

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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WASHINGTON STATE FARM BUREAU FEDERATION, WASHINGTON  
STATE GRANGE, NATIONAL FEDERATION OF INDEPENDENT  
BUSINESS, BUILDING INDUSTRY ASSOCIATION OF WASHINGTON,  
EVERGREEN FREEDOM FOUNDATION, and DAN WOOD, individually,

Petitioners,

v.

SAM REED, in his official capacity as  
Secretary of State of the State of Washington,

Respondent.

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An Original Action Against the Secretary of  
State, Sam Reed, A State Officer

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**PETITION FOR WRIT OF MANDAMUS**

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## INTRODUCTION

The rights of the people to participate directly in the passage of legislation are rights secured by Article II, Section 1 of the Washington Constitution. These rights include the right to initiate new legislation by initiative and to vote on the legislature's adoption of bills by referendum.

Through Initiative 601, the people adopted a clear requirement that bills which would increase taxes must be adopted by a two-thirds vote of both houses of the legislature. At the end of the last legislative session, the legislature amended the two-thirds vote requirement and replaced it with a simple majority vote.

As it has done in the past and now in a clear attempt to deprive people of the right to vote on this significant change to a law initiated by the people, the current legislature declared the new bill's changing of the voting requirements to be an "emergency." Doing so purports to have only two consequences—making the legislative change effective immediately and prohibiting people from voting on this legislation through the referendum process.

The so-called emergency clause is invalid, both on its face and in the absence of any basis to support it. While it is an unabashed attempt to avoid direct review by the voters, this attempt should fail. An invalid emergency clause cannot deprive Washington voters of the right to vote through the

referendum process. This action seeks expedited review of the validity of this so-called emergency clause so that Constitutional protection of the voters' right to collect signatures and have the referendum placed on the ballot is preserved. The question in this action involves significant issues in the public interest.

Pursuant to Article II, Section 1(b) and Article IV, Section 4 of the Constitution of the State of Washington and Rule of Appellate Procedure (RAP) 16.2, Petitioners file this Petition in the Supreme Court for a Writ of Mandamus, ordering Respondent Sam Reed to accept Referendum 60 for filing and processing.

#### **NEED FOR EXPEDITIOUS RESOLUTION**

Petitioners need to know whether Sections 1 and 2 of SSB 6078 is subject to a referendum because, under Article II, Section 1 of the Washington Constitution, they must submit signatures on referendum petitions within 90 days of the end of the legislative session. The end of the legislative session was on April 24, 2005, which makes the 90-day deadline July 23, 2005. Within those 90 days, Petitioners must obtain signatures of 4% of the number of voters registered and voting for the office of governor at the last gubernatorial election. *See* Article II, Section 1(b). Petitioners have no other plain, speedy and adequate remedy in the ordinary course of law.

## **PARTIES**

Petitioner **Washington State Farm Bureau Federation** (Farm Bureau) is a nonprofit agricultural advocacy association representing farmers and ranchers and has existed in this state since 1920. It is a grass roots organization with 23 county chapters and a total membership over 34,000. The Farm Bureau represents a broad range of agricultural commodities and farming interests through local, state, and national affiliates.

Petitioner **Washington State Grange** is a nonprofit fraternal order composed of and representing 278 local Granges organized under Chapter 24.28 RCW and approximately 50,000 members who are voters and taxpayers in Washington State.

Petitioner **National Federation of Independent Business** (NFIB) is the largest advocacy organization representing small and independent businesses in all 50 states, serving 600,000 members nationwide. Washington State's 15,000 NFIB members include farmers, manufacturers, service company owners, neighborhood retailers and wholesalers. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America.

Petitioner **Building Industry Association of Washington** ("BIAW") has 11,490 members involved in construction and homebuilding projects statewide. BIAW is the voice of the housing industry dedicated to ensuring

and enhancing the vitality of the building industry for the benefit of its members and the housing needs of the citizens.

Petitioner **Evergreen Freedom Foundation** (EFF) is a private, nonprofit, public policy research organization in Washington State with more than 3,300 individual members, including registered voters of Washington State. EFF's mission is to advance individual liberty, free enterprise, and limited and accountable government.

All Petitioners listed above have members who are citizens, the payers of taxes which fund the Secretary of State's office and registered voters of Washington State. These members seek to gather signatures for Referendum 60 with the purpose of having it placed on the ballot.

Petitioner **Dan Wood** is a citizen, voter and taxpayer of Washington State. Petitioner Wood is the proponent of Referendum 60.

Respondent **Sam Reed** is the duly elected Secretary of State of the State of Washington who is sworn to support the Constitution and laws of the State of Washington. Pursuant to RCW 29.04.055, Secretary Sam Reed is designated the chief election officer for all state elections held in Washington. Under RCW Chapter 29.04 and RCW 43.07.310, the Secretary of State is responsible for filing, verifying signatures, and certifying state initiative, referendum and recall petition measures for the ballot, and, following the election, for canvassing the votes on each question and

certifying the results to the Governor.

### **STATEMENT OF FACTS**

In the 59<sup>th</sup> Legislative 2005 Regular Session, the Legislature passed Substitute Senate Bill 6078 (SSB 6078), Chapter 72 Laws of 2005, which was approved by Governor Christine Gregoire on April 18, 2005. A copy of SSB 6087 is attached hereto as Exhibit A.

SSB 6078 contains seven sections. Section 2 amends RCW 43.135.035, which was originally adopted by the people by means of Initiative 601. A significant feature of this section of I-601 is in Subsection (1) which states:

After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

Exhibit A.

SSB 6078 adds the following to Subsection 1:

However, for legislation enacted between the effective date of this 2005 act and June 30, 2007, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken with the approval of a majority of members elected to each house, so long as state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

Exhibit A. Sections 3 through 6 of SSB 6078 make changes in how the expenditure limit is calculated and handled.

Section 7 states:

(1) Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health or safety, or support of state government and its existing public institutions, and take effect immediately.

(2) Sections 3 through 6 of this act take effect July 1, 2007.

Exhibit A.

On April 29, 2005, Petitioner Wood filed in the Secretary of State's Office an Affidavit for Proposed Referendum Measure to propose a referendum on Sections 1 and 2 of SSB 6078. A copy of the Affidavit is attached hereto as Exhibit B. Although the Secretary of State gave this referendum the designation Referendum 60, the Secretary of State has decided that the referendum is not within the scope of the referendum power due to the emergency clause in Section 7(1) and, therefore, has refused to accept the measure. Attached hereto as Exhibit C is a copy of the Secretary of State's letter dated April 29, 2005 to Petitioner Wood expressing the Secretary of State's position on this measure.

Petitioners have requested that Attorney General Rob McKenna enforce Secretary of State Sam Reed's duty to process Referendum 60. Petitioners believe that Attorney General McKenna has decided not to do so.

Because the Secretary of State has refused to process Referendum 60, the Attorney General has not and will not prepare a ballot title pursuant to RCW 29A.72.060, which is a prerequisite for the gathering of signatures on

referenda petitions. RCW 29A.72.090 and .100.

Under Article II, Section 41, a law may not become effective for 90 days after the adjournment of the session at which it was enacted except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of state government and its existing public institutions. Art. II, §1(b). Although the Legislature made such a statement in Section 7(1) of SSB 6078, which presumably provides the basis for the Secretary of State's position, Petitioners this emergency clause is not valid and cannot consistent with the constitution circumvent the right to referendum or the right to an effective date after 90 days after the adjournment of the session of the legislature. Since the emergency clause is not valid, SSB 6078 cannot constitutionally go into effect until 90 days after the adjournment of the 59<sup>th</sup> Session on July 23, 2005. Therefore, Petitioners may collect signatures on referendum petitions and, upon the presentation of sufficient signatures, Referendum 60 must be placed on the ballot.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray for the following relief:

1. That the Court issue under seal of this Court a Writ of Mandamus ordering Respondent Secretary of State Reed to accept Referendum 60, to forward the same to the Attorney General forthwith for the preparation of a ballot title, and to count signed petitions for Referendum

60 and place the same on the ballot upon receipt of sufficient signatures.

2. That the Court enter an order declaring Section 7(1) of SSB 6078 to be invalid and of no legal effect.

3. For such other relief as this Court deems just and equitable.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of May, 2005.

GROEN STEPHENS & KLINGE LLP

By:

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Richard M. Stephens, WSBA #21776  
Attorneys for Petitioners

**DECLARATION OF SERVICE**

I, Linda Hall, declare:

I am not a party in this action.

I reside in the State of Washington and am employed by Groen Stephens & Klinge LLP of Bellevue, Washington.

On May 3, 2005 a true copy of Petition for Writ of Mandamus was given to ABC Legal Services for service on May 3, 2005 on the following persons:

Sam Reed  
Secretary of State of the State of Washington  
520 Union Ave.  
Olympia, WA 98051

Rob McKenna  
Attorney General of Washington  
1125 Washington St. SE  
Olympia, WA 98504-0116

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 3<sup>rd</sup> day of May, 2005 at Bellevue, Washington.

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Linda Hall