



January 31, 2024

Lt. Governor Denny Heck
Office of the Lt. Governor
220 Legislative Building
416 Sid Snyder Ave. S.W.
Olympia, WA 98504

Senator Andy Billig
307 Legislative Building
416 Sid Snyder Ave. S.W.
Olympia, WA 98504

Senator John Braun
314 Legislative Building
416 Sid Snyder Ave. S.W.
Olympia, WA 98504

Speaker Laurie Jinkins
339C Legislative Building
416 Sid Snyder Ave. S.W.
Olympia, WA 98504

Representative Drew Stokesbary
335C Legislative Building
416 Sid Snyder Ave. S.W.
Olympia, WA 98504

RE: State Constitutional Requirements Regarding Prioritization of Initiatives to the Legislature

Dear Lt. Governor Heck, Senator Billig, Senator Braun, Speaker Jinkins, and Representative Stokesbary,

I have the pleasure of representing John and Amber Goldade, and on their behalf I wanted to convey their concerns to you collectively as the leadership of the Washington State Legislature that the state constitutional requirements under Article II, § 1(a) are not being met with regard to the six initiative measures now pending in the Legislature.

On January 15, 2022, my clients suffered an unimaginable tragedy when their daughter was struck and killed by a man driving a stolen truck. They subsequently learned that the driver had been driving another stolen truck two weeks earlier and the police had been unable to pursue him due to previous changes in legislation that restricted such pursuits for property crimes. Although the legislature amended the law last year, it did not adequately address the circumstances that the Goldades sought to change.

The Goldades channeled their grief into action. They signed and actively supported the petition for Initiative 2113, which repealed restrictions on police pursuits. They also signed five other petitions that made other changes that they supported, including: I-2117, I-2081, I-2109, I-2111, and I-2124. They were not alone. According to initiative proponents, the six initiatives received nearly 2.7 million signatures. Approximately 800,000 people signed in total.

All six initiatives were certified by the secretary of state and were referred to the state legislature pursuant to Article II, § 1(a) of the state constitution. The first initiative to be certified, I-2113 (the police pursuit reform measure that had special significance to Ms. Goldade), was certified on January 11, 2024, just three days into the session. The final initiative to be certified, I-2124, has been pending for a week.

Article Two, § 1(a) of the state constitution requires that initiative measures “shall take precedence over all other measures in the legislature except appropriation bills and shall either be enacted or rejected without change.” To date, the Legislature has heard hundreds of non-appropriation bills in committees that do not have this special constitutional protection

The legislative rights of the people reserved in the state Constitution are to be liberally construed in order to preserve them and render them effective. *Brower v. State*, 137 Wash.2d 44, 969 P.2d 42 (WA 1998). The constitutional provision granting the right to referendum provides a fourth element to the three branches of government, the people, reserving the right to assert its will over the legislative department of the government. *Washington State Farm Bureau Federation v. Reed* (2005) 154 Wash.2d 668, 115 P.3d 301.

As noted by the court in *Eyman v. Wyman*, 191 Wash.2d 581, 424 P.3d 1183 (WA 2018).

[t]he initiative power “is nearly as old as our constitution itself, [is] deeply ingrained in our state's history, and [is] widely revered as a powerful check and balance on the other branches of government.” Coppernoll v. Reed, 155 Wash.2d 290, 296-97, 119 P.3d 318 (2005). Because of this, we have repeatedly affirmed the judiciary's responsibility to protect “this potent vestige” of Washington's progressive past from encroachment or interference. Id. at 297, 119 P.3d 318 (citing In re Estate of Thompson, 103 Wash.2d 292, 294-95, 692 P.2d 807 (1984)). In fulfillment of that duty, “this court has consistently applied the rule that such provisions will be liberally construed to the end that the right of initiative be facilitated.” Thompson, 103 Wash.2d at 294-95, 692 P.2d 807 (citing Sudduth

v. Chapman, 88 Wash.2d 247, 251, 558 P.2d 806, 559 P.2d 1351 (1977)); see *State ex rel. Evich v. Superior Court*, 188 Wash. 19, 27-28, 61 P.2d 143 (1936) (quoting *State ex rel. Case v. Superior Court*, 81 Wash. 623, 632, 143 P. 461 (1914)).

Article II, § 1 of the state constitution restricts the legislature's authority to enact, amend, defer, and reject legislation in “explicit” ways. *Dep't of Revenue v. Hoppe*, 82 Wash.2d 549, 557, 512 P.2d 1094 (1973).

It should be noted that an honest adherence to the separation of powers doctrine limits a court's ability to interfere in the independence and integrity of another coequal branch of government. *State v. Gresham*, 173 Wash.2d 405, 428, 269 P.3d 207 (2012). However, the state supreme court has also not hesitated to defend the right to legislate by initiative, which is the “first power reserved by the people”, especially in instances in which the legislature’s actions were violative of the letter and spirit of that right. See e.g. *Eyman v. Wyman* 191 Wash.2d 581, 424 P.3d 1183 (2018) (Bill purporting to amend initiative that was adopted immediately after passage of bill violated constitutional provision governing initiatives; bill was a change or amendment to initiative done before end of regular session in which initiative was passed.) (Per Gordon McCloud, J., with three justices concurring and one justice concurring in result.)

The central question here is the meaning of the phrase “take precedence” for the purposes of Article II § 1(a). While it appears that no court has defined the phrase within that context, the phrase is commonly used in a number of areas, including determining service of process in RCW 7.105.155, court ordered obligations in RCW 10.01.160, and determining the order of liens. See e.g. *Hollenbeck v. City of Seattle*, 136 Wash. 508, 240 P. 91 (WA 1925). In addition, Black’s law dictionary further defines “precedence” as “[t]he act or state of going before; adjustment of place. The right of being first placed in a certain order.” *Precedence, Black’s Law Dictionary* (6th ed. 1990). The bottom line is that the meaning of this state constitutional provision should be harmonized with state law and commonly used legal phrases and that, at minimum, an initiative measure has a greater claim in priority than other legislation in the legislative process.

Our state supreme court has not refrained in other recent instances from exercising its mandamus power to ensure that the dictates of the constitution are followed, even when legislative power was implicated. See e.g. *Order in McCleary v. State* 2016 WL 11783312 (Keeping in place monetary sanction of \$100,000 per day against state until the state purges its contempt by adopting a complete legislative plan demonstrating how it will fully comply with provisions of Article IX, § 1 of the Washington constitution’s paramount duty of the state legislature to provide ample funding for education.)

In addition, Article II § 1(a) sets up a special process to protect the right to petition the government for the Goldades and the other Washingtonians who signed the petitions for the initiatives. The process is that once certified, the legislature is to give priority to the initiative measures in its proceedings. In the absence of passage of alternative measures, it must either give a hearing to the bills or provide a vote up or down on the initiative.

This is how the state constitution protects the Goldades' right to petition their government: by ensuring that the legislature must give precedence to the measures they signed, and once they are certified, it must take some sort of action. What it cannot do is ignore them, otherwise the phrase "take precedence" has no meaning.

We respectfully request that you adhere to the plain language and text of Article II, § 1(a) of the state constitution and either ensure that the six initiatives now pending receive hearings or a floor vote. If you do not, I am authorized to inform you that we will consider the available options to ensure compliance with the constitution.

Please feel free to contact me with any questions or if any of you would like to discuss further.

Respectfully,

A handwritten signature in blue ink that reads "Jackson Maynard, Jr." in a cursive style.

Jackson Maynard
Executive Director and Counsel
Citizen Action Defense Fund
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