

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

2008 AUG 22 P 4: 36

BY RONALD R. CARPENTER

NO. 81857-6

CLERK

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

COMMUNITY CARE COALITION OF WASHINGTON; HOME CARE  
OF WASHINGTON, INC.; THE FREDRICKSON HOME; CYNTHIA  
O'NEILL, a Washington Citizen and Taxpayer; RON RALPH and LOIS  
RALPH, husband and wife and Washington Citizens and Taxpayers,  
Petitioners,

v.

SAM REED, Secretary of State,

Respondent,

and

LINDA LEE and PEOPLE FOR SAFE QUALITY CARE,

Intervenors/Respondents.

---

**BRIEF OF RESPONDENT**

---

ROBERT M. MCKENNA  
Attorney General

MAUREEN HART, WSBA # 7831  
Solicitor General

JEFFREY T. EVEN, WSBA #20367  
Deputy Solicitor General  
PO Box 40100  
Olympia, WA 98504-0100  
(360) 586-0728 Fax (360) 664-2963

Attorneys for Respondent Sam Reed

**TABLE OF CONTENTS**

I. NATURE OF THE CASE.....1

II. ISSUES PRESENTED .....1

III. STATEMENT OF THE CASE .....2

    A. Constitutional and Statutory Background.....2

        1. Constitutional Provisions Governing the Power of Initiative.....2

        2. Statutory Provisions Facilitating the Power of Initiative.....4

    B. Factual Background .....9

    C. Background Of The Litigation.....14

IV. SUMMARY OF ARGUMENT.....16

V. ARGUMENT .....18

    A. Petitioners Lack Standing To Challenge The Secretary of State’s Certification Of Initiative 1029 To The November 2008 Ballot.....18

    B. This Court Lacks Jurisdiction Over This Action .....20

        1. This Is Not Properly A Case In Mandamus Or Prohibition .....21

        2. This Is Not Properly A Case In Certiorari.....22

    C. The Secretary’s Acceptance Of The Petitions Supporting I-1029 Was Well Within His Discretion; It Was Neither Unlawful Nor Arbitrary And Capricious .....24

1.	Constitutional And Statutory Provisions Governing The Initiative Process Must Be Construed To Facilitate The Right To Initiative .....	26
2.	Setting Aside The Matter Of The Petition Form, I- 1029 Fully Complied With All Constitutional And Statutory Requirements Governing Initiatives To The People .....	27
3.	As To The Petitions For I-1029, They Contain All Of The Information That The Constitution And Governing Statutes Unequivocally Require .....	28
4.	The Only Deviation Of I-1029's Petitions From The Form Set Forth In RCW 29A.72.120 Is Not Substantial, And Did Not Compel the Secretary Of State To Reject The Petitions .....	29
5.	Numerous Additional Objective Factors Indicated That The Petition's Deviation From Statutory Form Was A Simple Mistake.....	34
6.	The Cases On Which Petitioners Rely To Argue That I-1029 Was Not Substantially In The Form Set Forth In RCW 29A.72.120 Do Not Support Their Argument.....	37
7.	Petitioners' Reliance On Article II, Section 19 And Article II, Section 37 Is Misplaced; In Fact These Provisions Also Confirm The Importance Of Notice Of The Substance Of A Measure Rather Than The Process Relating To It .....	40
D.	Washington Law Does Not Authorize The Transformation Of One Type Of Initiative Into Another After The Proposed Measure Initially Is Filed With The Secretary Of State .....	41

1.	For The Initiative Process To Function And Comply With Legal Requirements, The Type Of Initiative Is Fixed When The Proposed Measure Initially Is Filed With The Secretary Of State.....	41
2.	Petitioners Identify No Constitutional Or Statutory Provision That Authorizes The Secretary Of State To Transform I-1029 From An Initiative To The People Into An Initiative To The Legislature Based On A Mistake In The Form Of Signature Petitions .....	44
3.	Allowing Signature Petition Forms To Transform An Initiative To The People Into An Initiative To The Legislature Would Invite Abuse Of The Initiative Process.....	47
VI.	CONCLUSION .....	49

## TABLE OF AUTHORITIES

### Cases

<i>City of Bellevue v. Hellenthal</i> , 144 Wn.2d 425, 28 P.3d 744 (2001).....	30
<i>Clark Cy PUD 1 v. Wilkinson</i> , 139 Wn.2d 840, 991 P.2d 1161 (2000).....	22, 23
<i>Convention Ctr. Referendum Comm. v. Dist. of Columbia Bd. of Elections &amp; Ethics</i> , 441 A.2d 889 (D.C. 1981) .....	38
<i>Coppernoll v. Reed</i> , 155 Wn.2d 290, 119 P.3d 318 (2005).....	18, 25
<i>Dep't. of Ecology v. Campbell &amp; Gwinn, LLC.</i> , 146 Wn.2d 1, 43 P.3d 4 (2002).....	45
<i>Feldmeier v. Watson</i> , 211 Ariz. 444, 123 P.3d 180 (2005) .....	31
<i>Futurewise v. Reed</i> , 161 Wn.2d 407, 166 P.3d 708 (2007).....	18
<i>Kreidler v. Eikenberry</i> , 111 Wn.2d 828, 766 P.2d 438 (1989).....	20, 24
<i>Nist v. Herseth</i> , 270 N.W.2d 565 (S.D. 1978).....	38
<i>People ex rel. Harris v. Hinkle</i> , 130 Wash. 419, 227 P. 861 (1924) .....	45
<i>Saldin Sec., Inc. v. Snohomish Cy.</i> , 134 Wn.2d 288, 949 P.2d 370 (1998).....	22, 23
<i>Schrempp v. Munro</i> , 116 Wn.2d 929, 809 P.2d 1381 (1991).....	passim

<i>Staples v. Benton Cy.</i> , 151 Wn.2d 460, 89 P.3d 706 (2004).....	20
<i>State ex rel. Case v. Superior Court</i> , 81 Wash. 623, 143 P. 461 (1914) .....	23, 26
<i>State ex rel. Donohue v. Coe</i> , 49 Wn.2d 410, 302 P.2d 202 (1956).....	20, 24
<i>State ex rel. Howell v. Superior Court</i> , 97 Wash. 569, 166 P. 1126 (1917) .....	25, 27
<i>State ex rel. Kiehl v. Howell</i> , 77 Wash. 651, 138 P. 286 (1914) .....	27, 42
<i>State v. Jackson</i> , 137 Wn.2d 712, 976 P.2d 1229 (1999).....	32
<i>Thomson v. Wyoming In-Stream Flow Committee</i> , 651 P.2d 778 (Wyo. 1982).....	39
<i>To-Ro Trade Shows v. Collins</i> , 144 Wn.2d 403, 27 P.3d 1149 (2001).....	19
<i>Truly v. Heuft</i> , 138 Wn. App. 913, 158 P.3d 1276 (2007).....	32
<i>Univ. of Washington Med. Ctr. v. Dep't of Health</i> , ___ Wn.2d ___, 187 P.3d 243 (2008).....	26
<i>Walmart, Inc. v. Progressive Campaigns, Inc.</i> , 139 Wn.2d 623, 989 P.2d 524 (1999).....	27
<i>Washington Ass'n of Neighborhood Stores v. State</i> , 149 Wn.2d 359, 70 P.3d 920 (2003).....	40
<i>Washington State Coun. of Cy. &amp; City Employees v. Hahn</i> , 151 Wn.2d 163, 86 P.3d 774 (2004).....	21
<i>Washington State Labor Council v. Reed</i> , 149 Wn.2d 48, 65 P.3d 1203 (2003).....	22

**Constitutional Provisions**

Const. art. II, § 1 .....	1, 2, 4, 37
Const. art. II, § 1(a).....	passim
Const. art. II, § 1(c).....	36
Const. art. II, § 1(d).....	passim
Const. art. II, § 19 .....	40
Const. art. II, § 37 .....	40
Const. art. IV, § 4.....	21, 22

**Statutes**

Laws of 1913, ch. 138, § 12.....	30
Laws of 1965, ch. 9, § 29.79.150.....	30
RCW 29A.72.....	4
RCW 29A.72.010.....	passim
RCW 29A.72.020.....	5, 10
RCW 29A.72.030.....	passim
RCW 29A.72.040.....	5, 6, 11, 43
RCW 29A.72.050(1).....	6
RCW 29A.72.050(2).....	6
RCW 29A.72.060.....	6
RCW 29A.72.070.....	6
RCW 29A.72.090.....	6, 12, 28

RCW 29A.72.100.....	6, 7, 12, 29
RCW 29A.72.110.....	30, 45
RCW 29A.72.120.....	passim
RCW 29A.72.140.....	8, 29
RCW 29A.72.160.....	13
RCW 29A.72.170.....	passim
RCW 29A.72.180.....	19, 24
RCW 29A.72.230.....	45

**Other Authorities**

AGO 2006 No. 13 .....	29
-----------------------	----

## I. NATURE OF THE CASE

The first power reserved to the People under the Washington Constitution is the right of initiative. Const. art. II, § 1. Petitioners attack the Secretary of State's exercise of his statutory discretion to accept petitions bearing over 318,000 signatures filed in support of Initiative I-1029 (I-1029), and to certify I-1029 to the voters on the November 2008 general election ballot. Although I-1029 complies with all mandatory, constitutional, and statutory requirements for an initiative to the People, Petitioners, opponents of I-1029, assert that the Secretary was required to reject the petitions solely because they mistakenly included boilerplate statutory language, unrelated to the substance of the proposed law, and concerning only the precise legislative process for its consideration.

Petitioners lack standing to bring such a claim, the Court lacks jurisdiction to entertain it, and it is, in any event, unsound.

## II. ISSUES PRESENTED

1. Do Petitioners, who will suffer no direct and substantial harm from certification of I-1029 to the November 2008 general election ballot, have standing to attack the Secretary of State's discretionary decision to accept the petitions for I-1029 and send the measure to a vote of the People?
2. Where the constitution does not provide original jurisdiction, and a statute forecloses review of this essentially political question, do Petitioners state a cause of action in mandamus, prohibition, or certiorari invoking the jurisdiction of the Court?

3. Was the Secretary of State's discretionary decision to certify Initiative 1029 to the ballot unlawful or arbitrary and capricious where I-1029 fully complies with mandatory constitutional and statutory requirements, and where its petitions' single deviation from a statutory form relates not to the substance of the measure, but only to the precise legislative process by which it would be considered?
4. May an initiative to the People be transformed into an initiative to the legislature at the instance of its opponents based simply on mistaken petition language concerning the process for its consideration?

### **III. STATEMENT OF THE CASE**

#### **A. Constitutional and Statutory Background**

##### **1. Constitutional Provisions Governing the Power of Initiative**

The right of initiative is a right created by the Washington Constitution and implemented by statute. Because these provisions establish the legal framework for this matter, the statement of the case begins with a description of the relevant constitutional provisions governing the right of initiative, and statutes enacted "especially to facilitate [their] operation." Const. art. II, § 1(d).

Under article II, section 1(a), "[t]he first power reserved by the people is the initiative." "[T]he People reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature". Const. art. II, § 1.

The constitution addresses the content of initiative petitions in article II, section 1(a). It simply provides that, “[e]very such petition shall include the full text of the measure so proposed.” It also provides that “[t]he style of all bills proposed by initiative petition shall be: ‘Be it enacted by the people of the State of Washington.’” Const. art. II, § 1(d). The number of valid signatures of legal voters required on initiative petitions, regardless of whether they are to the People or to the legislature is the same: “eight percent of the votes cast for the office of governor at the last gubernatorial election preceding the initial filing of the text of the initiative measure with the secretary of state.” Const. art. II, § 1(a).

The People have the constitutional right to vote on any initiative, but the timing of the vote differs. If the initiative is to the People, it is voted on at the general election following submission of petitions meeting the constitutional threshold of support. *Id.* If the initiative is to the legislature, and the legislature does not enact it precisely as proposed, it is placed on the ballot at the next general election. *Id.* In that case, the legislature may propose an alternative measure, which also is placed on the ballot. *Id.*

In addition to addressing the content of initiative petitions, the constitution also addresses submission of initiative signature petitions to the Secretary of State. Article II, section 1(a) provides that “[i]nitiative

petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature.” Under article II, section 1(a), “[i]f [the petitions are] filed at least four months before the election at which they are to be voted upon, [the Secretary of State] shall submit the same to the vote of the people at the said election.” In contrast, article II, section 1(a) provides that “[i]f such petitions are filed not less than ten days before any regular session of the legislature, [the Secretary of State] shall certify the results within forty days of the filing.”

Article II, section 1 “is self-executing, but legislation may be enacted especially to facilitate its operation.” Const. art. II, § 1(d).

## **2. Statutory Provisions Facilitating the Power of Initiative**

Statutory provisions “enacted especially to facilitate” the initiative power under article II, section 1, principally are codified in RCW 29A.72. It begins with filing the proposed measure.

Under RCW 29A.72.010, “[i]f any legal voter of the state, either individually or on behalf of an organization, desires to . . . submit a proposed initiative measure to the people, . . . he or she shall file with the secretary of state a legible copy of the measure proposed, . . . accompanied by an affidavit that the sponsor is a legal voter and a filing fee prescribed under RCW 43.07.120.”

The time for filing proposed initiative measures and for filing initiative petitions is governed by RCW 29A.72.030. "Initiative measures proposed to be submitted to the people must be filed with the secretary of state within ten months prior to the election at which they are to be submitted". "[T]he signature petitions must be filed with the secretary of state not less than four months before the next general statewide election."

After the sponsor files a proposed initiative measure with the Secretary of State, the Secretary provides the proposed initiative to the Code Reviser. RCW 29A.72.020. The Code Reviser reviews the proposed measure "and recommend[s] to the sponsor such revision or alteration of the measure as [to the Code Reviser] may [seem] necessary [or] appropriate." *Id.* "The recommendations of the code reviser are advisory only, and the sponsor may accept or reject them". *Id.* Once the Code Reviser certifies that review has taken place, "the sponsor, if he or she desires to proceed with sponsorship, shall file the measure together with the certificate of review with the secretary of state for assignment of a serial number". *Id.*

Under RCW 29A.72.040, "[t]he secretary of state shall give a [separate] number to each initiative . . . using a separate series for initiatives to the legislature [and] initiatives to the people . . . and forthwith transmit one copy of the measure proposed bearing its serial number to the

attorney general. Thereafter, a measure shall be known and designated on all petitions, ballots and proceedings as 'Initiative Measure No. ....'. *Id.*

Under RCW 29A.72.060, "the attorney general shall formulate the ballot title . . . required by RCW 29A.72.050 and a summary of the measure . . . and transmit the serial number for the measure, complete ballot title, and summary to the secretary of state." The ballot title for an initiative consists of three parts: "(a) A statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form prescribed in this section for the ballot measure in question." RCW 29A.72.050(1). The statutorily prescribed question for an initiative is: "Should this measure be enacted into law?" RCW 29A.72.050(2).

After the Attorney General formulates the ballot title and summary for the measure, the Secretary of State then "shall notify . . . the person proposing the measure . . . of the exact language of the ballot title". RCW 29A.72.070. "Thereafter such ballot title shall be the title of the measure in all petitions, ballots, and other proceedings in relation thereto [and] . . . [t]he summary shall appear on all petitions directly following the ballot title." RCW 29A.72.090.

Under RCW 29A.72.100, "[t]he person proposing the measure" prints the petitions. "Each petition at the time of circulating, signing, and filing with the secretary of state must consist of not more than one sheet

with numbered lines for not more than twenty signatures, with the prescribed warning and title, be in the form required by RCW 29A.72.110, 29A.72.120, or 29A.72.130, and have a readable, full, true, and correct copy of the proposed measure printed on the reverse side of the petition.”  
RCW 29A.72.100.

RCW 29A.72.120 addresses, among other things, the form of initiative petitions for submission to the People. It provides:

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

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

INITIATIVE PETITION FOR SUBMISSION  
TO THE PEOPLE

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

We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. . . . ., entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the . . . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

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

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

RCW 29A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

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

(Emphasis added.)

Under RCW 29A.72.140, “[t]he word ‘warning’ and the following warning statement regarding signing petitions must appear on petitions as prescribed by this title”. The warning advises that “[e]very person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter, or makes any false statement on this petition may be punished by fine or imprisonment or both.” *Id.*

“When the person proposing any initiative measure has obtained signatures of legal voters [in the number required by Article II, section 1] . . . the petition containing the signatures may be submitted to the secretary of state for filing.” RCW 29A.72.150.

The authority and discretion of the Secretary of State with respect to acceptance or rejection of initiative petitions is stated in RCW 29A.72.170:

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

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

...

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

(Emphasis added.)

Thus, insofar as it is relevant in this case, under RCW 29A.72.170, “[t]he secretary of state may refuse to file an initiative . . . petition being submitted” only if the petition is not in “substantially” (*see* RCW 29A.72.120) the form set forth in that statute.

#### **B. Factual Background**

On March 12, 2008, consistent with RCW 29A.72.010, Linda S. Lee filed a proposed initiative measure to the People relating to “long-term care services.” Agreed Statement of Facts (ASF), Ex. A. (Affidavit

For Proposed Initiative states, “I herewith submit a proposed Initiative to the . . . People.”) This was the only filing received by the Secretary of State for Initiative 1029.<sup>1</sup> The measure was filed within ten months prior to the election at which it was to be submitted. (RCW 29A.72.030).

The Secretary of State’s Office “acknowledge[d] the filing of a proposed Initiative to the People relating to long-term care services, and the payment of the filing fee”, and advised Ms. Lee, the sponsor, that the proposed measure would be forwarded to the Code Reviser for review as provided under RCW 29A.72.020. ASF, Ex. D. In keeping with RCW 29A.72.020, following Code Reviser review, the sponsor filed the statutorily required certificate of review and the final version of the measure with the Secretary of State’s Office. ASF, Ex. G. The Secretary of State acknowledged receipt of “your proposed Initiative to the People relating to long-term care services . . . together with the Certificate of Review from the Code Reviser” and advised the sponsor that the initiative proposal was assigned the number 1029. ASF, Ex. H. The Secretary

---

<sup>1</sup> Petitioners devote several pages of their brief to identifying other proposed initiative measures relating to long-term care for the elderly and disabled that were initially filed with the Secretary of State in late 2007 and early 2008, but not pursued. Petitioners describe these measures as “[t]he substantive measure that is encompassed in I-1029 . . . with minor variations”, Pet. Br. at 8, and as “with minor variations . . . the same as . . . I-1029.” *Id.* at 9. Insofar as the Secretary of State can discern, this discussion is irrelevant to any issue in this case. To the extent the discussion may be understood to suggest that I-1029 was filed as an initiative to the legislature, such a suggestion and such an understanding would be unfounded.

assigned the proposed initiative to the People number 1029, from the numbering series for initiatives to the People. (RCW 29A.72.040).

The Attorney General prepared a ballot title and summary for Initiative 1029 and transmitted the ballot title and summary to the Secretary of State, explaining that “[p]ursuant 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).” ASF, Ex. J. The ballot title and summary prepared for Initiative 1029 reads:

#### **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.

ASF, Ex. J.

The Secretary of State's office then provided a copy of the ballot title and summary "for Initiative to the People No. 1029", to the sponsor, Ms. Lee, and advised her that, "[t]he official ballot title and summary statement must appear on the front of each signature petition sheet circulated in support of this measure." (RCW 29A.72.090). ASF, Ex. L. The Secretary of State also advised the sponsor to "read the Washington State laws relating to the requirements of petition layout and signature gathering". ASF, Ex. L.

The sponsor prepared petitions for I-1029 and began gathering signatures on the petitions. ASF ¶ 1. A true copy of the petition is attached to this brief as Appendix A. The petitions include the full text of I-1029. (Const. art. II, § 1(a)); ASF, Ex. M. The petitions contain the required bill style, "Be it enacted by the People of the State of Washington." (Const. art. II, § 1(d)); ASF, Ex. M. The petitions contain the ballot title and summary. (RCW 29A.72.090); ASF, Ex. M and I. The petitions are a single sheet with numbered lines for 20 signatures, contain the statutorily prescribed warning, and contain the correct text of the measure. (RCW 29A.72.100); ASF, Ex. M.

On July 3, 2008, the day that precedes the November 4, 2008, general election at which I-1029 would be voted upon, by four months, the sponsor filed thousands of petitions for I-1029 with the Secretary of State. RCW 29A.72.160. The Secretary of State accepted the petitions. (Const. art. II, § 1(a); RCW 29A.72.170.)

Insofar as Petitioners complain, the petitions vary from the form set forth in RCW 29A.72.120 in a single respect. The petitions do not contain that portion of the form following the ballot title and summary, some sixty-plus words into language addressed to the Secretary of State. The form language in RCW 29A.72.120 directs 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)”. Instead, the petitions for I-1029 contain language that directs that the proposed measure “be transmitted to the legislature of the State of Washington at its next ensuing regular session” and “petition[s] the legislature to enact said proposed measure into law.” ASF, Ex. M.

On the day before the petitions for I-1029 were filed, counsel for Petitioner Community Care Coalition of Washington (CCCW), a ballot committee formed to oppose I-1029, wrote to the Secretary of State, urging him to reject the petitions for I-1029. Counsel for Petitioners wrote

“the petitions that were circulated for signatures were not in substantial compliance with the law, and must be rejected.” ASF, Ex. N at 3.

The Secretary of State declined CCCW’s request to reject the petitions for I-1029. ASF, Ex. O. The Secretary of State explained that, from its inception, I-1029 was proposed as an initiative to the People; the proponents built their campaign around and satisfied the constitutional deadlines for an initiative to the People; there was no indication that the proponents of I-1029 had done anything other than make a mistake in the form language on the petition for I-1029; there was no indication that the proponents of I-1029 had in any other respect identified I-1029 as an initiative to the legislature; and there was no factual basis for believing that the form of the petition influenced the number of valid signatures gathered for the measure. *Id.* The Secretary of State further explained that rejecting the petitions for I-1029, as counsel for Petitioners requested, “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.” *Id.*

### **C. Background Of The Litigation**

On July 22, 2008, Petitioners filed the instant case denominating it as an original action seeking a writ of mandamus, prohibition, or certiorari

“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 “restraining the Secretary of State from accepting and filing I-1029 as an initiative to the people.” Pet. ¶ 1.

This was a new-found position. In their July 2, 2008, letter to the Secretary of State, counsel for Petitioners asserted that the petitions for I-1029 “must be rejected”, and argued that “[a] requirement that an initiative petition be ‘substantially’ in the proper form is violated by a form that . . . leaves open the possibility that an initiative can be converted from one form to another in midstream.” ASF, Ex. N at 3.

Without waiving legal arguments, including jurisdiction, and strictly in the interest of providing certainty for voters and an accurate ballot, the Secretary of State agreed to expedited disposition of this case. SOS’s Resp. to Mot. for Expedited Review at 11. The Court has granted intervention to the proponents of Initiative 1029, and retained the case for purposes of determining whether the petition should be granted, denied, transferred, or dismissed. Ruling On Original Action (July 29, 2008). The Court subsequently denied Petitioners’ Emergency Motion for Temporary Injunction to preclude the Secretary from certifying I-1029 to the ballot, and set argument for September 4, 2008. Ruling of August 1, 2008.

The Secretary of State certified I-1029 to the People on August 13, 2008, after determining that the petitions bore the valid signatures of more than the constitutionally-required 224,880 registered voters.<sup>2</sup>

#### IV. SUMMARY OF ARGUMENT

This Court should dismiss this action, deny any relief to Petitioners, and permit I-1029 to proceed to the November 2008 general election ballot as certified by Secretary Reed. Four separate reasons support this conclusion:

*First*, Petitioners lack standing to pursue this action. The proponents of an initiative exercise a constitutional right when they propose a measure and qualify it to the ballot. An initiative's opponents, such as Petitioners, enjoy no countervailing constitutional right to preclude the initiative's proponents from exercising their right to propose and pursue the measure. Moreover, Petitioners suffer no direct and substantial harm merely by permitting the voters to vote upon I-1029.

*Second*, Petitioners fail to state a cause of action in the nature of mandamus, prohibition, or certiorari and, as a result, the Court lacks

---

<sup>2</sup> Initiatives For The 2008 General Election (available online at: <http://www.secstate.wa.gov/elections/> (accessed August 21, 2008) (certification of measures to the ballot, listed under the heading "current topics"). The certified results of the Secretary's random sample examination of the petition signatures are available online at: <http://www.secstate.wa.gov/elections/initiatives/People.aspx?y=2008> (accessed on August 21, 2008) (link reading "Certified to ballot on 13 August 2008" in entry for I-1029). *See also*, ASF ¶ 27 (stipulating that the Secretary has determined the number of valid signatures to be sufficient.).

jurisdiction over this matter. The Secretary's decision to accept the I-1029 petitions is discretionary, and thus not subject to mandamus or prohibition. In addition, state law establishes no duty—or even authority—for the Secretary of State to transform a measure filed as an initiative to the People into an initiative to the legislature. Accordingly, Petitioners state no cause of action in certiorari.

*Third*, the Secretary of State's discretionary decision to accept petitions for I-1029 was neither unlawful nor arbitrary and capricious. I-1029 satisfied all mandatory requirements of the state constitution and statutes necessary to qualify an initiative to the People to the ballot. In addition, its petitions were in substantially the prescribed form, differing from it only as to language concerning the precise process to be employed in considering the measure. The petitions demonstrate voter support for considering the measure, and this difference did not compel the Secretary of State to reject the petitions.

*Fourth*, and finally, the sponsor of an initiative determines whether his or her measure is a proposed initiative to the People or a proposed initiative to the legislature, at the time he or she commences the process, by filing the proposed measure with the Secretary of State. Petitioners identify no constitutional or statutory provision that would authorize, much less require, the Secretary of State to transform an initiative to the

People into an initiative to the legislature. In order for the initiative process to function and comply with governing law, and in order to facilitate the right of initiative, the type of measure is fixed at the time the proposed initiative is filed with the Secretary of State.

## V. ARGUMENT

### A. **Petitioners Lack Standing To Challenge The Secretary of State's Certification Of Initiative 1029 To The November 2008 Ballot**

The right to propose and vote upon prospective legislation “is the first power reserved by the people in the Washington Constitution.” *Coppernoll v. Reed*, 155 Wn.2d 290, 296, 119 P.3d 318 (2005). “[T]he right of initiative is nearly as old as our constitution itself, deeply ingrained in our state’s history, and widely revered as a powerful check and balance on the other branches of government.” *Futurewise v. Reed*, 161 Wn.2d 407, 410, 166 P.3d 708 (2007) (quoting *Coppernoll*, 155 Wn.2d at 296-97). The proponents of an initiative exercise a constitutional right when they propose a measure and bring it forth for a public vote. *Schrempp v. Munro*, 116 Wn.2d 929, 935, 809 P.2d 1381 (1991). “By contrast, the opponents can claim no constitutional right to impede the exercise of the proponents’ constitutional rights.” *Id.*

Petitioners, opponents of I-1029 who desire to prevent its presentation to the voters at the November 2008 general election, can

identify no direct and substantial harm they would suffer by virtue of the Secretary of State's decision to certify I-1029 to the November 2008 general election ballot. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (a showing of "direct and substantial" harm is necessary to present a justiciable dispute). They accordingly lack standing to request that this Court direct the Secretary of State to reject the 318,000 petition signatures submitted in support of I-1029.<sup>3</sup>

Opponents of an initiative have no right to judicial review of the Secretary's acceptance of the petitions. RCW 29A.72.180; *see also Schrempp*, 116 Wn.2d at 934 ("Judicial review of the administrative decision of the Secretary of State is authorized only if the Secretary *refuses* to file the petition."). Like the constitution itself, this statute reflects the primacy of the initiative right, and the public policy expressed in the constitution that statutes facilitate, and be construed to facilitate, the right to initiative. *Schrempp*, 116 Wn.2d at 936.

Petitioners' argument that this Court should review the Secretary of State's acceptance of the petitions for I-1029, notwithstanding this statute, is unavailing. The Court has already upheld the legislature's

---

<sup>3</sup> Petitioners couch part of their requested relief as an order compelling the Secretary of State to submit I-1029 to the legislature. For reasons discussed in part D, such "relief" is nowhere authorized in the law. In addition, however, and as even Petitioners recognize, the first prerequisite to such relief would be invalidating the decision of the Secretary to accept I-1029 for the November 2008 general election ballot, and Petitioners lack standing to assert such a challenge. Pet. ¶ 1.

limitation of the right to challenge the Secretary's filing decision to actions by sponsors, when the Secretary rejects a petition and thereby administratively terminates the initiative process. *Schrempp*, 116 Wn.2d at 934. Such statutes are "in the interest of facilitating the operation of the [initiative process] and [are] justified by the practicalities of the situation." *State ex rel. Donohue v. Coe*, 49 Wn.2d 410, 415-16, 302 P.2d 202 (1956) (noting the brief time within which election officials must prepare to conduct the election). This Court heeds reasonable statutory provisions to bring finality to the process so that the election may proceed, even when the Court would, in the strictest constitutional sense, have authority to intercede. *Kreidler v. Eikenberry*, 111 Wn.2d 828, 834, 766 P.2d 438 (1989) (noting the importance of the public interest in finality served by the denial of a right of appeal from the superior court's revision of initiative ballot titles).

**B. This Court Lacks Jurisdiction Over This Action.**

The original jurisdiction of this Court is limited, and where it exists, it is discretionary and nonexclusive. *Staples v. Benton Cy.*, 151 Wn.2d 460, 464, 89 P.3d 706 (2004). The Court's original jurisdiction is limited to actions in the nature of habeas corpus, *quo warranto* and mandamus. The Court also may issue writs of mandamus, prohibition, and certiorari, among others, "necessary and proper to the complete

exercise of its appellate and revisory jurisdiction.” Const. art. IV, § 4. Petitioners frame this action as being in the nature of mandamus, prohibition, or certiorari, but it is none of those.

**1. This Is Not Properly A Case In Mandamus Or Prohibition**

Petitioners seek to invoke this Court’s original jurisdiction in mandamus, but mandamus exists only “to compel the performance of an act which the law especially enjoins as a duty resulting from an office.” *Washington State Coun. of Cy. & City Employees v. Hahn*, 151 Wn.2d 163, 166-67, 86 P.3d 774 (2004) (quoting RCW 7.16.160). The Secretary of State’s statutory authority—to accept or reject the petitions for I-1029—is discretionary. *Schrempp*, 116 Wn.2d at 937. Under RCW 29A.72.170, “[t]he secretary of state *may* refuse to file an initiative or referendum petition being submitted upon any of the following grounds: (1) That the petition does not contain the information required by . . . RCW 29A.72.120.” RCW 29A.72.120, in turn, provides that the petition “must be in substantially” its form. The discretion that the law gives to the Secretary in this regard could not be more clear and, accordingly, mandamus does not lie to direct its course.<sup>4</sup>

---

<sup>4</sup> The sponsor filed a proposed initiative to the People, Initiative 1029. ASF ¶ 1. As discussed more fully in part D, neither the constitution nor the statutes provide any authority for the Secretary to treat an initiative as anything other than the type of

Petitioners characterize their action as being in the nature of prohibition as well as mandamus, but this Court's original jurisdiction does not extend to prohibition. Const. art. IV, § 4. Requesting a writ of prohibition adds nothing to the Court's inquiry in any event. See *Washington State Labor Council v. Reed*, 149 Wn.2d 48, 55, 65 P.3d 1203 (2003) ("Mandamus is an appropriate remedy where a petitioner seeks to prohibit a mandatory duty.").

## 2. This Is Not Properly A Case In Certiorari

Petitioners similarly fail to state a cause of action in the nature of certiorari, because "[t]he fundamental purpose of the constitutional writ of certiorari is to enable a court of review to determine whether the proceedings below were within the lower tribunal's jurisdiction and authority." *Saldin Sec., Inc. v. Snohomish Cy.*, 134 Wn.2d 288, 292, 949 P.2d 370 (1998).<sup>5</sup> "Thus, a court will accept review only if the appellant

---

initiative designated by the sponsor upon its initial filing. Const. art. II, § 1(a); RCW 29A.72.010 (initial filing of proposed measure). The Secretary has no authority, let alone a duty to convert an initiative from an initiative to the People to an initiative to the legislature based on submission of petitions that are not in substantially the form set forth in RCW 29A.72.120. State law provides the Secretary with discretion to select between two choices when an initiative petition for an initiative to the People does not substantially conform to RCW 29A.72.120: he may either accept the petitions or refuse them. RCW 29A.72.170. State law does not provide a third option of transforming the initiative from one type of measure into another. *Id.*

<sup>5</sup> The constitutional writ of certiorari is available under more narrow circumstances than the statutory writ of certiorari. *Clark Cy PUD 1 v. Wilkinson*, 139 Wn.2d 840, 845, 991 P.2d 1161 (2000). The statutory writ, however, is unavailable in this case because it lies only to review the actions of an inferior tribunal or officer

can allege facts that, if verified, would establish that the lower tribunal's decision was illegal or arbitrary and capricious." *Id.*

Under this writ, the only matters presented for review are those that fall within the Secretary's authority. *State ex rel. Case v. Superior Court*, 81 Wash. 623, 633, 143 P. 461 (1914) (the Court's power to review the Secretary's actions regarding a proposed initiative is limited to matters that were within the Secretary's power to decide in the first instance). The Secretary's authority under the law is limited to determining whether the petitions for I-1029 were in substantially the form set forth in RCW 29A.72.120, and to accept them if they were or reject them if they were not. Thus, the question of whether at the instance of its opponents, an initiative to the People should be converted to an initiative to the legislature by virtue of an allegedly fatal flaw in its petitions, was not within the Secretary's authority to decide in the first instance, and is not a matter reviewable by writ of certiorari.

Moreover, the decision of whether to enact I-1029 is ultimately vested in the voters. Const. art. II, § 1(a). Given the political nature of that determination, this Court has been hesitant to intervene where the

---

exercising judicial functions. *Id.* The Secretary exercised no judicial functions in this matter.

legislature has affirmatively limited review and the constitution does not provide for review.<sup>6</sup> As this Court has reminded prior litigants:

In approaching the question of the power of the Secretary and of the courts in determining questions arising incidental to the submission of an initiative measure to the voters, it is to be remembered that we are dealing with a political and not a judicial question, except only in so far as there may be express statutory or written constitutional law making the question judicial. Speaking generally, it may be said that the legislature might have committed wholly to administrative officers all questions arising under the law incidental to the submission of initiative measures to the people, without any right of review in the courts whatever, except, possibly, pure questions of law.

*State ex. rel. Donohue*, 49 Wn.2d at 417 (quoting *State ex. rel. Case*, 81 Wash. at 633); *see also Schrempp*, 116 Wn.2d at 932 (noting the political, and not judicial, nature of the initiative process). This judicial reluctance applies as well to this case, which involves the Secretary's determination in a preliminary stage in the initiative process.

**C. The Secretary's Acceptance Of The Petitions Supporting I-1029 Was Well Within His Discretion; It Was Neither Unlawful Nor Arbitrary And Capricious**

Because Petitioners lack standing and because the Court lacks jurisdiction, the Court should dismiss this action without reaching the merits of Petitioners' claim. However, if the Court reaches the merits, the

---

<sup>6</sup> RCW 29A.72.180 (limiting review to cases in which the Secretary rejects petitions, and excluding those in which he accepts them); *see also Kreidler*, 111 Wn.2d at 834 (expressing the Court's reluctance to intervene in an ongoing election).

action must be resolved in light of two important principles. The first is the fundamental role that the initiative process plays in our constitutional system. The right of voters to propose initiatives “is the first power reserved by the people in the Washington Constitution.” *Coppernoll*, 155 Wn.2d at 296. The proponents of an initiative exercise a constitutional right, but its opponents have no countervailing constitutional right to impede the proponents’ exercise of the initiative power. *Schrempp*, 116 Wn.2d at 935. For this reason, statutes implementing the initiative process must be liberally construed to facilitate the right to initiative. *State ex rel. Howell v. Superior Court*, 97 Wash. 569, 578, 166 P. 1126 (1917); *Schrempp*, 116 Wn.2d at 932.

The action must also be resolved in light of the burden Petitioners would have to demonstrate that the Secretary’s decision was unlawful or arbitrary and capricious. The Secretary clearly did not act unlawfully in accepting the petitions because he did so pursuant to an express grant of statutory authority. RCW 29A.72.170. When reviewing the actions of an executive branch official under the “arbitrary and capricious” standard, this Court declines to substitute its judgment for that of the Secretary, and requires Petitioners to demonstrate that his decision to accept the petitions was so utterly unreasoning as to amount to a “willful and unreasoning action, without consideration and in disregard of facts or circumstances.”

*Schrempp*, 116 Wn.2d at 938 (quoting *Kreidler*, 111 Wn.2d at 837); see also *Univ. of Washington Med. Ctr. v. Dep't of Health*, \_\_\_ Wn.2d \_\_\_, 187 P.3d 243, 246 (2008) (“To find an agency’s decision to be arbitrary and capricious we must conclude that the decision is the result of willful and unreasoning disregard of the facts and circumstances.”). For all of the reasons discussed below, Petitioners cannot satisfy this burden.

**1. Constitutional And Statutory Provisions Governing The Initiative Process Must Be Construed To Facilitate The Right To Initiative**

The constitutional right of initiative is self-executing, but the legislature may enact statutes “especially to facilitate its operation.” Const. art. II, § 1(d). As this Court explained shortly after the initiative and referendum powers were added to the constitution, statutes implementing the initiative process were enacted in compliance with this language. *State ex rel. Case v. Superior Court*, 81 Wash. at 632.

Thus there is strongly suggested in the language of the Constitution and this law a required liberal construction, to the end that this constitutional right of the people may be *facilitated* and not hampered by either technical statutory provisions or technical construction thereof further than is necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right.

*Id.*

As this Court has long recognized, this means that statutes that implement the initiative process must be construed liberally in order to

facilitate, rather than hamper, the right to initiative. *State ex rel. Howell*, 97 Wash. at 578; *Schrempp*, 116 Wn.2d at 932; *see also Waremart, Inc. v. Progressive Campaigns, Inc.*, 139 Wn.2d 623, 634-35, 989 P.2d 524 (1999) (recognizing “the importance of protecting the public’s access to the initiative process”). Statutes “facilitate” the right to initiative when they provide “orderly procedure and fairness to the electors.” *State ex rel. Kiehl v. Howell*, 77 Wash. 651, 654, 138 P. 286 (1914).

**2. Setting Aside The Matter Of The Petition Form, I-1029 Fully Complied With All Constitutional And Statutory Requirements Governing Initiatives To The People**

The Washington Constitution and statutes implementing the initiative process set forth a limited number of requirements with which an initiative to the People must fully comply in order to qualify to the ballot. Initiative 1029 complies with all of them. To begin with, the sponsor must initially file the initiative with the Secretary “within ten months prior to the election at which [it is] to be submitted.” RCW 29A.72.030. Initiative 1029 complies with this requirement because the sponsor filed it on March 12, 2008. ASF ¶ 1. In doing so, the sponsor designated the measure as an initiative to the People. *Id.* The sponsor must provide the full text of the measure, an affidavit, and a filing fee. RCW 29A.72.010. The sponsor did so. ASF, Ex. G (full text of measure in bill-drafting form); ASF, Ex. A (affidavit); ASF, Ex. C (filing fee).

After obtaining a ballot title and circulating the initiative for signatures, the signed petitions must be filed with the Secretary no later than four months before the general election. Const. art. II, § 1(a); RCW 29A.72.030. Initiative 1029 complies with this requirement because the sponsor and proponents submitted signed petitions on July 3, 2008. ASF, Ex. M.

**3. As To The Petitions For I-1029, They Contain All Of The Information That The Constitution And Governing Statutes Unequivocally Require**

The petitions supporting I-1029 also contain all of the information that the constitution and governing statutes unequivocally require. Unlike identifying the particular legislative process for considering an initiative, which is not unequivocally required to be set out in initiative petitions by any constitutional or statutory provision, the constitution and statutes unequivocally require certain information to be contained in initiative petitions. Initiative 1029's petitions fully comply with these requirements.

The petitions are required to set forth the full text of the proposed initiative. Const., art. II, § 1(a). The I-1029 petitions do so. ASF, Ex. M. The petitions are required to set forth the ballot title in full, and they do. RCW 29A.72.090. ASF, Ex. M. "The style of all bills proposed by initiative petition shall be: 'Be it enacted by the People of the State of Washington.'" Const. art. II, § 1(d). The petitions for I-1029 contain this

language. The petitions are required to contain the valid signatures of registered voters numbering at least 8 percent of the votes cast for the Office of Governor at the most recent election. Const. art. II, § 1(a). The Secretary has certified that the petitions supporting I-1029 meet this requirement. ASF ¶ 27. The warning against illegal signing required by RCW 29A.72.140 correctly appears on the petitions. ASF, Ex. M. The petitions must include numbered lines for not more than twenty signatures, including space for the voters to print their names and addresses. RCW 29A.72.100, .120. The petitions fully comply. ASF, Ex. M. The petition must include a statement by the circulator regarding the collection of signatures on the petitions. RCW 29A.72.120.<sup>7</sup> The petitions for I-1029 contain this statement. ASF, Ex. M. The petitions must be printed on paper measuring at least 11 inches by 14 inches. RCW 29A.72.100. The petitions meet this requirement. ASF ¶ 12.

**4. The Only Deviation Of I-1029's Petitions From The Form Set Forth In RCW 29A.72.120 Is Not Substantial, And Did Not Compel the Secretary Of State To Reject The Petitions**

“Inherent in the decision of the Secretary of State to accept and file this petition was his determination that the petition was substantially in the

---

<sup>7</sup> The statute does not require that the circulator sign the statement. AGO 2006 No. 13.

form required.” *Schrempp*, 116 Wn.2d at 937.<sup>8</sup> As in *Schrempp*, the petitions at issue in this case contained one incorrect phrase. *Id.* at 938. Instead of including language directing the measure “be submitted to the legal voters of the State of Washington for their approval or rejection”<sup>9</sup> at the next general election, the petition directed that it, “be transmitted to the legislature of the State of Washington at its next ensuing regular session.”<sup>10</sup>

State law does not require strict or absolute compliance with initiative petition format requirements. RCW 29A.72.120 provides that petitions supporting initiatives to the People must “be substantially in the following form”. Deviation from the statutory form is permissible, or else “substantially” would have no meaning. *See City of Bellevue v. Hellenthal*, 144 Wn.2d 425, 431, 28 P.3d 744 (2001) (recognizing that under similar language, “[p]lainly, variation from the example shown is permissible”).

---

<sup>8</sup> This grant of discretion to the Secretary results from a considered legislative choice. The original statutes enacted in 1913 to implement the right to initiative stated that if the petitions “appear to be in proper form” then “the secretary of state shall accept and file said petition in his office; otherwise, he shall refuse to file the same”. Laws of 1913, ch. 138, § 12. The legislature later determined that granting the Secretary discretion to accept petitions that do not strictly conform to the format provision better facilitated the People’s right to initiative. Laws of 1965, ch. 9, § 29.79.150.

<sup>9</sup> RCW 29A.72.120 (language for petitions supporting initiatives to the People).

<sup>10</sup> RCW 29A.72.110 (language for petitions supporting initiatives to the legislature).

Consistent with the principle that the Court should strive to give effect to the constitutional right of initiative (*Schrempp*, 116 Wn.2d at 932), the Court's objective should not be to entertain rigorous quests to find deficiencies in petitions, but to reasonably and faithfully give effect to the right of initiative. In considering whether an initiative petition is in substantially the form set forth in RCW 29A.72.120, it is appropriate to examine what the purpose of an initiative petition is. As explained in a recent Arizona case, "[i]n deciding whether an initiative substantially complies with the constitutional and statutory requirements, a court should consider several factors, including the nature of the constitutional or statutory requirements, the extent to which the petitions differ from the requirements, and the purpose of the requirements." *Feldmeier v. Watson*, 211 Ariz. 444, 447, 123 P.3d 180, 183 (2005). "Accordingly, in the context of the formal requirements for initiatives, substantial compliance means that the petition as circulated fulfills the purpose of the relevant statutory or constitutional requirements, despite a lack of strict or technical compliance." *Id.* And "[t]he challenged initiative petitions must be examined as a whole to determine whether they comply." *Id.* at 184.<sup>11</sup>

---

<sup>11</sup> None of the cases cited by Petitioners on this point concern the initiative process, and none of them arise in its context of requiring liberal construction of statutes implementing the right to initiative. Pet. Br. at 27-30.

Although Petitioners invite the Court to rule that an essential purpose of an initiative petition is to advise voters of the precise legislative process by which the proposed initiative will be considered, Petitioners offer no persuasive authority for their theory, and it is not sound of its own weight. If such a purpose were essential, one would expect to see a statute, in unequivocal terms, requiring that voters be provided such an explanation, but there is no such statute. In contrast, as previously discussed, such statutes exist with respect to several other matters included in initiative petitions, such as the measure itself and its ballot title and summary. Accordingly, one can only conclude that it is among the small number of items the legislature regarded as *not* being an essential purpose of the petitions. *State v. Jackson*, 137 Wn.2d 712, 724, 976 P.2d 1229 (1999) (use of different statutory language in different situations indicates a difference in legislative intent); *contra* Pet. Br. at 27 (citing *Truly v. Heuft*, 138 Wn. App. 913, 922, 158 P.3d 1276 (2007)).

Rather, fundamentally, the purpose of initiative petitions is to demonstrate sufficient voter support for the proposed initiative—that is, to demonstrate voter support for considering the law that the initiative proposes. Const. art. II, § 1(a). Identifying precisely how that consideration is undertaken is, at best, a secondary and insubstantial purpose of initiative petitions, and likely accounts for the fact that no

constitutional provision or statute unequivocally requires such information on petitions. This is all the more true when one considers that voters will have their say on an initiative—regardless of whether the measure is an initiative to the legislature or to the People. The People will have their say promptly and directly on an initiative to the People. But they also will have their say on an initiative to the legislature unless the legislature enacts a proposed initiative to that body, without amendment. Const. art. II, § 1(a).

Like legislators who sign proposed bills as sponsors, petition signers fundamentally demonstrate their support for placing a proposal to enact a law into a lawmaking process. The precise process by which that enactment will take place or be considered is not what is critical; rather, it is that the signer supports the substance of the proposed law and its consideration. Petitioners accordingly attach far too much significance to form, and far too little to the support the voters demonstrated for consideration of the enactment of I-1029 into law.

The petitions for I-1029 express this fundamental support for the measure and thus serve this purpose. A prominent banner across the top of the front page proclaims in bold letters, “Yes I-1029”. ASF, Ex. M. Thus, voters signing the petition were asked to say “yes” to the measure, showing support for the proposal, not for a particular legislative process.

The banner also expressed the goals of the measure in terms of what the measure itself would feature, and not in terms of a legislative process to be used. ASF, Ex. M. The petitions also contain the initiative's ballot title, which describes the measure, and then asks: "Should this measure be enacted into law?" ASF, Ex. M. Again, signers of the petitions expressed support that it should. And even so, in constitutionally required bill style, the petitions included the very language: "Be it enacted by the people of the State of Washington." Cont. art. II, § 1(d). To the extent that the purpose of an initiative petition is to gauge voter support for consideration of a proposed law, the I-1029 petitions fully serve that purpose.

**5. Numerous Additional Objective Factors Indicated That The Petition's Deviation From Statutory Form Was A Simple Mistake**

In addition, there was no basis for the Secretary of State to conclude that the sponsors of I-1029 had tried to manipulate the initiative process in placing incorrect language on the petitions, and there were numerous objective indicators to the contrary. Even today, discounting Petitioners' unsupported speculation that a voter might support I-1029 if it was to the legislature but not if it was to the People, there still is no such basis.

The sponsor filed the measure as an Initiative to the People, designating it as such on the filing affidavit. ASF, Ex. A. The initial

filing met all the requirements for an initiative to the People, including the time when it was filed and it was received, and processed as such. The Secretary acknowledged receipt of the filing of an initiative to the People with respect to I-1029 (ASF, Ex. D) and transmitted it to the Code Reviser as such a measure. ASF, Ex. E. The Code Reviser issued a certificate of review, denominating the measure as an initiative to the People. ASF, Ex. F. Secretary Reed then assigned it a number from the series applicable to initiatives to the People, and transmitted I-1029 to the Attorney General for title, as such. ASF Ex. I. The Attorney General issued a ballot title, identifying the measure again as an initiative to the People. ASF, Ex. J. The sponsors filed the petitions within the period prescribed by law for an initiative to the People, four months prior to the November 2008 election. And the petitions also directed that they be returned to the sponsor no later than June 25, 2008, a date clearly designed to coordinate with the deadline for submitting initiatives to the People, not initiatives to the legislature. *Id.*; Const. art. II, § 1(a) (deadline for submitting signed petitions). Accordingly, there was no indication that the sponsors of I-1029 were endeavoring to gain more time than the law allows to gather signatures, or any other unlawful advantage when they placed incorrect language on the petitions.<sup>12</sup>

---

<sup>12</sup> As previously noted, the number of signatures required for the two types of

Moreover, I-1029 could only be fully implemented as an initiative to the People. The major operative sections of I-1029 all apply “effective January 1, 2010,” and require the Department of Health or the Department of Social and Health Services to develop administrative rules “by August 1, 2009” to implement them. I-1029 §§ 3, 4, 5, 6, 7 and 8 (reproduced in ASF, Ex. G). Three additional sections all require that one or the other of those departments complete additional rulemaking, also by August 1, 2009. I-1029, §§ 11, 12, and 13 (reproduced in ASF, Ex. G). Altogether, the measure requires two different state agencies to develop a total of nine different sets of administrative rules by August 1, 2009.

If approved by the voters in November 2008, I-1029 would take effect in December 2008, leaving approximately eight months for rulemaking. Const. art. II, § 1(d) (initiatives take effect 30 days after the election at which they are approved). However, if I-1029 were an initiative to the legislature, then it would not take effect until substantially later. If the legislature enacted it without amendment at its 2009 session, it would take effect 90 days after the adjournment of that session—approximately mid-July, 2009. Const. art. II, § 1(c). Alternatively, if the legislature did not enact it, or did not enact it and proposed an alternative, then I-1029 would not be voted upon until November 2009. Const. art. II, 

---

initiatives is the same. Const. art. II, § 1(a). Thus, the sponsor’s error offered no advantage in that regard.

§ 1(a). This would mean that, in the best-case scenario, the responsible agencies would be afforded only a matter of days to complete nine separate sets of rulemaking in order to meet the August 1, 2009, deadline provided in the measure. If the measure went to the 2009 ballot, it would not even be voted upon until after that deadline had expired, and it would take effect only a matter of days before agencies would be required to apply rules the measure envisions them completing months earlier.<sup>13</sup> For all of these reasons, the Secretary did not abuse his discretion in concluding that the erroneous petition language was a single, simple mistake that did not warrant rejecting the petitions.

**6. The Cases On Which Petitioners Rely To Argue That I-1029 Was Not Substantially In The Form Set Forth In RCW 29A.72.120 Do Not Support Their Argument**

Petitioners rely on three cases from other jurisdictions to support their argument that a simple mistake in identifying the particular variety of initiative process on a petition form precludes accepting the petition as an initiative to the People. None supports such a conclusion. In *Convention Center Referendum Committee v. District of Columbia Board of Elections*

---

<sup>13</sup> In light of Petitioners' explanation of the legislature's prior rejection of proposed bills on the same topic as I-1029 (Pet. Br. at 3), their present insistence that the sponsors of I-1029 be required to present their proposal in the legislative process again, also merits note. The reason for reserving the right to direct democracy in the state constitution is to permit the voters to legislate on their own, independent of the legislature. Const. art. II, § 1. The initiative process is not facilitated by erecting obstacles designed to prevent initiative proponents from doing exactly what the initiative process was designed to let them do.

*& Ethics*, 441 A.2d 889, 901 (D.C. 1981) (see Pet. Br. at 39-40), the sponsors of an initiative bill changed the *substance* of the proposed measure mid-collection of signatures, and sought to use signatures supporting the initial measure to meet the signature threshold for the second, different measure. The court in *Convention Center* recognized that, fundamentally, voters sign petitions as their expression of support for the measure being proposed. That being the case, “the bill they signed to support, in contrast with one materially rewritten . . . must be the bill put to the voters.” *Id.* To the extent *Convention Center* speaks to the issue before this Court, it is in its recognition that, fundamentally and critically, petition signers are expressing support for consideration of the law that is proposed. Accordingly, it is important for the substance of the proposed law to remain the same throughout signature collection. The petitions for I-1029 fully comply with this important value.

Petitioners also offer a South Dakota case, *Nist v. Herseith*, 270 N.W.2d 565 (S.D. 1978) as support for their position that the Secretary was compelled to reject the petitions for I-1029. Pet. Br. at 40-42. *Nist* was concerned only with statutory provisions relating to the authenticity of

petition signatures, and thus is not on point. There is no question of the authenticity of signatures in this case.<sup>14</sup>

Finally, Petitioners provide a quote, without context, from *Thomson v. Wyoming In-Stream Flow Committee*, 651 P.2d 778 (Wyo. 1982) as support for a broad statement that those seeking to exercise the right of initiative must comply with the conditions prescribed. Pet. Br. at 42. For reasons previously discussed, Petitioners' statement is overly broad and out of step with Washington law. In addition, Petitioners fail to explain the context to which the quote itself refers. The case concerned only a Wyoming statutory requirement for its Secretary of State to determine that persons who signed initiative petitions were qualified registered voters. It is only in the context of this specific requirement, and

---

<sup>14</sup> Moreover, South Dakota law is far removed from Washington's with respect to the right of initiative. South Dakota's constitutional provisions concerning the initiative power are not self-executing. South Dakota Const., art. III, §1. Washington's are. Const. art. II, §1(d). The South Dakota constitution directs its legislature to "make suitable provisions" for carrying its constitutional provisions concerning initiatives into effect. Washington's authorizes laws to "especially to facilitate" the constitutional provisions. Const. art. II §1(d). The South Dakota courts appear to hold that every legislative provision relating to the authenticity of petition signatures is "substantial in character" and must be satisfied. See *Shields v. Wells*, 65 S.D. 552, 276 N.W. 246 (1937); *Headley v. Ostroy*, 76 S.D. 246, 76 N.W.2d 474 (1956). Thus, in South Dakota, "[t]he function of the court is only to determine whether [the] requirement bears any real relation to the duty imposed upon the legislature to give effect to the constitutional provision, or whether the requirement is a palpable invasion of the right to refer a law to the people. In case of doubt, the court should give effect to the will of the legislature." *Nist*, 270 N.W.2d at 571. This approach is at odds with Washington law, which requires liberal construction in favor of the initiative power, and with Washington authorities rejecting the notion that compliance with every statutory provision on the subject of petition signatures is a prerequisite to exercising the right. See, e.g., *State ex rel. Case*, 81 Wash. at 632.

with specific reference to it, that the Wyoming court states proponents of an initiative must comply with prescribed conditions. Such a proposition is hardly remarkable, says nothing for this case, and does not support the broad statement for which it is offered.

**7. Petitioners' Reliance On Article II, Section 19 And Article II, Section 37 Is Misplaced; In Fact These Provisions Also Confirm The Importance Of Notice Of The Substance Of A Measure Rather Than The Process Relating To It**

Petitioners rely on two provisions of the state constitution, article II, section 19 and article II, section 37, to argue that form petition language identifying the particular initiative process involved serves a purpose analogous to them, and thus such notice is an essential requirement of initiative petitions. Pet. Br. at 34-37. There is no analogy.

The constitutional requirements upon which Petitioners rely are concerned with notice of *the substance of a proposed law and how it will affect existing law*—its content—not notice of the particular legislative process that will be used to consider its enactment. *Washington Ass'n of Neighborhood Stores v. State*, 149 Wn.2d 359, 368-72, 70 P.3d 920 (2003) (analyzing single-subject and subject-in-title requirements of Const. art. II, § 19); *Id.*, 149 Wn.2d at 372-73 (analyzing requirement of Const. art. II, § 37, that legislation set forth in full statutes it amends).

In contrast, language from the statutory form on which Petitioners rely has nothing to do with ensuring notice of the content of the proposed measure. It concerns only the particular legislative process by which the measure will be voted upon. To the extent that these constitutional provisions inform the question before the Court, they too emphasize the importance of ensuring that legislative bodies, whether the legislature or the People in their legislative capacity, have notice of the content of a proposed law and how it would affect existing law. Initiative 1029 petitions fully satisfy these constitutional values.

For all of the foregoing reasons, the Secretary of State acted within his lawful discretion in accepting the petitions for I-1029, and it cannot be said that his decision was willful and unreasoning, in disregard of facts and circumstances.

**D. Washington Law Does Not Authorize The Transformation Of One Type Of Initiative Into Another After The Proposed Measure Initially Is Filed With The Secretary Of State**

**1. For The Initiative Process To Function And Comply With Legal Requirements, The Type Of Initiative Is Fixed When The Proposed Measure Initially Is Filed With The Secretary Of State**

Under RCW 29A.72.010, the initiative process begins when the sponsor files the proposed initiative with the Secretary of State. Under this statute, “[i]f any legal voter of the state, either individually or on

behalf of an organization, desires to . . . submit a proposed initiative measure to the people, . . . he or she shall file with the secretary of state a legible copy of the measure proposed, . . . accompanied by an affidavit that the sponsor is a legal voter and a filing fee prescribed under RCW 43.07.120.”

For the Secretary of State to determine whether a proposed initiative measure is filed within the statutorily prescribed period, the type of initiative that the sponsor proposes must be fixed at the outset. RCW 29A.72.030 prohibits the filing of proposed measures before the dates that it specifies. Under this statute, “[a] proposed initiative . . . measure may be filed no earlier than . . . the first day filings are permitted, and any initiative . . . petition must be filed not later than the close of business on the last business day in the specified period for submission of signatures.” RCW 29A.72.030. *See also Kiehl*, 77 Wash. at 654 (upholding the statute prescribing the period for filing a proposed initiative, and the Secretary of State’s decision to decline to accept the filing of a proposed initiative to the People more than ten months prior to the next ensuing general election).

The prescribed period for initial filing of proposed initiatives is different for initiatives to the People and initiatives to the legislature. “Initiative measures proposed to be submitted to the people must be filed

with the secretary of state within ten months prior to the election at which they are to be submitted". RCW 29A.72.030. In contrast, "[i]nitiative measures proposed to be submitted to the legislature must be filed with the secretary of state within ten months prior to the next regular session of the legislature at which they are to be submitted". *Id.* Consequently, for the Secretary to determine whether a proposed initiative is filed within the statutorily required period, the type of initiative must be fixed at the time it is proposed under RCW 29A.72.010.<sup>15</sup>

The same is true with respect to the statutory requirement of RCW 29A.72.040 that, early in the initiative process, the Secretary of State assign a number to a proposed initiative that reflects its type. The Secretary could not determine the appropriate numerical series to use, unless the type of initiative being proposed was fixed at that point. Similarly, RCW 29A.72.040 provides that thereafter, a measure shall be "known and designated on all petitions, ballots, and proceedings" by that number. This requirement only has force if the type of initiative is so fixed.

---

<sup>15</sup> During each calendar year there are two months (early January to mid-March) when a sponsor could file an initiative to the People but not an initiative to the legislature. Similarly, there are approximately six months (early July to mid-December) when a sponsor could file an initiative to the legislature but not an initiative to the People, because the deadline for submitting signed petitions supporting initiatives to the People would have expired. Const. art. II, § 1(a). From about mid-March to early July, either measure may be filed. RCW 29A.72.030.

Nor could the Secretary of State determine the due date for submission of signature petitions unless the initiative type is previously fixed. As with the period for filing proposed initiatives, the deadline for submitting signature petitions also differs for initiatives to the People and initiatives to the legislature. Signature petitions for initiatives to the People “must be filed with the secretary of state not less than four months before the next general statewide election.” RCW 29A.72.030. Signature petitions for initiatives to the legislature must be filed with the Secretary of State not less than ten days before the regular session of the legislature to which they are to be submitted. *Id.*

In sum, unless the nature of the proposed measure is fixed at the time it is initially filed, the Secretary is unable to determine (a) whether the initial filing is timely; (b) what serial number to assign the measure for identification; or (c) the deadline for submission of signed petitions. In each of these respects, governing statutes contemplate that the type of measure is fixed at the time the sponsor initially files the proposal.

**2. Petitioners Identify No Constitutional Or Statutory Provision That Authorizes The Secretary Of State To Transform I-1029 From An Initiative To The People Into An Initiative To The Legislature Based On A Mistake In The Form Of Signature Petitions**

Nonetheless, Petitioners argue as though the type of initiative proposed may be transformed by mistaken language on signature petitions.

The act of filing the petitions with the Secretary is merely the final act in a multi-stage effort to propose and qualify an initiative. *People ex rel. Harris v. Hinkle*, 130 Wash. 419, 434, 227 P. 861 (1924) (considering the authority of the Secretary to allow voters to withdraw their signatures from petitions). Petitioners' argument not only ignores the above statutes which demonstrate that the type of initiative is, and must be, established when the measure first is proposed and filed with the Secretary, it also purports to define the authority of the Secretary by statutes that do not prescribe it, RCW 29A.72.110 and .120. These statutes merely provide a form for signature petitions; they do not purport to establish the legal authority of the Secretary of State or, as in the circumstances of this case, require the Secretary to act according to mistaken language on the form. Statutes are to be construed as a whole, not in isolation, and are to be construed to achieve their evident purpose. *Dep't. of Ecology v. Campbell & Gwinn, LLC.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

The only other authority Petitioners offer as supporting their assertion that signature petitions may transform an initiative from one type to another is a "see" cite to RCW 29A.72.230. Pet. Br. at 27. RCW 29A.72.230 provides no support for Petitioners' theory. The statute addresses only how the Secretary is to proceed with certifying an initiative to the legislature. It does not remotely address, let alone suggest, that

signature petitions determine whether an initiative is an initiative to the legislature in the first place.

In sum, neither the state constitution nor statutes governing the initiative process make any provision for the nature of the proposed measure to change after it is filed, and Petitioners cite no authority that actually supports their assertion that incorrect language on signature petitions can transform an initiative to the People into an initiative to the legislature.

Rather, as in this case, when the sponsor submits a proposed measure to the Secretary under RCW 29A.72.010, he or she also submits an affidavit designating the initiative as either an initiative to the People or an initiative to the legislature. *See, e.g.*, ASF, Ex. A (sponsor of I-1029 designated the measure as an initiative to the People). This designation at the outset of the process fixes the type of measure, and is necessary in order for the process to function in accordance with governing legal requirements. Without this fixed character, the Secretary cannot determine whether the initiative is timely filed, how to number it, or how to proceed with the measure from that point forward.

**3. Allowing Signature Petition Forms To Transform An Initiative To The People Into An Initiative To The Legislature Would Invite Abuse Of The Initiative Process**

Before filing this action, Petitioners asserted that Secretary Reed should have rejected the petitions for I-1029 outright. ASF, Ex. N. Among the reasons Petitioners offered in support of this position was the concern that initiative sponsors should not be allowed 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.” *Id.* at 3. Although Petitioners have changed their position, their initial concern with respect to inviting abuse of the initiative process remains valid, and their new position would invite it.

For example, as explained above, the dates for proposing initiatives to the People and initiatives to the legislature differ. A proposed initiative to the People can be filed starting ten months before the next election (*i.e.* early January) and signature petitions must be submitted four months prior to the general election. RCW 29A.72.030. In contrast, an initiative to the legislature can be commenced starting no earlier than ten months before the next regular legislative session, and signature petitions may be submitted ten days prior to the session. *Id.*

Thus, the sponsor of an initiative to the People can commence the process approximately two months earlier than he or she could commence the process for an initiative to the legislature, by making the initial filing of the measure in January or February, when an initiative to the legislature could not yet be filed. RCW 29A.72.030. If Petitioners' theory were correct, and signature petition language may transform the type of initiative that has been proposed, the sponsor of an initiative to the People could gain two months longer than the law allows for signature gathering, simply by inserting language for an initiative to the legislature on the signature petitions, thereby transforming the measure.

Petitioners themselves warned of exactly this danger in asking Secretary Reed to reject the petitions. ASF, Ex. N at 3. They were right, and the danger to which they alerted the Secretary would arise if the Court were to grant the relief they now seek.

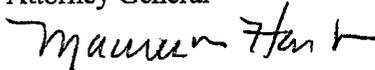
For all of these reasons, Petitioners' assertion that an error in printing the petitions converted I-1029 from an initiative to the People into an initiative to the legislature is unmeritorious. Their position ignores existing law and would make the initiative process uncertain, unworkable, and open to abuse.

## VI. CONCLUSION

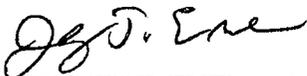
Neither the Washington Constitution nor Washington statutes provide any mechanism by which an initiative filed as an initiative to the People can be transformed into an initiative to the legislature. Neither the constitution nor any statute provides the Secretary of State with the authority—much less the duty—to transform an initiative from one variety into another because of a printing error on petitions. Accordingly, the Court should dismiss this action and permit I-1029 to proceed to the general election ballot as certified by Secretary Reed.

RESPECTFULLY SUBMITTED this 22nd day of August 2008.

ROBERT M. MCKENNA  
Attorney General



MAUREEN HART, WSBA #7831  
Solicitor General



JEFFREY T. EVEN, WSBA #20367  
Deputy Solicitor General

PO Box 40100  
Olympia, WA 98504-0100  
(360) 586-0728 Fax (360) 664-2963

Counsel for Respondent Sam Reed

# APPENDIX A



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

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

[www.yeson1029.org](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 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.

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

1	SIGNATURE	PRINT NAME HERE	ADDRESS WHERE REGISTERED TO VOTE			Email
	<small>Please sign as registered to vote</small>	<small>For positive identification</small>	<small>Street or rural route &amp; box number</small>	<small>City</small>	<small>County</small>	
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						

# INITIATIVE 1079 FOR QUALITY LONG-TERM CARE

Initiative 1079 is a ballot measure that will amend the state constitution to require the legislature to pass laws that protect the safety of and improve the quality of care to the vulnerable elderly and persons with disabilities.

The people find 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:

**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:  
The context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Adult family home" means a home licensed under chapter 70.128 RCW.
- (2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.
- (3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.
- (4) "Boarding home" means a facility licensed under chapter 18.20 RCW.
- (5) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.
- (6) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.
- (6)(f) "Department" means the department of social and health services.
- (7) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.
- (8) "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.
- (9) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.
- (10) "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; 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.
- (11) "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.
- (12) "Home care aide" means a long-term care worker who has obtained certification as a home care aide by the department of health.
- (13) "Individual provider" is defined according to RCW 74.39A.240.
- (14) "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.
- (15) "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.
- (16) "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, hospital agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (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.
- (17) "Nursing home" means a facility licensed under chapter 18.51 RCW.
- (18) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.
- (19) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.
- (20) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct hands on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care.
- (21) "Secretary" means the secretary of social and health services.
- (22) "Secretary of health" means the secretary of health or the secretary's designee.
- (23) "Training partnership" means a joint partnership or trust (established and maintained jointly) that includes the role of the governor and the executive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and (certifications required under this chapter and occupational career) and/or development, or other services to individual providers.
- (24) "Trially licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW.

**NEW SECTION.** Sec. 3. A new section is added to chapter 74.39A RCW to read as follows:  
All long-term care workers for the elderly or persons with disabilities hired after January 1, 2010, shall be screened through state and federal background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. These background checks shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall share this information with the department of health. The department shall not pass on the cost of these criminal background checks to the workers or their employers. The department shall adopt rules to implement the provisions of this section by August 1, 2009.

**NEW SECTION.** Sec. 4. (1) Effective January 1, 2010, except as provided in section 7 of this act, the department of health shall require that any person hired as a long-term care worker for the elderly or persons with disabilities must be certified as a home care aide within one hundred fifty days from the date of being hired.  
(2) Except as provided in section 7 of this act, certification as a home care aide requires both completion of seventy-five hours of training and successful completion of a certification examination pursuant to sections 5 and 6 of this act.  
(3) No person may practice on, by use of any title or description, represent himself or herself as a certified home care aide without being certified pursuant to this chapter.  
(4) The department of health shall adopt rules by August 1, 2009, to implement this section.

**NEW SECTION.** Sec. 5. A new section is added to chapter 74.39A RCW to read as follows:  
(1) Effective January 1, 2010, except as provided in section 7 of this act, all persons employed as long-term care workers for the elderly or persons with disabilities must meet the minimum training requirements in this section within one hundred twenty calendar days of employment.  
(2) All persons employed as long-term care workers must obtain seventy-five hours of entry level training approved by the department. A long-term care worker must accomplish five of these seventy-five hours before becoming eligible to provide care.  
(3) Training required by subsection (4)(c) of this section will be applied towards training required under RCW 18.20.270 or 70.128.230 as well as any statutory or regulatory training requirements for long-term care workers 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 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.

**NEW SECTION.** Sec. 6. (1) Effective January 1, 2010, except as provided in section 7 of this act, the department of health shall require that all long-term care workers successfully complete a certification examination. Any long-term care worker failing to make the required grade for the examination will not be certified as a home care aide.  
(2) The department of health, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. Unless excluded by section 7 (1) and (2) of this act, only those who have completed the training requirements in section 5 of this act shall be eligible to sit for this examination.  
(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. The department of health shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.  
(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department of health or by a contractor to the department of health that is neither an employer of long-term care workers or private contractors providing training services under this chapter.  
(5) The department of health has the authority to:  
(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;  
(b) Hire clerical, administrative, and investigative staff as needed to implement this section;  
(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;  
(d) Maintain the official record of all applicants and persons with certifications;  
(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and  
(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.  
(6) The department of health shall adopt rules by August 1, 2009, that establish the procedures and examinations necessary to carry this section into effect.

**NEW SECTION.** Sec. 7. The following long-term care workers are not required to become a certified home care aide pursuant to this chapter.  
(1) Registered nurses, licensed practical nurses, certified nursing assistants, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary of health, or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary of health determines that the circumstances do not require certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in section 5 of this act but must successfully complete a certification examination pursuant to section 6 of this act.  
(2) A person already employed as a long-term care worker prior to January 1, 2010, who completes all of his or her training requirements in effect as of the date he or she was hired, is not required to obtain certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in section 5 of this act but must successfully complete a certification examination pursuant to section 6 of this act.  
(3) All long-term care workers employed by supported living providers are not required to obtain certification under this chapter.  
(4) An individual provider caring only for his or her biological, step, or adoptive child or parent is not required to obtain certification under this chapter.  
(5) Prior to June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month is not required to obtain certification under this chapter.  
(6) A long-term care worker exempted by this section from the training requirements contained in section 5 of this act may not be prohibited from enrolling in training pursuant to that section.  
(7) The department of health shall adopt rules by August 1, 2009, to implement this section.

**NEW SECTION.** Sec. 8. A new section is added to chapter 74.39A RCW to read as follows:  
(1) Effective January 1, 2010, a biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days of becoming an individual provider.  
(2) Effective January 1, 2010, individual providers identified in (a) and (b) of this subsection must complete thirty-five hours of training within the first one hundred twenty days of becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:  
(a) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by subsection (1) of this section; and  
(b) Before January 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.  
(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:  
(a) Has been developed with input from consumer and worker representatives; and  
(b) Requires comprehensive instruction by qualified instructors.  
(4) The department shall adopt rules by August 1, 2009, to implement this section.

**NEW 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.

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

**NEW SECTION.** Sec. 11. A new section is added to chapter 18.88A RCW to read as follows:  
By August 1, 2009, the department of health shall develop, in consultation with the nursing care quality assurance commission and consumer and worker representatives, rules permitting reciprocity to the maximum extent possible under federal law between home care aide certification and nursing assistant certification.

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 the population specific competencies.  
(5) The department shall only approve training curriculum that:  
(a) Has been developed with input from consumer and worker representatives; and  
(b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.  
(6) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.  
(7) The department of health shall adopt rules by August 1, 2009, to implement subsections (1), (2), and (3) of this section.  
(8) The department shall adopt rules by August 1, 2009, to implement subsections (4) and (5) of this section.

**NEW SECTION.** Sec. 6. (1) Effective January 1, 2010, except as provided in section 7 of this act, the department of health shall require that all long-term care workers successfully complete a certification examination. Any long-term care worker failing to make the required grade for the examination will not be certified as a home care aide.  
(2) The department of health, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. Unless excluded by section 7 (1) and (2) of this act, only those who have completed the training requirements in section 5 of this act shall be eligible to sit for this examination.  
(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. The department of health shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.  
(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department of health or by a contractor to the department of health that is neither an employer of long-term care workers or private contractors providing training services under this chapter.  
(5) The department of health has the authority to:  
(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;  
(b) Hire clerical, administrative, and investigative staff as needed to implement this section;  
(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;  
(d) Maintain the official record of all applicants and persons with certifications;  
(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and  
(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.  
(6) The department of health shall adopt rules by August 1, 2009, that establish the procedures and examinations necessary to carry this section into effect.

**NEW SECTION.** Sec. 7. The following long-term care workers are not required to become a certified home care aide pursuant to this chapter.  
(1) Registered nurses, licensed practical nurses, certified nursing assistants, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary of health, or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary of health determines that the circumstances do not require certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in section 5 of this act but must successfully complete a certification examination pursuant to section 6 of this act.  
(2) A person already employed as a long-term care worker prior to January 1, 2010, who completes all of his or her training requirements in effect as of the date he or she was hired, is not required to obtain certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in section 5 of this act but must successfully complete a certification examination pursuant to section 6 of this act.  
(3) All long-term care workers employed by supported living providers are not required to obtain certification under this chapter.  
(4) An individual provider caring only for his or her biological, step, or adoptive child or parent is not required to obtain certification under this chapter.  
(5) Prior to June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month is not required to obtain certification under this chapter.  
(6) A long-term care worker exempted by this section from the training requirements contained in section 5 of this act may not be prohibited from enrolling in training pursuant to that section.  
(7) The department of health shall adopt rules by August 1, 2009, to implement this section.

**NEW SECTION.** Sec. 8. A new section is added to chapter 74.39A RCW to read as follows:  
(1) Effective January 1, 2010, a biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days of becoming an individual provider.  
(2) Effective January 1, 2010, individual providers identified in (a) and (b) of this subsection must complete thirty-five hours of training within the first one hundred twenty days of becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:  
(a) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by subsection (1) of this section; and  
(b) Before January 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.  
(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:  
(a) Has been developed with input from consumer and worker representatives; and  
(b) Requires comprehensive instruction by qualified instructors.  
(4) The department shall adopt rules by August 1, 2009, to implement this section.

**NEW 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.

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

**NEW SECTION.** Sec. 11. A new section is added to chapter 18.88A RCW to read as follows:  
By August 1, 2009, the department of health shall develop, in consultation with the nursing care quality assurance commission and consumer and worker representatives, rules permitting reciprocity to the maximum extent possible under federal law between home care aide certification and nursing assistant certification.

**NEW SECTION.** Sec. 12. A new section is added to chapter 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. 13. 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. 14. 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. 15. 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. 16. 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. 17. 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. 18. 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.050 and 2004 c 140 s 6 are each amended to read as follows:

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

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

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

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

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

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

(12) The department shall create an approval system by March 1, 2002, for the seeking to conduct department-approved training. (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 (is) 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 74.09.020, 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 use equipment 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 family. 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) Oculanists 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) Orthodontists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW; (and)

(xxiv) Athletic trainers licensed under chapter 18.250 RCW; and

(xxv) Home care aides certified under chapter 18. RCW (the new chapter created in section 18 of this act).

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

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

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

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

**NEW SECTION, Sec. 20.** If any provision of this act in 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  
un-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 mailing 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 \_\_\_\_\_

PLACE  
STAMP  
HERE

*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!*

I, \_\_\_\_\_, a resident of this state, hereby certify 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 willfully used his or her true name and that the information provided here with is true and correct to the best of my knowledge. I am under Chapter 9A-44 RCW, forger of signatures of this petition constitutes a Class C felony and that offering any consideration or bribe to any person to induce them to sign a petition is a gross misdemeanor. My obligations being fulfilled by the foregoing certifier or both.

To avoid any problem 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, 2008**

**WHAT'S WRONG WITH THIS PICTURE?**

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

		
<i>Hairdresser: 1,000 hours of training</i>	<i>Nail Technician: 600 hours of training</i>	<i>Home Care Workers: 34 hours of training</i>

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