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Notice and Demand

to the Washington State Legislature



RECEIVED
MAR 10 2003
OFFICE OF SENATE

**For exception from cutoffs under SCR 8400
HJM 4022 and SJM 8021**

To: **Cindy Zehnder**, Chief Clerk of the House of Representatives
Mark Doumit, Secretary of the Senate

cc: **Governor Gary Locke**
Christine Gregoire, Attorney General
Senator Adam Kline
Representative Al O'Brien

HAND DELIVERED
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OFFICE OF THE GOVERNOR

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Notice and Demand Letter to the Washington State legislature, March 10th, 2003

Constitution Defense Committee
P.O. Box 6316 Olympia, WA 98507
(360) 866-2278

March 10th 2003 (by hand delivery)

To: Ms. Cindy Zehnder
Chief Clerk, House of Representatives
Mod 2, 101F
Capitol Campus
Olympia, WA 98504

Mr. Mark Doumit
Secretary of the Senate
201 Pritchard Building
Capitol Campus
Olympia, WA 98504

NOTICE AND DEMAND

In re: Exception from cutoffs under SCR 8400 for HJM 4022 & SJM 8021

Dear Sir and Madam:

The above referenced Joint Memorials, read this past Wednesday into the House and Senate (Memorials, Att. A. & B.), are exempt from the March 5th cutoff under SCR 8400 because they are initiatives or alternatives to initiatives to the legislature:

“... Resolved, By the Senate of the State of Washington, with the House of Representatives concurring, that the following cutoff dates apply to all bills, memorials, and joint resolutions *with exception of ... initiatives to the legislature and alternatives to initiatives to the legislature.*” (Senate Concurrent Resolution (SCR) 8400, emphasis added, Att. C.).

Article II section 1(a) of the Washington State Constitution holds that “*The first power reserved by the people is the initiative*” and continues to describe filing, signature and certification requirements, and certain rights of refusal and modification by the legislature (WA Const. Art. II 1(a), Att. D.). While such refusal is generally considered as spawning “alternatives to initiatives”, that language is to be found neither in the Constitution nor in the law (Art. II 1(a), ibid; RCWs 29.79.280 and 29.79.290, Att. E.). We assert the peoples’ right is also reserved to alternative initiative processes for Joint Memorials because their requirements are reasonably less stringent and legally distinguishable from those for a referendum to make law ,

Constitution Defense Committee
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The signatures collected and the press report in the Daily Olympian newspaper on January 25th are *prima facie* evidence that an initiative by the people is underway for passage of the subject Joint Memorials (See: Ficalora Affidavit, Exhibit 1; The Olympian, Att. F.). While the process, requirements and relief may differ, it is an initiative of the type reserved to the people by the stated intent of Article II section 1(a) of the Washington State Constitution. The initiative *sub judice* is, therefore, an alternative to initiatives to the legislature specified in the Constitution, and would satisfy the requirement of SCR 8400 for exemption from the cut-off.


The genesis of the initiative was a petition for relief delivered to Governor Gary Locke and all Washington State legislators. Delivery was by hand or campus mail on or about January 23rd, 2003, and sponsor sheets were obtained in the House and the Senate for the furtherance of the initiative (See: Ficalora Affidavit, ibid.).

The application of cut-offs to Joint Memorials is also inappropriate, evoked disbelief and concern from Senator Kohl-Welles, and is arguably unconstitutional. The court will note that no action need be taken should the cut-off be lifted, that legislators are currently blocked from considering timely and important legislation, and that maintaining status quo will cause irreparable harm to myself and to others.

Your offices must, therefore, make exclusions from the cutoff dates pursuant to Senate Concurrent Resolution 8400 for House Joint Memorial 4022 and Senate Joint Memorial 8021 in re: "*Petitioning the President to reaffirm our nation's commitments to the Constitution.*" Time is of the essence and we ask for a formal, written answer at your offices by noon of Wednesday, March 12th.

PLEASE TAKE NOTICE that denial of this demand for action by your offices to enforce the law will result in a proceeding at law being commenced against you.

cc page attached


Robert A. Ficalora
March 10, 2003

H-1408.2

HOUSE JOINT MEMORIAL 4022

State of Washington 58th Legislature 2003 Regular Session

By Representatives O'Brien, Haigh, Simpson, Hudgins and Romero

Read first time 03/05/2003. Referred to Committee on State Government.

TO THE HONORABLE GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, AND TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES, IN CONGRESS ASSEMBLED:

We, your Memorialists, the Senate and House of Representatives of the State of Washington, in legislative session assembled, respectfully represent and petition as follows:

WHEREAS, The State of Washington does unequivocally and most solemnly declare a warm attachment to the United States; and that for this end it is our duty, on behalf of our people, to watch over and oppose every infraction of those principles embodied in the Constitution that forms the only basis of that Union, because the faithful observance of this duty can alone secure its existence and the public happiness; and

WHEREAS, Each state retains its sovereign rights as a party to the Constitution that established the general, or federal, government of the United States, and it is each state's duty to its people to oppose all acts of said government that are without or in excess of the powers delegated to it by the Constitution that created it; and

WHEREAS, Congress is without the power to reconstitute government or to give, grant, release, or otherwise surrender its delegated powers to another branch of government, yet in October of 2002 it passed legislation purporting to give war-making powers to the President without a declaration of war; and

WHEREAS, Article I, section 8 of the Constitution delegates the power to declare war to Congress; Article II, section 2 delegates to the Presidency powers that do not include the power to declare war, or to make war without a declaration of war, yet the President is currently claiming just such powers; and

WHEREAS, Article VI of the Constitution of the United States holds that "...all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land," and on June 26th, 1945, the representatives of the United States did join in the establishing of the United Nations and agreed to its Charter that holds, at Article II.4, that "All members shall refrain...from the threat of the use of force against the territorial integrity or political independence of any state..." yet the use of force is currently being threatened by the federal government of the United States against a sovereign state and original member of the United Nations; and

WHEREAS, This forthright affirmative declaration of the rights of this and other states to restrain unconstitutional actions by the federal government of the United States will reaffirm the 1798 legislative precedents most beneficial to our republic;

NOW, THEREFORE, Your Memorialists respectfully petition the President to reaffirm our nation's commitments to the Constitution, to the rule of law both domestic and international, and to the supreme law embodied in our international obligations: To these ends your Memorialists do herewith resolve and declare upon our oath to uphold the Constitution that war may not be made by the

http://www.leg.wa.gov/pub/billinfo/2003-04/House/4000-4024/4022_03052003.txt

3/7/2003

government of the United States in the name of the People of the State of Washington, or of the United States, in violation of the Constitution, or of said laws and obligations, all other acts or agreements notwithstanding;

BE IT RESOLVED, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

--- END ---

Att. B. - Senate Joint Memorial 8021, read March 5th, 2003

Page 1 of 2

S-1366.2

SENATE JOINT MEMORIAL 8021

State of Washington 58th Legislature 2003 Regular Session

By Senators Kline and Fairley

Read first time 03/05/2003. Referred to Committee on Judiciary.

TO THE HONORABLE GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, AND TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES, IN CONGRESS ASSEMBLED:

We, your Memorialists, the Senate and House of Representatives of the State of Washington, in legislative session assembled, respectfully represent and petition as follows:

WHEREAS, The State of Washington does unequivocally and most solemnly declare a warm attachment to the United States; and that for this end it is our duty, on behalf of our people, to watch over and oppose every infraction of those principles embodied in the Constitution that forms the only basis of that Union, because the faithful observance of this duty can alone secure its existence and the public happiness; and

WHEREAS, Each state retains its sovereign rights as a party to the Constitution that established the general, or federal, government of the United States, and it is each state's duty to its people to oppose all acts of said government that are without or in excess of the powers delegated to it by the Constitution that created it; and

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WHEREAS, This forthright affirmative declaration of the rights of this and other states to restrain unconstitutional actions by the federal government of the United States will reaffirm the 1798 legislative precedents most beneficial to our republic;

NOW, THEREFORE, Your Memorialists respectfully petition the President to reaffirm our nation's commitments to the Constitution, to the rule of law both domestic and international, and to the supreme law embodied in our international obligations: To these ends your Memorialists do herewith resolve and declare upon our oath to uphold the Constitution that war may not be made by the

government of the United States in the name of the People of the State of Washington, or of the United States, in violation of the Constitution, or of said laws and obligations, all other acts or agreements notwithstanding;

BE IT RESOLVED, That copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

--- END ---

SENATE CONCURRENT RESOLUTION 8400

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senators West and Brown

Read first time 01/13/2003. UNDER SUSPENSION OF THE RULES, READ SECOND AND THIRD TIMES AND ADOPTED.

WHEREAS, It is of paramount importance to establish cutoff dates for the consideration of legislation during the 2003 Regular Session of the Fifty-Eighth Legislature;

NOW, THEREFORE, BE IT RESOLVED, By the Senate of the State of Washington, the House of Representatives concurring, That the following cutoff dates apply to all bills, memorials, and joint resolutions with the exception of budgets, matters necessary to implement budgets, initiatives to the legislature, and alternatives to initiatives to the legislature:

(1) Wednesday, March 5, 2003, the fifty-second day, will be the final day to read in committee reports in the house of origin, with the exception of reports from the Senate Ways and Means, Senate Highways and Transportation, and House of Representatives fiscal committees;

(2) Monday, March 10, 2003, the fifty-seventh day, will be the final day to read in Senate Ways and Means, Senate Highways and Transportation, and House of Representatives fiscal committee reports in the house of origin;

(3) Wednesday, March 19, 2003, the sixty-sixth day, at 5:00 p.m., will be the final time to consider bills in their house of origin;

(4) Friday, April 4, 2003, the eighty-second day, will be the final day to read in committee reports on bills from the opposite house with the exception of reports from the Senate Ways and Means, Senate Highways and Transportation, and House of Representatives fiscal committees;

(5) Monday, April 7, 2003, the eighty-fifth day, will be the final day to read in Senate Ways and Means, Senate Highways and Transportation, and House of Representatives fiscal committee reports on bills from the opposite house; and

BE IT FURTHER RESOLVED, That after 5:00 p.m. on Friday, April 18, 2003, the ninety-sixth day, neither house may consider any bills, memorials, or joint resolutions except initiatives to the legislature and alternatives to such initiatives, messages pertaining to amendments, matters of differences between the two houses, and matters incident to the interim and to the closing of the business of the 2003 Regular Session of the Legislature.

--- END ---

Att. D. - Article II Sect. 1(a) of the Washington State Constitution

ARTICLE II - Washington State Constitution
LEGISLATIVE DEPARTMENT

SECTION 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature.

(a) Initiative: The first power reserved by the people is the initiative. Every such petition shall include the full text of the measure so proposed. In the case of initiatives to the legislature and initiatives to the people, the number of valid signatures of legal voters required shall be equal to 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.

Initiative 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. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall certify the results within forty days of the filing. If certification is not complete by the date that the legislature convenes, he shall provisionally certify the measure pending final certification of the measure. Such initiative measures, whether certified or provisionally certified, shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

RCW 29.79.280

Substitute for rejected initiative treated as referendum bill.

If the legislature, having rejected a measure submitted to it by initiative petition, proposes a different measure dealing with the same subject, the secretary of state shall give that measure the same number as that borne by the initiative measure followed by the letter "B." Such measure so designated as "Alternative Measure No. . . . B," together with the ballot title thereof, when ascertained, shall be certified by the secretary of state to the county auditors for printing on the ballots for submission to the voters for their approval or rejection in like manner as initiative measures for submission to the people are certified.

[1965 c 9 § 29.79.280. Prior: 1913 c 138 § 22, part; RRS § 5418, part.]

<http://search.leg.wa.gov/pub/textsearch/ViewHtml.asp?Action=Html&Item=0&X=3072142...> 7/2003

RCW 29.79.290

Substitute for rejected initiative -- Concise description.

For a measure designated as "Alternative Measure No. . . . B," the secretary of state shall obtain from the measure adopting the alternative, or otherwise the attorney general, a concise description of the alternative measure that differs from the concise description of the original initiative and indicates as clearly as possible the essential differences between the two measures.

[2000 c 197 § 6; 1965 c 9 § 29.79.290. Prior: 1913 c 138 § 22, part; RRS § 5418, part.]

NOTES:

Part headings not law -- 2000 c 197: See note following RCW 29.79.035.

Petitioners want to declare Iraq war unconstitutional

BY ALEX SUNDBY
THE OLYMPIAN

Anti-war activists delivered a petition to the Legislature on Friday, calling on lawmakers to stop the United States from going to war with Iraq.

About 70 activists, calling themselves the Citizens Constitutional Defense Committee, want the Legislature to pass a joint memorial declaring Congress' authorization of use of force against Iraq unconstitutional.

Joint memorials are messages or petitions from the Legislature addressed to the president, Congress or the head of any state or federal agency asking for consideration on a matter of concern to the state. An example of a joint memorial would be a proposed amendment to the U.S. Constitution.

"We have to have a declaration of war or else the Constitution's broken," said Bob Ficalora, the group's organizer.

Ficalora believes that the joint resolution authorizing President Bush to use force against Iraq does not adhere to the Constitution because it is not an official declaration, like what Congress used to officially enter World War II.

Ficalora wrote a petition demanding the Legislature tell Congress that an impending war with Iraq doesn't have the support of the state of Washington or any constitutional basis.

More than 1,000 people signed the petition the group gave to lawmakers, Ficalora said. Rebecca Dare, an anti-war activist from Burien, collected about 100 signatures for it.

"The American people are really rising against it," Dare said about the war. "The more we learn, the more people will be against our government making war against Iraq."

Supporters of the petition gathered at Sylvester Park Friday afternoon before delivering it to legislators.

The supporters, escorted by State Patrol officers on bicycles, followed a small fife and drum band along the Capitol Way sidewalk to the Capitol Campus.

While the group brought multiple pages of signatures with them, they apparently forgot their maps of the campus.

Demonstrators had planned to meet some legislators at Tivoli Fountain, but marched past it toward the Temple of Justice. Once they got their bearings, however, the group



Mike Salsbury/The Olympian

Mark Pennock of Olympia participates in Friday's rally questioning the constitutionality of a war with Iraq.

went back to the fountain and waited for someone to show up.

No legislators came, but a fraction of the group visited Rep. Maralyn Chase, D-Seattle. Chase began

last week to hold weekly peace vigils at the Capitol and she co-sponsored House Joint Memorial 4008, which opposes a pre-emptive attack on Iraq.