

COPY

No.

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.

**MOTION FOR ACCELERATED REVIEW OF PETITION
AGAINST STATE OFFICER**

Narda Pierce, WSBA No. 10923
Kathleen D. Benedict, WSBA No. 7763
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I. IDENTITY OF MOVING PARTIES

The petitioners seek the relief designated in Part II. The petitioners have filed a Petition Against State Officer Sam Reed asking that the Secretary of State be directed to process signed petitions relating to Initiative Measure No. 1029 (“I-1029”) as an initiative to the legislature and be prohibited from processing I-1029 as an initiative to the people.

II. STATEMENT OF RELIEF SOUGHT

Petitioners respectfully request an order granting accelerated review of their petition and establishing the following schedule for the filing of an agreed statement of facts, briefs, and oral argument to allow expeditious consideration of this matter by the Supreme Court:

July 31, 2008	Parties file any Agreed Statement of Facts
August 11, 2008	Petitioners’ Opening Brief
August 25, 2008	Respondent’s Brief
September 2, 2008	Petitioners’ Reply Brief
Week of September 8, 2008	Oral Argument
Before Mid-September	Order Issued

RAP 16.2(d) provides that the Supreme Court Commissioner or Supreme Court Clerk will determine the timing of steps in an original action against a state officer, including the time for filing briefs. RAP 18.12 provides that the Court on its own motion or on motion by a party may set any review proceeding for accelerated disposition, and that “[t]he appellate court clerk will notify the parties of the setting and any orders entered to promote the accelerated disposition under rules 1.2(c) and 18.8(a).” RAP 1.2 (c) states the Court may waive or alter the provisions of any of the appellate rules in order to serve the ends of justice, and RAP 18.8(a) states the appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of the rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice.¹

Petitioners believe that granting accelerated review and adopting the proposed schedule will provide adequate time for briefing, argument, and expeditious final disposition of the matter.

III. FACTS RELEVANT TO MOTION

The sponsors of I-1029 prepared and circulated initiative petitions. On the front of the petitions there appear the ballot title and summary prepared by the Attorney General. The petitions then state as follows:

¹Both RAP 1.2 (c) and RAP 18.8 (a) are subject to the restrictions in RAP 18.8 (b) and (c), which are not applicable here.

To the Honorable Sam Reed, 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. 1029, entitled "Statement of Subject: Initiative Measure No. 1029 concerns long-term care services for the elderly and persons with disabilities. Concise Description: This measure would require long-term care workers to be certified as home care aides based on examination, with exceptions: increase training and criminal background check requirements; and establish disciplinary standards and procedures.", 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 in 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.

Immediately below this language is a separate box with a warning that "[e]very person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter or makes any false statement on this petition may be punished by fine or imprisonment or both." Directly beneath the warning are 20 signature lines. A copy of this page of the

petition presented for registered voters to sign is attached as Attachment A.²

The copy of Attachment A, with handwritten markings, was delivered to the Secretary of State's office by a citizen on June 25, 2008.³ The citizen pointed out that the language on the face of the petition, addressed to the Secretary of State, did not contain the language prescribed in RCW 29A.72.120 for initiatives to the people, but rather the petition contained the language prescribed in RCW 29A.72.110 for initiatives to the legislature.⁴ In a letter dated July 14, 2008, from Deputy Solicitor General James K. Pharris on behalf of Secretary of State Reed to Kathleen D. Benedict and Narda Pierce, Mr. Pharris explained the Secretary of State's receipt of this petition as follows:

² The petitions were apparently printed on two sides of 11 x 34 inch sheets, with folds in the center. This created four "pages" with Attachment A being the first page, the text of the initiative printed on the second and third "pages" (separated by the fold) and a fourth "back" page contained mailing instructions and other matters.

³ The attached copy of Attachment A was provided to petitioners by the Attorney General's Office. This copy contains circling and underlining which petitioners understand was made by the individual who delivered the copy to the Secretary of State. Petitioners do not know the identity of the individual who brought this matter to the attention of the Secretary of State. Petitioners have not yet received requested copies of the petitions without this marking. Petitioners understand from Deputy Solicitor James K. Pharris that the language of all of the submitted petitions is identical to the language of Attachment A.

⁴ This description of the citizen's contact with the Secretary of State is based on the letter dated July 14, 2008, from Deputy Solicitor General James K. Pharris on behalf of Secretary of State Sam Reed to Kathleen D. Benedict and Narda Pierce. This letter is attached hereto as Attachment B.

On or about June 25, 2008, a citizen delivered a blank petition for I-1029 to the Secretary of State's office, pointing out that the language on the face of the petition, addressed to the Secretary of State, did not contain the language prescribed in RCW 29A.72.120 for initiatives to the people ("We, the undersigned citizens and legal voters . . . respectfully direct that the proposed measure . . . 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)"). Rather, the petition in question contained the language prescribed in RCW 29A.72.110 for initiatives to the legislature ("We, the undersigned citizens and legal voters . . . respectfully direct that this petition and the proposed measure . . . be transmitted to the legislature of the State of Washington at its next ensuing regular session").

(Ellipses in original.) Attachment B, p. 2.

Later, on June 25, 2008, the Communications Director for the Secretary of State distributed a memo to the Capitol Press Corps providing an update on the plans for signature turn-ins on three proposed measures, including I-1029. The memo noted:

Also, FYI, there was some question about whether to accept I-1029 petitions, because sponsors printed the incorrect preamble on petition forms. The petitions read as an initiative to the Legislature, but it was intended as an initiative for this fall's general election. Our office determined that it was not a fatal flaw or that would-be signers were misled. "Our office is authorized to reject petitions, but not required to do so," said Assistant Elections Director Shane Hamlin. "This error does not rise to a level that suggests voters were misinformed as a result of the error or that a signer would have acted otherwise if the petition correctly stated that it is an initiative to the people."

Memo from David Ammons, Secretary of State Communications Director, posted June 25, 2008, at <http://blogs.thenewstribune.com/politics/2008/06/25> (Attachment C).

As a result of this memo and subsequent media coverage, petitioners became aware that the printed petitions the proponents intended to deliver to the Secretary of State proposed an initiative measure to the legislature and that officials in the Secretary of State's office nevertheless had expressed an intention to accept the petitions as petitions for an initiative to the people.

On July 2, 2008, the undersigned attorneys wrote to the Secretary of State on behalf of the Community Care Coalition noting that the proponents had asked the measure be certified for submittal to the voters at the next general election, setting forth reasons that it should not be so certified, and urging the Secretary of State to reject the petitions as petitions for an initiative to the people. Letter dated July 2, 2008, from Kathleen D. Benedict and Narda Pierce to the Honorable Sam Reed, Attachment D.

The text of the measure appears on the back of the I-1029 petition forms circulated to obtain voter signatures.⁵ No language on the front or

⁵ This text begins with the language "Be it enacted by the people of the State of Washington." This language is required for any bill proposed by initiative petition, whether to the legislature or to the people. Const. art. II, § 1(d) provides: "The style of

the back of the petition makes any reference to submission of an initiative to the people.

On July 3, 2008, the proponents of I-1029 delivered several thousand petitions to the Secretary of State Sam Reed. Although these petitions are in the form prescribed by RCW 29A.72.110 for an initiative to the legislature, the Secretary of State “has determined to process the petitions relating to I-1029 as an initiative to the people.” Attachment B, p. 4. Further, the Secretary of State’s position is that “[i]f it is determined that signatures have been filed in sufficient number to qualify I-1029, it will be certified for inclusion on the November 2008 ballot.” *Id.*

In support of this decision, Mr. Pharris noted that when the sponsor, Linda Lee, filed the proposed initiative with the Secretary of State’s office, she indicated it was a proposed initiative to the People by checking the box for “People” rather than “Legislature” on the Secretary of State’s form Affidavit for Proposed Initiative. *Id.*, p. 1. A copy of the Affidavit for Proposed Initiative contained in the Secretary of State’s I-1029 file is attached as Attachment E. Mr. Pharris noted that the March 12, 2008, cover letter from the Secretary of State to the Code Reviser transmitting a copy of the measure referenced a “proposed Initiative to the People,” that the measure was assigned a number in the series of numbers

all bills proposed by initiative petition shall be: ‘Be it enacted by the people of the State of Washington.’”

applicable to initiatives to the people, and that the Secretary of State website included I-1029 under the heading for initiatives to the people. Attachment B, pp. 1-2.

In a “taxpayer demand” letter to the Attorney General, with a copy provided to the Secretary of State, the undersigned attorneys requested that the Attorney General bring suit against the Secretary of State (1) to prevent him from processing petitions relating to I-1029 as an initiative to the people, and (2) to require him to process I-1029 as an initiative to the legislature. Letter dated July 18, 2008, from Kathleen D. Benedict and Narda Pierce to the Honorable Rob McKenna, Attachment F.

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 4, 2008 general election ballot and to require that he process I-1029 as an initiative to the legislature.⁶

Timeframes for the November 4, 2008, general election are set forth in statute and summarized on the Secretary of State election calendar

⁶ RCW 29A.72.230 provides in pertinent part: “For an initiative to the legislature, the secretary of state shall transmit a certified copy of the proposed measure to the legislature at the opening of its session and, as soon as the signatures on the petition have been verified and canvassed, the secretary of state shall send to the legislature a certificate of the facts relating to the filing, verification, and canvass of the petition.” Const. art. II, § 1(a) provides: In the event petitions are filed for an initiative to the legislature, the Secretary of State is required to “certify the results within forty days of the filing.”

found at http://www.secstate.wa.gov/elections/calendar_full.aspx. An initiative petition for submission of a measure to the people requires the Secretary of State to certify to the county auditors the serial numbers and ballot titles of the initiative measures no later than September 9, 2008. *See* RCW 29A.72.250 and RCW 29A.60.240. Ballots must be printed sometime between September 9, 2008, and the date the county auditors are required to mail ballots to overseas and military service voters, October 5, 2008. *See* RCW 29A.40.070(2). The Secretary of State is also required to print and distribute a voters' pamphlet whenever at least one statewide measure or office is scheduled to appear on the general election ballot. *See* RCW 29A.32.010.

IV. GROUNDS FOR RELIEF AND ARGUMENT

Accelerated review of this matter by the Washington Supreme Court is essential, achievable, and appropriate. It is essential because county auditors will need to know by mid-September 2008 whether to include I-1029 on the ballots that must be printed and mailed to overseas and military service voters on October 5, 2008, or whether instead the measure will be certified to the legislature. Accelerated review is achievable because the petition raises narrow legal issues that can be decided through review of the language on the initiative petitions and related public records. Pre-election review is proper to determine whether

a proposed ballot measure is authorized to be certified to the general election ballot by Const. art. II, §1, and has met the applicable requirements under chapter 29A.72 RCW for submission of an initiative to the general election ballot or, alternatively, for submission of an initiative to the legislature. Further, it is appropriate for this review to be conducted by the Supreme Court in the exercise of its original jurisdiction because this petition presents fundamental and urgent issues of broad public import which requires prompt and ultimate determination. *See City of Tacoma v. O'Brien*, 85 Wn.2d 266, 268, 534 P.2d 114 (1975); *State ex rel. LaFollette v. Hinkle*, 131 Wash. 86, 88, 229 P. 317 (1924).

A. It is Essential to Grant Accelerated Review Pursuant to RAP 18.12 to Eliminate Uncertainty and Confusion at a Critical Juncture in the Certification Process for I-1029.

The Washington Constitution sets forth two separate and distinct methods to exercise legislative power through an initiative process: an “initiative to the people” and an “initiative to the legislature.” Const. art. II, § 1(a). While both types of initiative involve proposed new statutes that are circulated by petition for signature, there are significant differences in the consequence of securing sufficient signatures. If a sufficient number of voters sign an initiative to the people, it is placed directly on the ballot for voter approval or rejection without any prior submittal to the legislature. In contrast, if a sufficient number of voters

sign an initiative to the legislature, it is certified to the legislature, which opens up a broad range of options to both the legislature and the voters.⁷

These options include:

1. The initiative measure may be enacted without change or amendment by the legislature, and become law if no referendum petition is filed.
2. If enacted, the voters may file a referendum petition and the voters may accept or reject the initiative measure in whole or in part.⁸
3. The legislature may enact the initiative measure *and* refer it to the people for approval or rejection at the next regular election.
4. The legislature may propose an alternative measure dealing with the same subject, with both the original initiative and the alternative measure proceeding to the ballot.
5. The legislature may reject the initiative measure or take no action, whereupon the measure will be submitted to the people for approval or rejection at the next regular general election.

An initiative to the legislature invokes a deliberative legislative process, public debate facilitated by that process, and the ability of the process to consider alternative approaches to an issue of demonstrated public interest.

⁷ A copy of the full text of Const. art. II, § 1 is attached hereto as Attachment G.

⁸ *See, e.g.*, Initiative 164 to the legislature, which was enacted by the legislature and subsequently rejected by the people in Referendum 48; this history is as described on the Secretary of State website at http://www.secstate.wa.gov/elections/initiatives/statistics_initleg.aspx

Uncertainty and confusion has been created by the Secretary of State's decision to process I-1029 as an initiative to the people when all of the petitions bearing voter signatures state that the voters are directing the measure to the legislature for its consideration. If this issue is not decided before I-1029 is certified to a vote of the people, the appearance of the measure on the ballot and any subsequent vote count will, as a practical matter, confuse voters. It will also affect any subsequent legislative deliberations in a manner not contemplated by the Washington Constitution. Voters petitioning an initiative to the legislature intend to submit the measure for the *initial* consideration of the legislature with the full range of possible actions.

Like the poet Robert Frost looking down two roads, the Secretary of State is at the point of embarking upon either the road to placing the initiative measure on the ballot or the road of certifying the initiative measure to the legislature. And as in the Frost poem, the road that is taken now will make all the difference.⁹ It is therefore essential that accelerated review be granted.

⁹ The Road Not Taken (1915).

B. Accelerated Review Is Achievable Since This Petition Presents Narrow and Focused Legal Issues That Are Suitable for Accelerated Briefing and Argument.

This petition presents two narrow issues that are essentially two sides of the same coin. They may be briefly stated as follows:

1. Do RCW 29A.70.110, RCW 29A.70.250 and/or Const. art. II, §1(a) require the Secretary of State to certify an initiative to the legislature when the operative language of the petitions states that the undersigned voters “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”
2. Does the Secretary of State have the authority to certify an initiative to the general election ballot when all of the petitions signed by voters direct him to transmit the initiative measure to the legislature, and nowhere indicate that the measure should be certified to the ballot?

The facts necessary to resolve these issues are straightforward and undisputed. Further, the attorneys for the parties are familiar with the constitutional provisions and case law regarding initiatives and are capable of presenting full briefing and argument on these issues on an accelerated schedule. Accelerated review is therefore readily achievable in this matter.

C. The Issue of Which of Two Different Initiative Processes Authorized by Const. Art. II, § 1(a) Is to Be Followed Is Appropriate for Pre-Election Review and the Exercise of the Supreme Court’s Original Jurisdiction.

This Court conducts pre-election review to determine whether placement of a measure on the general election ballot is authorized. “The idea that courts can review proposed initiatives to determine whether they are authorized by article II, section 1, of the state constitution is nearly as old as the amendment itself.” *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 717, 911 P.2d 389 (1996) (referencing *State ex rel. Berry v. Superior Court*, 92 Wash. 16, 159 P. 92 (1916)). A distinction has been drawn between the legality of placing a measure on the ballot and claims that the substantive provisions of measures would be unconstitutional if enacted. Pre-election review is appropriate in the first instance, but not the second: “[W]hile a court may decide whether the initiative is authorized by article II, section 1, of the state constitution, it may not rule on the constitutional validity of a proposed initiative.” *Id.* Challenges in the first category “do not raise concerns regarding justiciability because postelection events will not further sharpen the issue (*i.e.*, the subject of the proposed measure is either proper for direct legislation or it is not).” *Coppernoll v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 318 (2005).

This petition does not challenge the validity of the substance of the proposed initiative measure should it be enacted into law. Rather, the

question that is ripe and warrants accelerated consideration is whether the Secretary of State can ignore and give no effect to the plain language on the I-1029 petitions directing the measure to the legislature, and instead direct the measure to the November 2008 general election ballot. This issue requires a determination of the limits of the Secretary of State's discretion and whether he may summarily decide which of the two different initiative processes authorized by Const. art. II, § 1(a) is to be followed.

This issue is one of broad public interest and concern. See Attachments H – N.¹⁰ A delay in the resolution of these issues and the passage of time will not make these issues any more concrete or fit for judicial decision. The passage of time will result in a vote of the people on I-1029 in the November 2008 election and a post-election appeal that will impinge on the legislative process that has been put in motion by the petitions' directive to the legislature. A post-election challenge may

¹⁰The following newspaper articles reflect the public interest in the issue, while expressing various views on the legal issues: Editorial, *Minor Error Shouldn't Forestall I-1029 Vote*, Seattle Times, July 16, 2008 (Attachment H); Richard S. Davis, *Voters Should Be Presumed To Know What They're Doing*, The Herald, July 16, 2008 (Attachment I); Editorial, *I-1029: What It Said Vs. What They Said It Said*, The News Tribune, July 17, 2008 (Attachment J); Editorial, *Initiative Process: Reason To Rethink*, Seattle Post-Intelligencer, July 17, 2008 (Attachment K); Editorial, *Is Health Care Worker Initiative Legal?*, The Olympian, July 20, 2008 (Attachment L); Editorial, *Please, No Lawsuit*, Spokesman Review, July 21, 2008 (Attachment M); Editorial, *Problematic Initiative Shouldn't Move Forward*, The Yakima Herald-Republic, July 22, 2008 (Attachment N).

preclude the legislature from undertaking its constitutional and legislative responsibility to deliberate the measure, “taking precedent over all other measures in the legislature except appropriation bills” and enact or reject the measure. Const. art. II, § (1)(a). There is no reason to delay resolution of this fundamental issue of broad public concern.

V. CONCLUSION

For the reasons set forth above, petitioners respectfully request accelerated briefing and oral argument to allow expeditious final disposition of the matter.

Respectfully submitted this 22nd day of July, 2008.



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ATTACHMENT A



I-1029 WILL IMPROVE CARE FOR SENIORS, PERSONS WITH DISABILITIES, AND THE VULNERABLE:

- ✓ FBI background checks to assure safety and peace of mind.
- ✓ Improved training and certification for home care and other long-term care workers.

www.yeson1029.org

BALLOT TITLE

Initiative Measure No. 1029 concerns long-term care services for the elderly and persons with disabilities. This measure would require long-term care workers to be certified as home care aides based on an examination, with exceptions; increase training and criminal background check requirements; and establish disciplinary standards and procedures. Should this measure be enacted into law? Yes [] No []

BALLOT MEASURE SUMMARY

Beginning January 1, 2010, this measure would require certification for long-term care workers for the elderly and persons with disabilities, requiring a written examination increased training and additional criminal background checks. Continuing education would be required in order to retain certification. Disciplinary standards and procedures would be applied to long-term care workers who are certified as home care aides. Certain workers would be exempt based on prior employment, training or other circumstances.

To the Honorable Sam Reed, 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. 1029, entitled "Statement of Subject: Initiative Measure No. 1029 concerns long-term care services for the elderly and persons with disabilities. Concise Description: This measure would require long-term care workers to be certified as home care aides based on examination, with exceptions: increase training and criminal background check requirements; and establish disciplinary standards and procedures.", 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, 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.

WARNING: Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter or makes any false statement on this petition may be punished by fine or imprisonment or both.

1	SIGNATURE	PRINT NAME HERE	ADDRESS WHERE REGISTERED TO VOTE			Email
	<small>Please sign as registered to vote</small>	<small>For positive identification</small>	<small>Street or rural route & box number</small>	<small>City</small>	<small>County</small>	
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INITIATIVE 1029 FOR QUALITY LONG-TERM CARE

AN ACT relating to long-term care services for the elderly and persons with disabilities, amending RCW 74.39A.009, 74.39A.240, 74.39A.350, 74.39A.050, and 18.130.040; reenacting and amending RCW 18.130.040; adding new sections to chapter 74.39A RCW; adding a new section to chapter 18.88A RCW; adding a new chapter to Title 18 RCW; creating new sections; providing an effective date; and providing a contingent effective date.

BEST ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON;

NEW SECTION. Sec. 1. It is the intent of the people through this initiative to protect the safety of and improve the quality of care to the vulnerable elderly and persons with disabilities.

The people find and declare that current procedures to train and educate long-term care workers and to protect the elderly or persons with disabilities from caregivers with a criminal background are insufficient. The people find and declare that long-term care workers for the elderly or persons with disabilities should have a federal criminal background check and a formal system of education and experiential qualifications leading to a certification test.

The people find that the quality of long-term care services for the elderly and persons with disabilities is dependent upon the competency of the workers who provide those services. To assure and enhance the quality of long-term care services for the elderly and persons with disabilities, the people recognize the need for federal criminal background checks and additional training requirements. Their establishment should protect the vulnerable elderly and persons with disabilities, bring about a more stabilized workforce, improve the quality of long-term care services, and provide a valuable resource for recruitment into long-term care services for the elderly and persons with disabilities.

Sec. 2. RCW 74.39A.009 and 2007 c 361 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Adult family home" means a home licensed under chapter 70.128 RCW.
- (2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.
- (3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.
- (4) "Boarding home" means a facility licensed under chapter 18.20 RCW.
- (5) "Core competencies" means basic training topics including but not limited to: communication skills, worker self care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

(6) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

- (7) "Department" means the department of social and health services.
- (8) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.
- (9) "Direct care worker" means a paid caregiver who provides direct, hands on personal care services to persons with disabilities or the elderly requiring long-term care.

(10) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(11) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. Activities of daily living, in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(12) "Home and community services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(13) "Home care aide" means a long-term care worker who has obtained certification as a home care aide by the department of health.

(14) "Individual provider" is defined according to RCW 74.39A.240.

(15) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(16) (a) "Long-term care workers for the elderly or persons with disabilities" or "long-term care workers" includes all persons who are long-term care workers for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, community residential service providers, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed in nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(17) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(18) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

(19) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to: mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

(20) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care.

(21) "Secretary" means the secretary of social and health services.

(22) "Secretary of health" means the secretary of health or the secretary's designee.

(23) "Training partnership" means a joint partnership or trust (established and maintained jointly) by that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and (examinations required under this chapter, and educational career) workforce development, or other services to individual providers.

(24) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW.

NEW SECTION. Sec. 3. A new section is added to chapter 74.39A RCW to read as follows:

All long-term care workers for the elderly or persons with disabilities hired after January 1, 2010, shall be screened through state and federal background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. These background checks shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall share this information with the department of health. The department shall not pass on the cost of these criminal background checks to the workers or their employers. The department shall adopt rules to implement the provisions of this section by August 1, 2009.

NEW SECTION. Sec. 4. (1) Effective January 1, 2010, except as provided in section 7 of this act, the department of health shall require that any person hired as a long-term care worker for the elderly or persons with disabilities must be certified as a home care aide within one hundred fifty days from the date of being hired.

(2) Except as provided in section 7 of this act, certification as a home care aide requires both completion of seventy-five hours of training and successful completion of a certification examination pursuant to sections 5 and 6 of this act.

(3) No person may practice or, by use of any title or description, represent himself or herself as a certified home care aide without being certified pursuant to this chapter.

(4) The department of health shall adopt rules by August 1, 2009, to implement this section.

NEW SECTION. Sec. 5. A new section is added to chapter 74.39A RCW to read as follows:

(1) Effective January 1, 2010, except as provided in section 7 of this act, all persons employed as long-term care workers for the elderly or persons with disabilities must meet the minimum training requirements in this section within one hundred twenty calendar days of employment.

(2) All persons employed as long-term care workers must obtain seventy-five hours of entry level training approved by the department. A long-term care worker must accomplish five of these seventy-five hours before becoming eligible to provide care.

(3) Training required by subsection (4)(c) of this section will be applied towards training required under RCW 18.20.270 or 70.128.230 as well as any statutory or regulatory training requirements for long-term care work-

ers employed by supportive living providers.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The seventy-five hours of entry-level training required shall be as follows:

- (a) Before a long-term care worker is eligible to provide care, he or she must complete two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment;
 - (b) Before a long-term care worker is eligible to provide care, he or she must complete three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and
 - (c) All long-term care workers must complete seventy hours of long-term care basic training, including training related to core competencies and population specific competencies.
- (5) The department shall only approve training curriculum that:
- (a) Has been developed with input from consumer and worker representatives; and
 - (b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.
- (6) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.
- (7) The department of health shall adopt rules by August 1, 2009, to implement subsections (1), (2), and (3) of this section.
- (8) The department shall adopt rules by August 1, 2009, to implement subsections (4) and (5) of this section.

NEW SECTION. Sec. 6. (1) Effective January 1, 2010, except as provided in section 7 of this act, the department of health shall require that all long-term care workers successfully complete a certification examination. Any long-term care worker failing to make the required grade for the examination will not be certified as a home care aide.

(2) The department of health, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. Unless excluded by section 7 (1) and (2) of this act, only those who have completed the training requirements in section 5 of this act shall be eligible to sit for this examination.

(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. The department of health shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.

(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department of health or by a contractor to the department of health that is neither an employer of long-term care workers or private contractors providing training services under this chapter.

(5) The department of health has the authority to:

- (a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;
- (b) Hire clerical, administrative, and investigative staff as needed to implement this section;
- (c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;
- (d) Maintain the official record of all applicants and persons with certifications;
- (e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and
- (f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.

(6) The department of health shall adopt rules by August 1, 2009, that establish the procedures and examinations necessary to carry this section into effect.

NEW SECTION. Sec. 7. The following long-term care workers are not required to become a certified home care aide pursuant to this chapter.

- (1) Registered nurses, licensed practical nurses, certified nursing assistants, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary of health, or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary of health determines that the circumstances do not require certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in section 5 of this act but must successfully complete a certification examination pursuant to section 6 of this act.
- (2) A person already employed as a long-term care worker prior to January 1, 2010, who completes all of his or her training requirements in effect as of the date he or she was hired, is not required to obtain certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in section 5 of this act but must successfully complete a certification examination pursuant to section 6 of this act.

(3) All long-term care workers employed by supported living providers are not required to obtain certification under this chapter.

(4) An individual provider caring only for his or her biological, step, or adoptive child or parent is not required to obtain certification under this chapter.

(5) Prior to June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month is not required to obtain certification under this chapter.

(6) A long-term care worker exempted by this section from the training requirements contained in section 5 of this act may not be prohibited from enrolling in training pursuant to that section.

(7) The department of health shall adopt rules by August 1, 2009, to implement this section.

NEW SECTION. Sec. 8. A new section is added to chapter 74.39A RCW to read as follows:

(1) Effective January 1, 2010, a biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days of becoming an individual provider.

(2) Effective January 1, 2010, individual providers identified in (a) and (b) of this subsection must complete thirty-five hours of training within the first one hundred twenty days of becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

- (a) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by subsection (1) of this section; and
 - (b) Before January 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.
- (3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:
- (a) Has been developed with input from consumer and worker representatives; and
 - (b) Requires comprehensive instruction by qualified instructors.
- (4) The department shall adopt rules by August 1, 2009, to implement this section.

Sec. 9. RCW 74.39A.340 and 2007 c 361 s 4 are each amended to read as follows:

(1) The department of health shall ensure that all long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning on January 1, 2010.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under this act.

(3) Unless voluntarily certified as a home care aide under this act, subsection (1) of this section does not apply to:

- (a) An individual provider caring only for his or her biological, step, or adoptive child; and
 - (b) Before June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.
- (4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:
- (a) Has been developed with input from consumer and worker representatives; and
 - (b) Requires comprehensive instruction by qualified instructors.
- (5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.
- (6) The department of health shall adopt rules by August 1, 2009, to implement subsections (1), (2), and (3) of this section.
- (7) The department shall adopt rules by August 1, 2009, to implement subsection (4) of this section.

Sec. 10. RCW 74.39A.350 and 2007 c 361 s 5 are each amended to read as follows:

The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate (sixty-five) seventy hours of training within a reasonable time period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training opportunities shall be offered through (a contract with) the training partnership established under RCW 74.39A.360. Training topics shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training. The department may not require long-term care workers to obtain the training described in this section. This requirement to offer advanced training applies beginning January 1, (2010) 2011.

NEW SECTION. Sec. 11. A new section is added to chapter 18.88A RCW to read as follows:

By August 1, 2009, the department of health shall develop, in consultation with the nursing care quality assurance commission and consumer and worker representatives, rules permitting reciprocity to the maximum extent possible under federal law between home care aide certification and nursing assistant certification.

NEW SECTION. Sec. 12. A new section is added to chapter 74.39A RCW to read as follows:

- (1) The department shall deny payment to any individual provider of home care services who has not been certified by the department of health as a home care aide as required under this act or, if exempted from certification by section 7 of this act, has not completed his or her required training pursuant to this act.
- (2) The department may terminate the contract of any individual provider of home care services, or take any other enforcement measure deemed appropriate by the department if the individual provider's certification is revoked under this act or, if exempted from certification by section 7 of this act, has not completed his or her required training pursuant to this act.
- (3) The department shall take appropriate enforcement action related to the contract of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under this act or, if exempted from certification by section 7 of this act, has not completed his or her required training pursuant to this act.
- (4) Chapter 34.05 RCW shall govern actions by the department under this section.
- (5) The department shall adopt rules by August 1, 2009, to implement this section.

NEW SECTION. Sec. 13. (1) The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, issuance of certificates, and the discipline of persons with certificates under this chapter. The secretary of health shall be the disciplinary authority under this chapter.

- (2) The secretary of health may take action to immediately suspend the certification of a long-term care worker upon finding that conduct of the long-term care worker has caused or presents an imminent threat of harm to a functionally disabled person in his or her care.
- (3) If the secretary of health imposes suspension or conditions for continuation of certification, the suspension or conditions for continuation are effective immediately upon notice and shall continue in effect pending the outcome of any hearing.
- (4) The department of health shall take appropriate enforcement action related to the licensure of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under this chapter or, if exempted from certification by section 7 of this act, has not completed his or her required training pursuant to this chapter.
- (5) Chapter 34.05 RCW shall govern actions by the department of health under this section.
- (6) The department of health shall adopt rules by August 1, 2009, to implement this section.

Sec. 14. RCW 74.39A.050 and 2004 c 140 s 6 are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

- (1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.
- (2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.
- (3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.
- (4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.
- (5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) (If the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.) All long-term care workers shall be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. This information will be shared with the department of health to advance the purposes of this act.

(8) No provider or (staff) long-term care worker, or prospective provider or (staff) long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about ((personal care aides)) long-term care workers identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information will also be shared with the department of health to advance the purposes of this act.

(10) (The department shall by rule develop training requirements for individual providers and home care agency providers. Effective March 1, 2009, until December 31, 2009, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section (based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190). The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department in rule.)

(11) Until December 31, 2009, in an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training. ((In the rule-making process, the department shall adopt rules based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190;))

(13) The department shall establish, by rule, ((training)) background checks((s)) and other quality assurance requirements for ((personal care aides)) long-term care workers who provide in-home services funded by Medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers.

(14) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.

Sec. 15. RCW 18.130.040 and 2007 c 269 s 17, 2007 c 253 s 13, and 2007 c 70 s 11 are each reenacted and amended to read as follows:

- (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.
- (2)(a) The secretary has authority under this chapter in relation to the following professions:
 - (i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;
 - (ii) Naturopaths licensed under chapter 18.36A RCW;
 - (iii) Midwives licensed under chapter 18.50 RCW;
 - (iv) Ocularists licensed under chapter 18.55 RCW;
 - (v) Massage operators and businesses licensed under chapter 18.108 RCW;
 - (vi) Dental hygienists licensed under chapter 18.29 RCW;
 - (vii) Acupuncturists licensed under chapter 18.06 RCW;
 - (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
 - (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
 - (x) Persons registered under chapter 18.19 RCW;

- (xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;
 - (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
 - (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
 - (xiv) Health care assistants certified under chapter 18.135 RCW;
 - (xv) Dietitians and nutritionists certified under chapter 18.138 RCW;
 - (xvi) Chemical dependency professionals certified under chapter 18.205 RCW;
 - (xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;
 - (xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
 - (xix) Denturists licensed under chapter 18.30 RCW;
 - (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;
 - (xxi) Surgical technologists registered under chapter 18.215 RCW;
 - (xxii) Recreational therapists;
 - (xxiii) Animal massage practitioners certified under chapter 18.240 RCW; ((and))
 - (xxiv) Athletic trainers licensed under chapter 18.250 RCW; and
 - (xxv) Home care aides certified under chapter 18.---RCW (the new chapter created in section 18 of this act).
- (b) The boards and commissions having authority under this chapter are as follows:
- (i) The podiatric medical board as established in chapter 18.22 RCW;
 - (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
 - (iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;
 - (iv) The board of hearing and speech as established in chapter 18.35 RCW;
 - (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
 - (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
 - (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
 - (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
 - (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
 - (x) The board of physical therapy as established in chapter 18.74 RCW;
 - (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
 - (xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;
 - (xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and
 - (xiv) The veterinary board of governors as established in chapter 18.92 RCW.
- (3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.
- (4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 16. RCW 18.130.040 and 2008 c ... (Fourth Substitute House Bill No. 1103) s 18 are each amended to read as follows:

- (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.
- (2)(a) The secretary has authority under this chapter in relation to the following professions:
 - (i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;
 - (ii) Naturopaths licensed under chapter 18.36A RCW;
 - (iii) Midwives licensed under chapter 18.50 RCW;
 - (iv) Ocularists licensed under chapter 18.55 RCW;
 - (v) Massage operators and businesses licensed under chapter 18.108 RCW;
 - (vi) Dental hygienists licensed under chapter 18.29 RCW;
 - (vii) Acupuncturists licensed under chapter 18.06 RCW;
 - (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
 - (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
 - (x) Persons registered under chapter 18.19 RCW;
 - (xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;
 - (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
 - (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
 - (xiv) Health care assistants certified under chapter 18.135 RCW;
 - (xv) Dietitians and nutritionists certified under chapter 18.138 RCW;
 - (xvi) Chemical dependency professionals certified under chapter 18.205 RCW;
 - (xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;
 - (xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
 - (xix) Denturists licensed under chapter 18.30 RCW;
 - (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;
 - (xxi) Surgical technologists registered under chapter 18.215 RCW;
 - (xxii) Recreational therapists;
 - (xxiii) Animal massage practitioners certified under chapter 18.240 RCW; ((and))
 - (xxiv) Athletic trainers licensed under chapter 18.250 RCW; and
 - (xxv) Home care aides certified under chapter 18.---RCW (the new chapter created in section 18 of this act).
- (b) The boards and commissions having authority under this chapter are as follows:
 - (i) The podiatric medical board as established in chapter 18.22 RCW;
 - (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
 - (iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;
 - (iv) The board of hearing and speech as established in chapter 18.35 RCW;
 - (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
 - (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
 - (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
 - (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
 - (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
 - (x) The board of physical therapy as established in chapter 18.74 RCW;
 - (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
 - (xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;
 - (xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and
 - (xiv) The veterinary board of governors as established in chapter 18.92 RCW.
- (3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.
- (4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

NEW SECTION. Sec. 17. The definitions in RCW 74.39A.009 apply throughout [chapter 18, RCW (the new chapter created in section 18 of this act)] unless the context clearly requires otherwise.

NEW SECTION. Sec. 18. Sections 4, 6, 7, 13, and 17 of this act constitute a new chapter in Title 18 RCW.

NEW SECTION. Sec. 19. The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

NEW SECTION. Sec. 20. 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. 21. This act may be known and cited as the better background checks and improved training for long-term care workers for the elderly and persons with disabilities initiative of 2008.

NEW SECTION. Sec. 22. Section 11 of this act takes effect September 1, 2009.

NEW SECTION. Sec. 23. Section 15 of this act does not take effect if section 18, chapter ... (Fourth Substitute House Bill No. 1103), Laws of 2008 is signed into law by April 6, 2008.

NEW SECTION. Sec. 24. Section 16 of this act takes effect if section 18, chapter ... (Fourth Substitute House Bill No. 1103), Laws of 2008 is signed into law by April 6, 2008.

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STAM
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Return Address (please print)

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Address _____
City, Address, Zip _____
Phone _____
Home E-mail _____

Yes, I want to help! I need more petitions.



SEIU Healthcare 775NW
33615 First Way S., Ste A
Federal Way, WA 98003

*Please send
all filled and partially
filled petitions to the
campaign headquarters
EVERY MONDAY.*

Self-Mailer Instructions:

1. **DO NOT CUT.**
2. Fill in return address section above right.
3. Fold in thirds so this mailing address panel shows.
4. Staple on open edge.
5. Affix a \$0.41 stamp and mail in petitions **EVERY MONDAY** and no later than June 25 - the last day to mail petitions.

Please fold. **DO NOT CUT.** Cutting the petition invalidates your signatures.

Petition gatherer, please sign here!

I, _____, swear or affirm under penalty of law that I circulated this sheet of 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 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.

To avoid any problems with fraudulent signatures, we are asking that signature gatherers print their names and provide a telephone number in addition to printing your name and address in the return address section of the mailer. Thank you!

NAME _____ PHONE _____ HOME E-MAIL _____

Every signature counts! Please return every petition even if it only has one signature.

FIRST CLASS MAILING DEADLINE IS JUNE 25, 200



WHAT'S WRONG WITH THIS PICTURE?

CURRENT TRAINING STANDARDS IN WASHINGTON STATE JUST DON'T ADD UP:



*Hairdresser:
1,000 hours of training*



*Nail Technician:
600 hours of training*



*Home Care Workers:
34 hours of training*

I-1029 WILL REQUIRE IMPROVED TRAINING, BACKGROUND CHECKS, CERTIFICATION, FOR HOME CARE AND OTHER LONG-TERM CARE WORKERS.

ATTACHMENT B



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

July 14, 2008

Kathleen D. Benedict
Narda Pierce
Attorneys at Law
Benedict Garratt Pond & Pierce, PLLC
711 Capitol Way S., Suite 605
Olympia, WA 98501

Dear Ms. Benedict and Ms. Pierce:

You recently wrote a letter to Secretary of State Sam Reed on behalf of the Community Care Coalition of Washington (CCCW), concerning the petition signatures submitted on behalf of Initiative Measure 1029 (I-1029). Your letter asserts that the petitions should be rejected because language on the submitted petitions does not precisely conform to RCW 29A.72.120, which relates to proposed initiative measures for submission to the people.

The Secretary of State has consulted with our office in response to your letter, and this reply is written on his behalf. Although, in a single respect, the petitions submitted in support of I-1029 do not fully comport with the governing statute, the petitions submitted and the surrounding circumstances are sufficiently in keeping with an initiative to the people that their rejection is not warranted. Under the circumstances, the law does not require their rejection, and compelling the citizens to start over and repeat the process next year would be out of step with the constitutional legislative power of the people. Accordingly, after consulting with our office, the Secretary of State has determined that the signatures should be processed and counted as signatures in support of a petition for an initiative to the people. If sufficient signatures have been submitted, the measure will be certified for inclusion on the November 2008 general election ballot.

In support of this decision, we note first the facts surrounding the filing of I-1029. On March 12, 2008, Linda Lee filed a proposed initiative with the Secretary of State's office, concerning "long-term care services for the elderly and persons with disabilities." The initial filing met all the requirements set forth in RCW 29A.72.010 for an initiative to the people. The sponsor indicated her intent to file an initiative to the people, and the papers initially filed (including a cover letter describing the contents as a proposed initiative to the people) were transmitted to the Code Reviser (as required by RCW 29A.72.020) on the same day. On March 28, 2008, the Code Reviser issued a certificate of review as required by RCW 29A.72.020. On the same day, the



ATTORNEY GENERAL OF WASHINGTON

July 14, 2008

Page 2

Secretary of State assigned the measure the number 1029, the next number in the sequence of initiatives to the people, and transmitted it to the Attorney General for a ballot title and ballot measure summary.¹ The Attorney General furnished a ballot title and summary for I-1029 on April 4, 2008. No appeals were filed concerning the title and summary (see RCW 29A.72.080), so the title and summary drafted by the Attorney General became final. The proponents prepared and circulated printed petitions containing the ballot title and summary (as required by RCW 29A.72.090) and meeting the additional requirements set forth in RCW 29A.72.100.²

On or about June 25, 2008, a citizen delivered a blank petition for I-1029 to the Secretary of State's office, pointing out that the language on the face of the petition, addressed to the Secretary of State, did not contain the language prescribed in RCW 29A.72.120 for initiatives to the people ("We, the undersigned citizens and legal voters . . . respectfully direct that the proposed measure . . . 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)"). Rather, the petition in question contained the language prescribed in RCW 29A.72.110 for initiatives to the legislature ("We, the undersigned citizens and legal voters . . . respectfully direct that this petition and the proposed measure . . . be transmitted to the legislature of the State of Washington at its next ensuing regular session"). On July 3, the proponents of I-1029 delivered several thousand petitions for I-1029 to the Secretary of State's office.³ It appears that all of the signed petitions are worded in the same manner as the blank petition received on June 25—that is, they contain the statutory "petitioning" language for an initiative to the legislature rather than to the people.

The Secretary of State may refuse to file any initiative or referendum petition being submitted on 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 the petition clearly bears insufficient signatures.
- (3) That the time within which the petition may be filed has expired.

¹ The State Constitution provides for two types of initiative measures, initiatives to the people and initiatives to the legislature. Washington Constitution, Article II, §1(a). By statute, the Secretary of State uses four separate series of numbers, one each for initiatives to the people, initiatives to the legislature, and two types of referendum. RCW 29A.72.040. If this proposal had been identified when filed as an initiative to the legislature, it would have been processed as such by the Secretary of State and would have received a number in the range of No. 400 rather than the number 1029.

² The Secretary of State's office included I-1029 in its website as an initiative measure to the people.

³ July 3 was the constitutional deadline for submitting initiatives to the people in 2008 (Article II, § 1, of the Constitution requires such proposals to be filed not less than four months before the election at which they are to be voted upon). If I-1029 had been considered an initiative to the legislature, the filing deadline would be ten days before the next regular session of the legislature in January of 2009. The petition forms contain language indicating that June 25 would be "the last day to mail petitions." Despite the wording on the front page of the petitions, there is no doubt that the proponents circulated and processed the petitions as an initiative to the people, and considered themselves bound by the deadlines for this form of an initiative.

ATTORNEY GENERAL OF WASHINGTON

July 14, 2008

Page 3

RCW 29A.72.170.⁴ As your letter points out, the petitions submitted on I-1029 do not contain all of the information required by RCW 29A.72.120 for an initiative to the people. However, the petitions are in most respects in compliance with the requirements for petitions on initiatives to the people. There is no doubt that those who filed and circulated the petitions on I-1029 intended to file and process an initiative to the people and built their petition campaign around the constitutional deadlines for this form of an initiative. We are aware of no evidence that the proponents or the press ever described I-1029 as an initiative to the legislature, or even noted the potential ambiguity of the language on the face of the petition. Nor do we have any factual basis for believing that the form of the petition influenced the number of valid signatures gathered for the measure.

Although the petitions submitted for I-1029 do not contain all the information described by RCW 29A.72.120, the Secretary of State is not *required* to reject them for that reason, and in this circumstance, their single deficiency does not warrant the action that you seek. The alternative that you request—rejecting the petitions for I-1029—would fail to afford Washington’s voters the opportunity to consider, and either approve or reject the measure, where a constitutionally requisite number of qualified voters express support for its enactment to be considered. The action that you request also would give no effect to circumstances where a requisite number of citizens in almost every way—and in what appears under the circumstances to be every critical way—meet the statutory standards for submission of an initiative to the people, and would require the entire process to be repeated. We believe that such a course would substantially and unnecessarily interfere with the people’s constitutional lawmaking power.

There is precedent for accepting and processing signatures in situations such as this. In *Schrempp v. Munro*, 116 Wn.2d 929, 809 P.2d 1381 (1991), the Secretary of State accepted and processed petition signatures for a proposed Initiative 120, an initiative to the legislature. Citizens sought to restrain the Secretary from accepting and filing the measure because (1) it lacked a legislative title and (2) it contained allegedly erroneous reference to “initiative petition for submission to the people.” The state supreme court (1) found that the statute permits judicial review when the Secretary of State rejects a petition but not when the Secretary accepts it and (2) otherwise upheld the Secretary’s exercise of discretion in accepting the petitions on I-120.

⁴ It has not yet been determined, of course, whether sufficient signatures were submitted by the constitutional deadline to qualify I-1029 for the ballot. That determination will be made within the next few weeks.

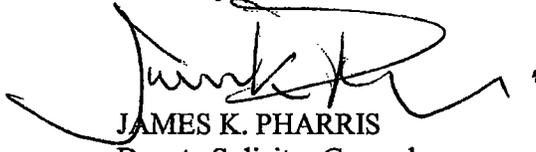
ATTORNEY GENERAL OF WASHINGTON

July 14, 2008

Page 4

As noted above, the Secretary of State in consultation with our office has determined to process the petitions relating to I-1029 as an initiative to the people. If it is determined that signatures have been filed in sufficient number to qualify I-1029, it will be certified for inclusion on the November 2008 ballot. We appreciate your expression of interest and your thoughtful comments on the issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'James K. Pharris', written over a horizontal line.

JAMES K. PHARRIS
Deputy Solicitor General
(360) 664-3027

JKP:rs

cc: Sam Reed, Secretary of State
Nick Handy, Director of Elections
Shane Hamlin, Assistant Director of Elections

ATTACHMENT C

05/24/08 11:15:16 AM

Why Online Degrees are HOT *Select a Program:*

1. Top Schools	Business	Criminal Justice
2. Earn Over \$20,000	Education	Info. Tech.
3. Earn More	Health Care	Graphic Design
	Business	Education

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Tuesday - Hi/Low: 71/52
Intermittent clouds

Wednesday - Hi/Low: 71/50
Intermittent clouds

Thursday - Hi/Low: 77/52
Intermittent clouds

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ABOUT US

Political Buzz

A place where people go to talk about politics.

Wednesday, June 25th, 2008

With deadline looming, 3 groups to turn in initiative signatures: assisted suicide, traffic congestion, home-care training

Posted by Joe Turner @ 01:08:54 pm

Our former AP colleague, **David Ammons**, gives us an update on the plans for signature turn-ins on the three measures most likely to make the November ballot -- **Initiatives 985, 1000 and 1029**.

It starts tomorrow with a no-fanfare delivery of petitions by former Gov. **Booth Gardner's** "Death with Dignity" measure, I-1000.

Memo to the Capitol Press Corps:

JUNE 26: I-1000 brings in bulk of signatures at 520 Union, without any ceremonies, @ 10 a.m.

JULY 2: I-1000 brings final signatures into Secstate's office in Capitol after 1 p.m. event on cap steps.

JULY 3: I-1029 turn-in will be at 520 building at 2pm, bringing an estimated 300k. Tim Eyman is expected to bring in the rest of his I-985 petitions on this day, but no apt set yet.

Also, FYI, there was some question about whether to accept I-1029 petitions, because sponsors printed the incorrect preamble on petition forms. The petitions read as an initiative to the Legislature, but it was intended as an initiative for this fall's general election. Our office determined that it was not a fatal flaw or that would-be signers were misled. "Our office is authorized to reject petitions, but not required to do so," said Assistant Elections Director Shane Hamlin. "This error does not rise to a level that suggests voters were misinformed as a result of the error or that a signer would have acted otherwise if the petition correctly stated that it is an initiative to the people."

David Ammons
Communications Director
Office of Secretary of State
(360) 902-4140

Categories: Campaign news, Initiatives

COMMENTS:

No COMMENTS for this post yet...

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POLITICAL BUZZ

A team of experienced reporters keep you updated on what's happening in political arenas at the city, county, state and federal levels. From presidential campaign visits to who's running for city council, we've got it covered.

Contributors

Niki Sullivan covers politics. Before coming to Tacoma, she covered state government in Oregon. She is a regular contributor to the *GritCity* blog. Email [Niki](#)

Peter Callaghan is a local columnist. He's covered the statehouse and state politics since 1981. Before joining The News Tribune in 1985, the Stadium High grad worked for newspapers in Everett and Lewiston, Idaho, and for The Associated Press in Olympia and Seattle. Email [Peter](#)

Joe Turner has covered state government and transportation issues since 1990. Since the Bellarmine grad's arrival in the newsroom in 1978, he's covered police, suburban cities, Tacoma City Hall, Federal Way City Hall and the Pierce and King county governments. Email [Joe](#)

David Wickert covers Pierce County government. Before coming to The News Tribune in 1998, he covered local government for newspapers in Illinois, Virginia and Tennessee. Email [David](#)

Jason Hagey covers Tacoma city government. Before coming to The News Tribune in late 2000, he worked at newspapers in the Tri-Cities and Pendleton, Ore., covering city and county government, courts, crime and the occasional feature. Email [Jason](#)

Les Blumenthal has been covering Washington, D.C. for The News Tribune since 1990, focusing on issues and politicians involving the state. Before joining The News Tribune, he spent 13 years working for The Associated Press in Seattle, Illinois and Washington, D.C. Email [Les](#)

Hunter George is the local news editor who oversees coverage of state and county politics. Before coming to The News Tribune in 2001, he

ATTACHMENT D

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www.benedictlaw.com

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(206) 652-8983

RALPH C. POND
(206) 447-5755

SEATTLE OFFICE:
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WA 98104-1064

July 2, 2008

The Honorable Sam Reed
Secretary of State
P. O. Box 40220
Olympia WA 98504-0220

RE: *Initiative 1029 Petitions*

Dear Secretary Reed:

We write on behalf of our client, the Community Care Coalition of Washington (CCCW), to urge you to carefully review the Initiative 1029 petitions that proponents are scheduled to submit to your office on July 3, 2008. As we understand it, the proponents of this measure have asked you to certify Initiative 1029 to be submitted to the voters of the State of Washington for their approval or rejection at the general election to be held on November 4, 2008. Yet nothing on the face of the petitions proposes a measure for submission to the people for their approval or rejection. Rather, the petitions state:

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 . . .

This plain language does not advise voters who signed the petitions that the proposed legislation is to be placed on the ballot. Rather, the persons signing the petitions placed their signature beneath a petition *to the legislature*.

When a petition states that it is for the purpose of having a matter considered in the deliberative processes of the legislature, there is no basis to submit the initiative to the general election. The Washington Constitution allows two forms of initiative: the "initiative to the people" and the "initiative to the legislature." As you know, an initiative to the people and an initiative to the legislature have very different processes and

consequences. If passed, an initiative to the people will change existing law without further review and the legislature will be restricted in amending the law for a period of two years. An initiative to the legislature is a more conservative exercise of the people's lawmaking power that calls for legislative deliberations and future options for the voters.

An initiative to the Washington Legislature is not placed immediately on the ballot. Rather, the legislature may propose an alternative, enact the initiative into law, or reject (or fail to act upon) the proposal. If the legislature proposes an alternative, then both the initiative and the alternative are placed before the voters. If the legislature enacts the measure into law, the voters may file a referendum petition on all or any part of the law. If the legislature fails or refuses to enact the initiative into law, the initiative is placed on the next general election ballot. Thus, the initiative to the legislature gives the voters choices not afforded voters in an initiative to the people.

To ignore these basic and constitutional differences in the two forms of initiative would underrate the voters of this State and their understanding of the options for the exercise of direct democracy. The voters petition to have an initiative to the people only when the requisite numbers of signers direct you, as Secretary of State, to place an initiative on the ballot at the next ensuing general election. The law regarding petition language provides that petitions for proposing measures for submission to the people at the next general election must be substantially in the form set forth in RCW 29A.72.120. This section requires petitions to set forth the warning prescribed by RCW 29A.72.140, followed by the language printed in the statute as follows:

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.

(Emphasis added.) The petition form for Initiative 1029 does not state it is for submission directly to the people—neither in the capitalized title form of RCW 29A.72.140 nor in the actual petitioning language. The petitions are not substantially in the required form.

The Honorable Sam Reed
July 2, 2008
Page 3

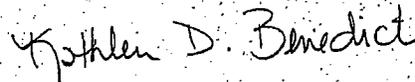
It would be a dangerous precedent to allow petitions to qualify a measure for the general election ballot without clearly indicating they are for the purpose of submitting an initiative to the general election ballot. This precedent would allow an initiative sponsor to create ambiguities about which of the two initiative processes were involved, and decide at a later day whether to argue the initiative was intended to be an initiative to the legislature or an initiative to the people. For example, initiatives could be filed on the first day proponents are allowed to file an initiative for submission to the legislature (as this one was), omit the capitalized title language, and say in language above the signatures that the proposed initiative measure was for submission to the legislature. If the proponents did not obtain the requisite number of signatures for placement on the general election ballot, they could argue the measure was actually intended to be an initiative to the legislature and only the numbering of the initiative was out of sequence. If they did obtain sufficient signatures for placement on a general election ballot, they could then argue that the petitions were really an initiative to the people and that it was the language above the signatures that was in error.

A requirement that an initiative petition be "substantially" in the proper form is violated by a form that misrepresents the basic nature of the initiative and leaves open the possibility that an initiative can be converted from one form to another in midstream. Voters are entitled to notice and clarity as they make their decisions on initiative petitions.

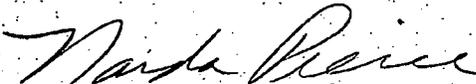
The law sets out required components of the petition form to insure notice and clarity. Indeed, in an April 4, 2008, letter to the initiative sponsor, your office offered "to review the final proof copy of your petition sheet for matters of form and style should you desire such consultation." Despite the clear law and the offer of technical assistance, the petitions that were circulated for signatures were not in substantial compliance with the law, and must be rejected. We appreciate your consideration of our concerns and look forward to your response.

Very truly yours,

BENEDICT GARRATT
POND & PIERCE, PLLC



Kathleen D. Benedict



Narda Pierce

ATTACHMENT E



Filed

MAR 12 2008

SECRETARY OF STATE

State of Washington

AFFIDAVIT FOR PROPOSED INITIATIVE

State of Washington

County of Clatsop

)
)
) ss.

I, Linda S. Lee, am a registered voter residing at: *Enter your name as recorded on your voter registration—Please Print*

6009 NE 102nd Ave. #7 Vancouver, WA 98662
STREET ADDRESS OR RURAL ROUTE CITY, WASHINGTON ZIP CODE

Clark (360) 213-3048
COUNTY TELEPHONE NO. (W/ AREA CODE)

I herewith submit a proposed Initiative to the (check one)

People

Legislature

in the form appended hereto regarding the subject of long-term care services and request that the Secretary of State file same and assign an Initiative number, and do further request that the Attorney General supply a ballot title.

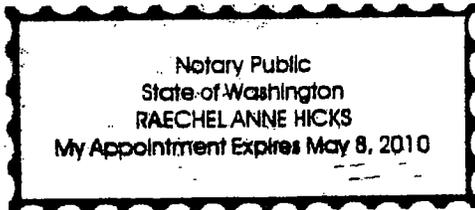
Linda S. Lee

SIGNATURE OF SPONSOR

I certify that I know or have satisfactory evidence that Linda S Lee is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

February 8, 2008

DATED



[Signature]

NOTARY'S SIGNATURE

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

May 8, 2010

MY APPOINTMENT EXPIRES

Note: The Secretary of State routinely publishes lists of proposed initiatives, including sponsor addresses and telephone numbers. Initiative sponsors may have alternative contact information published by providing the information in the space below. Please keep in mind that all information provided in this affidavit is public record and is subject to public disclosure.

33615 1st Way South, Suite A Federal Way WA 98003
ADDRESS CITY, WASHINGTON ZIP CODE

866-371-3200
TELEPHONE NO. (W/ AREA CODE)

na
FAX NO. (W/ AREA CODE)

traininginitiative@seio775.org
E-MAIL

ATTACHMENT F

BENEDICT GARRATT POND & PIERCE, PLLC

ATTORNEYS AT LAW

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SEATTLE, WA 98104-1064

July 18, 2008

The Honorable Rob McKenna
Attorney General
State of Washington
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100

RE: Request for Action on Behalf of Taxpayers Regarding Initiative 1029

Dear General McKenna:

We represent Cynthia O'Neill, a taxpayer of the State of Washington, as well as other taxpayers, voters and businesses. On behalf of our clients, we request that you bring suit against the Secretary of State (1) to prevent him from processing petitions relating to Initiative 1029 as an initiative to the people, and (2) to require him to process Initiative 1029 as an initiative to the legislature.

The proponents of Initiative 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 . . .

There is nothing on the face of the petitions that proposes a measure for submission to the people for their approval or rejection at the next ensuing general election. RCW 29A.72.120 specifies that 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" and sets forth petition language in the statute. That language provides in pertinent part:

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.

In a letter dated July 14, 2008, written by Deputy Solicitor General James K. Pharris, on behalf of Secretary of State Sam Reed, we were advised that the Secretary of State “has determined to process the petitions relating to I-1029 as an initiative to the people.” We were further advised that “[i]f it is determined that signatures have been filed in sufficient number to qualify I-1029, it will be certified for inclusion on the November 2008 ballot.”

Such action would be contrary to the directive of RCW 29A.72.120 requiring petitions to state that the signers are directing that the proposed measure be submitted directly to the voters. The Secretary of State has no right to certify an initiative to the ballot if the petitions are not substantially in the form set forth in RCW 29A.72.120.

State law sets forth different language for submission of an initiative to the legislature, and the petitions that were circulated for Initiative 1029 were substantially in the form for an initiative to the legislature. RCW 29A.72.110 specifies that petitions for proposing measures for submission to the legislature at its next regular session “must be substantially in the following form” and sets forth petition language. The language provides in pertinent part:

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

The Honorable Rob McKenna
July 18, 2008
Page 3

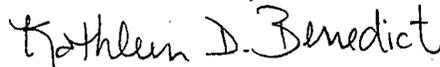
which is printed on the reverse side of this petition, be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally 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.

The petitions that were submitted to the Secretary of State are substantially in the form set forth in RCW 29A.72.110, specifically direct the Secretary to transmit the proposed measure to the legislature, and further petition the legislature to enact the proposed measure into law. RCW 29A.72.230 directs: "For an initiative to the legislature, the secretary of state shall transmit a certified copy of the proposed measure to the legislature at the opening of its session and, as soon as the signatures on the petition have been verified and canvassed, the secretary of state shall send to the legislature a certificate of the facts relating to the filing, verification, and canvass of the petition." The Secretary of State has no right to decline to certify an initiative that is directed to the legislature and instead certify it directly to the ballot, bypassing the legislature's consideration of the measure and its determination of whether to enact, reject, or propose an alternative to the measure.

We request a response to our request no later than July 21, 2008, as the Secretary of State's election calendar will require expeditious consideration of this matter by the court. Thank you for your consideration.

Very truly yours,

BENEDICT GARRATT
POND & PIERCE, PLLC



Kathleen D. Benedict



Narda Pierce

cc: The Honorable Sam Reed
Secretary of State

Maureen Hart
Solicitor General

ATTACHMENT G

§ 31 STANDING ARMY. No standing army shall be kept up by this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

§ 32 FUNDAMENTAL PRINCIPLES. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

§ 33 RECALL OF ELECTIVE OFFICERS. Every elective public officer of the state of Washington except [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. [AMENDMENT 8, 1911 p 504 § 1. Approved November, 1912.]

§ 34 SAME. The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: *Provided*, That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. [AMENDMENT 8, 1911 p 504 § 1. Approved November, 1912.]

§ 35 VICTIMS OF CRIMES — RIGHTS. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights.

In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel. [AMENDMENT 84, 1989 Senate Joint Resolution No. 8200, p 2999. Approved November 7, 1989.]

Article II LEGISLATIVE DEPARTMENT

§ 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. Every such petition shall include the full text of the measure so proposed. In the case of initiatives to the legislature and initiatives to the people, the number of valid signatures of legal voters required shall be equal to eight percent of the votes cast for the office of governor at the last gubernatorial election preceding the initial filing of the text of the initiative measure with the secretary of state.

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 certify the results within forty days of the filing. If certification is not complete by the date that the legislature convenes, he shall provisionally certify the measure pending final certification of the measure. Such initiative measures, whether certified or provisionally certified, 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: *Provided*, That the legislature may not order a referendum on any initiative measure enacted by the legislature under the foregoing subsection (a). The number of valid signatures of registered voters required on a petition for referendum of an act of the legislature or any part thereof, shall be equal to or exceeding four percent of the votes cast for the office of governor at the last gubernatorial election preceding the filing of the text of the referendum measure with the secretary of state.

(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: *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.

(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 next succeeding regular general election following the filing of the measure with the secretary of state, 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. 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.

(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. [AMENDMENT 72, 1981 Substitute Senate Joint Resolution No. 133, p 1796. Approved November 3, 1981.]

Referendum procedures regarding salaries: Art. 28 § 1.

Amendment 7 (1911) — Art. 2 § 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 were 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 were 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) was 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 was 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, 1911 House Bill No. 153 p 136. Approved November, 1912; Subsection (e) added by AMENDMENT 36, 1961 Senate Joint Resolution No. 9, p 2751. Approved November, 1962.]

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.

§ 1(a) INITIATIVE AND REFERENDUM, SIGNATURES REQUIRED. [Stricken by Amendment 72, 1981 Substitute Senate Joint Resolution No. 133, p 1796. Approved November 3, 1981.]

Amendment 30 (1956) — Art. 2 § 1(a) 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 per centum 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 per centum 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. [AMENDMENT 30, 1955 Senate Joint Resolution No. 4, p 1860. Approved November 6, 1956.]

§ 2 HOUSE OF REPRESENTATIVES AND SENATE. The house of representatives shall be composed of not less than sixty-three nor more than ninety-nine members. The number of senators shall not be more than one-half nor less than one-third of the number of members of the house of representatives. The first legislature shall be composed of seventy members of the house of representatives, and thirty-five senators.

§ 3 THE CENSUS. [Repealed by AMENDMENT 74, 1983 Substitute Senate Joint Resolution No. 103, p 2202. Approved November 8, 1983.]

Original text - Art. 2 Section 3 THE CENSUS - The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and ninety-five and every ten years thereafter; and at the first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants, excluding Indians not taxed, soldiers, sailors and officers of the United States army and navy in active service.

§ 4 ELECTION OF REPRESENTATIVES AND TERM OF OFFICE. Members of the house of representatives shall be elected in the year eighteen hundred and eighty-nine at the time and in the manner provided by this Constitution, and shall hold their offices for the term of one year and until their successors shall be elected.

§ 5 ELECTIONS, WHEN TO BE HELD. The next election of the members of the house of representatives after the adoption of this Constitution shall be on the first Tuesday after the first Monday of November, eighteen hundred and ninety, and thereafter, members of the house of representatives shall be elected biennially and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise changed by law.

§ 6 ELECTION AND TERM OF OFFICE OF SENATORS. After the first election the senators shall be elected by single districts of convenient and contiguous territory, at the same time and in the same manner as members of the house of representatives are required to be elected; and no representative district shall be divided in the formation of a senatorial district. They shall be elected for the term of four years, one-half of their number retiring every two years. The senatorial districts shall be numbered consecutively, and the senators chosen at the first election had by virtue of this Constitution, in odd numbered districts, shall go out of office at the end of the first year; and the senators, elected in the even numbered districts, shall go out of office at the end of the third year.

§ 7 QUALIFICATIONS OF LEGISLATORS. No person shall be eligible to the legislature who shall not be a citizen of the United States and a qualified voter in the district for which he is chosen.

ATTACHMENT H



Wednesday, July 16, 2008 - Page updated at 12:00 AM

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Minor error shouldn't forestall I-1029 vote

An error in the wording on petitions has given Secretary of State Sam Reed the right to reject Initiative 1029. On the advice of Attorney General Rob McKenna, Reed has not done it, arguing that the error was not important enough to nullify 300,000 signatures. He is right.

I-1029 would require most long-term-care workers to be tested and certified by the state. The initiative is sponsored by Local 775 of the Service Employees International Union and is opposed by the Community Care Coalition of Washington, which represents home-care employers and others.

This page will editorialize later on the merits of the initiative. At issue now is only whether the error should keep it off the ballot.

The error has to do with whether I-1029 is an initiative to the people or the Legislature. I-1029 was written, filed, numbered and processed by the state as an initiative to the people, to go straight onto the November ballot.

The SEIU promoted it to the public that way, and filed the signatures by the deadline for initiatives to the people. But the small type on the petitions said the measure would be "transmitted to the Legislature."

Opponents now say the petitions were misleading. But it is doubtful that one in a thousand persons noticed the reference to the Legislature and signed because of that.

Those claiming trickery are, of course, the measure's opponents. They want it off the ballot — not to protect the public's interest, but their own.

In each political cycle, it seems, someone argues that thousands of signatures should be thrown in the wastebasket for some reason or other. Often the argument is weak, as it is here.

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ATTACHMENT I

HeraldNet

Everett, Wash.

Published: Wednesday, July 16, 2008

Voters should be presumed to know what they're doing

By Richard S. Davis

Secretary of State Sam Reed should honor the wishes of the 300,000 people who petitioned to place Initiative 1029 before the Legislature next year. Instead, with the likely approval of the state attorney general, he appears ready to follow the lead of the Services Employees International Union and put it on the ballot this fall.

SEIU 775, chief backer of the initiative that seeks to boost training levels for home-care workers, wants Reed to overlook what they say is a mistake in the petitions. Although they want to have the measure treated as an initiative to the people, the petitions present it as an initiative to the Legislature.

Maybe it's a mistake by the politically sophisticated labor union. Or maybe it is, as Deborah Murphy calls it, "a blatant bait and switch" designed to mislead the voters. Murphy, spokesperson for the Community Care Coalition of Washington, which opposes I-1029, is the CEO of Aging Services of Washington. She calls the state's decision to accept the petitions a "gift to the SEIU."

It sure looks like one. In the plain language at the top of each signature sheet is this: "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 ... at its next ensuing regular session ..."

The distinction is important. Initiatives to the Legislature are less risky. Voters understand this. Lawmakers have three options: enact the measure, propose an alternative and let voters decide, or reject (or ignore) the initiative, automatically sending it to the ballot the following November.

Representing CCCW, attorneys Kathleen Benedict and Narda Pierce wrote Reed July 2, saying, "To ignore these basic and constitutional differences in the two forms of initiative would underrate the voters ... and their understanding of the options ... This precedent would allow an initiative sponsor to create ambiguities about which of the two initiative processes were involved, and decide at a later date whether to argue the initiative was intended to be an initiative to the legislature or an initiative to the people."

The SEIU appears to be OK with that. Reed should not be, even though the attorney general gave him the green light Monday.

There's no need for Clintonesque parsing or to wonder what the "meaning of 'is' is." No magic words or hidden codes can change "transmitted to the legislature" to "submitted to the voters."

Reed's spokesman, Dave Ammons, told me last week that the office would prefer to "err on the side of the 300,000 people who signed the petitions." Not an unusual position for the secretary of state to take with respect to citizen initiatives.

But he misses the point: To place the initiative on the November ballot, Reed must contend that those 300,000 folks did not know what they were signing. I'll concede that voters sometimes sign petitions without adequate information. But the state's chief election officer is an unlikely proponent of the Theory of Benign Voter Ignorance.

Murphy says, sensibly, "We believe the voters knew what they were signing." To take any other position asks Reed to read minds. She finds the state's decision "baffling."

Initiative activist Tim Eyman understands the system better than most. He doubts state officials would show him the same courtesy they are showing SEIU.

Eyman says, "I see a clear double standard."

ATTACHMENT J



PRINT-FRIENDLY FORMAT

Tacoma, WA - Monday, July 21, 2008

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I-1029: What it said vs. what they said it said

THE NEWS TRIBUNE

Last updated: July 17th, 2008 01:23 AM (PDT)

Are Washingtonians smart? Or are they dumb?

Some might have doubts about their collective intelligence, but the state constitution presumes they are smart enough to enact laws through the initiative process.

Secretary of State Sam Reed apparently has a few doubts of his own.

He's just accepted Initiative 1029, which mandates more training for home-care workers, as an initiative to the people. That's what its sponsor, the powerful Service Employees International Union, wants: A place on the November ballot.

The problem is that the petitions didn't identify I-1029 as a direct-to-ballot initiative. They identified it as an initiative to the Legislature. It's there in black and white, right in the middle of the sheets, in the concise description: The measure is to be "transmitted to the Legislature of the State of Washington at its next ensuing regular session ..."

Initiatives to the people and initiatives to the Legislature are very different animals. The latter are presented to lawmakers when they get together in January, just as the I-1029 petitions proposed. Lawmakers study these measures and do one of three things: adopt them as written, reject them and let them proceed to the ballot by themselves, or put alternative measures on the ballot alongside them.

The SEIU says the "transmitted to the Legislature" part was an accident. That's quite an accident, given the legal advice this union can buy. Nevertheless, Reed has decided the mistake was a mere glitch that shouldn't keep the initiative off the ballot.

The argument: Offering I-1029 directly to the electorate honors the intent of the citizens who signed it, because they assumed it was what the SEIU said it was, not what the actual petitions said it was.

Honoring the intent of citizens is, of course, a good thing. But that argument assumes that all of the roughly 300,000 citizens who signed it failed to read what they were signing. Why not assume that at least some did read it – perhaps enough of them that the initiative otherwise wouldn't have qualified?

It's easy to imagine someone signing an initiative to the Legislature when he or she would have rejected the same measure as an initiative to the people. Initiatives to the Legislature get vetted. They get hearings, and lawmakers hear arguments pro and con. If they spot a serious major flaw, they can propose a fix with a ballot alternative.

As secretary of state, Reed may have the legal discretion to do what he did – though that's likely to be challenged in court. The bigger issue is how much credit to give the voters who lent their signatures to it. Supporters of I-1029 are essentially saying that virtually all 300,000 missed the critical "to the Legislature" language and ought to be given an initiative to the people instead.

But that's giving their inattention the benefit of the doubt. If their carefulness were given the benefit of the doubt, I-1029 would be headed for the 2009 Legislature, not the 2008 ballot.

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ATTACHMENT K

Seattle Post-Intelligencer

http://seattlepi.nwsourc.com/opinion/371204_petitioned.html

Initiative process: Reason to rethink

Last updated July 17, 2008 3:55 p.m. PT

SEATTLE POST-INTELLIGENCER EDITORIAL BOARD

Could Secretary of State Sam Reed still change his mind about accepting egregiously mislabeled initiative petitions? We'd like to think the steady, veteran public leader could summon the political fortitude to reverse his decision to ignore a powerful labor union's flagrant carelessness on an issue that's supposedly so important it must be brought to voters in November.

Initiative 1029, sponsored by the Service Employees International Union, would create training and certification requirements for home health care workers. Reed is about to check I-1029's signatures to certify that it has qualified as an initiative to the people for the November election.

But the petitions signed by the people clearly refer to I-1029 as an initiative to the Legislature, which is fundamentally different. The measure first would go to the Legislature with an option for lawmakers to enact it or have it go to voters next year, possibly with an alternative drawn up by the Legislature.

We can only imagine how many people -- us, perhaps most of all -- would be howling if initiative entrepreneur Tim Eyman had done something so slipshod. Instead, there is a lot of pretending that this was a minor mistake involving fine print, a technicality or some verbiage that's only marginally relevant. The mistake is right on the signature page of the petitions, something voters would be most likely to read before signing. Anyone attempting to exercise care about providing his or her signature should be able to trust that the language of what he signed meant what it said and that the measure would first go to the Legislature with an option for lawmakers to enact it or propose an alternative.

The state Attorney General's Office says it is within Reed's discretion to reject or accept the petitions. That position likely will face a court challenge, although a letter from the AG's office makes a strong legal argument.

The problem is the political misjudgment. Reed has presented his choice to accept the petitions as respecting voters' initiative power. That's true if you assume voters don't bother to read or shouldn't be expected to, either of which seems more than a tad disrespectful to voters and the supposedly sacred initiative process.

As Eyman reasonably points out, there's a middle ground Reed could choose: Accept the petitions as an initiative to the Legislature, exactly what the signers endorsed (even if the folks drawing up the petition meant otherwise). Then, either the Legislature enacts the measure or sends it to the people for a decision, with or without an alternative. That course would be in keeping with the secretary's moderate record and careful administrative style, which we have long admired.

Our biggest problem with initiatives is that they often lack the review and compromise that are the essential elements in quality legislation. I-1029's petition problem illustrates a group so intent on getting what it wants that it can't be bothered with even the most basic norms of writing a measure properly. Lawmaking, elections and words all deserve the respect of being treated as having real meaning.

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ATTACHMENT L

Published July 20, 2008

Is health care worker initiative legal?

Secretary of State Sam Reed appears to be skating on thin legal ice with his decision to accept Initiative 1029 signatures and send the measure to the voters for their consideration in November.

The courts need to decide this issue quickly so that supporters and opponents of I-1029 have ample time to make their case before a fall election.

The initiative would require state certification and criminal background checks for all long-term-care workers and boost training requirements from 34 to 75 hours. That is more training time than state lawmakers wanted to pay for earlier this year.

What's at issue, now, is not the merits of the initiative proposal but whether the initiative petitions themselves are flawed.

In Washington, there are two very different types of initiatives, and therefore two very different processes followed to adoption or rejection:

An initiative to the people goes directly to the ballot for an up or down vote. It's a simple, straight-forward process.

An initiative to the Legislature is more complicated and uses the legislative process as a screening mechanism. Once lawmakers have received an initiative to the Legislature they have three options. They can adopt the initiative, in which case it becomes law. They can ignore the initiative, in which case it goes on to the fall ballot for a "yes" or "no" vote. The third option for lawmakers is to draft an alternative initiative, in which case both the original and the alternative go to the ballot for voters to decide.

The problem in the case of I-1029 is that it was drafted as an initiative to the Legislature, but was submitted as an initiative to the people. The legal question is whether Reed, as the state's top election official, was within his legal rights to accept an initiative to the Legislature as an initiative to the people. Or should Reed have rejected the initiative petitions because they were flawed?

"We do not choose to disenfranchise 300,000 voters (who signed I-1029) because the format in the petition itself was incorrect," said David Ammons, Reed's spokesman.

Count the signatures

Last week, a letter from James Pharris, deputy solicitor general for the attorney general's office, supported Reed's decision to accept the initiative petitions and count the signatures.

Pharris admits, "... the petitions submitted on I-1029 do not contain all the information required ... for an initiative to the people. However the petitions are in most respects in compliance with the requirements for petitions on initiatives to the people. There is no doubt that those who filed and circulated the petitions on I-1029 intended to file and process an initiative to the people and built their petition campaign around the constitutional deadlines for this form of an initiative."

Pharris said the courts have recognized that Reed has some discretion in accepting initiative petitions.

Legal challenge

The Community Care Coalition of Washington, a coalition of organizations that provide care to the elderly that opposes I-1029, have filed notice of an intent to challenge Reed in court.

"The secretary has some discretion in deciding whether petitions substantially comply with the form required by law, but in this case Secretary of State Reed is ignoring the law altogether," said coalition spokesperson Deb Murphy. "We know that there are individuals who signed these petition forms because they believed the issue would be subject to the analysis and deliberations of the legislative process. If the secretary of state is not willing to take action to protect these voters' intentions, we will ask the courts to do so."

"This isn't some technicality," Murphy added. "There are fundamental differences articulated in state law between the two forms of initiatives. Voters have the right to know how their signatures will be used. They don't sign the form and say, 'use my signature any way you want.'"

Was Reed within his legal rights to accept an initiative to the Legislature as an initiative to the people?

The courts must provide a speedy answer to that question so voters can focus on the merits of the underlying initiative on training of long-term care workers.

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From the YakimaHerald.com Online News.

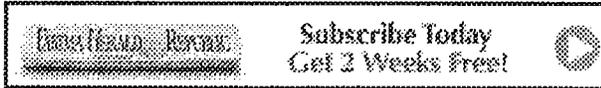
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Problematic initiative shouldn't move forward

Yakima Herald-Republic

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This is one time that "do as we meant, not as we said," just doesn't seem to apply.

Initiative 1029 backers turned in more than 315,000 voter signatures on petitions delivered earlier to Secretary of State Sam Reed and normally that should be enough to guarantee a spot on the ballot.

But I-1029 is not your ordinary measure. It could be perceived as both an initiative to the Legislature AND an initiative to the people. For that reason, we have serious doubts that it will withstand a court challenge.

The secretary of state's office is validating signatures on I-1029, a measure to increase training for long-term health care. It's sponsored by the Service Employees International Union and is opposed by the Community Care Coalition of Washington, which represents home-care employers and others.

Supporters say it is intended to be an initiative to the people for a November statewide vote. They point out that the full text of the initiative filed with the secretary of state in March clearly says it is to be "enacted by the people of the state of Washington."

But we doubt many signers of initiatives bother to read the full text. What they do read are the petitions they signed to qualify it for the November ballot and those petitions clearly label it "an initiative to the Legislature."

The two types of initiatives are entirely different processes.

* Once certified for the ballot with enough signatures, an initiative to the people goes directly to the voters to say yes or no.

* Initiatives to the Legislature, once certified with enough signatures, are submitted directly to the next legislative session where lawmakers have three options: Accept the measure as is; reject it, which places it on the November ballot for a statewide vote; or lawmakers can fashion an alternative and both the original initiative and the alternative go to the voters.

If you read the petitions circulated for signature and the text of the proposed law, it would be easy to get the impression I-1029 claims to be both.

What's particularly bothersome is the fact that the state Supreme Court invalidated Tim Eyman's

Initiative 747 on property tax limits because it said voters were deceived and misled as to its intent. That's the short answer to a long, convoluted series of events that culminated with a one-day special legislative session late last year to clean up the mess and reinstate a 1 percent limit on property tax increases.

Given Eyman's unpopularity in some quarters, we can't help but think that if he had submitted this flawed measure, the cries would go out for invalidating it.

Eyman has twice written Reed and says that "processing I-1029 petitions as anything other than an Initiative to the Legislature is clearly contrary to the court's ruling in the I-747 case."

He has a point. If voters were confused on I-747, one has to wonder about I-1029 that says "to the Legislature" on the petitions for signature gathering and "to the people" in the text of the measure.

A spokeswoman for The Community Care Coalition of Washington said her group is filing a lawsuit this week against Secretary of State Sam Reed, arguing that people signed the petitions thinking the issue would go to the Legislature and that's where it should go.

To the people or to the Legislature? If turned down by the courts as one to the people, whether it goes on to the Legislature is something for the courts to decide, said a spokesman in Reed's office. In this case the office is only checking signatures on what was accepted as an initiative to the people -- even with the flawed wording on the petitions.

Given the track record on the Eyman initiative, it would seem a bad case of double standard, based on the double-speak of the petitions and the measure itself, if the I-1029 is allowed to go ahead to the November ballot as an initiative to the people.

** Members of the Yakima Herald-Republic Editorial Board are Michael Shepard, Sarah Jenkins, Bill Lee and Karen Troianello.*