

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
5/25/2018 4:41 PM  
BY SUSAN L. CARLSON  
CLERK

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; and CYRUS HABIB, Lieutenant  
Governor of the State of Washington,

Intervenor-Appellant/Cross-Respondent.

---

**DE-ESCALATE WASHINGTON'S REPLY BRIEF**

---

PACIFICA LAW GROUP LLP  
1191 Second Avenue, Suite 2000  
Seattle, WA 98101-3404  
(206) 245-1700

Paul J. Lawrence, WSBA #13557  
Gregory J. Wong, WSBA #39329  
Claire E. McNamara, WSBA #50097

Attorneys for De-Escalate Washington

## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ARGUMENT .....	2
A.	Eyman and Senator Padden have the heavy burden to establish the enacted laws are unconstitutional in order to obtain their requested remedy .....	2
B.	The Legislature properly enacted I-940 without change or amendment .....	4
1.	Only an impermissible reliance on acts preceding I-940’s enactment supports re-characterizing the Legislature’s enactment of the Initiative as a “rejection.” .....	4
2.	The enrolled bill doctrine applies here .....	6
3.	This case implicates the separation of powers concerns protected by the enrolled bill doctrine and does not infringe on courts’ constitutional review .....	8
4.	Eyman and Senator Padden advance only inapposite authority in favor of looking beyond the valid enactment of I-940 to invalidate the Initiative .....	11
C.	ESHB 3003 is a validly-enacted legislative amendment .....	13
D.	Should the court conclude there is a conflict, the proper remedy is to uphold I-940 and invalidate ESHB 3003.....	16
III.	CONCLUSION .....	18

## TABLE OF AUTHORITIES

### Washington Cases

<i>Amalgamated Transit Union Local 587 v. State</i> , 142 Wn.2d 183, 11 P.3d 762 (2000).....	2
<i>Brown v. Owen</i> , 165 Wn.2d 706, 206 P.3d 310 (2009).....	7, 10, 13
<i>Citizens Council Against Crime v. Bjork</i> , 84 Wn.2d 891, 529 P.2d 1072 (1975).....	5, 8, 9
<i>City of Fircrest v. Jensen</i> , 158 Wn.2d 384, 143 P.3d 776 (2006).....	12
<i>Department of Revenue v. Hoppe</i> , 82 Wn.2d 549, 512 P.2d 1094 (1973).....	16, 17
<i>Retired Pub. Employees Council of Washington v. Charles</i> , 148 Wn.2d 602, 62 P.3d 470 (2003).....	11
<i>Roehl v. Pub. Util. Dist. No. 1 of Chelan Cty.</i> , 43 Wn.2d 214, 261 P.2d 92 (1953).....	10
<i>Shelton Hotel Co. v. Bates</i> , 4 Wn.2d 498, 104 P.2d 478 (1940).....	5
<i>State ex rel. Distilled Spirits Inst., Inc. v. Kinnear</i> , 80 Wn.2d 175, 492 P.2d 1012 (1972).....	13, 15
<i>State ex rel. Tattersall v. Yelle</i> , 52 Wn.2d 856, 329 P.2d 841(1958).....	5
<i>State ex rel. Washington Toll Bridge Auth. v. Yelle</i> , 61 Wn.2d 28, 377 P.2d 466 (1962).....	6, 7, 8
<i>State v. Jones</i> , 6 Wash. 452, 34 P. 201 (1893).....	8, 9, 10
<i>State v. State Bd. of Equalization</i> , 140 Wash. 433, 249 P. 996 (1926).....	5, 7

*Washington Citizens Action of Washington v. State*,  
162 Wn.2d 142, 171 P.3d 486 (2007)..... 11

**Constitutional Provisions**

Const. art. II, § 1 ..... 3  
Const. art. II, § 1(a)..... 13, 14, 15  
Const. art. II, § 1(c)..... 13  
Const. art. II, § 19 ..... 12  
Const. art. II, § 37 ..... 12

## I. INTRODUCTION

Initiative 940 (“I-940”) is enacted law in Washington State. There is no dispute that nearly 360,000 Washington voters signed the petition submitting I-940 to the Legislature and the Legislature enacted it, as submitted by the people, by a majority vote in both houses. In addition, pursuant to its broad plenary power, the Legislature enacted Engrossed Substitute House Bill 3003 (“ESHB 3003”) which amends and clarifies I-940, but only after I-940 takes effect. The trial court violated the enrolled bill doctrine when it looked beyond the Legislature’s vote in favor of I-940 and speculatively declared that the Legislature actually rejected I-940. The trial court further erred by invalidating ESHB 3003 simply because the Legislature voted on ESHB 3003 before I-940. No constitutional provision disallows that act.

Respondents Timothy Eyman and Senator Michael Padden are incorrect that the enrolled bill doctrine applies only to review of disputed procedural decisions of the Legislature. They cite no case affirmatively supporting that position. They cite no case where a court has reversed the enactment of an unambiguous statute based on speculation that the Legislature actually intended something different. Finally, they cite no case supporting their argument that the Legislature’s plenary power does not include the power to adopt amendments to enacted initiatives by a

majority vote so long as the amendments are only effective after the initiative becomes law. Regardless, if there are concerns about the Legislature's adoption of ESHB 3003, the proper remedy—and best fulfillment of the people's power of initiative to the Legislature—is to uphold the enacted initiative: I-940. This Court should reverse the trial court and uphold both validly enacted laws. Or if this Court concludes that the Legislature amended I-940 at an improper time, this Court should follow its precedent and uphold I-940.

## II. ARGUMENT

### A. **Eyman and Senator Padden have the heavy burden to establish the enacted laws are unconstitutional in order to obtain their requested remedy.**

Eyman and Senator Padden seek to invalidate two duly enacted laws. Certification of Enrollment for I-940;<sup>1</sup> Certification of Enrollment for ESHB 3003.<sup>2</sup> But they try to avoid their burden of proof to achieve this result by arguing that they are not challenging the constitutionality of either I-940 or ESHB 3003 and therefore are not required to overcome the presumption of constitutionality of a duly enacted law. Resp. Br. at 4; *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11

---

<sup>1</sup> Available at <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Initiatives/Initiatives/INITIATIVE%20940.SL.pdf> (last visited May 25, 2018).

<sup>2</sup> Available at <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/3003-S.SL.pdf#page=1> (last visited May 25, 2018).

P.3d 762 (2000) (stating enacted laws, whether through the initiative process or not, are presumed constitutional). But a constitutional challenge is the only road that entitles them to the mandamus remedy they seek.

Specifically, Eyman and Senator Padden argue that the passage of I-940 and ESHB 3003 did not conform with the requirements of Article II, Section 1 of the Constitution; that the Constitution requires the Legislature's vote to adopt I-940 be interpreted as a vote to reject I-940; that the Constitution requires ESHB 3003 to be rewritten to conform with the requirements of an alternative to an initiative; and that the Constitution places a mandatory duty on the Secretary of State to place both I-940 and a re-written ESHB 3003 on the ballot. *See* Resp. Br. at 13. In doing so, they argue that the Legislature acted outside its constitutional authority. *See id.* at 10 (arguing the Legislature has proposed a "fourth alternative" to the three options set out by the Constitution for addressing initiatives to the Legislature). These arguments are based entirely on the Constitution. Accordingly, Eyman and Senator Padden must meet their heavy burden to show that I-940 and ESHB 3003 were unconstitutionally enacted. *Amalgamated Transit Union Local 587*, 142 Wn.2d 205 (stating a party

challenging a law's constitutionality bears the heavy burden to establish unconstitutionality beyond a reasonable doubt).<sup>3</sup>

**B. The Legislature properly enacted I-940 without change or amendment.**

**1. Only an impermissible reliance on acts preceding I-940's enactment supports re-characterizing the Legislature's enactment of the Initiative as a "rejection."**

No party disputes that the Legislature enacted I-940 by a majority vote in both houses. *See* Senate I-940 Bill History;<sup>4</sup> House I-940 Bill History;<sup>5</sup> Resp. Br. at 11; State Br. at 7; Lieut. Gov. Br. at 3. Moreover, no party can dispute that in doing so, the Legislature voted on the exact initiative language proposed and submitted by nearly 360,000 Washington voters. *See* CP 34; 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). Yet, Eyman and Senator Padden urge this Court to ignore that the Legislature validly enacted I-940 as proposed by the people and instead conclude that the Legislature actually rejected I-940. *See* Resp. Br. at 13.

---

<sup>3</sup> Eyman and Senator Padden concede they bear the burden to show placing an alternative measure containing ESHB 3003's amendments on the ballot facilitates the people's constitutional rights. *See* Resp. Br. at 6.

<sup>4</sup> Available at <http://apps2.leg.wa.gov/billsummary/?BillNumber=940&Chamber=Senate&Year=2017> (last visited May 25, 2018).

<sup>5</sup> Available at <http://apps2.leg.wa.gov/billsummary/?Year=2017&BillNumber=940&Chamber=House> (last visited May 25, 2018).

The path urged by Eyman and Senator Padden to reach this conclusion runs straight into the enrolled bill doctrine. Eyman and Senator Padden argue that the Legislature’s adoption of ESHB 3003 prior to acting on I-940 is evidence of legislative intent to reject I-940. But that type of argument specifically is precluded by the enrolled bill doctrine, which prohibits inquiry into acts preceding an enactment unless there is ambiguity in the language of the statute at issue. *Citizens Council Against Crime v. Bjork*, 84 Wn.2d 891, 897, n.1, 529 P.2d 1072 (1975) (citing *Shelton Hotel Co. v. Bates*, 4 Wn.2d 498, 104 P.2d 478 (1940)).

As this Court noted in *Shelton Hotel Co.*: “Even if the court is fully persuaded that the legislature really meant and intended something entirely different from what it actually enacted, . . . if the words chosen by the legislature are not obscure or ambiguous, . . . then the court must take the law as it finds it, . . . without being influenced by the probable legislative meaning lying back of the words.” 4 Wn.2d at 508 (refusing to examine legislative history of an unambiguous statute); *see also State v. State Bd. of Equalization*, 140 Wash. 433, 443, 249 P. 996 (1926), *superseded by regulation as stated in State ex rel. Tattersall v. Yelle*, 52 Wn.2d 856, 859, 329 P.2d 841 (1958) (“Finding an enrolled bill in the office of the Secretary of State, . . . the courts will make no investigation of the antecedent history connected with its passage except as such an

investigation may be necessary in case of ambiguity in the bill for the purpose of determining the legislative intent.”). Eyman and Senator Padden do not identify any ambiguity in I-940. This Court should reject their attempt to weave a story of what they believe the Legislature “actually” intended that is contrary to and ignores what the Legislature did in fact: vote to adopt I-940 as proposed by the people.

**2. The enrolled bill doctrine applies here.**

Eyman and Senator Padden’s assertion that the enrolled bill doctrine does not apply here because no one disputes the facts surrounding the enactments of ESHB 3003 and I-940 is wrong. The argument relies on an inaccurate premise that the enrolled bill doctrine requires a dispute about whether a certain internal procedure occurred. This is not the case.

*State ex rel. Washington Toll Bridge Auth. v. Yelle*, 61 Wn.2d 28, 377 P.2d 466 (1962) is instructive. In *Yelle*, a bill title included reference to an urban aid account while no such provision was included in the body of the act because the House struck the account from the bill without changing the title. *See id.* at 33. No one disputed this occurred. *See id.* Rather, the bill’s challenger attempted to rely on the printed bill and legislative journals to establish that because the House failed to change the title, the Senate accepted and passed the bill as amended by the House under the belief the account remained in the bill. *Id.* Relying on the

enrolled bill doctrine, this Court declined to review these legislative history materials to consider whether the Senate was confused by the title when it passed the bill. *Id.* *Yelle* did not involve a dispute whether a certain internal procedure occurred. *Id.* Rather, like here, *Yelle* involved a claim that the undisputed proceedings leading up to the enactment of the bill informed legislative intent. *Id.* This Court rejected such a claim, holding that the enrolled bill doctrine prohibits looking at antecedent proceedings leading to an otherwise unambiguous bill's adoption to determine legislative intent. *Id.*

Further, the cases *Eyman* and *Senator Padden* attempt to distinguish do not stand for the proposition that the enrolled bill doctrine is limited to disputes regarding procedure. *See* Resp. Br. at 19-21. In *Brown v. Owen*, 165 Wn.2d 706, 723-24, 206 P.3d 310 (2009), this Court relied on the enrolled bill doctrine in refusing to consider a challenge based on the undisputed records of proceedings of the Senate. This Court noted: "We have declined to examine the history of a bill even where the petitioner claimed that constitutionally mandated procedures were not followed." *Id.* at 723. In *State Bd. of Equalization*, 140 Wash. at 445-46, this Court relied on the enrolled bill doctrine in refusing to consider a challenge to a bill because it was not authenticated with the signatures of the leaders of both legislative houses upon re-passage after veto. And in

*State v. Jones*, 6 Wash. 452, 454, 460, 34 P. 201 (1893) the Court relied on the enrolled bill doctrine in refusing to review legislative journals to evaluate whether the Legislature failed to follow “several mandatory provisions of the constitution” as a basis to invalidate an enacted piece of legislation.

Looking behind the valid enactment of I-940 and inferring from the passage of ESHB 3003 that the Legislature actually intended to reject I-940 is exactly the type of procedural inquiry prohibited by the enrolled bill doctrine. *See Yelle*, 61 Wn.2d at 32 (stating the enrolled bill doctrine has peculiar force in the solution of the question of whether or not the act has been in form constitutionally passed, because such a constitutional question has to do with legislative procedure). Eyman and Senator Padden’s arguments to the contrary should be rejected.

**3. This case implicates the separation of powers concerns protected by the enrolled bill doctrine and does not infringe on courts’ constitutional review.**

The separation of powers concerns that the enrolled bill doctrine addresses are directly implicated by this case. The doctrine is premised on the principle that “the three branches of state government are co-equal in dignity.” *Bjork*, 84 Wn.2d at 897, n.1. Under that principle, none of the three branches are “entitled to look behind the properly certified record of another,” “rather each is responsible and answerable only to the people for

its proper performance of the function for which it is constituted.” *Id.*; *see also Jones*, 6 Wash. at 468-69 (stating the courts acting as the guardian of all mandatory provisions of the Constitution is an “untenable position”). Eyman and Senator Padden completely ignore this rationale underlying the enrolled bill doctrine.

Moreover, contrary to Eyman and Senator Padden’s contentions, applying the enrolled bill doctrine here does not preclude courts from examining laws for constitutional compliance. *See* Resp. Br. at 24, 30-32. Initially, this general objection that the enrolled bill doctrine inappropriately limits judicial review of certain legislative actions has been analyzed and rejected since the adoption of the doctrine in *Jones*, where the majority of this Court’s opinion explained why Washington should adopt the doctrine.

In *Jones*, this Court stated that the Legislature enacts laws and is “commanded by the constitution to enact them in a certain way.” 6 Wash. at 461. The Court concluded such mandatory provisions of the Constitution are “addressed to the department which is called upon to perform them, and. . . neither of the other departments can in any manner coerce that department into obedience thereto.” *Id.* at 462. Therefore, this Court concluded there was “no more impropriety in the legislature seeking to go behind the final record of a court, for the purpose of determining

whether or not it had obeyed the constitutional directions in making such a record” than “the courts seeking to go behind the final record made by the legislative department.” *Id.*

This Court has reaffirmed the reasoning from *Jones*. *See, e.g., Roehl v. Pub. Util. Dist. No. 1 of Chelan Cty.*, 43 Wn.2d 214, 222, 261 P.2d 92 (1953) (stating “the legislature is a co-ordinate branch of the government, in no sense inferior to the judicial branch, and consequently its final record, when certified and recorded as required by the constitution, imports absolute verity”); *Brown*, 165 Wn.2d at 722 (“Just as the legislature may not go beyond the decree of the court when a decision is fair on its face, the judiciary will not look beyond the final record of the legislature when an enactment is facially valid, even when the proceedings are challenged as unconstitutional.”). Thus, the enrolled bill doctrine, contrary to the suggestion of Eyman and Senator Padden, is not a broad bar to appropriate judicial review of the constitutionality of legislative acts. *See Roehl*, 43 Wn.2d at 223-25 (rejecting the argument that there is “no way to obtain enforcement of constitutional restrictions upon legislative action,” if the enrolled bill doctrine is maintained). The doctrine does, however, bar the Court from doing what is asked here: to look at antecedent legislative action to determine legislative intent in enacting an unambiguous bill.

**4. Eyman and Senator Padden advance only inapposite authority in favor of looking beyond the valid enactment of I-940 to invalidate the Initiative.**

Contrary to Eyman and Senator Padden’s urging, the general notion that this Court sometimes reviews the content of legislation to evaluate constitutionality fails to support the trial court’s invalidation of I-940 based on the passage of ESHB 3003. Eyman and Senator Padden rely on cases applying Article II, Sections 37 and 19 to argue that the trial court’s reliance on ESHB 3003’s passage to evaluate I-940 was a “normal, judicial review of legislative action.” *See* Resp. Br. at 15-18. The cited cases, however, are inapposite and do not support their argument.

As Eyman and Senator Padden’s examples illustrate, Article II, Section 37 cases address the validity of an enacted piece of legislation, amending another enacted piece of legislation. Resp. Br. at 16; *see e.g.*, *Washington Citizens Action of Washington v. State*, 162 Wn.2d 142, 154, 171 P.3d 486 (2007) (evaluating whether an initiative accurately set forth the law the initiative sought to amend). Specifically, Article II, Section 37 requires that legislation be complete in itself or show expressly how it relates to the statutes it amends. *See Retired Pub. Employees Council of Washington v. Charles*, 148 Wn.2d 602, 632, 62 P.3d 470 (2003). Applying that analysis here would require determining the validity of ESHB 3003—whether it properly sets forth how it amends I-940—not

whether I-940 is valid law to begin with. And these cases have nothing to do with determining the legislative intent of validly enacted, unambiguous laws such as I-940.

Article II, Section 19 cases are equally inapplicable here. That provision requires that “[n]o bill shall embrace more than one subject, and that [subject] shall be expressed in . . . [its] title.” Const. art. II, § 19. The provision ensures bills only cover one subject, expressed in the title, to protect legislators and the people acting with legislative capacity against undisclosed subjects in bills; to apprise the public of the subjects under consideration; and to prevent “log-rolling.” *See City of Fircrest v. Jensen*, 158 Wn.2d 384, 390, 143 P.3d 776 (2006) (internal quotation omitted). Article II, Section 19 thus requires examining the content of an enactment. But no one here challenges whether I-940 gave proper notice of its scope and effect, or whether I-940 impermissibly covers multiple subjects. The question here is simply whether the Legislature validly enacted I-940. It did.

In sum, the Article II, Section 37 and 19 examples Eyman and Senator Padden rely on are not applicable to the issues raised in this case and in no way support the action taken by the trial court to invalidate I-940.

**C. ESHB 3003 is a validly-enacted legislative amendment.**

Eyman and Senator Padden fail to address that the Legislature possesses absolute plenary power to amend legislation, subject only to limitations expressly or by fair implication set out in the Constitution. *See Brown*, 165 Wn.2d at 722; *State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 181, 492 P.2d 1012 (1972). And as De-Escalate has argued, pursuant to its plenary power, the Legislature enacted ESHB 3003 within the bounds of the constitutional limits set out by Article II, Section 1(a). *See* Opening Brief of De-Escalate at 13-14. ESHB 3003 does not change or amend I-940 during the same session, but after I-940 takes effect on June 7, 2018. CP 55. ESHB 3003 also preserves the right of referendum on I-940. Const. art. II, § 1(a), (c) (requiring initiatives to be subject to a referendum period); CP 55. The Legislature thus validly and carefully exercised its plenary power to amend an adopted initiative when it enacted ESHB 3003.

Further, despite agreeing that the Legislature voted to enact ESHB 3003 as a separate measure amending I-940 after I-940 takes effect (Resp. Br. at 11), Eyman and Senator Padden simultaneously argue that is not what the Legislature did. *See* Resp. Br. at 27-28 (stating the Legislature

proposed a “different measure”).<sup>6</sup> Glossing over the Legislature’s true action is necessary for Eyman and Senator Padden to argue as they do: that the Legislature passed what qualifies as an alternative measure—what they call “I-940B”—which aligns with their desired remedy of placing I-940 and ESHB 3003 on the ballot. In addition to ignoring that the Legislature passed ESHB 3003 as a separate measure, this argument also ignores that the Legislature expressly rejected a proposal to pass an alternative measure that would have sent I-940 and the alternative to the ballot. *See* Proposed Amendment 1422;<sup>7</sup> Proposed Amendment 956.<sup>8</sup>

Moreover, no one disputes that ESHB 3003 will amend I-940 once I-940 takes effect following the referendum period. CP 55. Nor is there any dispute ESHB 3003 addresses the same subject as I-940: use of deadly force by police. *Compare* CP 21-28 *with* 48-55. Eyman and Senator Padden try to make hay out of these facts, stating them repeatedly. *See* Resp. Br. at 14, 22-23, 27. Yet that ESHB 3003 will amend I-940 once I-940 is effective does not show it was the Legislature’s “preferred policy

---

<sup>6</sup> Eyman and Senator Padden dispute the use of the word “alternative.” Resp. Br. at 29. Yet when the Legislature proposes a different measure pursuant to Article II, Section 1(a) to go on the ballot alongside an initiative, the proposed legislative measure and initiative are alternatives because Article II, Section 1(a) only allows for voters to select one of them if the voters elect to change the law. *See* Const. art. II, § 1(a).

<sup>7</sup> Available at <http://lawfilesexternal.leg.wa.gov/biennium/2017-18/Pdf/Amendments/House/3003-S%20AMH%20RODN%20H5178.1.pdf> (last visited May 25, 2018).

<sup>8</sup> Available at <http://lawfilesexternal.leg.wa.gov/biennium/2017-18/Pdf/Amendments/Senate/3003-S.E%20AMS%20PADD%20S6202.1.pdf> (last visited May 25, 2018).

choice,” to send ESHB 3003 as an alternative to the ballot as they assert. Resp. Br. at 27. It clearly was not preferred given that the Legislature expressly rejected the option.

Further, Eyman and Senator Padden fail to address the trial court’s decision to invalidate ESHB 3003 based on the timing of its adoption before the adoption of I-940. *See* Resp. Br. *generally*; RP 58:2-22 (ruling 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). As De-Escalate has argued, the constitutional provision the trial court relied on does not contain any language directing the order in which the Legislature must vote on legislation on the same subject. *See* De-Escalate Opening Brief at 14-15; Const. art. II, §1(a). The Legislature also introduced I-940 and considered it before ESHB 3003, and therefore the Initiative took precedence over the bill per the Constitution. *See* De-Escalate Opening Brief at 15-16. The trial court’s invalidation of ESHB 3003 on this basis was erroneous. *Id.*

Finally, Eyman and Senator Padden also fail to dispute that there is no substantive difference between the Legislature’s enacting ESHB 3003 so that it goes into effect after I-940, and if the Legislature had adopted ESHB 3003 in special session in June 2018 right after I-940 goes into

effect. In both cases, the substantive law of I-940 goes into effect, immediately followed by the amendments in ESHB 3003. They ignore this similarity because it does not comport with their theory that the Legislature did not enact a valid amendment, but an alternative to I-940. This theory, as argued above, should be rejected.

**D. Should the court conclude there is a conflict, the proper remedy is to uphold I-940 and invalidate ESHB 3003.**

As De-Escalate has argued, the Legislature validly enacted I-940 pursuant to the Constitution and it will be effective once the referendum period passes. *See* De-Escalate Opening Brief at 18. The enactment of ESHB 3003 was also valid, as stated above. Yet if the Court concludes that ESHB 3003 was improper or conflicts in any way with I-940, that does not mean I-940's enactment was invalid. There has to be a separate basis for striking down the Legislature's adoption of I-940. The only argument Eyman and Senator Padden make is that the legislative acts preceding I-940's adoption changes the intent of the adoption to a rejection. But for the reasons stated above, the enrolled bill doctrine precludes that analysis.

Moreover, this Court's opinion in *Department of Revenue v. Hoppe*, 82 Wn.2d 549, 512 P.2d 1094 (1973), illustrates that the proper remedy in the event of a constitutional problem is to uphold I-940 and

void ESHB 3003. Although Eyman and Senator Padden acknowledge this Court's ruling in *Hoppe*, they fail to reckon with the actual outcome of the case. *See* Resp. Br. at 32. This Court expressly held that insofar as an enacted legislative bill impermissibly conflicted with an enacted initiative, the initiative prevailed and the conflicting provisions of the legislative bill were void. *Hoppe*, 82 Wn.2d at 557-58. This Court did so to preserve the initiative power of the people. *Id.* at 557. Upholding I-940 as the people submitted it to the Legislature, and as the Legislature enacted it, similarly preserves the people's exercise of their initiative power. *See* De-Escalate Opening Brief at 18-19.

Eyman and Senator Padden express concern that if not granted their requested remedy, the Legislature will have unrestricted power to adopt modified initiatives. *See* Resp. Br. at 34. But upholding the enacted initiative in this and in future cases provides a limiting principle. Giving effect to the legislators' majority vote enacting I-940 signals to them, and to future legislatures, that they must carefully consider when to enact an initiative because they will be held to such votes. Indeed, it is hard to imagine Eyman objecting if this was one of his initiatives and the Legislature is held to its vote to enact the measure into law. This is because such a result is the ultimate fulfillment of the people's power to submit an initiative to the Legislature.

Finally, all of the parties agree that the trial court's decision to place I-940 on the ballot by itself was error. *See* Resp. Br. at 25; State Br. at 3; Lieut. Gov. Br. at 14-15. They do so for good reason—there is no authority supporting that outcome.<sup>9</sup>

In sum, the most effective way to protect the initiative process in this case is to uphold the enacted initiative, not send it to a vote after the people already campaigned for signatures to support it and successfully achieved enactment. This Court should reverse.

### **III. CONCLUSION**

The Legislature acted constitutionally when it enacted I-940. The enrolled bill doctrine prevents looking beyond the valid enactment of I-940 as the trial court did and as Eyman and Senator Padden advocate. Similarly, the Legislature acted constitutionally when it enacted ESHB 3003. Finally, placing I-940, an enacted law, on the ballot is contrary to the constitutional initiative process and without precedent. De-Escalate respectfully requests that this Court reverse.

---

<sup>9</sup> If this Court decides, as the trial court did, to speculate on legislative intent based on the passage of ESHB 3003, then this Court should conclude that placing I-940 alone on the ballot is the least likely reading of the Legislature's intent given its passage of I-940 and ESHB 3003. While nothing should go to the ballot, if anything does it should be both I-940 and ESHB 3003.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of May, 2018.

PACIFICA LAW GROUP LLP

By s/ Paul J. Lawrence

---

Paul J. Lawrence, WSBA #13557  
Gregory J. Wong, WSBA #39329  
Claire E. McNamara, WSBA #50097  
1191 2<sup>nd</sup> Ave, Ste. 2000  
Seattle, WA 98101  
P: 206.245.1700  
F: 206.245.1750  
paul.lawrence@pacificalawgroup.com  
greg.wong@pacificalawgroup.com  
claire.mcnamara@pacificalawgroup.com

### CERTIFICATE OF SERVICE

I, Tricia O’Konek, declare under penalty of perjury under the laws of the State of Washington, that on May 25<sup>th</sup>, 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:

VLBabani@perkinscoie.com  
akhanna@perkinscoie.com  
calliec@atg.wa.gov  
claire.mcnamara@pacificallawgroup.com  
dawn.taylor@pacificallawgroup.com  
ddewolf@trialappeallaw.com  
dperez@perkinscoie.com  
greg.wong@pacificallawgroup.com  
joel.ard@immixlaw.com  
malbrecht@trialappeallaw.com  
mevans@trialappeallaw.com  
mmc@smithalling.com  
noahp@atg.wa.gov  
paul.lawrence@pacificallawgroup.com  
rebeccag@atg.wa.gov  
rmack@smithalling.com  
burke@ryanlaw.com

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

DATED this 25th day of May, 2018.

  
\_\_\_\_\_  
Tricia O’Konek  
Legal Assistant

# PACIFICA LAW GROUP

May 25, 2018 - 4:41 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95749-5  
**Appellate Court Case Title:** Tim Eyman v. Kim Wyman, et al.  
**Superior Court Case Number:** 18-2-01414-7

### The following documents have been uploaded:

- 957495\_Briefs\_20180525153011SC864725\_2467.pdf  
This File Contains:  
Briefs - Appellants Reply  
*The Original File Name was De Escalate Reply Brief CODED.pdf*

### A copy of the uploaded files will be sent to:

- VLBabani@perkinscoie.com
- akhanna@perkinscoie.com
- calliec@atg.wa.gov
- claire.mcnamara@pacificallawgroup.com
- ddewolf@trialappeallaw.com
- dperez@perkinscoie.com
- greg.wong@pacificallawgroup.com
- jeffe@atg.wa.gov
- joel.ard@immixlaw.com
- malbrecht@trialappeallaw.com
- mevans@trialappeallaw.com
- mmc@smithalling.com
- noahp@atg.wa.gov
- rebeccag@atg.wa.gov
- rmack@smithalling.com
- sgoolyef@atg.wa.gov

### Comments:

---

Sender Name: Tricia O'Konek - Email: tricia.okonek@pacificallawgroup.com

**Filing on Behalf of:** Paul J. Lawrence - Email: paul.lawrence@pacificallawgroup.com (Alternate Email: dawn.taylor@pacificallawgroup.com)

#### Address:

1191 Second Avenue, Suite 2100  
Seattle, WA, 98101  
Phone: (206) 245-1700

**Note: The Filing Id is 20180525153011SC864725**