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No. 95749-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

TIM EYMAN,
Respondent/Cross-Appellant; and

MICHAEL J. PADDEN,
Intervenor-Respondent/Cross-Appellant,

v.

KIM WYMAN, in her capacity as the Secretary of State,
Defendant;

THE WASHINGTON STATE LEGISLATURE
Appellant/Cross-Respondent; and

DE-ESCALATE WASHINGTON
Intervenor-Appellant/Cross-Respondent.

DE-ESCALATE WASHINGTON'S OPENING BRIEF

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I. INTRODUCTION

This case involves the intersection of the Washington State Legislature's obligations when faced with an initiative to the Legislature and its plenary power to amend such an initiative once constitutionally adopted. The trial court erred in invalidating the Legislature's enactment of Initiative 940 ("I-940"), a constitutionally valid option for the Legislature to take when presented with an initiative. The trial court improperly looked beyond the Legislature's actual majority vote adopting I-940, ruling that the Legislature rejected I-940 based on speculation that the Legislature would not have adopted I-940 but for its adoption of Engrossed Substitute House Bill 3003 ("ESHB 3003"). This erroneous approach implicates separation of power concerns and violates the enrolled bill doctrine. The trial court also erred in invalidating ESHB 3003, an exercise of the Legislature's plenary power to amend an adopted initiative once it takes effect by a simple majority vote, an act not limited by the constitution.

Even if this Court concludes, however, that the Legislature amended I-940 at an improper time, then the proper remedy is to uphold I-940 alone. There is no dispute that I-940 as proposed by the people received majority votes in both the House and Senate, becoming the law in Washington subject to referendum. As this Court has previously held, the

people's power of initiative is better fulfilled by upholding enacted initiatives and invalidating conflicting legislation rather than invalidating both.

De-Escalate Washington ("De-Escalate") respectfully requests that this Court reverse and uphold the Legislature's decisions to enact I-940 into law and amend it with ESHB 3003 by a simple majority vote in a way that preserves the right to referendum on both measures. At a minimum, this Court should reverse the trial court's determination that the vote to enact I-940 was invalid.

II. STATEMENT OF ISSUES/ASSIGNMENTS OF ERROR

1. Did the Legislature validly enact I-940, an initiative to the Legislature, when a majority of both legislative bodies voted to approve I-940 as proposed by nearly 360,000 Washington voters without change or amendment?
2. Should courts speculate about what was in legislators' minds when they voted to enact an initiative to the Legislature in order to evaluate whether the vote was valid?
3. Did the Legislature validly enact ESHB 3003, an act that amends I-940 after I-940's effective date and allows for a referendum on I-940?
4. Does the "takes precedence" language in Article II, Section 1(a) of the Washington State Constitution require the Legislature to **vote** on an

initiative first, before voting on a bill that would amend the initiative after the initiative's effective date?

5. Did the trial court properly direct the Secretary of State to place I-940 on the 2018 November ballot when Washington precedent illustrates that the proper remedy is to uphold enacted initiatives and invalidate legislation to the extent there is a constitutional conflict?

III. STATEMENT OF THE CASE

A. Washington voters and the Legislature reformed policy governing use of deadly force by police with I-940 and ESHB 3003.

De-Escalate developed and is the registered campaign for I-940. I-940 requires police to receive training on violence de-escalation, mental health, and implicit and explicit bias, and re-frames the lawful use of deadly force in terms of an objective good faith standard. Clerk's Papers ("CP") 21, 24. The Initiative also requires that if police officers come into contact with individuals who need first aid, police officers must ensure that they receive it in order to save lives and foster positive community contact. *Id.* at 21, 24-25.

Sponsor Leslie Cushman of De-Escalate filed I-940 as an initiative to the Legislature. *See Proposed Initiatives to the Legislature 2017.*¹

¹ Available at <https://www.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2017&t=1> (last visited May 11, 2018).

Almost 360,000 Washington voters signed the petition in favor of I-940. CP 34.

The Secretary of State certified the Initiative to the Legislature for consideration on January 23, 2018. CP 34. The Senate introduced I-940 for a first reading on January 26, 2018, and the House Committee on Public Safety and the Senate Committee on Law and Justice held public hearings on the Initiative on February 20, 2018. *See* Summary of Senate consideration of I-940 (“Senate I-940 Bill History”);² Summary of House consideration of I-940 (“House I-940 Bill History”).³ On March 6, 2018, the House Committee recommended the House pass I-940. *See* House I-940 Bill History. On March 7, 2018, the Senate Committee recommended the Senate do the same. *See* Senate I-940 Bill History.

The Legislature first considered the substantive text of ESHB 3003 well after I-940.⁴ The House conducted its first reading of ESHB 3003’s

² Available at <http://apps2.leg.wa.gov/billsummary/?BillNumber=940&Chamber=Senate&Year=2017> (last visited May 11, 2018).

³ Available at <http://apps2.leg.wa.gov/billsummary/?Year=2017&BillNumber=940&Chamber=House> (last visited May 11, 2018).

⁴ Starting in their appellate filings, Eyman and Senator Padden have started self-labeling ESHB 3003 as “I-940B.” *See, e.g.*, Plaintiffs’ Answer to Statement of Grounds at 4. This appears to be an attempt to make ESHB 3003 sound more like an alternative on the ballot under Article II, Section 1(a). But ESHB 3003 has never been known by this name. This Court should disregard Respondents’ attempt to mischaracterize ESHB 3003 in this way.

predecessor on February 26, 2018. *See* HB 3003 Bill History.⁵ That bill contained only a single sentence: “This act may be known and cited as the law enforcement act.” *Id.* (Original Bill). It was not until March 6, 2018, that the Legislature considered the substance of ESHB 3003, with introduction of an amendment adding actual provisions of law and a hearing in the House Committee on Public Safety. *Id.* The Senate considered ESHB 3003 the next day. *Id.*

ESHB 3003 contains amendments clarifying and ensuring practical implementation of I-940’s law enforcement and community safety policies as well as three new sections. *See* CP 48-55. De-Escalate supported these amendments as refinements that took into consideration the perspectives of a broad group of stakeholders. As drafted, ESHB 3003 does not become law or amend I-940 until after I-940 goes into effect. *Id.* at 55. ESHB states it will take effect June 8, 2018 “only if” I-940 is “passed by a vote of the Legislature during the 2018 regular legislative session” and a referendum on the Initiative is not certified. *Id.*

The Legislature passed ESHB 3003 and the Governor signed it into law on March 8, 2018. HB 3003 Bill History. Later that day, the Legislature voted on and passed I-940, with an effective date of June 7, 2018—a date that allows for the constitutionally-required referendum

⁵ Available at <http://apps2.leg.wa.gov/billsummary?BillNumber=3003&Year=2017> (last visited May 11, 2018).

period. Senate I-940 Bill History; House I-940 Bill History; Const. art. II, § 1(c). The Senate passed I-940 as it was proposed by the people by a vote of 25-24. *See* Senate I-940 Bill History. The House passed I-940 as it was proposed by the people by a vote of 55-43. *See* House I-940 Bill History.

B. Procedural history.

Respondent/Cross-Appellant Timothy Eyman filed this lawsuit shortly after the Legislature enacted I-940 and ESHB 3003. *Id.* at 3. He and Intervenor-Respondent/Cross-Appellant Senator Michael Padden sought summary judgment to invalidate both measures and to have them placed on the November 2018 ballot as alternatives. *See id.* at 82-94; 97. Appellant/Cross-Respondent The Washington State Legislature and De-Escalate filed cross-motions for summary judgment and requested that the trial court uphold both laws. *See id.* at 112-130;151-169. De-Escalate also argued that should the court find any defect in the Legislature’s adoption of ESHB 3003, then the proper remedy would be to uphold I-940 and invalidate ESHB 3003.

On April 20, 2018, the trial court granted summary judgment to Eyman and Senator Padden in part, and denied summary judgment to the Legislature and De-Escalate. *Id.* at 257. The trial court ruled that: “[C]ertainly, today, I cannot find that the legislature enacted I-940,

because they didn't. They enacted I-940 with amendments, which was not one of the things that is permissible under the constitution. Therefore the legislature rejected I-940....” Report of Proceedings (“RP”) 62:5-10. The trial court reached its ruling by posing a hypothetical: “If there had been no ESHB 3003, would there have been enough votes in one or both houses to pass I-940 as written?”, and then answering it: “What we know is when the legislature voted on I-940, every legislator knew that the substantive amendments contained in ESHB 3003 had already been approved by both houses and signed by the governor. Votes held in reverse could have resulted in something different.” *Id.* at 60:21-23, 61:1-6.

The trial court went on to invalidate ESHB 3003 on the basis of timing: the court ruled that constitutional language requiring that initiatives to the Legislature “take precedence over other measures in the legislature, except appropriation bills,” prohibited the Legislature from voting on ESHB 3003 before I-940. *Id.* at 58:2-22; Const. art. II, § 1(a). The trial court stated, without citation, that under this constitutional provision the Legislature “certainly cannot address a matter that is engaged or recommends or is referencing the same subject matter prior to addressing the initiative.” *Id.* at 58:13-15. Ultimately, the court ruled that “take precedence” means that “the legislature must first vote to adopt an

initiative without change or amendment, and only then after it is adopted can the legislature possibly propose amendments....” *Id.* at 58:18-21.

Based on these rulings, the trial court directed the Secretary of State to place I-940 on the November 2018 ballot by itself, *id.* at 62:10-12, a remedy that no party had argued for or asserted was appropriate. *See CP* 82-94, 97, 112-130, 151-169. This appeal followed.

IV. ARGUMENT

A. Standard of review.

“A statute enacted through the initiative process is, as are other statutes, presumed to be constitutional.” *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000). Thus, I-940 and ESHB 3003 come before this Court with a presumption of constitutionality. The party challenging the laws’ constitutionality bears the heavy burden to establish unconstitutionality beyond a reasonable doubt. *Id.* This Court reviews motions for summary judgment and the constitutionality of statutes de novo. *Voters Educ. Comm. v. Wash. State Pub. Disclosure Comm’n*, 161 Wn.2d 470, 481, 166 P.3d 1174 (2007).

B. The Legislature’s options for considering initiatives.

An initiative to the Legislature begins as a new proposed statute drafted by voters and is circulated by petition. Const. art. II, §1(a). After an initiative to the Legislature receives enough signatures, the Secretary of

State certifies it directly to the Legislature for its consideration. *Id.* The Legislature must then address the initiative as set forth in the constitution. The Legislature's options are to (1) enact the initiative as proposed by the people, (2) reject the initiative with a vote or by failing to act on the proposal, or (3) propose an alternative measure. *Id.* If the Legislature votes to enact the initiative, it becomes enrolled as a law and takes effect after a referendum period of 90 days. Const. art. II, § 1(c). If the Legislature rejects the initiative by vote or by inaction, the Secretary of State places it on the next general election ballot. Const. art. II, § 1(a). If the Legislature proposes an alternative, then the Secretary of State places both the original initiative and the alternative on the ballot in a specific format that allows voters to select first, whether they want to change the law and second, which of the two alternative measures they prefer. Const. art. II, § 1 (a). Only one, not both, can be enacted.⁶

C. The Legislature enacted I-940 by majority votes in both the Senate and House.

There is no dispute that the Legislature enacted I-940 by a majority vote in both houses: 25-24 in the Senate and 55-43 in the House. *See*

⁶ This process differs from an initiative to the people—if a petition for an initiative to the people receives enough signatures, it is automatically placed on the ballot. Const. art. II, § 1(a). Additionally, there is a restriction on any initiative approved by a vote of the people. Within two years of enactment, the Legislature can only amend or repeal a popularly-enacted initiative with a two-thirds vote from each legislative body. Const. art. II, § 1(c).

Senate I-940 Bill History; House I-940 Bill History. The Legislature did so without voting to amend or change the Initiative and it was placed in the laws of Washington as it was proposed and submitted by nearly 360,000 Washington voters. *See* Senate I-940 Bill History (compare Bill Documents “Initiative 940” and “Session Law C 011 L 18” and noting “No Amendments”); House I-940 Bill History (same). The Legislature also adopted I-940 subject to referendum—the constitutional requirement for legislatively-enacted initiatives. Const. art. II, §1(a) (stating if any initiative measure is enacted by the Legislature it shall be subject to referendum); Senate I-940 Bill History (stating effective date following referendum period); House I-940 Bill History (same). The Legislature thus fulfilled its constitutional obligations and followed one of the three options set out by Article II, Section 1(a) available to address an initiative to the Legislature. Pending a referendum, I-940 is the law in Washington. Const. art. II, §§ 1(c), 41; *Washington State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 291, 174 P.3d 1142 (2007) (referring to an enacted initiative as law).

Rather than ending its inquiry there, the trial court looked behind this valid enactment and struck down I-940 based on its speculation about the Legislature’s intent, essentially concluding that the Legislature would not have enacted I-940 but for its enactment of ESHB 3003. There is no

authority for a court to invalidate an initiative based on second-guessing the Legislature's intent in light of acts preceding a vote. Indeed, such an approach violates the enrolled bill doctrine. Under that doctrine, an enrolled bill on file with the Secretary of State's office, signed by the presiding officers of both houses, and that "otherwise appears fair upon its face, is conclusive evidence of the regularity of all proceedings necessary for its proper enactment in accordance with the constitutional provisions." *Citizens Council Against Crime v. Bjork*, 84 Wn.2d 891, 897, n.1, 529 P.2d 1072 (1975). Thus, courts "will not go behind an enrolled enactment to determine the method, the procedure, the means, or the manner by which it was passed in the houses of the legislature." *Wash. State Grange v. Locke*, 153 Wn.2d 475, 500, 105 P.3d 9 (2005) (internal quotations omitted). Applying the doctrine, this Court has held "an investigation of the antecedent history of the passage of a bill will not be made except as may be necessary in case of ambiguity in the bill when the legislative intent must be determined." *Bjork*, 84 Wn.2d at 897, n.1 (internal citation omitted). There is no argument in this case that I-940 is ambiguous.

The enrolled bill doctrine is premised on separation of powers concerns and on the principle that "the three branches of state government are co-equal in dignity." *Id.*; *Brown v. Owen*, 165 Wn.2d 706, 722, 206 P.3d 310 (2009). None of the three branches are "entitled to look behind

the properly certified record of another to determine whether that branch has followed the procedures prescribed by the constitution.” *Bjork*, 84 Wn.2d at 897, n.1. Instead, each branch is “responsible and answerable only to the people for its proper performance of the function for which it is constituted.” *Id.* Further, the doctrine rejects the theory that the “judiciary is the only branch with sufficient integrity to insure the preservation of the constitution.” *See Brown*, 165 Wn.2d at 723 (internal quotation omitted). The trial court here did exactly what is prohibited by the enrolled bill doctrine. It looked at the antecedent legislative history of the passage of I-940, not to interpret an ambiguous provision of the law, but to speculate that the legislative adoption of I-940 was in fact a rejection of I-940. *See RP 61:1-6, 62:5-12.*

The Legislature acted within its constitutional prerogative when it voted to adopt I-940 without change or amendment in conformance with the mandates of Article II, Section 1(a). That legislative action should be upheld.

D. The Legislature’s enactment of ESHB 3003 was a valid exercise of its plenary power.

1. The Legislature may amend an enacted initiative to the Legislature.

Pursuant to its broad legislative power, the Legislature also voted on and enacted ESHB 3003. The Legislature has plenary power to amend

or supplement any enacted law. *See e.g., Brown*, 165 Wn.2d at 722 (internal citation omitted); *Ajax v. Gregory*, 177 Wash. 465, 473-74, 32 P.2d 560 (1934). This plenary power is absolute unless it is expressly or by fair implication limited in the constitution. *E.g., State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 181, 492 P.2d 1012 (1972) (citing *State v. Fair*, 35 Wash. 127, 76 P. 731 (1904)).

Article II, Section 1(a) only limits the Legislature in so far as it requires that an initiative to the Legislature must be enacted or rejected without change or amendment during the same session in which it was presented. It does not say or even imply that an enacted initiative cannot be amended by the Legislature. The only limitation on amendment is in the case of an initiative “approved by a majority of the electors voting thereon,” in which case the initiative cannot be amended within two years without a supermajority vote. Const. art. II, § 1(c). Since I-940 was adopted by the Legislature, and not by a vote of the people (the electors voting thereon), it is not subject to that limitation. *Id.* In other words, the Legislature, consistent with the constitution, is allowed to exercise its plenary power to amend or clarify legislation—including enacted initiatives—on the basis of a simple majority vote.

The only other constitutional limitation on the legislative power in adopting an initiative to the Legislature is that it be subject to referendum.

Const. art. II, §§ 1(a),(c). The constitution provides a mechanism for the people to call for a vote even on an initiative adopted by the Legislature: gather signatures sufficient to invoke a referendum. Notably, the constitution does not provide an alternative form of referendum that allows a court to undo the enactment of an adopted initiative and send it to a vote.

2. ESHB 3003 is a valid enactment.

The Legislature enacted ESHB 3003 within the bounds of these constitutional parameters. ESHB 3003 amended I-940, but only after I-940 became effective. CP 55. ESHB 3003 made sure to preserve the right of referendum on I-940 as adopted by the Legislature. *Id.* ESHB 3003 thus was an exercise of the Legislature’s plenary power to amend an adopted initiative. It does not violate any specific constitutional provision.

The trial court, however, invalidated ESHB 3003 based on the timing of its adoption before the adoption of I-940. Specifically, the trial court held Article II, Section 1(a)’s requirement that consideration of initiatives to the Legislature “take precedence over other measures in the legislature except appropriation bills,” prohibited the Legislature from voting on ESHB 3003 before I-940. RP 58:2-22. Neither the constitutional text nor any case decision supports the trial court’s ruling.

So what then does “takes precedence” mean? Initially, we have

not found any authority regarding the meaning of “takes precedence.” No one, not even the trial court, asserts that this provision literally means a vote on an initiative must take place before a vote on any other bill except for appropriations bills. *See id.* at 10-12 (trial court acknowledging that this constitutional provision does not compel the Legislature to address initiatives before any other legislation). Nonetheless, the trial court concluded that the clause means that no **vote** on legislation addressing the same subject as an initiative can happen before a **vote** on an initiative. *See id.* at 13-22. The trial court’s interpretation adds without any authority two concepts not found in the constitution itself: (1) votes and (2) legislation on the same subject. *See* Const. art. II, §1(a).

Rather than read language into the constitution as the trial court did here, the interpretation of “take precedence” that is most true to the constitutional text (and common sense) is that consideration of an initiative must take precedence over other matters. That is, once certified, an initiative must quickly be introduced and considered. This puts the initiative in front of the Legislature for action, even if the Legislature ends up ignoring it and takes no further steps in the legislative process, as it is constitutionally allowed to do. *See id.* That is what occurred in this case. The Secretary of State certified I-940 to the Legislature for consideration on January 23, 2018 (CP 34), and the Senate introduced I-940 for a first

reading three days later on January 26, 2018. Senate I-940 Bill History. I-940 therefore was procedurally ready for legislative consideration quickly after certification.

The Legislature first considered ESHB 3003 when I-940 already was in the legislative process. The House Committee on Public Safety and the Senate Committee on Law and Justice held public hearings on I-940 on February 20, 2018. *Id.*; House I-940 Bill History. The House's first reading of HB 3003, which was a single sentence long, took place subsequently on February 26, 2018. ESHB 3003 Bill History. And it was not until March 6, 2018, that the substance of ESHB 3003 was considered for the first time. *Id.* As this timeline illustrates, I-940 was introduced and considered before ESHB 3003, and therefore the Initiative took precedence over the bill.

Moreover, it is ESHB 3003's effective date that matters here, not the order in which the Legislature voted on these measures. ESHB 3003 does not become effective until after I-940 becomes effective, allowing 90 days for the filing of a referendum on I-940. CP 55. It is a "cardinal rule" that a statute passed to take effect at a later date, like ESHB 3003, applies from the time it becomes operative, not from the time it is voted on. *Yelle v. Kramer*, 83 Wn.2d 464, 477-78, 520 P.2d 927 (1974) (stating the "legislature, in the absence of constitutional restraint, may fix any time in

the future as the time when a statute shall become effective,” and noting act set to go into effect in the future was “not unique”); *McCleary v. State*, 173 Wn.2d 477, 509-10, 545, 269 P.3d 227 (2012) (considering a number of legislative enactments related to public schools set to become effective on future dates, including Substitute House Bill 2776 which passed in 2010 and set funding formulas for 2011-2013 and plans to implement all-day kindergarten by 2018). The Legislature’s passage of ESHB 3003 therefore was appropriate and constitutional.

In short, the Legislature introduced and considered I-940 before ESHB 3003. The Legislature’s amendment of I-940 is only effective **after** I-940’s effective date and the period for a referendum has expired. CP 55. It is no different than had the Legislature come back into special session in June 2018 and adopted ESHB 3003 amending I-940 the day after it goes into effect on June 7, 2018. ESHB 3003 should be upheld as a constitutional expression of the Legislature’s plenary power to amend laws after they take effect.⁷

⁷ Attorney General Opinion 1971 No. 5 does not change this conclusion. That opinion did not expressly conclude that the Legislature’s plenary power does not include amending the language of an enacted initiative to the Legislature after the required referendum period has passed and the initiative has taken effect. *See* Op. Att’y Gen. No. 5 (1971) at *4-6. Further, the opinion relies on a Maine case, *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 60 A.2d 908 (1948), which involved an inapposite factual situation. The Maine legislature had sent an initiative to the ballot and then adopted a bill on the same subject, thereby negating the people’s vote on the initiative. No popular vote is negated, or even at risk, here.

E. Even if there is a procedural defect here, the proper remedy is to uphold I-940 and invalidate ESHB 3003.

The Legislature, by majority vote, enacted I-940 and it is the law of Washington once the referendum period elapses. The constitution expressly allows this enactment. The true issue in this case is whether the Legislature's enactment of ESHB 3003 was valid and, if not, what is the remedy. The enactment of ESHB 3003 was valid, as argued above. But if the Court concludes that ESHB 3003 was improper in any way, such as due to timing or content, then the proper remedy is to uphold I-940 and to void ESHB 3003.

This Court's opinion in *Department of Revenue v. Hoppe*, 82 Wn.2d 549, 512 P.2d 1094 (1973), supports the remedy of upholding I-940. *Hoppe* addressed an initiative certified to the Legislature addressing tax levies. 82 Wn.2d at 550-51. Unlike here, in *Hoppe* the Legislature took no action on the initiative which had the effect of submitting it to the voters, who passed it. 82 Wn.2d at 557. In a later extraordinary session that year, the Legislature passed a bill which also addressed caps on tax levies. *Id.* at 551. The trial court in *Hoppe* concluded that the initiative and legislative bill were both void because they addressed the same subject and thus should have been sent to the ballot together. *Id.* at 557. This Court disagreed, and instead held that insofar as the legislative bill

conflicted with the enacted initiative, the initiative prevailed and that aspect of the legislative bill was void. *Id.* at 557-58. This Court further explained it would not hold the initiative void because to do so “would turn the reserved initiative power of the people into a futile exercise.” *Id.* at 557. Here, that the Initiative was enacted by the Legislature instead of the people is of no consequence. It is an initiative proposed by the people that was enacted into law. Like in *Hoppe*, to the extent a legislative act is inconsistent with an enacted initiative, it is the legislative act that is invalid, not the initiative.

Further, upholding I-940 preserves the people’s exercise of their initiative power. Article II, Section 1 is to be construed liberally so that the legislative rights of the people may be rendered effective. *See, e.g., Andrews v. Munro*, 102 Wn.2d 761, 767, 689 P.2d 399 (1984) (internal citation and quotation omitted). Nearly 360,000 voters supported and signed the petition in favor of submitting I-940 to the Legislature. CP 34. Heeding that showing of support from Washington voters and expressing its own policy preferences, the Legislature enacted I-940. This process effectuated the legislative rights of the people and the available option of referendum further maintains those rights. Invalidating I-940 undermines those rights, and would force the people to defend, debate, and vote on a

measure that already is law to save it from an uncertain outcome at the ballot.

V. CONCLUSION

The trial court erroneously invalidated I-940 and ESHB 3003 based on the court's improper speculation as to legislative intent and the order of the votes on the measures. Neither of these bases is supported by law or justifies striking these measures. There simply is no precedent to divine a legislative intent contrary to the face of an enacted law. And it is an infringement by the courts on the Legislature's powers to do so. But if the Court finds that ESHB 3003 created a constitutional issue, the proper remedy is to uphold I-940 and invalidate ESHB 3003. Placing I-940 on the ballot is unsupported by case law, is contrary to the constitutional initiative process, and will set back changes to this State's deadly force framework that nearly 360,000 voters supported and the Legislature secured by a constitutional majority vote. De-Escalate respectfully requests that this Court reverse the trial court's decision and uphold the enactment of I-940 and ESHB 3003.

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RESPECTFULLY SUBMITTED this 11th day of May, 2018.

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CERTIFICATE OF SERVICE

I, Tricia O’Konek, declare under penalty of perjury under the laws of the State of Washington, that on May 11th 2018 I electronically filed the foregoing document via the Washington State Appellate Courts’ Secure Portal which will send e-mail notification of such filing to the following:

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

DATED this 11th day of May, 2018.



Tricia O’Konek
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PACIFICA LAW GROUP

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