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Supreme Court, State of Washington

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

ROBERT A. FICALORA

03 MAR 14 PM 5:00

BY **Petitioner** ITT

v.

CLERK

**CINDY ZENDER, Chief Clerk of the House of Representatives and MILT DOUMIT, Secretary of the Senate, both of the State of Washington and in their official capacities.**

**Respondents**

**Special Proceeding**  
**Petition for writ of mandamus**  
**Supreme Court**  
**State of Washington**  
Case #

**U**pon the accompanying affidavit of Robert A. Ficalora and all of the attachments thereto, and as a matter of right pursuant to Article IV, §4 of the State Constitution (Att. A), plaintiff does herewith petition the court for a writ of mandamus to compel defendants to enforce Senate Concurrent Resolution 8400 (SCR 8400, Att. B) by excepting from the cutoffs established therein the companion joint memorials in the House and Senate numbered as HJM 4022 and SJM 8021 (Att. C & D) and entitled "*Petitioning the President to affirm our nation's commitments to the Constitution*" on the ground that they were established as a result of, and remain a part of, an alternative initiative according to the clear intent of Article II §1 of the State Constitution (Att. E).

**W**hereas, this court has original jurisdiction because the defendants are state officers and this matter involves the interests of the state and of the people in our State Constitution (Art. IV, §4, Article II, §1); and

Supreme Court, State of Washington

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ROBERT A. FICALORA

Petitioner

v.

CINDY ZENDER, Chief Clerk of the House of Representatives and MILT DOUMIT, Secretary of the Senate, both of the State of Washington and in their official capacities.

Respondents

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Special Proceeding
<b>Petition for writ of mandamus</b>
Supreme Court State of Washington
Case #

Upon the accompanying affidavit of Robert A. Ficalora and all of the attachments thereto, and as a matter of right pursuant to Article IV, §4 of the State Constitution (**Att. A**), plaintiff does herewith petition the court for a writ of mandamus to compel defendants to enforce Senate Concurrent Resolution 8400 (SCR 8400, **Att. B**) by excepting from the cutoffs established therein the companion joint memorials in the House and Senate numbered as HJM 4022 and SJM 8021 (**Att. C & D**) and entitled "*Petitioning the President to affirm our nation's commitments to the Constitution*" on the ground that they were established as a result of, and remain a part of, an alternative initiative according to the clear intent of Article II §1 of the State Constitution (**Att. E**).

Whereas, this court has original jurisdiction because the defendants are state officers and this matter involves the interests of the state and of the people in our State Constitution (Art. IV, §4, Article II, §1); and

Whereas, as a citizen of the State of Washington and leader of the alternative initiative of the people *sub judice*, petitioner has standing to bring this special proceeding on his own behalf; and

Whereas, while Article II, §9 of the State Constitution grants the legislature the power to establish its rules of procedure but not discretion in applying them ("*Each house may determine the rules...*", **Att. F**), SCR 8400 does, on its face, read "*That the following cutoff dates apply to all bills, memorials, and joint resolutions with the exception of ...initiatives to the legislature, and alternatives to initiatives to the legislature*", language that does not grant discretion to enforcing state officers; and

Whereas, discretion is also barred because the right of initiative is reserved to the people by Article II, §1(a) and must, therefore, be excepted from cutoffs; and

Whereas, neither Article II §1(a) of the State Constitution nor applicable statute (RCWs 29.79.280 and 29.79.290, **Att. G**) use or otherwise define the language "alternatives to initiatives"; and

Whereas, the Joint Memorials *sub judice* were attained using a legally distinguishable initiative process under emergency circumstances consistent with the rights reserved to the people by the clear expressed intent of Article II §1 of the State Constitution, remain inextricably a part of that timely initiative process, and must therefore be excepted from the cutoffs established by SCR 8400; and

Whereas, by their letter dated March 10th, 2003 (Att. H), counsel for the House of Representatives and the Senate of the State of Washington did deny petitioner's "Notice and Demand" to uphold the law by holding that "*neither HJM 4022 and SJM 8021 meet the criteria established in Article II, §1 of the State Constitution as initiatives to the legislature or alternatives to initiatives to the legislature*"; and

Whereas, the language "alternatives to initiatives" is found in neither the Constitution nor statute and defendants' basis for denial is, therefore, arbitrary; and

Whereas, your petitioner has exhausted all other legal remedies and is without further remedy at law,

Petitioner does, therefore, humbly submit that the court should take jurisdiction and issue a writ of mandamus to defendants Cindy Zender, Chief Clerk of the House of Representatives, and Milt Doumit, Secretary of the Senate, finding their denial of petitioner's demand to be arbitrary and made without or in excess of their authority to interpret ambiguous law, and compelling them to except companion Joint Memorials HJM 4022 and SJM 8021 from cutoffs according to SCR 8400 on the ground that they result from, and are a part of, an alternative initiative by the people within the intent of Article II, §1 of the State Constitution of the State of Washington. Petitioner does also request an expedited hearing of this matter and such other and further relief as the court may deem lawful, equitable or just.

  
Robert A. Ficalora  
Petitioner

Whereas, by their letter dated March 10th, 2003 (**Att. H**), counsel for the House of Representatives and the Senate of the State of Washington did deny petitioner's "Notice and Demand" to uphold the law by holding that "*neither HJM 4022 and SJM 8021 meet the criteria established in Article II, §1 of the State Constitution as initiatives to the legislature or alternatives to initiatives to the legislature*"; and

Whereas, the language "alternatives to initiatives" is found in neither the Constitution nor statute and defendants' basis for denial is, therefore, arbitrary; and

Whereas, your petitioner has exhausted all other legal remedies and is without further remedy at law,

Petitioner does, therefore, humbly submit that the court should take jurisdiction and issue a writ of mandamus to defendants Cindy Zender, Chief Clerk of the House of Representatives, and Milt Doumit, Secretary of the Senate, finding their denial of petitioner's demand to be arbitrary and made without or in excess of their authority to interpret ambiguous law, and compelling them to except companion Joint Memorials HJM 4022 and SJM 8021 from cutoffs according to SCR 8400 on the ground that they result from, and are a part of, an alternative initiative by the people within the intent of Article II, §1 of the State Constitution of the State of Washington. Petitioner does also request an expedited hearing of this matter and such other and further relief as the court may deem lawful, equitable or just.

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**Robert A. Ficalora**  
**Petitioner**

## **Washington State Constitution**

### **Article IV – Judicial Department**

SECTION 4 JURISDICTION. The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars (\$200) unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state or any judge thereof.

Source:

[http://www.leg.wa.gov/pub/other/washington\\_constitution.txt](http://www.leg.wa.gov/pub/other/washington_constitution.txt)

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**SENATE CONCURRENT RESOLUTION 8400**

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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.



Att. C. - House Joint Memorial 4022

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 IIA, 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 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.

<http://www.leg.wa.gov/pub/billinfo/2003-04/House/4000-4024/4022-03052003.txt>  
(corrected from original, text unchanged)

Att. D. - Senate Joint Memorial 8021

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

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  
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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  
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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.

<http://www.leg.wa.gov/pub/billinfo/2003-04/Senate/8000-8024/8021-03052003.txt>  
(corrected from original, text unchanged)

## Washington State Constitution

### ARTICLE II - 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.

Source: [http://www.leg.wa.gov/pub/other/washington\\_constitution.txt](http://www.leg.wa.gov/pub/other/washington_constitution.txt)

# Washington State Constitution

## ARTICLE II - LEGISLATIVE DEPARTMENT

SECTION 9 RULES OF PROCEDURE. Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member, but no member shall be expelled a second time for the same offense. (emphasis added)

Source: [http://www.leg.wa.gov/pub/other/washington\\_constitution.txt](http://www.leg.wa.gov/pub/other/washington_constitution.txt)

**RCWs relating to "Alternative Measures"**

**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.]

**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.]



## Washington State Legislature

March 10, 2003

Robert A. Ficalora  
Constitution Defense Committee  
P.O. Box 6316  
Olympia, WA 98507

### Re: Materials Submitted on Memorials & Petition

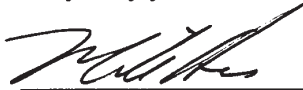
Dear Mr. Ficalora:


We are responding to the materials you submitted to the Secretary of the Senate and Chief Clerk of the House of Representatives earlier today, entitled, "Notice and Demand to the Washington State Legislature for exception from cutoffs under SCR 8400 HJM 4022 and SJM 8021." As counsel for the Senate and House, we regularly respond to legal matters on behalf of the Secretary of the Senate and the Chief Clerk of the House of Representatives.

From reviewing the materials, we believe that your conclusions are erroneous in several respects. Article II, §9 of the State Constitution gives each house of the legislature the power to establish rules of procedure. Both by custom and plain language, the cutoff dates established by Senate Concurrent Resolution 8400 apply to memorials from either chamber of the legislature. Thus, both HJM 4022 and SJM 8021 are bound by the cutoff dates it sets forth unless otherwise exempted by action of the legislature. It is within the discretion of the duly-elected members of the legislature whether they will choose to exempt from cutoff and take up either of these measures this Session. Exceptions to these cut-off dates are provided for budgets, measures necessary to implement the budget, initiatives to the legislature, and alternatives to initiatives to the legislature. Neither HJM 4022 nor SJM 8021 meet the criteria established in Article II, §1 of the State Constitution as initiatives to the legislature or alternatives to initiatives to the legislature.

Nothing in SCR 8400, however, prevents the circulation of initiatives for signature or any of the rights of the people in this regard. To the extent that you intend for any of the materials submitted to act as an initiative to the legislature, please note that both RCW 29.79.010 and the Washington Constitution, Article II, §1(a) require that such measures be filed with the Secretary of State. Under Washington Constitution, Article II, §1(a) and RCW 29.79.120, you must also submit with your petition a number of signatures of legal voters equal to or exceeding eight percent (8%) of the votes cast for the office of governor at the last gubernatorial election. RCW 29.79.090 sets forth a sample form for collecting these signatures. With this in mind, please note that the materials you have submitted do not constitute an initiative to the legislature.

Very truly yours,

  
\_\_\_\_\_  
Mike Hoover  
Senate Counsel

  
\_\_\_\_\_  
Martin Lovinger  
Senate Counsel

  
\_\_\_\_\_  
Tim Sekerak  
House Counsel