Initiative Measure No. 1020

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SECRETARY OF STATE

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

Suggested Statement of the Subject: Initiative Measure No. XXX concerns the initiative and referendum process.

Suggested Concise Description: This measure would require expedited judicial review for laws that affect the initiative and referendum process; provide post-election judicial review for initiatives and referendums; and revise signature gathering and petition requirements.

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

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

POLICIES AND PURPOSES

NEW SECTION. **Sec. 1.** Citizens want to ensure their right to participate fully in ballot measure processes. As guaranteed by the Washington state Constitution: "The first power reserved by the people is the initiative." The right of the people to petition and legislate through the initiative and referendum is a fundamental right protected by the Washington state Constitution. Citizens' participation in the legislative process by initiative and referendum has been subjected to hostility, interference and threats of interference by private and governmental actions. Because the constitutional right and power of initiative and referendum are the core of legislative policy-making, any legislative change that affects

the right of people to petition and vote must be viewed with extreme skepticism and therefore must be subject to expedited judicial review. The people intend that laws and rules adopted regarding the initiative and referendum processes be construed to facilitate and encourage the exercise of initiative and referendum powers. Legal challenges to initiatives or referendums must wait until after the voters have voted or the opportunity for a vote has expired, lest the mere presence of a lawsuit prevents the citizens from having the opportunity to vote on a matter. Laws or rules regarding the initiative or referendum process shall be construed narrowly to ensure protection of the citizens' rights to the initiative and referendum processes. The Legislature's placement of an emergency clause on legislation, if valid, indicates that the legislation might not be subject to referendum. However, the people should not be prohibited from collecting signatures on referendum petitions, nor should the people be prevented from voting on a referendum on legislation because of an emergency clause or other reasons. Collecting signatures and letting the voters' vote should be allowed to proceed because a more appropriate time to determine the validity of an emergency clause is after the election. Moreover, article I, section 4 of the Washington state Constitution and the First Amendment to the United States Constitution recognizes the right of the people to petition the government. This act is intended to facilitate the rights under these constitutional provisions. This measure requires expedited judicial review for any law affecting the state initiative and referendum process, provide post-election judicial review of initiatives and referendums, and establish protections for signature gathering. The people find that the existing checks and balances on the citizens' initiative process are more than adequate: The number of signatures necessary to qualify for the ballot is high and no proposed initiative without first being approved by a majority of voters. The citizens' rights to participate in the ballot measure process must be protected and encouraged.

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

As provided in article 1, section I of the Washington state Constitution, "All political power is inherent in the people and governments derive their just powers from the consent of the governed,

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

PROTECTING THE CITIZENS' RIGHT TO PARTICIPATE BY REQUIRING EXPEDITED JUDICIAL REVIEW FOR LEGISLATION THAT INTERFERES WITH THE INITIATIVE AND REFERENDUM PROCESS

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

Any legislation that affects the state initiative or referendum process must be subject to expedited judicial review. The Washington state Constitution guarantees the people the right to initiative and referendum and any legislation that frustrates the process or limits access to the process very likely requires a constitutional amendment (and even with a state constitutional amendment, such policies likely violate the First Amendment and/or Fourteenth Amendment of the United States Constitution) and therefore must be rapidly subjected to judicial scrutiny to ensure the people's right to the initiative and referendum process is not impaired.

(1) For the purposes of this section, "legislation that affects the state initiative or referendum process" includes, but is not limited to, any law that:

(a) Repeals the initiative and referendum process;

(b) Increases the percentage of signatures necessary to qualify for the ballot;

(c) Changes the requirements for petitions, including requiring witnesses or affidavits for signing petitions;

(d) Changes the requirements for petition circulators, including wearing identification badges or limiting the right to circulate petitions based on residency, age, or voter status;

(e) Changes the method of payment to petition circulators compensated for their service;

(f) Changes the procedure for validating or invalidating signatures;

(g) Levies new fees or increases current fees for filing an initiative or referendum or for submitting petitions to the secretary of state;

(h) Requires majority voter approval within certain jurisdictions affected by a measure in order for the initiative or referendum to be valid or effective within such jurisdictions;

(i) Decreases or limits the availability or access to public and private locations to allow petitioning;

(j) Changes to the information presented in the voters' pamphlet regarding initiatives and/or referenda;

(k) Requires a super-majority vote for an initiative or referendum; and

(l) Requires any proportionality for signatures based on geography or any other factor.

(2) Such restrictions must serve a compelling governmental purpose and in any legal challenge, the court shall review such laws with a legal standard of strict scrutiny to ensure the protection of the rights of citizens to participate in the initiative and referendum process.

(3) The supreme court has original jurisdiction to decide petitions challenging the constitutionality of any legislation that affects the state initiative and referendum process. The attorney general shall set up a division, or seek outside counsel, to defend the people's right to initiative and referendum and must legally challenge any legislation that affects the state initiative and referendum process. In addition to the attorney general, any person, after the enactment of legislation that affects the state initiative and referendum process, may file a petition directly in the supreme court seeking declaratory relief as to the constitutionality of the legislation that affects the state initiative and referendum process. The petition shall set forth the legislation, the objections to the law, any facts the petitioner contends are undisputed, and a request

that the court declare the law unconstitutional. The petition shall be served on the attorney general the same day it is filed with the court.

(4) The petition shall be considered an emergency matter of public concern by the supreme court and heard and determined within ninety days of filing.

(5) The attorney general shall have seven calendar days after service of the petition to file an answer to the petition. Any person who seeks to intervene in the proceeding must do so at the same time the attorney general files an answer to the petition. Facts asserted in the petition which are not denied by the answer shall be deemed undisputed. The petitioner shall have seven calendar days to file a reply to the answer. Any facts asserted in the answer which are not denied by the petitioner in the reply to the answer shall be deemed undisputed. These requirements that facts asserted be denied if they are disputed is intended to replace any requirement for a separate agreed statement of facts, although the parties are not prevented from filing a separate agreed statement of facts by this section.

(6) If the court deems oral argument advisable and if necessary to meet the timeframe in subsection 4 of this section, the court may reschedule oral argument in any other pending case which does not directly involve the constitutional rights of a party.

(7) The court shall determine whether the legislation that affects the state initiative and referendum process serves a compelling governmental purpose and otherwise complies with the provisions of this section and is therefore a legitimate infringement upon the peoples' right to initiative and referendum.

(8) Review of laws that affect the state initiative and referendum process under this section shall be de novo, and all presumptions shall be rendered in favor of the peoples' right to initiative and referendum. The burden of proof shall be on proponents of the contested law to establish a compelling governmental interest justifying interference with the people's right to initiative and referendum guaranteed by the Washington state Constitution.

(9) A person who files an appeal under subsection 3 of this section and substantially prevails is entitled to an award of reasonable costs and attorneys' fees in pursuing the action in the supreme court.

(10) This section does not affect any governmental law or

regulation required by the Washington state Constitution.

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

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

PROTECTING THE CITIZENS' RIGHT TO PARTICIPATE BY PROVIDING POST-ELECTION JUDICIAL REVIEW OF INITIATIVES AND REFERENDUMS

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

(1) The people find that the timing of judicial review of initiatives and referendums can frustrate the right of citizens to vote on valid initiatives and referenda. Judicial challenges to initiatives or referendums may be unnecessary if insufficient signatures are gathered or the results of a public vote make no legislative change. Moreover, judicial challenges prior to a public vote can deprive citizens of the right to vote by the cloud placed over the measure by litigation and the diversion of resources from public debate to fund unnecessary lawsuits.

(2) Under any lawful procedure for judicial review of an initiative or referendum, the courts may determine the legality of any initiative or referendum, including determination of questions regarding whether the matter is within the scope of the initiative or referendum power and/or the validity of an emergency clause, if any, only after there has been opportunity to gather sufficient signatures and, if sufficient signatures have been gathered, after the citizens have voted on the matter.

(3) In regard to referenda, the legislature's selection of an effective date shall be deemed valid unless and until a vote is held in response to a referendum petition and a court rules that an emergency clause or particular effective date is invalid. However, neither the secretary of state, nor the attorney general, shall refuse to process a referendum petition based on the inclusion of an

emergency clause on the legislation, a particular effective date on the legislation which is the subject of the petition or their belief that the legislation which is the subject of the petition is beyond the scope of the referendum power. The people find that their right to vote must not be interfered with. Judicial review to determine the validity of an emergency clause and/or an effective date in the legislation on which a referendum petition is being circulated may occur only after the people have voted on the referendum.

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

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

This section establishes protections for signature gathering. Interfering with signature gathering shall be illegal. Any person who is gathering signatures for an officially filed and processed initiative or referendum shall not have his or her right to petition infringed upon. Any person who is trying to sign a petition for an officially filed and processed initiative or referendum shall not have his or her right to sign a petition infringed upon. Any person who interferes with any person gathering signatures or interferes with any person trying to sign a petition shall be subject to the anti-harassment procedures in chapter 10.14 RCW and be subject to a civil penalty up to ten thousand dollars. For purposes of this section, "interfering with" includes, but is not limited to, pushing, shoving, touching, spitting, or throwing objects, yelling, screaming, or being verbally abusive, blocking or intimidating, or maintaining a presence within twenty-five feet of any person gathering signatures and any person trying to sign a petition. As the courts have consistently ruled, asking fellow citizens to sign a petition is core political speech, which is deserving of the highest levels of protection. Law enforcement must vigorously protect the rights of the people who collect voter signatures on initiative and referendum petitions to ensure they are not inhibited or restricted in any way. Signature gathering for an officially filed and processed initiative or referendum shall be a legally protected activity at large box stores and other retail locations open to the public, where the business of the retailer is or was subsidized by public moneys, tax exemptions or

reductions, or where the privilege of business operation is facilitated by public infrastructure, such as roads and utilities. Nothing is this section shall be interpreted to prohibit signature gathering at locations, which shall be legally protected, where there has been a history of noncommercial, charitable, or public service activity.

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

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

Sec. 6. RCW 29A.72.110 and 2005 c 239 s 1 are each amended to read as follows:

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

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

INITIATIVE PETITION FOR SUBMISSION TO THE LEGISLATURE

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

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that 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 transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, ((~~and~~)) I have knowingly signed this petition only once, and I have

voluntarily signed this petition without any compensation or promise of compensation.

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

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

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

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

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

Sec. 7. RCW 29A.72.120 and 2005 c 239 s 2 are each amended to read as follows:

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

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

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE

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

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. . . . ., entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the . . . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, ((~~and~~)) I have knowingly signed this petition only once, and I have voluntarily signed this petition without any compensation or promise of compensation.

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

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

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

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

Without people willing to ask voters to sign petitions, the initiative and referendum process does not function. The people find that any person who gathers signatures for an initiative or referendum deserves maximum legal protection to guarantee the initiative and referendum process is preserved. Requiring people who gather signatures to publicly identify themselves allows opponents of the initiative or referendum to abuse, harass, intimidate, and

threaten them. The people find that the people's constitutional right to peacefully petition our government for change is essential to ensure the protection of the initiative and referendum process.

Sec. 8. RCW 29A.72.130 and 2005 c 239 s 3 are each amended to read as follows:

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

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

PETITION FOR REFERENDUM

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

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

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

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

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude

the victim from seeking any other remedy otherwise available under law.

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

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

Sec. 9. RCW 29A.72.170 and 2003 c 111 s 1818 are each amended to read as follows:

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

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

(2) That the petition clearly bears insufficient signatures.

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

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

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

Concerning individual voter signatures on an initiative or referendum petition, the secretary of state must accept and may not reject a valid voter signature if it matches the signature on the voter's registration as long as the requirements in subsections (1), (2), and (3) of this section are fulfilled. Actions or inactions by the person who gathered a voter's signature can never be used as a reason to reject a valid voter signature on a petition or to reject a petition. The people find that the ninety-year policy by the

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

NEW SECTION. **Sec. 10.** A new section is added to chapter 29A.72 RCW to read as follows:

To ensure the safety of individuals who collect signatures for initiatives and referendums and to protect them from, and make them less susceptible to, intimidation, retaliation, or harassment, such persons can never be required to put their name, address, city, state, zip code, phone number, email address, or any other identification on the petition. Additionally, no governmental entity may register or require a license of any person or entity which collects signatures or coordinates the collection of signatures for any initiative or referendum. The people find that the voters are the ones who determine whether an initiative or referendum qualifies for the ballot and takes effect. The sponsor of the initiative or referendum or any person gathering signatures for an initiative or referendum is liable for his or her own actions but not those of others.

NEW SECTION. **Sec. 11.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act. Laws and rules adopted regarding the initiative and referendum process shall be construed to facilitate the initiative and referendum process. In any legal challenge, laws or rules regarding the initiative or referendum process shall be reviewed with a legal standard of strict scrutiny by the courts.

NEW SECTION. **Sec. 12.** Subheadings used in this act are not any part of the law.

NEW SECTION. **Sec. 13.** This act shall be self-executing. If any part or parts of this act are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the act shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this act.

NEW SECTION. **Sec. 14.** This act shall be known and cited as the Hands Off the People's Initiative Act of 2008.

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