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SUPREME COURT  
STATE OF WASHINGTON  
2009 JUL 22 P 4: 25

**SUPREME COURT OF THE STATE OF WASHINGTON**

CLERK

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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.

No. 8857-6

PETITION AGAINST  
STATE OFFICER SAM  
REED; WRIT OF  
MANDAMUS; WRIT OF  
PROHIBITION; IN THE  
ALTERNATIVE WRIT OF  
CERTIORARI

20367

Petitioners allege as follows:

**I. NATURE OF ACTION**

1. Petitioners seek a writ of mandamus to compel Respondent Secretary of State Sam Reed to comply with nondiscretionary duties imposed by the Washington State Constitution, Article II, § 1, RCW 29A.72.110, RCW 29A.72.230, and RCW 29A.72.170. Specifically, petitioners seek a writ to compel the Secretary of State to accept the initiative petitions submitted for Initiative Measure No. 1029 ("I-1029") as petitions for an initiative to the legislature and, if the Secretary of State verifies and canvasses a sufficient number of signatures, to certify the results to the legislature

within forty days of the filing and to transmit a certified copy of the proposed measure to the legislature at the opening of its 2009 session. Petitioners further seek a writ of mandamus or writ of prohibition restraining the Secretary of State from accepting and filing I-1029 as an initiative to the people and certifying the initiative to each county auditor to be voted upon at the November 2008 general election.

2. In the alternative, if the Washington Constitution and statutes are held to impose discretionary duties on the Secretary of State, petitioners request that the Supreme Court exercise discretionary review under the Court's inherent and constitutional power to issue a writ of certiorari and order the Secretary of State to process I-1029 as an initiative to the legislature as directed by the language of the petitions. The Secretary of State's presumption that voters sign initiative petitions indiscriminately, without regard to whether the petition directs the measure to the people or to the legislature, and the Secretary's acceptance and filing the I-1029 petitions as an initiative to the people rather than an initiative to the legislature, is arbitrary, capricious, and contrary to law.

3. This petition raises substantial questions of legal and public importance relating to duties of the Secretary of State with regard to petitions for initiatives that fail to comply with the constitutional and statutory mandates and procedural requirements for

initiatives to the people but comply with the constitutional and legislative mandates and procedural requirements for initiatives to the legislature. Pursuant to RCW 29A.72.170, the Secretary of State may refuse to file an initiative petition if: (1) the petition does not contain the information required by RCW 29A.72.110, RCW 29A.72.120, or RCW 29A.72.130; (2) the petition clearly bears insufficient signatures; or (3) the time within which the petition may be filed has expired. If none of these three grounds for refusal exist, the Secretary of State must accept and file the petition. When an initiative petition contains the language required by RCW 29A.72.110 for an initiative to the legislature, this statute is properly read as requiring the Secretary of State to accept and file the petition as a petition to the legislature.

4. If a petition signed by a sufficient number of voters directs an initiative measure to the legislature, pursuant to RCW 29A.72.230, the Secretary shall transmit a certified copy of the proposed measure to the legislature at the opening of its next regular session.

5. Petitions for proposing initiative measures to the legislature at its next regular session must be substantially in the form set out in RCW 29A.72.110. That form must include language that states:

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 . . . , 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; . . .

*Id.*

6. Petitions for proposing initiative measures to the people for their approval at the next ensuing general election must be substantially in the required form set out in RCW 29A.72.120. That form must include language that states:

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. . . . and entitled . . . , 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, . . .

*Id.*

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

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that this petition and the proposed measure known as Initiative Measure No. 1029 . . . be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law . . .

8. Despite the plain and clear language on the initiative petitions that direct I-1029 to be transmitted to the legislature, which language substantially complies with RCW 29A.72.110, the Secretary of State has accepted for filing the I-1029 petitions as petitions for an initiative to the people. The Secretary of State has stated that he will certify I-1029 as a measure for the November 2008 general election ballot if the required number of signatures are verified and canvassed.

9. Petitions that propose measures for submission to the people for their approval or rejection at the next ensuing general election “must be substantially in the [following] form” set forth in RCW 29A.72.120. There is nothing on the face of the I-1029 petitions that directs the measure for submission to the people for their approval or rejection in the November 2008 general election or that otherwise substantially complies with the form set forth in RCW 29A.72.120.

10. Petitions that propose measures for submission to the legislature “must be substantially in the [following] form” set forth in RCW 29A.72.110. The I-1029 petitions are substantially in compliance with the form set forth in RCW 29A.72.110. In fact, the language on the petitions is nearly identical to the form’s language set out in RCW 29A.72.110.

11. Neither the Washington State Constitution, chapter 29A.72 RCW, nor any other Washington law grant the Secretary of

State discretion to ignore the plain language on the face of the I-1029 petitions directing the proposed measure to the legislature and accept and certify that petition as a petition to the people. To allow such discretion would nullify the requirements in the Washington Constitution, chapter 29A.72 RCW, and the underlying policy reasons for the specific and distinct types of petitions for the exercise of the legislative power reserved by the people (petition for initiative to the people, petition for initiative to the legislature, and petition for referendum against one or more items, sections, or parts of any act, law, or bill).

12. The Secretary of State may not make arbitrary determinations regarding compliance with constitutional and statutory requirements for initiative petitions. The Secretary may not arbitrarily accept I-1029 petitions, which clearly state the voters are directing the measure to the legislature, as petitions for an initiative to the people based on statements by the sponsor that the measure was intended to be directed to the people.

13. The Secretary of State may not make arbitrary determinations that the I-1029 petitions are in error; that the proponent's affidavit submitted at the time of filing the proposed measure checking the box for an initiative to the people is determinative; and that the initiative measure, based on that affidavit,

should be directed to the people rather than the legislature as directed by the operative language of the initiative petitions.

## II. JURISDICTION

14. The Supreme Court has discretionary original jurisdiction to issue a writ of mandamus or writ of prohibition against a state officer pursuant to Const. art. IV, § 4 to compel the state officer to undertake clear duties imposed by law. This Court has the jurisdiction to issue a writ (1) to compel the Secretary of State to accept the initiative petitions submitted for I-1029 as petitions for an initiative to the legislature and, if the Secretary of State verifies and canvasses a sufficient number of signatures, to certify the results to the legislature as soon as the signatures on the petition have been verified and canvassed (within forty days of the filing) and to transmit a certified copy of the proposed measure to the legislature at the opening of its 2009 session, and (2) to prohibit the Secretary of State from accepting and filing I-1029 as an initiative to the people and certifying the initiative to each county auditor to be voted upon at the November 2008 general election.

15. Alternatively, the Supreme Court has the inherent power, confirmed in Const. art. IV, § 4, to review a state officer's actions pursuant to a writ of certiorari to determine if the state officer's actions are arbitrary, capricious, or contrary to law. This petition

presents a matter that is appropriate for the exercise of this inherent power if review of the Secretary of State's actions is not otherwise provided for by law.

16. The Supreme Court may exercise its original jurisdiction to protect the rights, interests, and franchise of the people, and the rights, interests, and franchise of the legislature.

### **III. PARTIES**

#### **A. Petitioners.**

17. The Community Care Coalition of Washington ("CCCW") was organized in May 2008 as a nonprofit organization registered with the Public Disclosure Commission as a Ballot Committee. The CCCW is a coalition of organizations and entities that provide care to the elderly and persons with disabilities in the State of Washington. The CCCW is an advocate for and on behalf of the elderly and persons with disabilities to promote their economic and personal well-being. The CCCW includes non-profit operators of elder care and assisted living facilities, agencies that deliver in-home care to the elderly and persons with disabilities, adult family home operators, and other small businesses that deliver care to the elderly and persons with disabilities in this state. CCCW, its members, and the persons they serve will be negatively impacted by I-1029's effects on care providers and programs for the elderly and persons with

disabilities. They have a direct interest in the deliberative legislative process, the public debate facilitated by that process, and the ability of the process to consider alternative approaches to an issue of demonstrated public interest. The CCCW and its members have an interest in presenting alternative approaches to the legislature that will promote the provision of appropriate care to the elderly and persons with disabilities while containing the costs of such care.

18. Home Care of Washington, Inc. (“Home Care”) is a Washington corporation that was founded in 2001 and is dedicated to providing care to the elderly and persons with disabilities. Home Care provides services to the elderly and persons with disabilities through eleven offices located in eastern Washington, including Clarkston, Walla Walla, Kennewick, Yakima, Ellensburg, Wenatchee, Okanogan, Moses Lake, Grand Coulee, Colville, and Spokane. Home Care serves approximately 1,100 elderly and persons with disabilities throughout eastern Washington. As a care provider, Home Care’s programs and staffing will be negatively impacted by I-1029’s effects on its care providers and programs for the elderly and persons with disabilities. Home Care has a direct interest in the deliberative legislative process, the public debate facilitated by that process, and the ability of the process to consider alternative approaches to an issue of demonstrated public interest. Home Care has an interest in presenting alternative

approaches to the legislature that will promote the provision of appropriate care to the elderly and persons with disabilities while containing the costs of such care.

19. The Fredrickson Home is an adult family home licensed by the State of Washington for six residents. It has a special designation from the Department of Social and Health Services allowing it to provide residential care to persons with developmental disabilities. The Fredrickson Home was founded in 1994 and provides twenty-four hour support to persons with developmental disabilities, all of whom receive funding through Medicaid. The Fredrickson Home's caregivers have education and experience in the field of disabilities. As a care provider, The Frederickson Home will be negatively impacted by I-1029's effects on its care providers and programs that benefit persons with developmental disabilities. The Frederickson Home has a direct interest in the deliberative legislative process, the public debate facilitated by that process, and the ability of the process to consider alternative approaches to an issue of demonstrated public interest. The Frederickson Home has an interest in presenting alternative approaches to the legislature that will promote the provision of appropriate care to the elderly and persons with disabilities while containing the costs of such care.

20. Petitioner Cynthia O'Neill is a voter and taxpayer in the state of Washington. Petitioner O'Neill works in the home care industry for an agency licensed with the Department of Health and contracted with the Department of Developmental Disabilities. Petitioner O'Neill provides care and oversight for persons with developmental disabilities. Petitioner O'Neill has a direct interest in the deliberative legislative process, the public debate facilitated by that process, and the ability of the process to consider alternative approaches to an issue of demonstrated public interest. As a taxpayer, Petitioner O'Neill also has an interest in the fiscal impact on the state of Washington from an initiative measure being placed on a general election ballot and the vote canvassed when such measure is directed to the legislature, and in the fiscal impact on state taxpayers if I-1029 is implemented as law.

21. Ron Ralph and Lois Ralph, a married couple, are both voters and taxpayers of the State of Washington. Petitioners Ralph have a 26-year-old son with severe developmental disabilities that requires 24-hour, 7-days-a-week care. Petitioners Ralph have a direct interest in the deliberative legislative process, the public debate facilitated by that process, and the ability of the process to consider alternative approaches to an issue of demonstrated public interest. Petitioners have an interest in presenting alternative approaches to the

legislature that will promote the provision of appropriate care to persons with disabilities, including alternative approaches that would allow close relatives in addition to parents to provide care without undergoing the full certification that I-1029 would require. As taxpayers, Petitioners Ralph also have an interest in the fiscal impact from an initiative measure being placed on a general election ballot and the vote canvassed when such measure is directed to the legislature, and in the fiscal impact on state taxpayers if I-1029 is implemented as law.

22. Petitioners have requested that the Attorney General for the state of Washington bring a taxpayer suit to mandate the Secretary of State to accept, file, and certify I-1029 as an initiative to the legislature and to prohibit the Secretary of State from accepting, filing, and certifying I-1029 as an initiative to the people. A copy of petitioners' request is attached hereto as Exhibit A.

**B. Respondents.**

23. Respondent is the Secretary of State for the state of Washington, Sam Reed. The Secretary of State is the chief elections officer for the state of Washington and is responsible for accepting, filing, and certifying to the ballot initiatives to the people and initiatives to the legislature. Secretary of State Reed has accepted and filed I-1029 as an initiative to the people, even though the plain

language on the I-1029 petitions states that the voters signing the petition direct the initiative measure to the legislature. Secretary of State Reed has stated that he will certify I-1029 to be included on the November 2008 general election ballot to be voted upon by the people if a sufficient number of the petitions' signatures are verified and canvassed.

24. Petitioners requested Secretary of State Reed to reject and not certify I-1029 as an initiative to the people. Secretary of State Reed denied petitioners' request. Secretary of State Reed accepted and filed I-1029 as an initiative to the people even though the plain language on the I-1029 petitions states that the voters signing the I-1029 petitions direct the initiative measure to the legislature.

#### **IV. FACTS**

##### **A. Filing the Proposed Initiative.**

25. On March 12, 2008, Linda S. Lee filed the proposed initiative measure which, if adopted, would require persons providing long-term care services for the elderly and people with disabilities to be certified by the Department of Health by obtaining certain levels of training and passing an examination. Ms. Lee filed the required affidavit for the proposed initiative and checked the box indicating that the proposed initiative would be submitted to the "people." Exhibit B.

26. The Secretary of State acknowledged Ms. Lee's filing of the proposed initiative "to the people" and the payment of the filing fee in a letter dated March 12, 2008. The letter also indicated that the Secretary of State was transmitting the proposed initiative to the Code Reviser for its review and cautioned that the initiative should be read carefully after it was returned to the sponsors from the Code Reviser. Exhibit C. Also on March 12, 2008, the Secretary of State's Office sent the proposed initiative to the Code Reviser's Office requesting that the Code Reviser review the initiative for matters of form and style and matters of substantive import. Exhibit D.

27. On March 21, 2008, the Code Reviser issued a certificate of review certifying that the sponsors' proposed initiative had been received by the Code Reviser's Office on March 12, 2008; that it had been reviewed by the Code Reviser; that recommendations had been made on the draft proposal; and that these recommendations had been communicated to the sponsor. Exhibit E. The Code Reviser sent a copy of the certificate of review to the Secretary of State on March 28, 2008. *See* Exhibit F.

28. After receiving the certificate of review from the Code Reviser, the Secretary of State's staff sent Ms. Lee a letter dated March 28, 2008, advising her that the certificate of review had been received from the Code Reviser's Office; that the Secretary of State

was officially filing the proposed initiative measure; that the measure had assigned number 1029; and that a copy of I-1029 was being sent to the Attorney General's Office with a request that a ballot title and summary statement be prepared for the measure. Exhibit F.

29. On March 28, 2008, the Secretary of State also forwarded I-1029 to the Attorney General's Office requesting a ballot title and summary statement. Exhibit G. The Attorney General drafted a ballot title for initiative 1029 and summary statement and returned the same to the Secretary of State on April 4, 2008. Exhibit H.

30. On April 4, 2008, the Secretary of State sent Ms. Lee a letter advising her that the official ballot title and summary statement for I-1029 had been received from the Attorney General and that the official ballot title and summary statement had to appear on the front of each signature petition sheet circulated in support of the measure. Ms. Lee was further advised to read chapter 29A.72 RCW regarding the requirements for petition layout and signature gathering, and that while the Secretary of State's Office did not review initiatives for content, the Office would "be happy to review the final proof copy of your petition sheet for matters of form and style should you desire such consultation." Exhibit I.

**B. Circulation of Petitions for Voters' Signatures.**

31. The sponsor and proponents of I-1029 prepared and circulated I-1029 petitions for voters' signatures. The front page of each of the circulated petitions stated: ". . . the undersigned citizens and 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 . . ." Exhibit J. Persons signing the I-1029 petitions placed their signatures beneath this language indicating that Initiative 1029 was a petition to the legislature.

32. On or about June 25, 2008, a citizen delivered to the Secretary of State's Office a copy of an I-1029 petition and pointed out that the language on the face of the petition did not contain the language prescribed in RCW 29A.72.120 for initiatives to the people, but instead indicated that the signers were addressing the initiative to the legislature. Petitioners were unaware of this deficiency in the I-1029 petitions until this citizen's delivery of an I-1029 petition to the Secretary of State.

33. The sponsor and/or proponents arranged with the Secretary of State's Office to submit the signed I-1029 petitions for

filing on July 3, 2008. Under the filing deadlines set forth in RCW 29A.72.160, this was the last day that petitions for initiatives to the people could be filed with the Secretary of State. Petitions for initiatives to the legislature could be filed with the Secretary of State until ten days before the commencement of the next regular legislative session. *Id.*

34. On July 2, 2008, the CCCW sent Secretary of State Reed a letter asking the Secretary to carefully review the I-1029 petitions that the sponsors were scheduled to submit on July 3, 2008. The CCCW advised the Secretary of State that nothing on the face of the I-1029 petitions directed the measure to the people for approval or rejection in the November 2008 general election. Instead, the voters signing the I-1029 petitions directed the Secretary of State to transmit the measure to the legislature at its next regular session. Exhibit K. The CCCW also explained the statutory and constitutional differences in the two forms of initiatives and urged the Secretary of State to not allow the “dangerous precedent” of qualifying a measure for the general election ballot when the sponsors clearly do not state the initiative is to the people. CCCW noted this precedent would allow an initiative sponsor to create ambiguities about which of the two initiative processes were being pursued and allow an initiative that sponsors intended to direct to the people to be changed by the sponsors

and their proponents to an initiative to the legislature if the initiative petitions did not have the required number of signatures by the deadline. *Id.*

35. On July 3, 2008, the sponsors and proponents submitted the I-1029 petitions to the Secretary of State's office and asked the Secretary of State to accept the petitions for filing and certify I-1029 to the voters of the state of Washington for their approval or rejection at the general election to be held on November 4, 2008.

36. The Secretary of State's legal counsel responded to CCCW's letter on July 14, 2008, stating that "[a]lthough 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 you seek." Exhibit L. The Secretary of State's legal counsel further advised CCCW that the Secretary of State would process the petitions relating to I-1029 as an initiative to the people if the signatures were sufficient in number to qualify I-1029 for the November 2008 ballot. *Id.*

**C. Effect of Placing Initiative I-1029 on the November 8, 2008, General Election Ballot to the People.**

37. If Secretary of State Reed finds that the I-1029 petitions contain the requisite number of valid signatures, he has stated that he will certify the measure to the various counties for placement on the

November 8, 2008, general election ballot. The plain language on each I-1029 petition states:

*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 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.

Exhibit J. Nothing on the face of the petitions proposes a measure for submission to the people for their approval or rejection in the November 8, 2008, general election.

38. 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 form set out in that section of the statute. That language would require an

initiative petition for submission to the people to include the following language:

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.

39. In contrast, RCW 29A.72.110 specifies that petitions for proposing measures for submission to the legislature “must be substantially” in the form set out in that section of the statute. That language would require an initiative petition for submission to the legislature to include the following language:

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 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 I-1029 petitions that were submitted to the Secretary of State are substantially in the form set forth in RCW 29A.72.110.

40. 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. Const. art. II, § 1(c).

41. If I-1029 is directed to the legislature, as stated in the plain language on the face of the initiative, the legislature may enact the initiative into law, propose an alternative, or reject the proposal (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. The initiative to the legislature therefore gives the voters choices not afforded voters in an initiative to the people.

42. The Secretary of State must certify an initiative to county election officials for the November general election ballot no

later than September 9, 2008. The county election officials then arrange for printing of the ballots and are required to mail ballots to overseas and military service voters by October 5, 2008.

43. This Court's immediate review of whether I-1029 must be processed as an initiative directed to the legislature will allow the Secretary of State and county election officials to provide voters a correct ballot and avoid voter confusion, and will further allow consideration by the legislature in the 2009 legislative session, consistent with the mandates of Const. art. II, § 1(a), if sufficient signatures are verified and canvassed.

**D. Complete Text of Initiative.**

44. A copy of the complete text of I-1029 is attached to this complaint as Exhibit J and is incorporated herein.

**V. FIRST CLAIM FOR RELIEF:  
VIOLATION OF WASHINGTON CONST. ART. II, § 1**

45. Petitioners reallege paragraphs 1 through 44 above.

46. Secretary of State Reed's acceptance and filing of I-1029 as an initiative to the people, and his stated intent to certify the initiative measure to each county auditor to be placed on the ballot at the November 2008 general election for a direct vote by the people, violates art. II, § 1 of the Washington Constitution.

47. The legislative authority of the State of Washington is set forth in Const. art. II. Included in this constitutional grant of

legislative authority is the reserved power of the people to submit an initiative measure to the legislature rather than directly to the people.

48. This initiative to the legislature allows the legislature to debate and deliberate initiatives and provide voters an expanded range of choices, including (1) the legislature may enact the initiative measure without change or amendment and become law if no referendum petition is filed; (2) if the legislature enacts the measure, the voters may file a referendum petition and the voters may then vote to accept or reject the initiative measure in whole or in part; (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; and (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.

49. Const. art. II, § 1 sets forth distinctions between an initiative to the legislature and an initiative to the people. By providing for an initiative to the legislature, the Constitution recognizes the deliberative nature of the legislature process, the public debate facilitated by that process, and, through that process, the ability

of the legislature and voters to consider alternative approaches to an issue of public interest.

50. The requirements for initiatives to the people and to the legislature are set forth in Const. art. II, § 1(a), which states that initiative petitions may be filed with the Secretary of State for a vote of the people at the next ensuing general election not less than four months before the election at which they are to be voted upon. Initiative petitions to the legislature must be filed with the Secretary of State not less than ten (10) days before any regular session of the legislature and the Secretary of State is required to certify the results of the petitions within forty (40) days of the filing. Initiative measures to the legislature take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected by the legislature before the end of the regular session.

51. Art. II, § 1(d) provides that the initiative sections shall not be construed to deprive any member of the legislature the right to introduce any measure; that all initiative petitions must be filed with the Secretary of State who is to be guided by the general laws in submitting the same to the people; that this section of the Constitution is self-executing but legislation may be enacted, especially to facilitate its operation.

52. Certifying I-1029 to be voted upon at the November 2008 general election and failing to certify the measure to the legislature will prevent the legislature from debating and deliberating I-1029's proposed measure contrary to Const. art. II, § 1. The voters, the legislature, and the petitioners will be affected by the Secretary of State's action.

53. The Secretary of State has failed to implement the Constitutional provisions for initiatives to the people and initiatives to the legislature as provided in Const. art. II, § 1. The Secretary of State cannot accept for filing an initiative measure as an initiative to the people when voters signed initiative petitions that directed the measure to be submitted to the legislature as an initiative to the legislature.

**VI. SECOND CLAIM FOR RELIEF**  
**VIOLATIONS OF CHAPTER 29A.72 RCW**

54. Petitioners reallege paragraphs 1 through 53 above.

55. Pursuant to Const. art. II, § 1(d), the legislature passed chapter 29A.72 RCW to facilitate the initiative and referendum processes.

56. The Secretary of State's acceptance of I-1029 for filing as an initiative to the people and stated intention to certify I-1029 to the county auditors of the various counties for placement on the November 2008 ballot violates chapter 29A.72 RCW.

57. The Secretary of State does not have the discretion to ignore and give no effect to initiative petitions, signed by voters, that state on the face of those petitions that the voters are directing the measure to the legislature and not the people.

58. RCW 29A.72.110 sets out the precise form and language to be included on the form for an initiative petition submitting a measure to the legislature. The I-1029 initiative petitions that were signed by voters and submitted to the Secretary of State on July 3, 2008, substantially comply with this form and language.

59. RCW 29A.72.120 sets out the precise form and language to be included on the form for an initiative petition submitting a measure directly to the people. The I-1029 initiative petitions that were signed by voters and submitted to the Secretary of State on July 3, 2008, do not substantially comply with this form and language.

60. Under RCW 29A.72.170, the Secretary of State may refuse to accept and file an initiative petition upon the grounds that the petition does not contain the information required by RCW 29A.72.110 and RCW 29A.72.120; the petition clearly bears insufficient signatures; or the time within which the petition had to be filed expired. None of these grounds exist for refusing to accept and file I-1029 as an initiative to the legislature. If there are no grounds

for refusing to file I-1029 as an initiative to the legislature, RCW 29A.72.170 requires the Secretary of State to accept and file the petitions as an initiative to the legislature.

61. The only discretion granted the Secretary of State to refuse to file an initiative petition that complies with chapter 29A.72 RCW is the discretion in RCW 29A.72.170. If none of these grounds in RCW 29A.72.170 exist, the Secretary of State must file the initiative petition and has no discretion to reject it. I-1029 is a petition to the legislature that is in the form and contains the language required by RCW 29A.72.110. I-1029 appears to have sufficient signatures and was timely filed. The Secretary of State has no discretion to reject the I-1029 petitions as an initiative measure to the legislature.

62. The Secretary of State must comply with RCW 29A.72.170's requirement that an initiative petition to the legislature, in compliance with RCW 29A.72.110, must be filed, accepted, and certified to the legislature if a sufficient number of signatures is verified and canvassed. The Secretary of State's reliance on the affidavit filed by the sponsor of I-1029 does not grant the Secretary of State the discretion to ignore and give no legal effect to I-1029's form and operative language. Chapter 29A.72 RCW does not provide the sponsor's affidavit any legal effect that overrides the provisions of RCW 29A.72.110 and RCW 29A.72.170.

63. The scope of the initiative power is set forth in Const. art. II, § 1(a) and provides for initiatives to the legislature that are distinct from initiatives to the people. The Secretary of State's failure to implement the plain language on the face of the I-1029 petitions directing the measure to the legislature ignores and is contrary to the constitutional distinctions between the two initiative powers. Chapter 29A.72 RCW does not provide the Secretary of State the authority, or discretion, to take action contrary to this constitutional provision.

64. The Secretary of State intends to take actions to submit I-1029 to the voters in the November 2008 general election. The Secretary of State's actions are unconstitutional and in violation of chapter 29A.72 RCW.

65. Certifying I-1029 to be voted upon at the November 2008 general election and failing to certify the measure to the legislature will prevent the legislature from debating and deliberating I-1029's proposed measure contrary to chapter 29A.72 RCW. The voters, the legislature, and petitioners will be affected by the Secretary of State's action.

66. Taxpayers will be affected by the Secretary of State's certification and submission of I-1029 to the counties for the measure to be voted upon in the November 2008 general election rather than to the legislature. The Secretary of State's noncompliance with the

requirements of law will injure the taxpayers of the state by incurring expenses in the conduct of an election and canvassing the vote of a measure placed on the general election ballot in violation of law. Further, if enacted into law, the provisions of the proposed measure would impose additional burdens on taxpayers by requiring additional training, fingerprint-based criminal background checks, and certification, the costs of which will be paid in part by the state's taxpayers through implementation of the requirements and/or through increased payments to long-term care workers paid by the state and those receiving services.

67. Petitioners are threatened with impending and irreparable harm and injury from the Secretary of State's actions in certifying and submitting I-1029 to the people to be voted upon in the November 2008 general election rather than to the legislature.

68. An actual, definite, and substantial controversy has arisen and now exists between the parties as to the constitutionality and statutory authority of the process adopted by the Secretary of State in accepting, filing and certifying I-1029.

69. This controversy is ripe for adjudication. Petitioners are not required to wait until I-1029 is duly passed by the voters at the November 2008 general election to petition for relief. Submitting the measure to the legislature based on petitions that are constitutionally

and statutorily deficient in form and process is a question of propriety of process that can be addressed by this Court prior to the November 2008 election. Pre-election challenges to initiatives are allowed if the procedural requirements for placing the measure on the ballot have not been met. The procedural requirements for placing I-1029's measure on the ballot have not been met.

70. Procedural pre-election challenges do not raise concerns regarding justiciability because the sole inquiry is whether the proper procedures have been followed in order to invoke the initiative process in the first instance. The Secretary of State is taking action to certify I-1029 to the vote of the people in the November 2008 general election even though the I-1029 petitions clearly state that the voters are directing the initiative to the legislature. The Secretary of State's actions warrant pre-election review.

71. Petitioners, voters, and the legislature will suffer a substantial hardship from 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 general election. This will create hardship and confusion on the petitioners, voters, and the legislature. A post-general election challenge may preclude the legislature from undertaking its constitutional and legislative directives

to deliberate and pass or reject I-1029's measure in the 2009 legislative session.

**VII. THIRD CLAIM FOR RELIEF**  
**ARBITRARY AND CAPRICIOUS ACTION THAT IS**  
**CONTRARY TO LAW AND REVIEWABLE UNDER A WRIT**  
**OF CERTIORARI PURSUANT TO**  
**CONST. ART. IV, § 4**

72. Petitioners reallege paragraphs 1 through 71 above.

73. The Supreme Court has the inherent power, confirmed in Const. art. IV, § 4, to review a state officer's actions pursuant to a writ of certiorari to determine if the state officer's actions are arbitrary, capricious, or contrary to law.

74. The Secretary of State's action in failing to follow the stated directive on the I-1029 petitions and submit the measure to the legislature is arbitrary and capricious and contrary to law.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, petitioners request the following relief:

1. That the Court issue a writ of mandamus or prohibition (a) mandating the Secretary of State to accept the petitions for I-1029 as an initiative to the legislature and submitting the measure to the legislature for its deliberation and adoption or rejection during the 2009 legislative session if a sufficient number of signatures are verified and canvassed, and (b) prohibiting the Secretary of State from certifying I-1029 to the county auditors for placement on the ballot as

an initiative to the people to be voted upon in the 2008 general election.

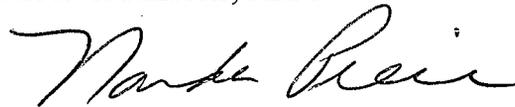
2. Alternatively, that the Court find that the Secretary of State acted arbitrarily, capriciously, and contrary to law in disregarding the plain language of the I-1029 petitions directing the measure to the legislature, and enter an order prohibiting the Secretary of State from certifying I-1029 to the county election officials for placement on the ballot as an initiative to the people to be voted upon in the 2008 general election, and requiring the Secretary of State to process petitions for I-1029 as an initiative to the legislature and to submit the measure to the legislature for its deliberation during the 2009 legislative session if a sufficient number of signatures are verified and canvassed.

3. That the Court award petitioners their costs and fees incurred in bringing this Petition.

4. That the Court enter such other and further relief as it deems appropriate.

DATED this 22<sup>nd</sup> day of July, 2008.

BENEDICT GARRATT  
POND & PIERCE, PLLC



Narda Pierce, WSBA #10923

Kathleen D. Benedict  
Kathleen D. Benedict, WSBA #7763

Attorneys for Petitioners

711 Capitol Way S., Suite 605  
Olympia, WA 98501  
(360) 236-9858

**EXHIBIT A**

# BENEDICT GARRATT POND & PIERCE, PLLC

ATTORNEYS AT LAW

KATHLEEN D. BENEDICT  
(360) 236-9858  
NARDA PIERCE  
(360) 357-6850  
OLYMPIA OFFICE:  
711 CAPITOL WAY S, SUITE 605  
OLYMPIA, WA 98501  
FAX: (360) 236-9860

www.benedictlaw.com

SALLY GUSTAFSON GARRATT  
(206) 652-8983  
RALPH C. POND  
(206) 447-5755  
SEATTLE OFFICE:  
1000 SECOND AVENUE, 30<sup>TH</sup> FLOOR  
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

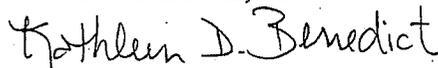
which is printed on the reverse side of this petition, be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we respectfully petition the legislature to enact said proposed measure into law; and each of us for himself or herself says: I have personally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

**EXHIBIT B**



Filed

MAR 12 2008

SECRETARY OF STATE

State of Washington

AFFIDAVIT FOR PROPOSED INITIATIVE

State of Washington )
County of Clark King WA ) 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)

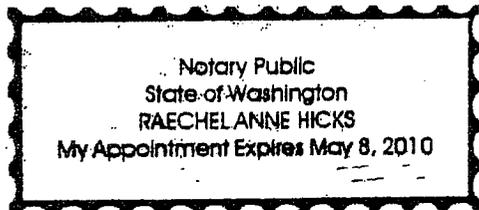
- People
Legislature

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 na traininginitiative@sei0775.org
TELEPHONE NO. (W/ AREA CODE) FAX NO. (W/ AREA CODE) E-MAIL

**EXHIBIT C**



*Washington*  
**Secretary of State**  
SAM REED

ELECTIONS DIVISION  
520 Union Avenue SE • PO Box 40229  
Olympia, WA 98504-0229  
Tel: 360.902.4180  
Fax: 360.664.4619  
[www.secstate.wa.gov/elections](http://www.secstate.wa.gov/elections)

March 12, 2008

Linda S. Lee  
c/o Judith Krebs  
33615 1<sup>st</sup> Way South, Suite A  
Federal Way, WA 98003

Dear Ms. Lee:

This acknowledges the filing of a proposed Initiative to the People relating to the long-term care services, and the payment of the filing fee of \$5.00. We are transmitting a copy of your proposed initiative to the Code Reviser.

The Code Reviser will review the proposal and send you his recommendations and a Certificate of Review within seven working days of his receipt of your proposal. At that time, you may make any revisions that you desire in the text of the proposed initiative.

You must file a final version of the initiative containing any revisions you wish to make and the Certificate of Review with this office no later than April 2, 2008.

Please carefully read your proposed initiative after you receive it from the Code Reviser and prior to filing the final version with us. Any revisions you might wish to make after that time will require that the measure be re-filed.

Sincerely,

Sam Reed  
Secretary of State

Teresa Glidden  
Initiative Supervisor

Enclosures

**EXHIBIT D**



*Washington*  
**Secretary of State**  
SAM REED

ELECTIONS DIVISION  
520 Union Avenue SE • PO Box 40229  
Olympia, WA 98504-0229  
Tel: 360.902.4180  
Fax: 360.664.4619  
[www.secstate.wa.gov/elections](http://www.secstate.wa.gov/elections)

March 12, 2008

Mr. K. Kyle Thiessen  
Code Reviser  
Legislative Building  
Olympia, WA 98504

Dear Sir:

Pursuant to the provisions of RCW 29A.72.020, we are transmitting herewith a copy of a proposed Initiative to the People relating to the protecting the initiative process.

Please review this proposed initiative for matters of form and style and such matters of substantive import as may be agreeable to the sponsors of this measure: Ms. Linda S. Lee, c/o Judith Krebs, 33615 1<sup>st</sup> Way S., Suite A., Federal Way, WA 98003, 866-371-3200, [traininginitiative@seiu775.org](mailto:traininginitiative@seiu775.org).

The sponsors have been notified that a certificate of review will be issued within seven working days from the date of this transmittal.

Sincerely,

Sam Reed  
Secretary of State

Teresa Glidden  
Initiative Supervisor

Enclosure

**EXHIBIT E**

OFFICE OF THE CODE REVISER  
PRITCHARD BUILDING  
OLYMPIA, WA 98504

Filed  
MAR 28 2008  
SECRETARY OF STATE

IN THE MATTER OF THE PROPOSED  
INITIATIVE TO THE PEOPLE  
Relating to long-term care services

PETITIONER: Ms. Linda S. Lee  
c/o Judith Krebs  
33615 1st Way S., Suite A  
Federal Way, WA 98003

**CERTIFICATE OF REVIEW (pursuant to RCW 29A.72.020)**

I hereby certify that sponsor's proposal was received in the office of the Code Reviser on March 12, 2008, that I have reviewed the proposal, and that any recommendations thereon, if any, have been communicated to the sponsor.

Dated March 21, 2008

K. Kyle Thiessen  
Code Reviser

By



---

KIKI KEIZER  
Assistant Code Reviser

**EXHIBIT F**



*Washington*  
**Secretary of State**  
SAM REED

ELECTIONS DIVISION  
520 Union Avenue SE • PO Box 40229  
Olympia, WA 98504-0229  
Tel: 360.902.4180  
Fax: 360.664.4619  
[www.secstate.wa.gov/elections](http://www.secstate.wa.gov/elections)

March 28, 2008

Linda S. Lee  
c/o Judith Krebs  
33615 1<sup>st</sup> Way South, Suite A  
Federal Way, WA 98003

Dear Ms. Lee:

We have received a revised copy of your proposed Initiative to the People relating to long-term care services originally submitted to this office on March 12, 2008, together with the Certificate of Review from the Code Reviser indicating that he has examined this proposal as required by RCW 29A72.020. We are officially filing this initiative proposal and have assigned it the serial number 1029.

As the Office of the Attorney General is required by law to formulate ballot titles and summaries for all initiative and referendum measures, we have forwarded a copy of Initiative Measure No. 1029 to that office, together with a request that a ballot title and summary be prepared for that measure. According to our calculations that ballot title and summary should be formulated and transmitted back to us no later than April 4, 2008, or five days following their receipt of the measure excluding Saturdays, Sundays and legal holidays. We will notify you by telephone and by mail as soon as we receive the Official Ballot Title and Summary from the Attorney General.

Sincerely,

SAM REED  
Secretary of State

Teresa Glidden  
Initiative Supervisor

Enclosure

**EXHIBIT G**



*Washington*  
**Secretary of State**  
SAM REED

ELECTIONS DIVISION  
520 Union Avenue SE • PO Box 40229  
Olympia, WA 98504-0229  
Tel: 360.902.4180  
Fax: 360.664.4619  
[www.secstate.wa.gov/elections](http://www.secstate.wa.gov/elections)

March 28, 2008

Honorable Rob McKenna  
Attorney General  
Highways-Licenses Building  
P. O. Box 40100  
Olympia, WA 98504-0100

Dear Sir:

Pursuant to RCW 29A.72.040, we are transmitting a copy of Initiative Measure No. 1029 to the People, together with the Certificate of Review as issued by the Code Reviser pursuant to RCW 29A.72.020.

Please issue an official ballot title consisting of a statement of the subject not to exceed ten words, a concise statement not to exceed 30 words and a summary of the measure not to exceed seventy-five words as required by RCW 29A.72.060. The sponsor has been notified that the ballot title and summary must be issued no later than five days following the transmittal of this request, excluding Saturdays, Sundays and legal holidays.

Sincerely,

SAM REED  
Secretary of State

Teresa Glidden  
Initiative Supervisor  
Enclosures

**EXHIBIT H**



Rob McKenna  
**ATTORNEY GENERAL OF WASHINGTON**

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

April 4, 2008

Filed

APR 04 2008

SECRETARY OF STATE

RECEIVED

APR - 4 2008

Office of Secretary of State

The Honorable Sam Reed  
ATTN: Teresa Glidden  
Initiative Supervisor  
PO Box 40220  
Olympia, WA 98504-0220

Re: Initiative No. 1029

Dear Mr. Reed:

Pursuant to RCW 29A.72.060, we supply herewith the ballot title and ballot measure summary for Initiative No. 1029 to the People (an act relating to long-term care services).

**BALLOT TITLE**

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 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 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.

Sincerely,

JEFFREY T. EVEN  
Deputy Solicitor General  
360-586-0728

**EXHIBIT I**



*Washington*  
**Secretary of State**  
SAM REED

ELECTIONS DIVISION  
520 Union Avenue SE • PO Box 40229  
Olympia, WA 98504-0229  
Tel: 360.902.4180  
Fax: 360.664.4619  
[www.secstate.wa.gov/elections](http://www.secstate.wa.gov/elections)

April 4, 2008

Linda S. Lee  
c/o Judith Krebs  
33615 1<sup>st</sup> Way South, Suite A  
Federal Way, WA 98003

Dear Ms. Lee:

We have received the official ballot title and summary statement for Initiative to the People No. 1029 from the Attorney General. A copy of the ballot title and summary statements is attached.

The official ballot title and summary statement must appear on the front of each signature petition sheet circulated in support of this measure.

While we do not review initiatives for content, we would be happy to review the final proof copy of your petition sheet for matters of form and style should you desire such consultation.

Please read the Washington State laws relating to the requirements of petition layout and signature gathering (RCW 29A.72). We are also enclosing a list of suggestions for you to follow to make your signature gathering process easier.

If you have any further questions as you prepare for the circulation of this initiative measure, please do not hesitate to contact our office.

Sincerely,

SAM REED  
Secretary of State

Teresa Glidden  
Initiative Supervisor  
Enclosure



Rob McKenna  
**ATTORNEY GENERAL OF WASHINGTON**

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

Filed

April 4, 2008

APR 04 2008

SECRETARY OF STATE

The Honorable Sam Reed  
ATTN: Teresa Glidden  
Initiative Supervisor  
PO Box 40220  
Olympia, WA 98504-0220

Re: Initiative No. 1029

Dear Mr. Reed:

Pursuant to RCW 29A.72.060, we supply herewith the ballot title and ballot measure summary for Initiative No. 1029 to the People (an act relating to long-term care services).

**BALLOT TITLE**

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 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 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.

Sincerely,

JEFFREY T. EVEN  
Deputy Solicitor General  
360-586-0728

**EXHIBIT J**

---



# 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](http://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.

SIGNATURE <small>Please sign as registered to vote</small>	PRINT NAME HERE <small>For positive identification</small>	ADDRESS WHERE REGISTERED TO VOTE			Email
		<small>Street or rural route &amp; 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.340, 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 18.130 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 increased 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 18.200 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 18.200 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) "Contingent effective date" 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 18.200 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) "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.

(17) "Long-term care workers" do not include:  
(a) 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;  
(b) Persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(18) "Nursing home" means a facility licensed under chapter 18.51 RCW.  
(19) "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.

(20) "Population specific competencies" means basic training topics unique to the care needs of the population from 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.

(21) "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.

(22) "Secretary" means the secretary of social and health services.  
(23) "Secretary of health" means the secretary of health or the secretary's designee.

(24) "Training partnership" means a joint partnership or trust (established and maintained jointly) by which 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 center) workforce development, or other services to individual providers.

(25) "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 18.200 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 18.200.270 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 certificates;

(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 (in 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 act or, if exempted from certification by section 7 of this act, has not completed his or her required training pursuant to this act.
- (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.030 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) (For 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-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 by rule.

(11) Until December 31, 2002, 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 ((and)) other quality assurance requirements for ((personal-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 18.130 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 18.130 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.

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.

Return Address (please print)

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, Address, Zip \_\_\_\_\_  
Phone \_\_\_\_\_  
Home E-mail \_\_\_\_\_

PLAC  
STAN  
HER

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



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

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



Petition gatherer, please sign here!

\_\_\_\_\_, 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.

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.

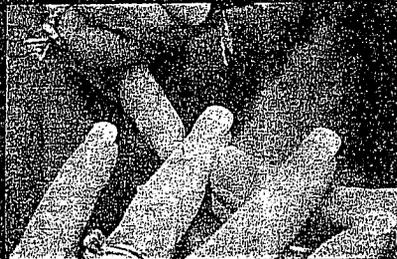
**FIRST CLASS MAILING DEADLINE IS JUNE 25, 200**

**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.

**EXHIBIT K**

# BENEDICT GARRATT POND & PIERCE, PLLC

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(206) 447-5755

SEATTLE OFFICE:  
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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

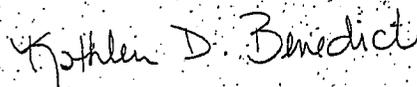
It would be a dangerous precedent to allow petitions to qualify a measure for the general election ballot without clearly indicating they are for the purpose of submitting an initiative to the general election ballot. This precedent would allow an initiative sponsor to create ambiguities about which 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.

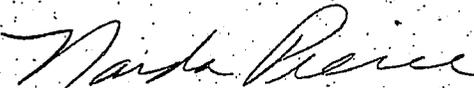
The law sets out required components of the petition form to insure notice and clarity. Indeed, in an April 4, 2008, letter to the initiative sponsor, your office offered "to review the final proof copy of your petition sheet for matters of form and style should you desire such consultation." Despite 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

**EXHIBIT L**



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

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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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.

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<sup>1</sup> 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.

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

<sup>3</sup> 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

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RCW 29A.72.170.<sup>4</sup> 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.

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<sup>4</sup> 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.

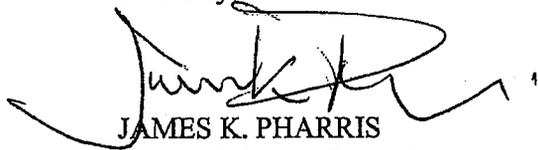
ATTORNEY GENERAL OF WASHINGTON

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