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No. 95749-5

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

TIM EYMAN,
Plaintiff, Respondent,
and
MICHAEL J. PADDEN,
Plaintiff-Intervenor, Respondent

v.

**KIM WYMAN, in her capacity as Secretary of State; and THE
WASHINGTON STATE LEGISLATURE,**
Defendants, Appellants

and

DE-ESCALATE WASHINGTON
Defendant-Intervenor, Appellant

and

CYRUS HABIB, in his capacity as Lieutenant Governor,
Defendant-Intervenor, Appellant

**OPENING BRIEF OF CYRUS HABIB, in his official capacity as
Lieutenant Governor**

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OPENING BRIEF OF LIEUTENANT GOVERNOR CYRUS HABIB

I. INTRODUCTION

In 1893, shortly after the Constitutional Convention, the Washington Supreme Court considered whether the judiciary should have authority to inquire into the legislative procedures preceding the enactment of a law to determine whether it was constitutional. Writing for the Court, Judge John Hoyt, who had served as President of the Constitutional Convention four years earlier, articulated the enrolled bill rule. *State v. Jones*, 6 Wash. 452, 453–54, 34 P. 201 (1893). The enrolled bill rule provides that if a legislative enactment was properly certified, the judicial branch lacks the authority to inquire into any of the legislature’s prior proceedings to ascertain whether the legislative branch had complied with mandatory provisions of the Constitution. Instead, the enrolled bill’s certification was *conclusive evidence* of that question. *Id.* at 459

For the past 125 years, the Washington Supreme Court has adhered to the enrolled bill rule “without deviation.” *Roehl v. Pub. Util. Dist. No. 1 of Chelan County*, 43 Wn.2d 214, 220, 261 P.2d 92, 94 (1953). And with good reason. The rule is an express acknowledgement that our system of government is based on three coordinate and co-equal branches. The judiciary may not look behind the legislature’s passage of a measure, once certified by the Lieutenant Governor and the Speaker of the House,

to determine whether that branch complied with constitutional prerequisites unique to it, any more than the legislature may look behind the judiciary's orders to determine whether the judiciary has complied with its constitutional obligations. To hold otherwise would elevate the judiciary to an exalted position relative to the legislative and executive branches.

In the proceedings below, the trial court disavowed this precedent, and expressly looked behind the Lieutenant Governor's certification that I-940 had passed the Senate, and the Speaker's certification that it had passed the House. The trial court openly considered political dynamics and even hypothesized about its view of what legislators were thinking when they cast their votes to enact I-940. In doing so, the trial court violated the enrolled bill rule. Regardless of whether this Court finds ESHB 3003 to have been properly enacted, one thing is clear: a majority of both chambers voted in favor of I-940, and the Lieutenant Governor and Speaker of the House properly certified its passage. Because I-940 was an initiative to the legislature, the Governor's signature was not required, meaning the Lieutenant Governor's certification was the last official act necessary for enactment.

This Court should reverse the trial court's order, and vacate the mandamus issued to the Secretary of State to place I-940 on the general

election ballot, and it should do so regardless of how it rules with respect to ESHB 3003.

II. ISSUE ON APPEAL

Whether the trial court’s decision to strike down ESHB 3003, and nullify the Legislature’s passage of I-940, constitutes legal error because it violated the enrolled bill rule.

III. STATEMENT OF THE CASE

On the last day of the 2018 legislative session, the Legislature passed Initiative 940 (“I-940”).¹ Laws of 2018, ch. 11 (certificate of enrollment reflecting legislative action). I-940 passed the Senate on a majority vote, 25-24. *Id.* As the president of the Senate, the Lieutenant Governor certified that the measure obtained the requisite number of votes to pass that chamber, and that its contents conformed perfectly to that which had already passed the House of Representatives. *Id. See* Const., art. II, § 32 (“No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session, and under such rules as the legislature shall prescribe.”). Because I-940 was an initiative to the legislature, it became enacted law when the

¹ CP 132-40.

legislature passed it; the Governor’s signature was not required. *See* Const., art. II, § 1(a).

Before the legislature enacted I-940, it passed ESHB 3003, which purports to amend I-940.² *See* Engrossed Substitute Senate Bill Report, ESHB 3003 (staff summary). ESHB 3003 would take effect the day after I-940. Laws of 2018, ch. 10, § 10. The legislature made clear that ESHB 3003 would not become law unless I-940 was passed in the 2018 legislative session, and the Secretary of State did not certify a referendum on the law. *Id.* ESHB 3003 was signed by Governor Inslee.

On March 12, 2018, Tim Eyman (“Eyman”) filed a lawsuit in Thurston County Superior Court, alleging that the passage of ESHB 3003 and I-940 together violated the Washington Constitution. On March 28, 2018, Eyman filed an amended complaint clarifying his allegation that the process by which the legislature enacted both I-940 and ESHB 3003 violated article II, section 1(a) of the Washington Constitution, and requesting a writ of mandamus directing the Secretary of State to place both I-940 and ESHB 3003 on the November 2018 general election ballot for a vote of the people. CP 3-57, ¶¶ 117-135. On April 6, 2018, eight

² CP 141-50.

days after filing the First Amended Complaint, Eyman moved for summary judgment. CP 82-96.

On April 20, 2018, the trial court granted in part Eyman’s motion, concluding that the legislature “did not validly enact Initiative 940” and that it “did not validly enact Engrossed Substitute House Bill 3003.” CP 255-58 (4/20 Order on SJ). The trial court issued a writ of mandamus “directing the Secretary of State to certify onto the 2018 general election ballot: Initiative 940.” *Id.*

Even before it issued its oral ruling, the trial court made clear that its attention was focused squarely on the methods, procedures, and political calculations that led to the enactments of ESHB 3003 and I-940. The trial court openly hypothesized that “had [the legislature] just voted on I-940 first before 3003, there’s no guarantee that it would have passed.” RP 26. The trial court’s oral ruling confirmed that its decision turned on the legislature’s political decision to sequence the enactments so that ESHB 3003 passed before I-940 passed:

By voting on ESHB 3003 first, the legislature allowed ESHB [3003], which was on the same subject matter as I-940, to take precedence, which is not allowed under Article II, Section 1(a), which requires that the initiatives shall -- which is mandatory -- shall take precedence over other measures in the legislature, except appropriation bills, and be enacted without change or amendment. . . . [T]he legislature must first vote to adopt an initiative without change or amendment, and only then after it is adopted can the legislature possibly

propose amendments or attempt to secure a majority of members of both chambers to adopt the changes.

RP 58. In other words, according to the trial court, merely proposing ESHB 3003 and “attempt[ing] to secure a majority of members of both chambers” to pass that bill was unconstitutional. The trial court reasoned that because the legislature passed ESHB 3003 first, “when the legislature voted to enact I-940, they knew it was already amended.” RP 60. Focusing on the political dynamics, the trial court wondered “[i]f there had been no ESHB 3003, would there have been enough votes in one or both houses to pass I-940 as written? Would it then have -- if it had passed both houses, would the governor have signed it as law? . . . Votes held in reverse could have resulted in something different.” RP 60-61.

From there, the trial court expressly “found that ESHB 3003 was not properly passed.” RP 61. As for I-940, despite garnering majority support in both chambers, and being certified by the Lieutenant Governor and the Speaker of the House, the trial court concluded that “the legislature rejected I-940,” and directed the Secretary of State to place the initiative “on the ballot in the general election for 2018.” RP 62. In other words, the trial court struck down ESHB 3003 as unconstitutional, and nullified the legislature’s passage of I-940.

With leave from this Court, Lieutenant Governor Cyrus Habib intervened on appeal.

IV. ARGUMENT

A. Standard of Review

“A statute is presumed to be constitutional.” *Skamania County v. State*, 102 Wn.2d 127, 132, 685 P.2d 576, 579 (1984). The party asserting that an act violates the state constitution ““bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt;”” any reasonable doubts are resolved in favor of constitutionality. *Pierce County v. State*, 150 Wn.2d 422, 430, 78 P.3d 640 (2003) (quoting *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762, 27 P.3d 608 (2000)); *see also Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003); *Washington Higher Educ. Facilities Auth. v. Gardner*, 103 Wn.2d 838, 843, 699 P.2d 1240, 1243 (1985) (“As we have pointed out on a number of occasions, a party challenging the constitutionality of a statute must demonstrate beyond a reasonable doubt that the statute is invalid and must rebut the presumption that all legally necessary facts exist.”).

Legal questions are reviewed de novo, including the constitutionality of legislation, *Washington State Grange v. Locke*, 153 Wash. 2d 475, 486, 105 P.3d 9, 15 (2005), and rulings on summary

judgment, *Washington State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 300, 174 P.3d 1142, 1150 (2007).

B. The Trial Court's Order Violates the Enrolled Bill Rule

1. The judiciary cannot inquire into the legislative procedures or political calculations preceding a legislative enactment to determine a statute's constitutionality.

The enrolled bill rule forbids an inquiry into the legislative procedures preceding the enactment of a statute that is “properly signed and fair upon its face.” *Washington State Grange v. Locke*, 153 Wn.2d 475, 499–500, 105 P.3d 9, 22 (2005) (citing *Schwarz v. State*, 85 Wn.2d 171, 175, 531 P.2d 1280 (1975)).

The Washington Supreme Court first articulated the enrolled bill rule in 1893, only four years after the Constitutional Convention met in Olympia. *State v. Jones*, 6 Wash. 452, 453–54, 34 P. 201 (1893). Notably, Judge John P. Hoyt, who had served as President of the Constitutional Convention, authored the *Jones* decision. In *Jones*, the Court held that if a legislative enactment was properly certified, the judicial branch lacked the authority to inquire into any of the legislature's prior proceedings to ascertain whether the legislative branch had complied with mandatory provisions of the Constitution. Instead, the enrolled bill's certification was conclusive evidence of that question. *Id.* at 459 (“The enrolled bill on file is either what it purports to be—a law regularly passed

through the legislature—or it is nothing whatever. If it was in fact regularly passed, it is a law; not simply prima facie a law, but conclusively so.”).

Judge Hoyt’s reasoning was based on an express acknowledgment that the legislature is a co-equal and coordinate branch of government, and an express rejection of the notion that the “mandatory provisions of the Constitution are safer if the enforcement thereof is intrusted to the judicial department than if so intrusted to the Legislature.” *Id.* at 462-63. As Judge Hoyt explained, courts holding the other view have “acted upon the presumption that their department is the only one in which sufficient integrity exists to insure the preservation of the Constitution.” *Id.* at 463.

In rejecting that presumption, the Court emphasized that

under our form of government, each of equal authority, one department cannot rightfully go behind the final record certified to it or to the public from either of the other departments; and the judicial department is no more justified in going behind the final act of the legislature to see if it has obeyed every mandatory provision of the constitution than has the legislature to go back of the final record made by the courts to see whether or not they have complied with all constitutional requirements.

Id. at 464. Otherwise, the judiciary would consider itself “superior to the others,” rather than a co-equal branch. *Id.*

Judge Hoyt’s reasoning has withstood the test of time. In fact, in articulating the enrolled bill rule back in 1893, Judge Hoyt expressly considered a scenario where the legislature enacts a law in a manner that

appears to ignore certain constitutional procedures. *Id.* at 465 (observing that “most constitutions recently adopted [in the late 19th Century] contain an increased number of mandatory directions to the legislature”). If anything, however, the increased prevalence of “formalities” before enacting certain pieces of legislation made the enrolled bill rule *all the more* important: “the people will see to it that such mandatory provisions are complied with by the legislature, or, if they do not, the blame must rest upon themselves or the system of government which has as its basis the equal authority of the three departments into which it is divided.” *Id.* at 468. In other words, each branch “is responsible and answerable only to the people for its proper performance of the function for which it is constituted.” *Citizens Council Against Crime v. Bjork*, 84 Wn.2d 891, 897 n.1, 529 P.2d 1072, 1076 (1975).

It is “an untenable position,” Judge Hoyt explained, to assume “that the courts are the guardian of all the mandatory provisions of the constitution, whether addressed to the judiciary, legislative, or executive department.” *Jones*, 6 Wash. at 468-69. The Court therefore concluded that “authority, reason, public policy, and convenience require us to hold that the enrolled bill on file, when fair upon its face, must be accepted without question by the courts, as having been regularly enacted by the legislature.” *Id.* at 477.

Judge Hoyt also articulated a critical public policy justification for the enrolled bill rule: that it is necessary so that the people may rely upon the statutes as setting forth the laws which have been enacted by the legislature. Decades later, in reaffirming Judge Hoyt's argument, this Court explained that if an enrolled bill were not taken as conclusive evidence that it was properly enacted, "it would be practically impossible for the courts even to determine what was the law, and would render it absolutely impossible for the average citizen to ascertain that of which he must at his peril take notice." *Citizens Council Against Crime v. Bjork*, 84 Wn.2d 891, 897, 529 P.2d 1072, 1076 (1975).

Since Judge Hoyt's decision in *Jones*, the Washington Supreme Court "has adhered to the rule that it will not go behind an enrolled bill as it appears in the Secretary of State's office to determine the method, the procedure, the means or manner in which it was passed in the houses of the Legislature." *State v. State Bd. of Equalization*, 140 Wash. 433, 442, 249 P. 996, 999 (1926).

Finding an enrolled bill in the office of the secretary of state, unless that bill carries its death warrant in its hand, the courts will make *no investigation* of the antecedent history connected with its passage, except as such an investigation may be necessary in case of ambiguity in the bill for the purpose of determining the legislative intent.

State ex rel. Wash. Toll Bridge Auth. v. Yelle, 61 Wn.2d 28, 34, 377 P.2d 466 (1962) (quoting *State ex rel. Dunbar v. State Bd. of Equalization*, 140 Wash. 433, 443, 249 P. 996 (1926)) (emphasis added).

Over the past 125 years, the Washington Supreme Court has applied the enrolled bill rule to decline to examine the history of a bill even where the challenger claimed that constitutionally mandated procedures were not followed. *See State ex rel. Dunbar v. State Bd. of Equalization*, 140 Wash. 433, 249 P. 996 (1926) (whether bill not properly authenticated); *Morrow v. Henneford*, 182 Wash. 625, 47 P.2d 1016 (1935) (whether bill passed after expiration of legislative session); *Shelton Hotel Co. v. Bates*, 4 Wn.2d 498, 509, 104 P.2d 478, 483 (1940) (whether scope of employment compensation bill should be expanded); *State ex rel. Bugge v. Martin*, 38 Wn.2d 834, 232 P.2d 833 (1951) (whether legislative history showed that amendments changed the scope and object of a bill); *State ex rel. Hodde v. Superior Court*, 40 Wn.2d 502, 507, 244 P.2d 668 (1952) (declining to examine investigations of legislative committees); *Roehl v. Pub. Util. Dist. No. 1 of Chelan County*, 43 Wn.2d 214, 219, 261 P.2d 92, 94 (1953) (whether legislative amendments “served to change the scope and object of that bill”); *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 61 Wash.2d 28, 377 P.2d 466 (1962) (whether senators were deceived by a bill title); *Schwarz v. State*, 85 Wn.2d 171, 175, 531 P.2d

1280, 1282 (1975) (“[T]he enrolled bill doctrine precludes inquiring into the legislative procedures preceding the enactment of a statute which is properly signed and fair upon its face.”).

Collectively, this century of case law stands for the proposition that “[w]here an act of the legislature had been properly certified, courts [have] *no authority* to inquire into any prior proceedings on the part of the legislature to ascertain whether the mandatory provisions of the constitution had been complied with.” *Dunbar*, 140 Wash. at 443-44, 249 P. 996 (quoting *Parmeter v. Bourne*, 8 Wash. 45, 56, 35 P. 586 (1894) (emphasis added)). In fact, the Court has made clear that it will adhere to the enrolled bill rule “perhaps even in the case of a flagrant violation of article II.” *Washington State Grange v. Locke*, 153 Wn.2d 475, 500, 105 P.3d 9, 22 (2005) (citing *Derby Club, Inc. v. Becket*, 41 Wn.2d 869, 882, 252 P.2d 259 (1953) (Hill, J., concurring)); *see also Roehl*, 43 Wn.2d at 220, 261 P.2d at 95 (“The enrolled bill rule was adopted early in the history of this state, and has been followed repeatedly and without deviation.”).

2. The trial court violated the enrolled bill rule.

In its brief to this Court, the legislature argues that *both* ESHB 3003 and I-940 were properly enacted. The Lieutenant Governor agrees that both bills should be upheld, but acknowledges that the decision to

pass ESHB 3003 was novel, because I-940 had not yet been enacted. At a minimum, this Court's decision can provide guidance on when amendments to initiatives to the legislature are timely—guidance that will be especially important for the Lieutenant Governor as he carries out his duties presiding over the Senate, and determining when bills are in order or out of order.

Novelty aside, however, the trial court's decision to throw out I-940 simply cannot be reconciled with the enrolled bill rule. Ultimately, the trial court's reasoning boiled down to this: it is constitutionally improper to pass a bill amending an initiative to the legislature before the legislature has passed the initiative itself; any such amendment would be unconstitutional, and the subsequent passage of any such initiative should be recharacterized as a *rejection* of the initiative, meaning the initiative would be sent to the general election ballot.

Assuming, *arguendo*, that the trial court was correct about the impropriety of passing an amendment before passing the initiative, there is a way to strike down the amendment (ESHB 3003) without violating the enrolled bill rule. The court could simply look to that bill, as a standalone enactment, and determine that it is improper because it purports to amend an initiative to the legislature that has not been enacted. If this Court were to choose such a remedy, then its decision could also clarify when such

amendments are timely (e.g., during the same session, but after the initiative's enactment; or during the next session).

But that same analysis couldn't be used to nullify the legislature's subsequent and separate decision to pass the initiative (I-940), and overrule the Lieutenant Governor's and Speaker of the House's determination that the initiative passed the Legislature. The constitutional disposition of one bill does not affect the validity of another, entirely separate bill. In other words, just because one bill is unconstitutional does not render another bill, otherwise proper on its face, unconstitutional. Each bill that passes the legislature is, in effect, quarantined from the flaws of any other bill. There's no such thing as constitutional contamination, where one flawed bill can infect another.

The least invasive approach that this Court could take—short of upholding both enactments—would be to affirm the passage of I-940. Under the enrolled bill rule, the key question for I-940 is this: setting aside whatever happened before its passage, does *that bill, as enrolled*, pass muster *on its face*? The answer to that question is unequivocally yes. And, in fact, there was no argument whatsoever that I-940 was somehow defective as a standalone enactment. The only objections to I-940 were based on the legislative acts that *preceded* its enactment, *see, e.g.*, RP 42 (“The vote on 940 is tainted by the vote on 3003. They voted for an

initiative after amending it.”); RP 60 (ESHB 3003 “was passed first and signed by the governor before I-940 was voted upon”), and speculation about what motivated the legislators to vote as they did on I-940, *see* RP 60 (“If there had been no ESHB 3003, would there have been enough votes in one or both houses to pass I-940 as written? . . . [W]ould the governor have signed it as law?”); RP 61 (“Votes held in reverse could have resulted in something different.”).

Each of the reasons the trial court articulated to nullify I-940’s passage violated the enrolled bill rule. First, the trial court reasoned that I-940’s passage was flawed because, when voting on the initiative, individual legislators “knew it was already amended.” RP 60. But under the enrolled bill rule, what legislators were “thinking about” when voting on I-940 does not matter. *See, e.g., State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 61 Wash.2d 28, 377 P.2d 466 (1962) (under enrolled bill rule, a court cannot consider whether senators were deceived by a bill title). Besides, political deal-making and “horse trading” are quotidian features of legislating; pledging support (or non-opposition) to a bill, in exchange for support (or non-opposition) for another, altogether different bill, is commonplace. This Court should not open the door to the judiciary micro-managing or policing the legislature’s internal politics.

Second, the trial court reasoned that the sequencing of the measures doomed I-940, suggesting that any constitutional infirmity would have been avoided if the legislature had passed I-940 *before* ESHB 3003. RP 58 (“[T]he legislature must first vote to adopt an initiative . . . and only then after it is adopted can the legislature possibly propose amendment or attempt to secure a majority of members of both chambers to adopt the changes.”). But the sequencing cannot be used to strike down I-940 because that necessarily turns on an inquiry “into the legislative procedures preceding the enactment of a statute which is properly signed and fair upon its face.”

Schwarz v. State, 85 Wn.2d 171, 175, 531 P.2d 1280, 1282 (1975).

Even if the Constitution contained an express prohibition on amending an initiative to the Legislature before enacting the initiative, that restriction could only be used to strike down the preceding *amendment* (ESHB 3003), not the subsequently and separately enacted initiative (I-940). Simply put, under the enrolled bill rule, “courts [have] *no authority* to inquire into any prior proceedings on the part of the legislature to ascertain whether the mandatory provisions of the constitution had been complied with.” *Dunbar*, 140 Wash. at 443-44 (emphasis added).

Third, the trial court’s focus on the political hypothetical of whether the Legislature could have garnered the votes necessary to pass I-

940 without first passing ESHB 3003 is the *sine qua non* of the practical dangers Judge Hoyt warned about in *Jones*. If courts can dissect political decisions preceding a bill's enactment, and use that dissection to speculate about whether a bill *would have passed* under a different political arrangement, then "it would be practically impossible for the courts . . . [or] the average citizen to ascertain" the law. *Citizens Council Against Crime*, 84 Wn.2d at 897.

Fourth, the trial court (and Plaintiffs) raised the specter of the Legislature "trying to circumvent the requirements of the constitution and the right of the initiative." RP 60. But Judge Hoyt addressed this concern, too, explaining that the judiciary is not the "guardian" of every constitutional formality. When exercising the powers unique to its department, each branch is entrusted to perform its duties, and "if they do not," then "the people will see to it that such mandatory provisions are complied with." *Jones*, 6 Wash. at 468; *see also Citizens Council Against Crime*, 84 Wn.2d 891, 897 n.1, 529 P.2d 1072, 1076 (1975) (each branch "is responsible and answerable only to the people for its proper performance of the function for which it is constituted"). In other words, it is not incumbent on the judiciary to police the legislature's adherence to constitutional formalities that apply only to that branch.

Additionally, this was not an instance where the Legislature was wantonly disregarding its constitutional requirements. On the contrary, the trial court emphasized that the Legislature did not act “in bad faith,” and that “it is clear [what] the legislature was doing and enacting a law that they thought it would be appropriate.” RP 59.

Tellingly, in striking down both enactments, the trial court analogized to cases where the Legislature had attempted to “circumvent the governor’s veto power.” RP 59 (citing *Washington State Legislature v. Lowry*, 131 Wn.2d 309 (1997)). But those cases illustrate why the trial court should not have taken the drastic remedy nullifying the Legislature’s vote to enact I-940 based on its conclusion that ESHB 3003 was unconstitutional. As the Court explained in *Grange v. Locke*, there is not “a single instance in which this court has invalidated all of a governor’s vetoes in their entirety based only upon the impropriety of the governor’s action with regard to a single section.” 153 Wn.2d at 491. For instance, in *Washington State Motorcycle Dealers Association v. State*, the court voided some but not all of the governor’s vetoes. 111 Wn.2d 667, 671, 763 P.2d 442 (1988). In other words, the impropriety of some vetoes did not operate to invalidate others, even in the same bill. Applied here, to the extent ESHB 3003 was an attempt to “circumvent” the will of the people, then that is a reason to strike down *that enactment*. It is not a reason to

strike down I-940, which was a separate enactment altogether. Put differently, Plaintiffs are wrong to assert that “[t]he vote on 940 is tainted by the vote on 3003.” RP 42. Under the enrolled bill rule, there is no way for one enactment’s flaws to be used to strike down a subsequent enactment that is otherwise proper on its face.

The trial court’s order thus contravenes over a century of uninterrupted case law that makes clear courts have “*no authority* to inquire into any prior proceedings on the part of the legislature to ascertain whether the mandatory provisions of the constitution had been complied with.” *Dunbar*, 140 Wash. at 443-44 (emphasis added).

V. CONCLUSION

I-940 was properly presented to the legislature, and a majority of both chambers voted to enact the initiative. The Lieutenant Governor and Speaker of the House acknowledged that a majority of their respective chambers voted in favor of the initiative, and each certified its passage. Because an initiative to the legislature does not require the Governor’s signature, the Lieutenant Governor’s certification was the last official act necessary for the initiative to become law. *See* Const., art. II, §§ 1(a), 32.

Regardless of the propriety of ESHB 3003, the trial court’s decision to nullify the legislature’s approval of I-940 violates the enrolled

bill rule. Accordingly, the Lieutenant Governor respectfully requests that this Court reverse the trial court's order, and vacate the writ of mandamus.

DATED: May 11, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David A. Perez, attorney for Lt. Governor Cyrus Habib, certify that on May 11, 2018, I caused to be served upon all counsel of record, via electronic and U.S. mail, a true and correct copy of this motion to intervene.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington, this 11th day of May, 2018.

/s/ David A. Perez _____

David A. Perez

PERKINS COIE LLP

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Comments:

OPENING BRIEF OF CYRUS HABIB, in his official capacity as Lieutenant Governor

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