislation, if valid, indicates that the legislation might not be subject to referendum. However, the people should not be prohibited from collecting signatures on referendum petitions, nor should the people be prevented from voting on a referendum on legislation because of an emergency clause or other reasons. Collecting signatures and letting the voters' vote should be allowed to proceed because a more appropriate time to determine the validity of an emergency clause is after the election. Moreover, article I, section 4 of the Washington state Constitution and the First Amendment to the United States Constitution recognizes the right of the people to petition the government. This act is intended to facilitate the rights under these constitutional provisions. This measure would require two-thirds legislative majorities for laws that restrict the initiative and referendum process, subject emergency clauses to expedited judicial review, and establish protections for signature gathering. The people find that the people's right to participate in the ballot measure process deserves to be protected and encouraged.

NEW SECTION. **Sec. 2.** A new section is added to chapter 29A.72 RCW to read as follows:

As provided in article 1, section I of the Washington state

Constitution, "All political power is inherent in the people and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights." Of the powers delegated to the legislature by Article II of the Washington state Constitution, the first right reserved to the people is that of initiative and referendum. The purpose of this act is to declare the intent of the people of the state of Washington that all laws and rules proposed by state agencies that restrict the right of initiative and referendum are to be construed in such a way as to facilitate, and eliminate any hindrance to, the right of initiative and referendum, and the right to petition the government. Legislative amendments or rules proposed by any state agency that restrict, impede, or increase the burdens and requirements to the exercise of the right to initiative and referendum shall be narrowly construed. To that end, this act is to be liberally construed to effectuate its purpose of preserving and protecting the peoples' right to initiative and referendum.

**PROTECTING CITIZENS' RIGHT TO PARTICIPATE BY REQUIRING A TWO-THIRDS  
LEGISLATIVE MAJORITY FOR ANY LEGISLATION THAT RESTRICTS THE STATE  
INITIATIVE AND REFERENDUM PROCESS**

NEW SECTION. **Sec. 3.** A new section is added to chapter 29A.72 RCW to read as follows:

Any legislation that restricts the state initiative or referendum process must be approved by a two-thirds vote of each house of the legislature. The Washington state Constitution guarantees the people the right to initiative and referendum and any law by the Legislature that frustrates the process or limits access to the process requires a constitutional amendment which requires a two-thirds legislative majority anyway (and even with a state constitutional amendment, such policies likely violate the First Amendment and/or Fourteenth Amendment of the United States Constitution - see section 4 of this act). This requirement does not apply to emergency clauses on bills.

(1) This section does not affect any governmental law, rule, or regulation required by the Washington state Constitution.

(2) This section applies to the initiative process and the referendum process at the state level.

(3) This section shall be self-executing. If any part or parts

of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this act.

**PROTECTING THE CITIZENS' RIGHT TO PARTICIPATE  
BY ALLOWING EXPEDITED JUDICIAL REVIEW OF EMERGENCY CLAUSES**

NEW SECTION. **Sec. 4.** A new section is added to chapter 29A.72 RCW to read as follows:

Any emergency clause attached to any legislation must be subject to expedited judicial review under the procedures required by this section.

(1) The legislature's use of an emergency clause on legislation prevents the peoples' fundamental right to referendum. Such a restriction must serve a compelling governmental purpose and in any legal challenge, the court shall review emergency clauses with a legal standard of strict scrutiny of the emergency clause to ensure the protection of the rights of citizens to the referendum process.

(2) Any person, after a public vote on a referendum challenging legislation with an emergency clause, may file a petition directly in the supreme court seeking declaratory relief as to the validity of that emergency clause. The petition shall set forth the legislation, the objections to the emergency clause, any facts the petitioner contends are undisputed, and a request that the court declare the emergency clause to be ineffective. The petition shall be served on the attorney general on the same day it is filed with the court.

(3) The petition shall be considered an emergency matter of public concern by the supreme court.

(4) The court shall determine whether the emergency clause serves a compelling governmental purpose and otherwise complies with the provisions of this section and is therefore a legitimate exclusion from the peoples' right to referenda.

(5) A person who files an appeal under subsection (2) and substantially prevails is entitled to an award of reasonable costs and attorneys' fees in pursuing the action in the supreme court.

(6) Consistent with this section requiring laws to be construed

to facilitate the initiative and referendum process, if a referendum is sought on legislation with an emergency clause, state officers and agencies, including but not limited to the secretary of state and attorney general, shall proceed with processing the referendum request. Legislation with an emergency clause that is challenged by referendum shall remain in effect and be deemed valid unless and until a vote is held and a court rules that the emergency clause is invalid.

However, neither the secretary of state, nor the attorney general, shall refuse to process a referendum petition based on the inclusion of an emergency clause on the legislation. The people find that their right to vote must not be interfered with. Judicial review to determine the validity of an emergency clause attached to legislation and subject to a referendum may occur only after the people have voted on the referendum.

**PROTECTING CITIZENS' RIGHT TO PARTICIPATE BY  
ESTABLISHING PROTECTIONS FOR SIGNATURE GATHERING**

NEW SECTION. **Sec. 5.** A new section is added to chapter 29A.72 RCW to read as follows:

This section establishes protections for signature gathering. Interfering with signature gathering shall be illegal. Any person who is gathering signatures for an officially filed and processed initiative or referendum shall not have his or her right to petition infringed upon. Any person who is trying to sign a petition for an officially filed and processed initiative or referendum shall not have his or her right to sign a petition infringed upon. Any person who interferes with any person gathering signatures or interferes with any person trying to sign a petition shall be subject to the anti-harassment procedures in chapter 10.14 RCW and civil penalties and shall be guilty of disorderly conduct under RCW 9A.840.030. For purposes of this section, "interfering with" includes, but is not limited to, pushing, shoving, touching, spitting, throwing objects, yelling, screaming, or being verbally abusive, or other tumultuous conduct, blocking or intimidating, or maintaining a presence within twenty-five feet of any person gathering signatures and any person trying to sign a petition. As the courts have consistently ruled, asking fellow citizens to sign a petition is core political speech, which is deserving of the highest levels of protection. Signature

gathering for an officially filed and processed initiative or referendum shall be a legally protected activity on public sidewalks and walkways, and sidewalks and walkways that carry pedestrian traffic, and inside or outside public buildings such as public sports stadiums, convention/exhibition centers, and public fairs. Law enforcement must vigorously protect the rights of the people who want to sign initiative and referendum petitions, and people who collect voter signatures on initiative and referendum petitions, to ensure they are not inhibited or restricted in any way.

The people find that they must be able to safely, freely, and peacefully petition their government for change without fear of retaliation or intimidation. Without the right to petition and the right to sign petitions, there is no functioning initiative and referendum process. Maximum legal protections must be afforded persons gathering signatures and persons trying to sign petitions to protect them from interference, harassment, or threat. Maximum penalties must be imposed against persons who interfere with the constitutionally protected right to initiative and referendum.

**Sec. 6.** RCW 9A.84.030 and 2007 c 2 s 1 are each amended to read as follows:

(1) A person is guilty of disorderly conduct if the person:

(a) Uses abusive language and thereby intentionally creates a risk of assault;

(b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority;

(c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority; or

(d)(i) Intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of:

(A) The location where a funeral or burial is being performed;

(B) A funeral home during the viewing of a deceased person;

(C) A funeral procession, if the person described in this subsection (1)(d) knows that the funeral procession is taking place; or

(D) A building in which a funeral or memorial service is being conducted; and

(ii) Knows that the activity adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

(e) Interferes with a person collecting signatures or signing any initiative or referendum petition by pushing, shoving, touching, spitting, throwing objects, yelling, screaming, being verbally abusive, blocking or intimidating, or other tumultuous conduct or maintaining a presence within twenty-five feet of any person gathering signatures or any person trying to sign any initiative or referendum petition.

(2) Disorderly conduct is a misdemeanor.

**PROTECTING CITIZENS' RIGHT TO PARTICIPATE BY MAKING IT SAFER  
FOR PEOPLE TO GATHER VOTER SIGNATURES**

**Sec. 7.** RCW 29A.72.110 and 2005 c 239 s 1 are each amended to read as follows:

(1) Petitions for proposing measures for submission to the legislature at its next regular session must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

INITIATIVE PETITION FOR SUBMISSION TO THE LEGISLATURE

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that this petition and the proposed measure known as Initiative Measure No. . . . . and entitled (here set forth the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, ~~((and))~~ I have knowingly signed this petition only once, and I have voluntarily signed this petition without any compensation or promise of compensation.

~~((The following declaration must be printed on the reverse side of the petition:~~

~~I, . . . . ., swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise~~

~~of compensation willingly signed his or her true name and that the information provided therewith is true and correct.))~~ I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

(2) The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Without people willing to ask voters to sign petitions, the initiative and referendum process does not function. The people find that any person who gathers signatures for an initiative or referendum deserves maximum legal protection to guarantee the initiative and referendum process is preserved. Requiring people who gather signatures to publicly identify themselves allows opponents of the initiative or referendum to abuse, harass, intimidate, and threaten them. The people find that the people's constitutional right to peacefully petition our government for change is essential to ensure the protection of the initiative and referendum process.

**Sec. 8.** RCW 29A.72.120 and 2005 c 239 s 2 are each amended to read as follows:

(1) Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. . . . ., entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the



legal voters of the State of Washington for their approval or rejection at the general election to be held on the . . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, ~~((and))~~ I have knowingly signed this petition only once, and I have voluntarily signed this petition without any compensation or promise of compensation.

~~((The following declaration must be printed on the reverse side of the petition.~~

~~I, . . . . ., swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct.))~~ I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

(2) The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Without people willing to ask voters to sign petitions, the initiative and referendum process does not function. The people find that any person who gathers signatures for an initiative or referendum deserves maximum legal protection to guarantee the initiative and referendum process is preserved. Requiring people who gather signatures to publicly identify themselves allows opponents of the initiative or referendum to abuse, harass, intimidate, and threaten them. The people find that the people's constitutional right to peacefully petition our government for change is essential to ensure the protection of the initiative and referendum process.

**Sec. 9.** RCW 29A.72.130 and 2005 c 239 s 3 are each amended to read as follows:

(1) Petitions ordering that acts or parts of acts passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

PETITION FOR REFERENDUM

To the Honorable . . . . ., Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully order and direct that Referendum Measure No. . . . ., filed to revoke a (or part or parts of a) bill that (concise statement required by RCW 29A.36.071 and that was passed by the . . . . . legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the . . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, ((and)) I have knowingly signed this petition only once, and I have voluntarily signed this petition without any compensation or promise of compensation.

~~((The following declaration must be printed on the reverse side of the petition:~~

~~I, . . . . ., swear and affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct)). I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.~~

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

(2) The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote.

Without people willing to ask voters to sign petitions, the

initiative and referendum process does not function. The people find that any person who gathers signatures for an initiative or referendum deserves maximum legal protection to guarantee the initiative and referendum process is preserved. Requiring people who gather signatures to publicly identify themselves allows opponents of the initiative or referendum to abuse, harass, intimidate, and threaten them. The people find that the people's constitutional right to peacefully petition our government for change is essential to ensure the protection of the initiative and referendum process.

**Sec. 10.** RCW 29A.72.170 and 2003 c 111 s 1818 are each amended to read as follows:

The secretary of state may refuse to file any initiative or referendum petition being submitted upon any of the following grounds:

(1) That the petition does not contain the information required by RCW 29A.72.110, 29A.72.120, or 29A.72.130.

(2) That if on the day of the signature deadline the petition clearly bears insufficient signatures; petition sheets submitted prior to the signature deadline must be processed by the secretary of state as required under RCW 29A.72.150.

(3) That the time within which the petition may be filed has expired.

In case of such refusal, the secretary of state shall endorse on the petition the word "submitted" and the date, and retain the petition pending appeal.

If none of the grounds for refusal exists, the secretary of state must accept and file the petition.

Concerning individual voter signatures on an initiative or referendum petition, the secretary of state must accept and may not reject a valid voter signature as long as the requirements in subsections (1), (2), and (3) of this section are fulfilled. Actions or inactions by the person who gathered a voter's signature can never be used as a reason to reject a valid voter signature on a petition or to reject a petition. For purposes of this section, "valid voter signature" means a voter's signature on an initiative or referendum petition sheet which matches, using the signature verification standard under Washington Administrative Code 434-379-020, the signature on file in the voter registration records. The people find that the secretary of state's policy, maintained for the past ninety

years, to always count a valid voter signature is essential to ensure that voters are not disenfranchised and their right to petition, signature, and/or vote is not taken away from them.

**Sec. 11.** RCW 29A.72.150 and 2003 c 111 s 1816 are each amended to read as follows:

When the person proposing any initiative measure has obtained at least half the signatures of legal voters equal to or exceeding eight percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, or when the person or organization demanding any referendum of an act or part of an act of the legislature has obtained ((a)) at least half the number of signatures of legal voters equal to or exceeding four percent of the votes cast for the office of governor at the last regular gubernatorial election prior to the submission of the signatures for verification, the petition containing the signatures may be submitted to the secretary of state for filing. The secretary of state must, without delay, conduct validity checks on signatures as soon as petitions are submitted. Validity checks on signatures must be conducted immediately upon receipt of any subsequent submission of petition sheets by the signature deadline established under RCW 29A.72.030. The people find that it is very helpful to the initiative and referendum process for both proponents and opponents of a measure to know as expeditiously as possible the number of signatures and the percentage of valid voter signatures submitted so as to determine whether or not the measure has obtained the required number of valid voter signatures to qualify for the ballot.

NEW SECTION. **Sec. 12.** A new section is added to chapter 29A.72 RCW to read as follows:

To ensure the safety of individuals who collect signatures for initiatives and referendums and to protect them from, and make them less susceptible to, intimidation, retaliation, or harassment, such persons can never be required by any governmental entity to put their name, address, city, state, zip code, phone number, email address, or any other identification on the petition. Additionally, no governmental entity may register or require a license of any person or entity which collects signatures or coordinates the collection of

signatures for any initiative or referendum. The people find that the voters are the ones who determine whether an initiative or referendum qualifies for the ballot and takes effect. The sponsor of the initiative or referendum or any person gathering signatures for an initiative or referendum is liable for his or her own actions but not those of others.

**Sec. 13.** RCW 29A.72.030 and 2003 c 111 s 1804 are each amended to read as follows:

Initiative measures proposed to be submitted to the people must be filed with the secretary of state within (~~ten~~) sixteen months prior to the election at which they are to be submitted, and the signature petitions must be filed with the secretary of state not less than four months before the next general statewide election.

Initiative measures proposed to be submitted to the legislature must be filed with the secretary of state within (~~ten~~) sixteen months prior to the next regular session of the legislature at which they are to be submitted, and the signature petitions must be filed with the secretary of state not less than ten days before such regular session of the legislature.

A referendum measure petition ordering that any act or part of an act passed by the legislature be referred to the people must be filed with the secretary of state within ninety days after the final adjournment of the legislative session at which the act was passed. It may be submitted at the next general statewide election or at a special election ordered by the legislature.

A proposed initiative or referendum measure may be filed no earlier than the opening of the secretary of state's office for business pursuant to RCW 42.04.060 on the first day filings are permitted, and any initiative or referendum petition must be filed not later than the close of business on the last business day in the specified period for submission of signatures. If a filing deadline falls on a Saturday, the office of the secretary of state must be open for the transaction of business under this section from 8:00 a.m. to 5:00 p.m. on that Saturday.

NEW SECTION. **Sec. 14.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act. Laws and rules adopted regarding the initiative and

referendum process shall be construed to facilitate the initiative and referendum process. In any legal challenge, laws or rules regarding the initiative or referendum process shall be reviewed with a legal standard of strict scrutiny by the courts.

NEW SECTION. **Sec. 15.** Subheadings used in this act are not any part of the law.

NEW SECTION. **Sec. 16.** This act shall be self-executing. If any part or parts of this act are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the act shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this act.

NEW SECTION. **Sec. 17.** This act shall be known and cited as the Hands Off the People's Initiative.

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