

1 EXPEDITE
2 No hearing set
3 Hearing is set
4 Date: April 20, 2018
Time: 1:30 P.M.
Judge: Hon. Christine Schaller

5
6 IN THE SUPERIOR COURT OF THURSTON COUNTY
7 IN AND FOR THE STATE OF WASHINGTON
8

9 TIM EYMAN,
10
11 Plaintiff,
12 MICHAEL J. PADDEN,
13 Plaintiff Intervenor,
14 v.
15 KIM WYMAN, in her capacity as the
16 Secretary of State, THE STATE OF
17 WASHINGTON; THE WASHINGTON
18 STATE LEGISLATURE,
19 Defendants
20 DE-ESCALATE WASHINGTON,
21 Defendant Intervenor.

No. 18-2-01414-34

INTERVENOR-DEFENDANT DE-
ESCALATE WASHINGTON'S
CROSS-MOTION FOR SUMMARY
JUDGMENT AND RESPONSE TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

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25 DE-ESCALATE WASHINGTON'S CROSS-MOTION FOR
26 SUMMARY JUDGMENT AND RESPONSE TO
27 PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Nearly 360,000 Washington voters signed a petition supporting Initiative 940 (“I-940” or the “Initiative”), an initiative to the Legislature. The Legislature enacted I-940 and it became the law in Washington. Before enacting I-940, and after consulting with a diverse and historically unique array of individuals, organizations, I-940 supporters, public officials and law enforcement groups, the Legislature considered and enacted Engrossed Substitute House Bill 3003 (“ESHB 3003”). ESHB 3003 contains amendments clarifying and ensuring practical implementation of I-940. ESHB 3003 was also conditioned on the enactment of I-940 and on the time for a submission of a referendum on I-940 elapsing. ESHB 3003 therefore only takes effect after I-940 has gone into effect. I-940 as amended and clarified by ESHB 3003 implements important law enforcement and community safety policies.

Plaintiff Timothy Eyman (“Eyman”) filed this lawsuit shortly after the Legislature enacted these measures. He and Intervenor-Plaintiff Senator Michael Padden (“Plaintiffs”) argue that the Legislature acted outside of the three options the State Constitution sets forth to address an initiative to the Legislature. They incongruously seek a declaration by the Court that by enacting I-940 and ESHB 3003, the Legislature actually rejected I-940, did not enact either I-940 or ESHB 3003, but instead intended ESHB 3003 to be put on the ballot as an alternative to I-940. To remedy this alleged error, they request that the Court compel the Secretary of State to place I-940, an initiative already duly enacted intact by the Legislature, and a court-redrafted ESHB 3003 as alternatives on the November 2018 general election ballot.

The Court should reject Plaintiffs’ claims and requested remedy. The Legislature followed one of the established constitutional procedures available for addressing an initiative to the legislature when they considered, voted on, and enacted I-940 without change or amendment.

1 Those who signed I-940 thus obtained the legislative action they petitioned the legislature to
2 take; Plaintiffs cannot now undo that accomplishment. Because there is no dispute that the
3 Legislature in fact enacted I-940, the real question in this case is whether the Legislature's
4 enactment of ESHB 3003 was valid. The Court should conclude that the Legislature validly
5 enacted ESHB 3003, pursuant to its plenary power to amend codified laws. Should the Court
6 conclude, however, that the timing of the enactment of ESHB 3003 exceeded the scope of the
7 Legislature's plenary power, Washington precedent establishes that the proper remedy is to
8 uphold I-940 as an enacted initiative and to void ESHB 3003. This remedy would allow the
9 Legislature a future vote on amendments in due course, while upholding the people's right
10 through the initiative process to petition for the adoption of laws and the Legislature's right to
11 enact such laws.
12

13 **II. FACTS AND PROCEDURAL BACKGROUND**

14 The De-Escalate Washington Campaign ("De-Escalate") formed to decrease the use of
15 deadly force by law enforcement officers, to address racial bias and lack of mental health
16 training that affect outcomes of law enforcement interaction with the public, and to end
17 Washington's unique, de-facto immunity from criminal prosecution in extreme cases of unlawful
18 use of deadly force by law enforcement officers.¹ In furtherance of those goals, De-Escalate
19 developed and supported I-940, which requires police to receive training on violence de-
20 escalation, mental health, and implicit and explicit bias, and re-frames the lawful use of deadly
21 force in terms of an objective good faith standard. Complaint, Attachment A at 1, 4; Stipulation
22 and Proposed Agreed Order Granting De-Escalate Washington's Intervention at 1. The Initiative
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¹ De-Escalate Washington, About Us, *available at* <https://www.deescalatewa.org/> (last visited April 12, 2018).

1 also requires that if police officers come into contact with individuals who need first aid, police
2 officers must ensure that they receive it in order to save lives and foster positive community
3 contact. Complaint, Attachment A at 1. Almost 360,000 Washington voters signed the petition
4 in favor of I-940. First Amended Complaint at 4. The Secretary of State certified the Initiative
5 to the Legislature for consideration on January 23, 2018. *Id.* Both legislative bodies held
6 hearings and recommended I-940's passage.²
7

8 During the same session, the Legislature considered ESHB 3003, which amends I-940,
9 after I-940 takes effect, and adds three new sections to the law. Complaint, Attachment B at 1.
10 ESHB 3003 states that it will take effect June 8, 2018 "only if" I-940 is "passed by a vote of the
11 Legislature during the 2018 regular legislative session" and a referendum on the Initiative is not
12 certified. *Id.* at 8. The Legislature passed ESHB 3003 and the Governor signed it into law on
13 March 8, 2018.³ First Amended Complaint at 11. Later that day, the Legislature passed I-940
14 which has an effective date of June 7, 2018. First Amended Complaint at 7, 11. As a result of
15 the Legislature's actions, I-940 will be law as written on June 7, 2018 and would then be
16 amended in certain respects on June 8, 2018.
17

18 Eyman filed this lawsuit shortly thereafter. Complaint at 16. He claims that the
19 Legislature's passage of these two laws actually constitutes a rejection of and proposed
20 alternative to I-940, rendering neither I-940 or ESHB 3003 enacted. First Amended Complaint
21 at 12-13. Eyman also seeks to have I-940 and a Court-redrafted ESHB 3003 placed on the
22

23 ² Summary of House consideration of I-940, *available at*
24 <http://apps2.leg.wa.gov/billsummary/?Year=2017&BillNumber=940&Chamber=House> (last visited April 12, 2018);
25 Summary of Senate consideration of I-940, *available at*
<http://apps2.leg.wa.gov/billsummary/?Year=2017&BillNumber=940&Chamber=Senate> (last visited April 12, 2018).

26 ³ The First Amended Complaint mistakenly states that the Governor signed ESHB 3003 on March 8 and 9. First
27 Amended Complaint at 10-11. The Governor signed ESHB 3003 on March 8. Bill Action, Governor Jay Inslee,
available at <https://www.governor.wa.gov/office-governor/official-actions/bill-action> (last visited April 12, 2018).

1 November 2018 general election ballot. *Id.* at 13. Eyman filed his Motion for Summary
2 Judgment (“Motion”) and Senator Padden filed a Memorandum in Support of Eyman’s Motion
3 on April 6, 2018. The parties agree that there are no material facts in dispute. *See* Motion at 1;
4 Legislature’s Answer to First Amended Complaint.

5
6 **III. STATEMENT OF ISSUES**

- 7 1. Did the Legislature enact I-940?
8 2. Did the Legislature properly exercise its plenary power when it enacted ESHB 3003,
9 which will amend I-940 after the referendum period elapses and one day after I-940
10 goes into effect?
11 3. If the Legislature’s timing in enacting ESHB 3003 was beyond its plenary power,
should the Court uphold I-940 and void ESHB 3003 rather than send both to the
12 ballot?

13 **IV. EVIDENCE RELIED UPON**

14 This opposition relies on the papers and pleadings filed with this Court.

15 **V. ARGUMENT AND AUTHORITIES**

16 **A. The Legislature Enacted I-940 Pursuant to the Proper Constitutional Procedure
17 Available to Address Initiatives.**

18 Eyman correctly notes that Article II, §1 of the State Constitution sets out three options
19 for the Legislature when presented with a certified initiative. Motion at 4. He is wrong,
20 however, in arguing the Legislature did not follow one of these options.

21 Article II, §1 sets out three options for the Legislature when presented with an initiative:
22 (1) to enact the initiative without change or amendment at the same session, (2) to reject the
23 initiative or take no action, which has the effect of sending the initiative to the ballot, or (3) to
24 reject the initiative and propose a different measure dealing with the same subject and send both
25 measures to the ballot. Const. art. II, §1(a). The Legislature used the first of these options set
26 out by the Constitution. As Eyman himself notes, I-940 was brought to a vote in both the Senate
27

1 and House and a majority of both houses voted to enact I-940 without change or amendment to
2 the Initiative. *See* First Amended Complaint at 4-7. Indeed, neither Eyman nor Senator Padden
3 can identify a single change to the text of I-940 as enacted by the Legislature. *See* Complaint,
4 Attachment A; Laws of 2018, ch. 11 (certificate of enrollment reflecting enactment of I-940).

5
6 The Legislature's intent to enact I-940 is also demonstrated by the fact that the
7 Legislature adopted I-940 subject to referendum—a constitutional requirement for legislatively-
8 enacted initiatives. Const. art. II, §1(a) (stating if any initiative measure is enacted by the
9 Legislature it shall be subject to referendum); Const. art. II, § 41 (requiring a 90 day period prior
10 to effective dates for laws subject to referendum); First Amended Complaint at 11. Pending a
11 referendum, I-940 is the law in Washington. Const. art. II, § 41; *Washington State Farm Bureau*
12 *Fed'n v. Gregoire*, 162 Wn.2d 284, 291, 174 P.3d 1142 (2007) (referring to an enacted initiative
13 as law). As further evidence that I-940 was enacted separate and apart from ESHB 3003, a
14 different array of Legislators voted in favor of ESHB 3003 than voted for I-940 as written.⁴

15
16 Accordingly, I-940 received the necessary majority in both houses, and was enacted into
17 law exactly as certified by the Secretary of State upon validation of nearly 360,000 registered
18 voters' signatures, as provided by the Constitution.⁵

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22 ⁴ Compare House Roll Call on Final Passage of I-940, *available at*
23 <http://apps2.leg.wa.gov/billsummary/?Year=2017&BillNumber=940&Chamber=House> (last visited April 12, 2018)
24 and Senate Roll Call on Third Reading and Final Passage of I-940, *available at*
25 <http://apps2.leg.wa.gov/billsummary/?Year=2017&BillNumber=940&Chamber=Senate> (last visited April 12, 2018)
26 *with* House Roll Call on Final Passage of ESHB 3003 and Senate Roll Call on Third Reading and Final Passage of
27 ESHB 3003, *available at*
<http://apps2.leg.wa.gov/billsummary?BillNumber=3003&Year=2017&BillNumber=3003&Year=2017> (last visited
April 12, 2018).

⁵ Certificate of Enrollment for I-940 *available at* <http://lawfilesex.leg.wa.gov/biennium/2017-18/Pdf/Initiatives/Initiatives/INITIATIVE%20940.SL.pdf> (last visited April 12, 2018).

1 **B. The Legislature’s Enactment of ESHB 3003 Was a Valid Exercise of Its Plenary**
2 **Power.**

3 1. The Legislature May and Did Amend an Enacted Initiative to The Legislature.

4 As with I-940, there is no dispute that the Legislature did, in fact, vote on and enact
5 ESHB 3003. The Legislature has plenary power to amend or supplement any enacted law. *See*
6 *e.g., Brown v. Owen*, 165 Wn.2d 706, 722, 206 P.3d 310 (2009) (internal citation omitted); *Ajax*
7 *v. Gregory*, 177 Wn. 465, 473-74, 32 P.2d 560 (1934). This plenary power is absolute unless it
8 is expressly or by fair implication limited in the constitution. *E.g., State ex rel. Distilled Spirits*
9 *Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 181-82, 492 P.2d 1012 (1972) (*citing State v. Fair*, 35
10 Wash. 127, 76 P. 731 (1904)).

11 Article II, §1(a) only requires that an initiative to the legislature be enacted or rejected
12 without change or amendment during the same session as in which it was presented. It does not
13 say that an *enacted* initiative cannot be amended by the Legislature. The only limitation on
14 amendment is in the case of an initiative “approved by a majority of the electors voting thereon”
15 in which case the initiative cannot be amended within two years without a supermajority vote.
16 Const. art. II, §§ 1(c), 41. Since I-940 was adopted by the Legislature, and not by a vote of the
17 people (the electors voting thereon), it is not subject to that limitation. *Id.* In other words, the
18 Legislature, consistent with the constitution, is allowed to exercise its plenary power to amend or
19 clarify legislation—including enacted initiatives—on the basis of a simple majority vote.⁶

20 2. ESHB 3003 Is a Valid Enactment Irrespective of the Timing of Passage.

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23 ⁶ Eyman states that if the Legislature adopted I-940 without change, following a referendum period “it cannot be
24 amended within the next two years except by a vote of two thirds of both houses of the legislature,” citing Const. art.
25 II, §1 (c). Motion at 7. This is incorrect. *See* Const. art. II, §1(c) (stating that only measures “approved by a
26 majority of the electors voting thereon” cannot be amended within a period of two years unless amended at any
27 regular or special session of the legislature by a vote of two-thirds of all the members elected to each house).

1 Eyman tries to make hay out of the order in which I-940 and ESHB 3003 were adopted.
2 But this is only a question of sequencing. Substantively what the Legislature did was appropriate
3 and constitutional. ESHB 3003 does not become effective until after I-940 becomes effective,
4 allowing 90 days for the filing of a referendum on I-940. Complaint, Attachment B at 8. There
5 is nothing wrong or unusual about that process. It is a “cardinal rule” that a statute passed to take
6 effect at a later date, like ESHB 3003, applies from the time it becomes operative, not from the
7 time of its passage. *Yelle v. Kramer*, 83 Wn.2d 464, 477-78, 520 P.2d 927 (1974) (stating the
8 “legislature, in the absence of constitutional restraint, may fix any time in the future as the time
9 when a statute shall become effective,” and noting act set to go into effect in the future was “not
10 unique”); *McCleary v. State*, 173 Wn.2d 477, 509-10, 545, 269 P.3d 227 (2012) (considering a
11 number of legislative enactments related to public schools set to become effective on future
12 dates, including Substitute House Bill 2776 which passed in 2010 and set funding formulas for
13 2011-2013 and plans to implement all-day kindergarten by 2018). In short, the Legislature
14 amended I-940 after its effective date. It is no different than had the Legislature come back into
15 special session in June 2018 and adopted ESHB 3003 amending I-940 the day after it goes into
16 effect on June 7, 2018.

19 Eyman also speculates about what the Legislature “desired” and “wanted” on the basis of
20 its timing in passing I-940 and ESHB 3003. *See* Motion at 8, 10. But where, as here, legislative
21 actions are constitutional, acts of the Legislature cannot be undone with speculation as to the
22 Legislature’s intent. *See Washington State Farm Bureau Fed'n*, 162 Wn.2d at 302 (stating that
23 when the “legislature enacts laws, it speaks as the chosen representative of the people,” and that
24 it is not the prerogative or the function of the court to substitute its judgment for that of the
25 legislature) (internal citations omitted). Regardless, what is clear here is that Legislature did *not*
26

1 intend to present ESHB 3003 as an alternative to I-940 on the ballot. Indeed, the State
2 Legislature explicitly considered and rejected an effort to send ESHB 3003 to the ballot. *Infra*
3 pp. 13-14. Rather, ESHB 3003 was adopted to amend and supplement I-940 post-effective date.

4 3. ESHB 3003 Is Lawfully Contingent on Passage of I-940.

5 That ESHB 3003 was conditioned on the passage of I-940 does not affect its validity
6 either. Washington Supreme Court precedent establishes the Legislature’s constitutional power
7 to condition the effectiveness of legislation on a future event. *See, e.g., State v. Storey*, 51 Wash.
8 630, 631-32, 99 P. 878 (1909) (legislation prohibiting livestock running at large contingent on 10
9 private landowners petitioning county commissioner to survey land to determine how much of it
10 was fenced-in); *Brower v. State*, 137 Wn.2d 44, 54-56, 969 P.2d 42 (1998) (stadium financing
11 bill contingent on football team affiliate being contracted to reimburse the State and counties for
12 the cost of the special election referendum held constitutional).

13 The recognized restriction on this power is that the Legislature cannot unlawfully
14 delegate its legislative power to actors on whom the condition depends. *See id.* Unlawful
15 delegation is not an issue here as the conditional act in ESHB 3003 depended on a proper
16 legislative actor—the Legislature, to enact I-940. *See Opinion of the Justices*, 287 Ala. 326, 330-
17 31, 251 So.2d 744 (1971) (the Supreme Court of Alabama holding that an act increasing the
18 excise tax on gasoline made contingent on the adoption of constitutional amendment by the
19 electors was valid). Indeed, the conditional nature of ESHB 3003 establishes that it was not
20 meant, as Eyman alleges, to be an alternative to I-940.

21 4. ESHB 3003 Clarifies and Supplements I-940 to Ensure Practical Application.

22 To the extent it is germane to the Court’s evaluation of the legal validity of ESHB 3003,
23 Eyman’s descriptions of ESHB 3003’s future changes to I-940 are inaccurate. ESHB 3003 will
24

1 preserve the policy goals and objectives of I-940 to decrease the use of deadly force by law
2 enforcement officers, to address racial bias and lack of mental health training that impact law
3 enforcement-public interactions, and to increase transparency and community collaboration on
4 the issue of use of force. *See* Complaint, Attachment B. Eyman does not argue otherwise. *See*
5 Motion. Instead, he argues inaccurately that ESHB 3003 “substantially relaxed” the first aid
6 requirements of I-940. *Id.* at 3. In reality, ESHB 3003 will simply clarify the scope of the duty
7 to render or facilitate first aid, making clear that it does not convert police officers into EMS
8 technicians or firefighters, proactively responding to people in medical jeopardy wherever they
9 are found. Rather, the duty pertains to situations when police officers control a scene and/or
10 themselves used deadly force, causing grave injury. *See* Complaint, Attachment B at 3. ESHB
11 3003 will maintain the clear directive for law enforcement officials to “provide or facilitate first
12 aid” when it is safe for them to do so. *Id.* And the revisions to I-940 will set forth concrete best
13 practices to secure a scene so that first aid is provided as soon as possible. *Id.* Additionally,
14 ESHB 3003’s clarification that rendering first aid is a “solemn” rather than “paramount” duty as
15 stated in I-940 will preserve I-940’s message that saving lives should be a priority. *Id.*

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18 Eyman also inaccurately argues that training requirements in I-940 were “eliminated” by
19 ESHB 3003. Motion at 3. I-940 requires law enforcement to establish a curriculum to train
20 officers to use deadly force “only when unavoidable and as a last resort.” Complaint,
21 Attachment A at 4. ESHB 3003 will not eliminate this goal. Rather, ESHB 3003 will set out
22 concrete, measurable training directives for officers to learn how to use deadly force as a last
23 resort by emphasizing that “de-escalation tactics and less lethal alternatives are part of the
24 decision-making process leading up to the consideration of” deadly force. Complaint,
25 Attachment B at 2.
26

1 Finally, while Eyman is correct that ESHB 3003 will remove the “subjective good faith”
2 test in I-940 to determine if an officer could be prosecuted for use of deadly force, Motion at 4,
3 he over-emphasizes this as a “significant change.” *Id.* In operation, even if an officer acted in
4 subjective good faith, the I-940 standard for good faith use of deadly force could not be satisfied
5 unless the officer also acted in a manner that a reasonable officer would find *objectively*
6 reasonable. *See* Complaint, Attachment B at 5. By retaining the “objective good faith” standard,
7 ESHB 3003 will maintain the impactful change adopted by I-940 to evaluate an officer’s use of
8 deadly force, *i.e.* removing the malice requirement and requiring an objective review of the use
9 of deadly force. *See id.* The amendments set out in ESHB 3003 did not constitute a rejection of
10 I-940, but merely refined and clarified its provisions in specific areas. ESHB 3003 should be
11 upheld as a lawful expression of the Legislature’s plenary power to amend laws after they take
12 effect.
13

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15 **C. Should the Court Conclude the Enactment of ESHB 3003 went beyond the**
16 **Legislature’s Plenary Power, the Proper Remedy is to Uphold I-940 and Void**
17 **the Legislative Bill.**

18 The Legislature followed a clearly delineated constitutional process to enact I-940. The
19 crux of the case is whether the Legislature’s enactment of ESHB 3003 was valid and, if not, what
20 is the remedy. As noted above, the enactment was valid. If the Court concludes, however, that
21 the Legislature exceeded the scope of its plenary power when it enacted ESHB 3003, the proper
22 remedy is to uphold I-940 and to void ESHB 3003. Eyman erroneously asserts *Department of*
23 *Revenue v. Hoppe*, 82 Wn.2d 549, 512 P.2d 1094 (1973) (“*Hoppe*”), supports his requested
24 remedy to send both measures to the ballot. Motion at 6. Yet that case actually illustrates that I-
25 904 should be upheld, rather than sent to the ballot.
26

1 *Hoppe* addressed an initiative certified to the Legislature addressing tax levies. 82
2 Wn.2d at 550-51. Unlike here, in *Hoppe* the Legislature took no action on the initiative which
3 had the effect of submitting it to the voters, who passed it. 82 Wn.2d at 557. In a later
4 extraordinary session that year, the Legislature passed a bill which also addressed caps on tax
5 levies. *Id.* at 551. The trial court in *Hoppe* concluded that the initiative and legislative bill were
6 void because they addressed the same subject and thus should have been sent to the ballot
7 together. *Id.* at 557. The Supreme Court disagreed, and instead concluded that insofar as the
8 legislative bill conflicted with the initiative with respect to the aggregate levy cap established for
9 a particular year, the initiative prevailed and that aspect of the legislative bill was void. *Id.* at
10 557-58. The Supreme Court further explained it would not hold the initiative void because to do
11 so “would turn the reserved initiative power of the people into a futile exercise.” *Id.* at 557.
12 Here, upholding I-940 preserves the people’s exercise of their initiative power, and the
13 Legislature’s exercise of its power to enact the Initiative. Voiding a properly enacted initiative
14 and then sending its future into doubt by placing it on the ballot neither is contemplated by the
15 constitution, nor a lawful outcome. It is Eyman who is creating a “fourth way” to handle a duly
16 certified initiative to the legislature (to judicially repeal an initiative enacted, intact by the
17 legislature), and his request should be rejected.

20 Eyman also submitted to the Court the Attorney General’s 1971 No. 5 Opinion.
21 Complaint, Attachment E. This opinion considered but did not expressly conclude that the
22 Legislature’s plenary power does not include amending the language of an enacted initiative to
23 the legislature after the required referendum period has passed and the initiative has taken effect.
24 *See* AGO 1971 No. 5 at *4-6. The opinion relies on a Maine case, *Farris ex rel. Dorsky v. Goss*,

1 143 Me. 227, 60 A.2d 908 (1948). *Id.* Yet *Farris* presents distinguishable facts and policy
2 concerns than are presented here. In *Farris*, the Legislature submitted an initiative to the voters,
3 but prior to the vote on the initiative the Legislature also enacted a legislative bill, addressing the
4 same subject matter but “inconsistent with [the initiative] in essential respects.” 143 Me. at 233.
5
6 The *Farris* court concluded both measures must be submitted to the voters because the
7 legislative bill was a ‘competing measure’ to the initiative. *Id.* As in *Hoppe*, *Farris* sought to
8 maintain the validity of the electorate’s vote on an initiative once the Legislature submitted an
9 initiative to the voters. *Hoppe*, 82 Wn.2d at 557; *Farris*, 143 Me. at 233. But unlike the
10 initiative in *Farris*, I-940 was enacted by the Legislature, not sent to the ballot, so ESHB 3003
11 did not invalidate or strip away a right of the people to an upcoming vote on I-940 the way the
12 bill in *Farris* did. *Id.*; see also *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183,
13 238, 11 P.3d 762 (2000), as amended (Nov. 27, 2000), opinion corrected, 27 P.3d 608 (Wash.
14 2001) (stating that “[h]aving surrendered legislative power with adoption of the constitution, the
15 people did not retain inherent authority to approve state legislation, and the initiative and
16 referendum powers are not the source of inherent authority either.”). Moreover, as was stated
17 above, ESHB 3003 is not an “inconsistent” or “competing” measure to I-940, but offered
18 modifications complementary to I-940 to ensure the initiative could be successfully implemented
19 by law enforcement in the field. *Supra* pp. 9-11.
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22 Confusingly, Eyman argues that the true intent of the Legislature was to pass ESHB 3003
23 as an alternative to I-940, rather than as an amendment, and suggests that this legislative intent
24 requires both measures go to the ballot. See Motion at 8. But the Legislature expressly opted not
25 to reject I-940 and send it along with an alternative measure to the ballot. Prior to the adoption
26

1 of either law, Senator Padden and Representative Jay Robert Rodne each introduced a full
2 “striker bill” in each house. *See* Proposed SHB 3003 Amendment 1422, Proposed ESHB 3003
3 Proposed Amendment 956.⁷ Each striker bill incorporated all of I-940 and ESHB 3003’s
4 amendments to serve as an alternative to go on the ballot with I-940. *Id.* Neither amendment
5 passed. *Id.*

6
7 Moreover, to grant Eyman’s request to send I-940 and ESHB 3003 to the ballot as
8 alternatives would require this court to rewrite ESHB 3003 as a true alternative to I-940. As
9 enacted ESHB 3003 is not a stand-alone bill, but a true amendment and supplement to I-940—
10 that is one could not read ESHB 3003 by itself without the enactment of I-940 and have it
11 constitute a coherent piece of legislation. For example, section 2 of ESHB 3003 states “RCW
12 36.28A.--- and 2018 c . . . s 6 (Initiative Measure 940) are each amended to read as follows. . . ”
13 Complaint, Attachment B at 3. Sections throughout ESHB 3003 amend provisions of I-940 this
14 way and ESHB 3003 expressly states it is contingent on I-940 taking effect barring a referendum.
15 *Id.* at 2-6, 8. When the Legislature truly proposes an alternative to an initiative, both the original
16 initiative and the alternative are placed on the ballot in a specific format that allows voters to
17 select first, whether they want to change the law and second, which of the two alternative
18 measures they prefer. Const. art. II, §1 (a). Only one, not both, can be enacted. Placing ESHB
19 3003 on the ballot would not offer the voters a viable alternative to select instead of I-940, as
20 intended by Article II, §1(a). *See Kreidler v. Eikenberry*, 111 Wn.2d 828, 841, 766 P.2d 438
21 (1989) (stating the alternative to Initiative 97 to establish a statewide hazardous waste cleanup
22
23

24
25 ⁷ Proposed SHB 3003 Amendment 1422, *available at* <http://lawfilesex.leg.wa.gov/biennium/2017-18/Pdf/Amendments/House/3003-S%20AMH%20RODN%20H5178.1.pdf> (last visited April 12, 2018); Proposed
26 ESHB 3003 Proposed Amendment 956, *available at* <http://lawfilesex.leg.wa.gov/biennium/2017-18/Pdf/Amendments/Senate/3003-S.E%20AMS%20PADD%20S6202.1.pdf> (last visited April 12, 2018).

1 program proposed by the Legislature was a different measure that “comprehensively
2 address[ed]” the State’s waste problem, with some provisions that were essentially the same and
3 many that were not). Eyman implicitly recognizes this problem by asking this Court to re-draft
4 ESHB 3003 into the form of an alternative. *See* Motion at 9-10. But Eyman has presented no
5 authority, and De-Escalate is aware of none, that would permit the Court to draft a piece of
6 legislation refitting ESHB 3003 as a stand-alone alternative legislative proposal.
7

8 The Court should not undermine the exercise of the people’s and the Legislature’s
9 constitutional power by placing I-940 on the ballot. Washington courts have agreed that Article
10 II, §1 is to be construed liberally so that the legislative rights of the people may be rendered
11 effective. *See, e.g., Andrews v. Munro*, 102 Wn.2d 761, 767, 689 P.2d 399 (1984) (internal
12 citation and quotation omitted). Here, nearly 360,000 voters supported and signed the petition in
13 favor of submitting I-940 to the Legislature. First Amended Complaint at 4. Heeding that
14 showing of support by Washington voters and expressing its own policy preferences, the
15 Legislature enacted I-940. This process effectuated the legislative rights of the people and those
16 rights are further maintained by the available option of referendum. As stated by United States
17 Congressman John E. Raker when states including Washington were adopting their initiative and
18 referendum provisions,
19

20
21 The initiative, referendum, and recall are closely connected parts of the same
22 political theory. The people elect representatives, if these representatives don’t
23 carry out the will of the people, then the people initiate legislation. . . .If their
24 representatives transgress the will of the people, then the people, through the
25 referendum repeal the laws which their representatives have made. . . . If [the
26 representatives] do violence to the will of the people as expressed in their laws,
27 then the people reserve the right to recall the interpreters as well as the makers or
executives of law. . . . This political theory constitutes democracy in action.

1 John E. Raker, Congressional Record, 47 (May 22, 1911), p. 67 of Appendix. The people
2 expressed a desire to enact I-940 through the submission of signatures; the legislature
3 heeded that preference and adopted I-940 as submitted. Should the people conclude they
4 do not wish for I-940 to be enacted, they retain the right to void the law with a
5 referendum. Barring the people's election to do so, the Court should uphold I-940.
6

7 VI. CONCLUSION

8 The Legislature acted constitutionally when it enacted I-940 and ESHB 3003. The valid
9 procedural actions in enacting ESHB 3003 as well as its substance confirm, contrary to Eyman's
10 contentions, the Legislature did not reject I-940. Placing I-940 and ESHB 3003 on the ballot is
11 contrary to the constitutional initiative process, without precedent, wholly impractical, and will
12 set back changes to this State's deadly force framework that nearly 360,000 voters supported and
13 the Legislature secured by a constitutional majority vote. De-Escalate respectfully requests that
14 this Court deny Eyman's motion for summary judgment and uphold the enactment of I-940 and
15 ESHB 3003 and instead grant De-Escalate's motion. Or, if the Court concludes that the passage
16 of ESHB 3003 exceeded the Legislature's plenary power, De-Escalate requests that the Court
17 uphold I-940 and void ESHB 3003 so that the Legislature may consider it or further amendments
18 to I-940 in due course.
19

20
21 DATED this 12th day of April, 2018.
22

23 PACIFICA LAW GROUP LLP

24
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26 Paul J. Lawrence, WSBA #13557
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27 DE-ESCALATE WASHINGTON'S CROSS-MOTION FOR
SUMMARY JUDGMENT AND RESPONSE TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT - 15

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1 **CERTIFICATE OF SERVICE**

2 I am and at all times hereinafter mentioned was a citizen of the United States, a resident
3 of the State of Washington, over the age of 21 years and not a party to this action. On the 12th
4 day of April, 2018, I caused to be served via e-mail service agreement a true copy of the
5 foregoing document upon:

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

23 DATED this 12th day of April, 2018.

24 *s/ Tricia O’Konek*
25 _____
26 Tricia O’Konek
27 Legal Assistant