

# Initiative Measure No. 440

## **Protect the Initiative Process** Establishes protections for citizens who participate in the initiative and referendum process

Filed

JUL 23 2009

SECRETARY OF STATE

AN ACT Relating to establishing protections for citizens exercising their First Amendment rights by participating in the initiative and referendum process; amending RCW 9A.84.030, 29A.72.170, and 29A.72.030; adding new sections to chapter 29A.72 RCW; creating new sections; and prescribing penalties.

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

### **POLICIES AND PURPOSES**

NEW SECTION. **Sec. 1.** Citizens want to ensure their right to participate in the initiative and referendum process is protected. 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 and retaliation by private and governmental actions.

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 protect the rights provided by these constitutional provisions. This measure would establish protections for citizens exercising their

First Amendment rights by participating in the initiative and referendum process. The people find that the peoples' right to participate in the initiative and referendum process needs to be protected.

**ESTABLISHING PROTECTIONS FOR CITIZENS EXERCISING THEIR FIRST AMENDMENT RIGHTS BY PARTICIPATING IN THE INITIATIVE AND REFERENDUM PROCESS**

NEW SECTION. **Sec. 2.** 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 deterred or 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 deterred or infringed upon. Any person who interferes with any person gathering signatures or interferes with any person trying to sign a petition or retaliates against or stalks any person who signed a petition or retaliates against or stalks any person who gathered signatures for a petition shall be subject to the anti-harassment procedures in chapter 10.14 RCW and civil penalties and shall be guilty of disorderly conduct under RCW 9A.840.030. For purposes of this section, "interfering with" includes, but is not limited to, pushing, shoving, touching, spitting, throwing objects, yelling, screaming, or being verbally abusive, or other tumultuous conduct, blocking or intimidating, or maintaining an intimidating 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. Signature gathering for an officially filed and processed initiative or referendum shall be a legally protected activity on public sidewalks and walkways, and all sidewalks and walkways that carry pedestrian traffic, and inside or outside public buildings such as public sports stadiums, convention/exhibition centers, and public fairs. Law enforcement must vigorously protect the rights of the people who want to sign initiative and referendum petitions, and

people who collect voter signatures on initiative and referendum petitions, to ensure they are not inhibited or restricted in any way.

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, threat, or retaliation. Maximum penalties must be imposed against persons who interfere with the constitutionally protected right to initiative and referendum.

**Sec. 3.** RCW 9A.84.030 and 2007 c 2 s 1 are each amended to read as follows:

(1) A person is guilty of disorderly conduct if the person:

(a) Uses abusive language and thereby intentionally creates a risk of assault;

(b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority;

(c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority; ~~((e))~~

(d)(i) Intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of:

(A) The location where a funeral or burial is being performed;

(B) A funeral home during the viewing of a deceased person;

(C) A funeral procession, if the person described in this subsection (1)(d) knows that the funeral procession is taking place; or

(D) A building in which a funeral or memorial service is being conducted; and

(ii) Knows that the activity adversely affects the funeral, burial, viewing, funeral procession, or memorial service; or

(e) Interferes with or retaliates against a person collecting signatures or signing any initiative or referendum petition by pushing, shoving, touching, spitting, throwing objects, yelling, screaming, being verbally abusive, blocking or intimidating, or other tumultuous conduct or maintaining an intimidating presence within twenty-five feet of any person gathering signatures or any person trying to sign any initiative or referendum petition.

(2) Disorderly conduct is a misdemeanor.

**Sec. 4.** 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 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. For purposes of this section, "valid voter signature" means a voter's signature on an initiative or referendum petition sheet which matches, using the signature verification standard under Washington Administrative Code 434-379-020, the signature on file in the voter registration records. The people find that the secretary of state's policy, maintained for the past ninety years, to always count a valid voter signature is essential to ensure that voters are not disenfranchised and their right to petition, signature, and/or vote is not taken away from them.

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

To ensure the safety and privacy of individuals who put their names and/or signatures on either the front or the back of petitions for initiatives and referendums, which includes both citizens signing the petitions on the front and citizens who gathered the signatures on

the back, and to protect them from, and make them less susceptible to, abuse, intimidation, threats, retaliation, and harassment, such persons' names and/or signatures shall be redacted before any petition is the subject of a public documents request. The people find that citizens participating in the initiative and referendum process deserve maximum legal protection. Requiring citizens participating in the initiative and referendum process to publicly identify themselves allows opponents of the initiative or referendum to abuse, harass, intimidate, threaten, and retaliate against 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.

As the courts have ruled: There can be no doubt that the compelled disclosure of this information (names and addresses) chills political speech. As the Supreme Court has explained: Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation -- and their ideas from suppression -- at the hand of an intolerant society.

NEW SECTION. **Sec. 6.** A new section is added to chapter 29A.72 RCW to read as follows:

It shall be illegal to use the names and signatures on initiative and referendum petitions for sales, marketing, or any other purpose other than to support that individual initiative or referendum.

**Sec. 7.** RCW 29A.72.030 and 2003 c 111 s 1804 are each amended to read as follows:

Initiative measures proposed to be submitted to the people must be filed with the secretary of state within (~~ten~~) sixteen months prior to the election at which they are to be submitted, and the signature petitions must be filed with the secretary of state not less than four months before the next general statewide election.

Initiative measures proposed to be submitted to the legislature must be filed with the secretary of state within (~~ten~~) sixteen months prior to the next regular session of the legislature at which they are to be submitted, and the signature petitions must be filed with the secretary of state not less than ten days before such regular session of the legislature.

A referendum measure petition ordering that any act or part of an act passed by the legislature be referred to the people must be filed with the secretary of state within ninety days after the final adjournment of the legislative session at which the act was passed. It may be submitted at the next general statewide election or at a special election ordered by the legislature.

A proposed initiative or referendum measure may be filed no earlier than the opening of the secretary of state's office for business pursuant to RCW 42.04.060 on the first day filings are permitted, and any initiative or referendum petition must be filed not later than the close of business on the last business day in the specified period for submission of signatures. If a filing deadline falls on a Saturday, the office of the secretary of state must be open for the transaction of business under this section from 8:00 a.m. to 5:00 p.m. on that Saturday.

Opponents of ballot measures sometimes try to interfere with the signature gathering process in the final months of the campaign, taking advantage of the limited time for the collection of signatures. The people find that allowing more time for citizens to participate in the signature gathering process will deter such despicable tactics.

**NEW SECTION. Sec. 8.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

**NEW SECTION. Sec. 9.** 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. 10.** This act is called "Protect the Initiative Process."

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