

1 No Hearing Set
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3 Date:
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8 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

9 KIM WYMAN, in her official capacity as
10 Secretary of State of the State of
11 Washington,
12
13 Plaintiff,

14 v.

15 GOVERNOR JAY INSLEE, in his official
16 capacity as Governor of the State of
17 Washington,
18 Defendant.

NO.

**PETITION FOR JUDICIAL
DETERMINATION REGARDING
ORDER OF FILING OF ACTS BY
SECRETARY OF STATE**

Petition for clarification under
RCW 44.20.020 Regarding Order of
Filing of Acts by Secretary of State

NOTICE TO CLERK:
Calendaring priority per
RCW Ch. 44.20

19 **I. INTRODUCTION AND RELIEF REQUESTED**

20 Plaintiff Kim Wyman, Secretary of State for the State of Washington, brings this
21 expedited legal action for clarification under RCW 44.20.020 about the order in which her office
22 should number and file two acts—Engrossed Substitute House Bill 1336 and Second Substitute
23 Senate Bill 5383—both of which were signed simultaneously by the Governor and thus became
24 law at precisely the same time. RCW 44.20.020 provides that “Whenever any bill shall become
25 a law the secretary of state shall number such bill *in the order in which it became a law . . .*”
26 RCW 44.20.020 (emphasis added). A bill becomes law when the Governor signs a bill, or the
time to sign or veto a bill expires. Here, the Governor signed the two bills at the same time, one
bill with his left hand and one bill with his right hand. The bills thus became law at precisely the

1 same moment, leaving the Secretary without a basis under the law to determine the order in
2 which the bills should be filed.

3 The order in which the Secretary of State files the bills may have a substantive impact on
4 the validity of certain provisions in each bill. RCW 1.12.025 provides that, where two or more
5 acts amend the same section of the session laws, each amendment without reference to the others,
6 each shall be given effect “to the extent that the amendments do not conflict in purpose,” and
7 otherwise, “the act last filed in the office of the secretary of state in point of time shall control.”
8 Advocates of the bills contend that parts of each act conflict in language and purpose and that
9 the filing order may thus substantively impact the validity of parts of each law.

10 Secretary Wyman views the act of determining the filing order of the acts as exceeding
11 her ministerial authority as filing officer for the acts under RCW 44.20.020. Secretary Wyman
12 thus seeks clarification from this Court about whether she has statutory or constitutional
13 authority to determine the numbering for each bill and, if not, for an order directing the order in
14 which the acts should be numbered and filed.

15 II. THE PARTIES

16 1. Kim Wyman is the Secretary of State for the State of Washington. The Office of
17 the Secretary of State is responsible under RCW 44.20.020 for numbering enacted bills in the
18 order each bill “became a law.”

19 2. Defendant Governor Jay Inslee is the Governor for the State of Washington. The
20 Governor is responsible for signing bills into law, or exercising the Governor’s constitutional
21 right to veto a bill in full or in part. When the Governor signs or vetoes a bill, the Governor is
22 acting in a legislative rather than an executive capacity.

23 III. JURISDICTION AND VENUE

24 3. This Court has jurisdiction over this dispute under article IV, section 6 of the
25 Washington Constitution, RCW 7.24.020 and RCW 4.12.010.

26 4. Venue is proper in this Court under RCW 4.12.020.

1 **IV. STATEMENT OF THE CASE**

2 5. In April 2021, the Washington Legislature passed two bills relevant here. The
3 Legislature passed 2SSB 5383, which was signed by the Speaker of the House and President of
4 the Senate on April 24, 2021. The Legislature also passed ESHB 1336, signed by the Speaker of
5 the House on April 24, 2021, and the President of the Senate on April 25, 2021. Both acts amend
6 RCW 54.16.330 and RCW 53.08.370, and neither act references the other act. Both acts were
7 presented to the Governor on April 26, 2021.

8 6. The Governor held a televised bill signing ceremony on May 13, 2021. TVW,
9 *Governor Inslee Bill Signing*, <https://www.tvw.org/watch/?eventID=2021051111>. A
10 memorandum from the Governor’s Executive Director of Legislative Affairs identified 20 bills
11 on which the Governor would take action.¹ Declaration of Mark Neary (Neary Decl.) at ¶2. At
12 the televised bill signing ceremony, the Governor signed 18 bills; specifically, he acted on every
13 bill listed in the memorandum except 2SSB 5383 and ESHB 1336. The Governor’s action on
14 these bills was not televised.

15 7. On May 13, 2021, the Office of the Secretary of State received certifications of
16 enrollment for 2SSB 5383 and ESHB 1336 that had been signed by the Governor. Neary Decl.
17 at ¶3. In the top right hand corner, the Governor’s staff had written “11:33am,” representing the
18 time at which it was signed. *Id.* at Attachment B. Both certifications were received at the same
19 time, in a single stack of paper. Neary Decl. at ¶4. The certification for 2SSB 5383 was on top,
20 and consequently, next to the date stamp, staff of the Office of the Secretary of State noted
21 “12:15:10 p.m.” on the certification for 2SSB 5383 and “12:15:30 p.m.” on the certification for
22 ESHB 1336. *Id.* The Office of the Secretary of State also received an unsigned two-sentence
23 statement that said, “These two bills were signed simultaneously. The order in the attached
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26 ¹ SHB 1016; E2SHB 1069; SHB 1155; 2SHB 1168; SHB 1193; E2SHB 1287; ESHB 1336; E2SHB 1365;
E2SHB 1477; SHB 1532; SSB 5151; SB 5225; ESSB 5235; SB 5299; SB 5345; 2SSB 5368; 2SSB 5383;
E2SSB 5399; ESSB 5405; ESB 5476

1 transmittal does not imply the order in which they should be considered and received.” Neary
2 Decl. at ¶5 & Attachment C.

3 8. Assistant Secretary of State Mark Neary contacted the Governor’s Chief of Staff
4 for clarification of the order in which the laws were signed. Neary Decl. at ¶6. The Governor’s
5 Chief of Staff responded that the Governor had signed both bills simultaneously, one with each
6 hand. *Id.*

7 9. RCW Ch. 44.20 contemplates expedited numbering of bills upon filing with the
8 Secretary of State. RCW 44.20.030 requires that the statute law committee have available copies
9 of acts “within ten days after” they are filed with Secretary of State. The Secretary’s numbering
10 is necessary for the code reviser to complete its ministerial duty to “make the proper headings
11 and index of such acts or laws” and for the statute law committee to meet its deadline to complete
12 certain tasks within 75 days of adjournment of the legislative session. RCW 44.20.050.

13 10. Under RCW 44.20.020,² the Secretary of State is assigned the ministerial duty of
14 numbering each bill “in the order in which it became a law[.]” Under the Washington
15 Constitution, if no referendum is filed,³ a bill becomes law either when it is signed by the
16 Governor or if the Governor takes no action within a specified time. Const. art. III, § 12. The
17 order assigned by the Secretary of State potentially has legal effect. If two or more acts amend
18 the same section of the Revised Code of Washington and there is a conflict in purpose, “the act
19 last filed in the office of the secretary of state in point of time[] shall control.” RCW 1.12.025(1).

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22 ² The full text of RCW 44.20.020 is as follows:

23 Whenever any bill shall become a law the secretary of state shall number such bill in the
24 order in which it became a law, commencing with each session of the legislature, and shall
25 forthwith certify and deliver three copies of such bill to the statute law committee. Such number
26 shall be in Arabic numerals, and shall be the chapter number of the act when published. A citation
to the chapter number and year of the session laws heretofore or hereafter published shall be a
sufficient reference to the act so designated.

³ When a referendum is filed, a bill does not become law until a later date. *Wynand v. Dep’t of Labor & Indus.*, 21 Wn.2d 805, 809-10, 153 P.2d 302 (1944) (interpreting article II, section 1(d)).

1 11. The Secretary’s duty in numbering and filing bills is purely ministerial. A duty is
2 “ministerial” when “the law prescribes and defines the duty to be performed with such precision
3 and certainty *as to leave nothing* to the exercise of discretion or judgment.” *Goldmark v.*
4 *McKenna*, 172 Wn.2d 568, 588, 259 P.3d 1095 (2011) (emphasis in original and citations
5 omitted). Neither the Washington Constitution nor any statute gives the Secretary authority to
6 exercise judgment or discretion in determining the order in which a bill is numbered and filed.
7 Rather, RCW 44.20.020 prescribes the Secretary’s duties in numbering and filing bills with such
8 precision and certainty as to leave nothing to the exercise of discretion or judgment. The
9 Secretary relies on the Governor’s representation of the date and time that a bill was signed to
10 determine the order in which to number bills.

11 12. Based on the Governor’s representation that he simultaneously signed 2SSB 5383
12 and ESHB 1336, the Secretary cannot fulfill her ministerial duty. Based on the Governor’s
13 representation, there is no apparent “order in which” each bill “became a law.” RCW 44.20.020.
14 A determination of which bill should be numbered first requires a discretionary exercise of
15 judgment that exceeds the scope of the Secretary’s ministerial duty.

16 13. The Secretary therefore requests a judicial determination regarding the order in
17 which 2SSB 5383 and ESHB 1336 should be numbered and filed for purposes of
18 RCW 44.20.020, or to clarify the method by which the Secretary should make this determination.

19 **V. SECRETARY’S PRAYER FOR EXPEDITED RELIEF**

20 14. The Secretary seeks expedited clarification of the law in order to fulfill the
21 Secretary’s ministerial duty of promptly numbering 2SSB 5383 and ESHB 1336.

22 RESPECTFULLY SUBMITTED this 18th day of May 2021.

23 ROBERT W. FERGUSON
24 *Attorney General*

25 *s/ Tera M. Heintz*
26 TERA M. HEINTZ, WSBA #54921
 KARL SMITH, WSBA # 41988
 Deputy Solicitors General

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1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
360-664-0869
tera.heintz@atg.wa.gov
karl.smith@atg.wa.gov