

No. 81857-6

SUPREME COURT OF THE STATE OF WASHINGTON

COMMUNITY CARE COALITION OF WASHINGTON; HOME CARE
OF WASHINGTON, INC.; THE FREDRICKSON HOME; CYNTHIA
O'NEILL, a Washington Citizen and Taxpayer;
RON RALPH and LOIS RALPH, husband and wife and
Washington Citizens and Taxpayers,

Petitioners,

v.

SAM REED, Secretary of State,

Respondent,

and

LINDA LEE and PEOPLE FOR SAFE QUALITY CARE,

Interveners/Respondents.

EMERGENCY MOTION FOR TEMPORARY INJUNCTION

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I. IDENTITY OF MOVING PARTIES

The moving parties are the petitioners who have filed this original action against the Secretary of State Sam Reed.

II. STATEMENT OF RELIEF SOUGHT

Petitioners respectfully request an order enjoining the Secretary of State Sam Reed from certifying Initiative Measure No. 1029 ("I-1029") to each county auditor to be voted upon at the November 2008 general election. Petitioners request the Secretary of State be enjoined pending resolution of the Petition Against State Officer Sam Reed; Writ of Mandamus; Writ of Prohibition; In The Alternative Writ of Certiorari ("Petition").

III. FACTS RELEVANT TO MOTION

On July 22, 2008, petitioners filed this original action for a writ of mandamus, a writ of prohibition, or in the alternative writ of certiorari to prevent the Secretary of State from certifying I-1029 to the November 2008 general election ballot and to require that he process I-1029 as an initiative to the legislature. On July 28, 2008, Narda Pierce, the undersigned counsel and one of the attorneys for the petitioners herein, spoke with Solicitor General Maureen Hart and Deputy Solicitor General Jeffrey T. Even, attorneys for respondent Secretary of State Sam Reed

herein. She requested that the Secretary of State agree to refrain from certifying Initiative 1029 ("I-1029") to the county auditors for placement on the ballot until the statutory deadline of September 9, 2008, anticipating that this matter might be resolved before that time. Deputy Solicitor General Jeffrey T. Even advised the undersigned counsel that the Secretary of State's Office intended to certify I-1029 to the county auditors for placement on the November 2008 general election ballot prior to the statutory deadline of September 9, 2008, and prior to the Court's resolution of this matter. Declaration of Narda Pierce In Support of Motion For Temporary Injunction ("Declaration of Narda Pierce"). Mr. Even stated that I-1029 could be certified to the county auditors as early as August 11, 2008. Declaration of Narda Pierce.

On August 1, 2008, Shane Hamlin, Assistant Director of Elections for the Secretary of State, sent an email message to the attorneys for the parties in this matter stating: "Sometime in the coming week or so, Secretary Reed will sign a separate document certifying all three initiative measures to the ballot. As of Friday morning I do not have a firm date for when this will occur. I will inform you of a date as soon as I have one."

A true and correct copy of the email is attached as Exhibit A. I-1029 is one of the three initiative measures referenced in this message. Therefore,

it now appears the Secretary of State could certify I-1029 to the ballot as early as August 4, 2008.

The Secretary of State is required by law to certify to the county auditors the serial numbers and ballot titles of the initiative measures by September 9, 2008. *See* RCW 29A.72.250¹ and RCW 29A.60.240².

IV. GROUNDS FOR RELIEF AND ARGUMENT

Rule of Appellate Procedure (“RAP”) 8.3 implements the Court’s authority to issue orders needed for effective review, including review undertaken in original actions. RAP 8.3 provides as follows:

Except when prohibited by statute, the appellate court has authority to issue orders, before or after acceptance of review or in an original action under Title 16 of these rules, to insure effective and equitable review, including authority to grant injunctive or other relief to a party. The appellate court will ordinarily condition the order on furnishing a bond^[3] or other security. A party seeking the relief

¹ RCW 29A.72.250 provides: “If a referendum or initiative petition for submission of a measure to the people is found sufficient, the secretary of state shall at the time and in the manner that he or she certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures to be voted upon at the next ensuing general election or special election ordered by the legislature.”

² RCW 29A.60.240 provides: “The secretary of state shall, as soon as possible but in any event not later than the third Tuesday following the primary, canvass and certify the returns of all primary elections as to candidates for state offices, United States senators and representatives in Congress, and all other candidates whose district extends beyond the limits of a single county.” *See also* Secretary of State election calendar at http://www.secstate.wa.gov/elections/calendar_full.aspx.

³ If the harm occasioned by the delay can be measured in terms of a monetary amount, then a bond is appropriate. *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 759, 958 P.2d 260 (1998).

provided by this rule should use the motion procedure provided in Title 17.

As a general matter, a temporary injunction is appropriate under RAP 8.3 when the issue presented is debatable, the injunctive relief preserves the fruits of a successful action, and the equities weigh in favor of the order. *See Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985) (stating that “[w]hether a stay pending appeal should be granted depends on (1) whether the issue presented by the appeal is debatable, and (2) whether a stay is necessary to preserve for the movant the fruits of a successful appeal, considering the equities of the situation”). *See also Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 291, 716 P.2d 956 (1986) (noting RAP 8.3 allows stay of trial court order if the movant can demonstrate that debatable issues are presented on appeal and that the stay is necessary to preserve the fruits of the appeal for the movant after considering the equities of the situation, citing *Purser v. Rahm*). When an original action seeks to prevent the Secretary of State from certifying a matter to the ballot, it is appropriate to enter an order enjoining such certification pending resolution of the original action. *See, e.g., Washington State Labor Council v. Reed*, 149 Wn.2d 48, 51, 65 P.3d 1203 (2003) (temporary injunction entered against Secretary of State Sam Reed preventing him from certifying the results of an election on a referendum

measure pending resolution of the original action seeking a writ of mandamus or a writ of prohibition).

All of the elements for entry of a temporary injunction are present here. First, this case presents “debatable issues.” RCW 29A.72.110 sets out a form of petition for an initiative to the legislature and requires that the petition be substantially in that form. This statute prescribes the following operative language:

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; . . .

The sponsors of I-1029 prepared and circulated petitions containing the following language:

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. 1029 . . . 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

In *Schrempp v. Munro*, 116 Wn.2d 929, 809 P.2d 1381 (1991) the Court found an initiative was properly certified to the legislature as substantially in the required form where

on the front of the petitions there appear the operative words of the petition, *i.e.*, that it is addressed to the Secretary of State and that the undersigned citizens and legal voters direct that the proposed measure “be transmitted *to the legislature*” and that the signers “petition the *legislature* to enact said proposed measure into law.”

(Emphasis in original.) The Court noted that four places on the face of the petition stated it was a petition to the legislature, including immediately above the signature lines, while one erroneous statement above the operative language stated it was an initiative petition for submission to the people. In these circumstances, the Court upheld the Secretary of State’s decision to accept and file the petition as an initiative to the legislature, noting that “[i]nherent in the decision of the Secretary of State to accept and file this petition was his determination that the petition was substantially in the form required.” *Id.* at 937.

The Secretary of State cites *Schrempp v. Munro*⁴ to support his claim that he has the discretion to certify to the ballot a petition that states on its face and in its operative language that it is a petition for an initiative to the legislature. Nowhere on the I-1029 petitions does it state that it is an initiative to the people. The petitioners’ believe *Schrempp v. Munro* recognizes and supports their position that a petition for an initiative to the people must so state its purpose to meet the basic mandatory requirement

⁴ See Exhibit L to Petition, p. 3.

of RCW 29A.72.120 that such petitions “must be substantially in the following form . . .”. The Secretary of State does not have discretion to nullify this basic mandatory requirement. Whether a petition circulated for signatures as an initiative to the people must state it is for that purpose, and not for the purpose of an initiative to the legislature, is a “debatable issue” of law supporting a temporary injunction under RAP 8.3.

Considerations relating to preservation of the fruits of a successful action and the equities of the situation also weigh in favor of a temporary injunction. The petitioners have requested that this Court issue a writ of mandamus or writ of prohibition prohibiting the Secretary of State from certifying I-1029 to the county auditors for placement on the general election ballot. Petition, p. 31, § VIII, ¶ 1(b). The Washington State Constitution, article IV, section 4, provides this Court original jurisdiction to issue writs of mandamus or prohibition to prohibit an act of a state officer as well as to command an act. *State ex rel. O'Connell v. Yelle*, 51 Wn.2d 620, 622, 320 P.2d 1086 (1958); *Andrews v. Munro*, 102 Wn.2d 761, 762, 689 P.2d 399 (1984). A temporary injunction is appropriate in this case to preserve the ability of this Court to grant the requested relief, and to preclude any suggestion that the relief requested in the petition has been rendered moot. If the Secretary of State certifies I-1029 to the November ballot prior to this Court's consideration of petitioners' request

for such writs, there will be confusion about the relief to be ordered. Would the Secretary of State be ordered to rescind the certification? Will a writ of mandamus or writ of prohibition lie to undo what has already been done by an executive officer's actions?

In addition to this potential legal confusion, there would also be the potential for misunderstanding by county auditors as to their legal responsibilities once the Secretary of State has certified an initiative for placement on the ballot, especially during the time period when the matter is under review by this Court. Entry of the requested temporary injunction will not hinder the Secretary of State's ability to work with county auditors in the interim. The Secretary of State would have full ability to communicate with the county auditors regarding the status of the signature verification and the status of the litigation, and assist in preparations necessary to insure timely printing and mailing of the ballots.

This Court has granted accelerated review in this case taking into consideration the date by which the county auditors need to be told whether or not to include I-1029 on the ballots that are printed. *See* Commissioner's Ruling on Original Action dated July 29, 2008. There is no need for certification to the ballot to occur prior to this Court's resolution of this matter. The appropriate course for clarity in orders and efficiency in use of judicial resources is entry of a temporary injunction

enjoining the Secretary of State Sam Reed from certifying Initiative 1029 to each county auditor to be voted upon at the November 2008 general election pending resolution of the Petition.

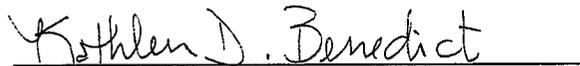
V. CONCLUSION

For the reasons set forth above, petitioners respectfully request entry of the temporary injunction pursuant to RAP 8.3.

Respectfully submitted this 1st day of August, 2008.



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