



January 12, 2024

Senator Jamie Pedersen
309 Legislative Building
PO Box 40443
Olympia, WA 98504

Speaker Laurie Jinkins
339C Legislative Building
PO Box 40600
Olympia, WA 98504

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

Dear Senator Pedersen and Speaker Jinkins,

I am writing to raise concerns to you, as leaders of the majority caucuses in the Washington State Legislature, that the constitutional requirements of Article II, § 1(a) are not being met with respect to the two initiative measures currently pending before the Legislature. I was surprised to learn that at last Friday's press availability you both indicated that you have no plans to hold hearings on the initiatives. Irrespective of the policy of the initiatives, such a position is not consistent with the letter or spirit of the state constitution which requires the Legislature to give precedence to initiatives over all legislation except appropriation bills. This stance is also disrespectful to the over 400,000 Washingtonians who signed petitions in support of the initiatives.

You may recall some of the arguments outlined below from a letter I sent two years ago in response to similar matter involving six initiatives submitted to the Legislature in 2024. Following mounting public pressure, the Legislature heard and passed three of the initiatives. Prior to that session, every initiative to the Legislature for the previous twenty years received a hearing in the committees to which they were referred.

As fellow lawyers, I would hope that both of you could recognize that the legal case here is easy to make. 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 is currently scheduled to hear

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 (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. *Wash. State Farm Bureau Fed'n v. Reed*, 154 Wn.2d 668, 115 P.3d 301 (2005).

As noted by the court in *Eyman v. Wyman*, 191 Wash.2d 581, 424 P.3d 1183 (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). The central question here is the meaning of the phrase “take precedence” in that provision. 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, e.g. *Hollenbeck v. City of Seattle*, 136 Wash. 508, 240 P. 91 (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 meaning of the phrase “take precedence” should be harmonized with state law how that phrase is commonly used in legal matters and applied to provide that initiatives have a greater claim in priority than other legislation in the legislative process.

Article II § 1(a) sets up a special process which protects the right to petition the government. The process is clear: once certified, the legislature is to prioritize initiative measures in its proceedings. Absent the passage of alternative measures, the Legislature must either hold hearings on the initiatives or submit them to an up-or-down vote.

In conclusion, the state constitution protects Washingtonians' 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.

I 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 two 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.

I also request a response that at the very least outlines your legal arguments in support of your position as to the meaning of the phrase "take precedence" in Article II§ 1(a) of the state constitution. Please feel free to contact me with any questions or if you would like to discuss further.

Respectfully,



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