

SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT A. FICALORA,

Petitioner,

v.

CINDY ZEHNDER, 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.

ANSWER TO
PETITION
FOR WRIT OF
MANDAMUS

COME NOW the Respondents, Cindy Zehnder, Chief Clerk of the House of Representatives, and Milt Doumit, Secretary of the Senate, by and through the undersigned counsel, and answer the Petition for Writ of Mandamus in this matter as follows:

1. The opening paragraph of the Petition sets forth Petitioner's characterization of the nature of this action. To the extent that this paragraph sets forth conclusions of law, no response by way of factual pleading is necessary. Without waiving response to any other allegations of law set forth within that paragraph, Respondents deny that Petitioner can bring this action in this Court "as a matter of right," noting that this Court's jurisdiction is both non-exclusive and

discretionary. Respondent also denies that the joint memorials at issue, HJM 4022 and SJM 8031, were established as a result of, or remain a part of, an alternative initiative.

2. With regard to the first “whereas” clause of the Petition (pp. 1-2), that paragraph consists entirely of conclusions of law as to which no response by way of factual pleading is required.

3. With regard to the second “whereas” clause of the Petition (p. 2), that paragraph consists entirely of conclusions of law as to which no response by way of factual pleading is required. Respondents deny that any “alternative initiative” is at issue in this action.

4. With regard to the third “whereas” clause of the Petition (p. 2), that paragraph consists entirely of conclusions of law as to which no response by way of factual pleading is required.

5. With regard to the fourth “whereas” clause of the Petition (p. 2), that paragraph consists entirely of conclusions of law as to which no response by way of factual pleading is required.

6. With regard to the fifth “whereas” clause of the Petition (p. 2), that paragraph consists entirely of conclusions of law as to which no response by way of factual pleading is required.

7. With regard to the sixth “whereas” clause of the Petition (p. 2), that paragraph consists entirely of conclusions of law as to which no response by way of factual pleading is required. To the extent that this paragraph may be construed to state a factual allegation with regard to whether the initiative process was used to “attain” the joint memorials at issues, Respondents deny any such allegation. Respondents deny that the initiative process is in any way invoked in the facts underlying this action.

8. With regard to the seventh “whereas” clause of the Petition (p. 3), Respondents admit that counsel for the House and Senate sent the letter described by that paragraph, and which is reproduced as an attachment to the Petition.

9. With regard to the eighth “whereas” clause of the Petition (p. 3), that paragraph consists entirely of conclusions of law as to which no response by way of factual pleading is required.

10. With regard to the last “whereas” clause of the Petition (p. 3), that paragraph consists entirely of conclusions of law as to which no response by way of factual pleading is required.

11. With regard to the final paragraph of the Petition, Respondents deny that Petitioner is entitled to any of the requested relief.

By way of FURTHER ANSWER and AFFIRMATIVE DEFENSE, Respondents allege as follows:

1. This action is barred by the doctrine of separation of powers.

2. Mandamus does not lie in this action, because the question of whether to adopt proposed legislation, including both HJM 4022 and SJM 8021, are vested in the sound discretion of the Legislature and therefore may not be the subject of mandamus.

3. Mandamus does not lie in this action because the application of the cutoff dates established by SCR 8400 are not within the scope of duties of either Respondent.

4. Neither HJM 4022 nor SJM 8021 constitute “alternative initiatives” or “alternatives to an initiative” within

the meaning of article II, section 1, of the Washington Constitution, nor is either proposed memorial the product of the initiative process.

5. Petitioner has failed to state a claim upon which relief should be granted.

For all of these reasons, Respondents respectfully PRAY FOR RELIEF as follows:

1. That the Petition be dismissed with prejudice;
2. That Petitioner take nothing by way of this action;
3. That Petitioner be ordered to pay all of Respondents' costs associated with this action; and
4. That this Court grant such other and further relief as may be just and appropriate.

RESPECTFULLY SUBMITTED this 9th day of April, 2003.

CHRISTINE O. GREGOIRE
Attorney General



JEFFREY T. EVEN, WSBA #20367
Assistant Attorney General
PO Box 40100
Olympia, Washington 98504-0100
(360) 586-0728
Attorney for Respondents Zehnder/Doumit

