

Referendum Measure No. 23

BALLOT TITLE

AN ACT relating to grand juries; providing for the appointment of an attorney, independent of the prosecuting attorney to assist and advise the grand jury; and amending section 2032 of Remington's Revised Statutes.

HOUSE BILL NO. 320

AN ACT relating to prosecution for public offenses, and amending section 14 of chapter 28 of the Laws of 1891 (section 2032 of Remington's Revised Statutes).

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 14 of chapter 28 of the Laws of 1891 (section 2032 of Remington's Revised Statutes) be amended to read as follows:

Section 14. The Superior Court in each county shall appoint an attorney to attend on the grand jury for the

purpose of examining witnesses and giving it such advice as it may ask. The Court shall provide a reasonable attorney's fee for such services to be paid from the county current expense fund. Such attorney shall not be subject in any way to the authority of the Prosecuting Attorney and in cases where such an attorney is appointed, the Prosecuting Attorney shall have no power to act or intervene.

Passed the House February 24, 1941.

Passed the Senate March 12, 1941.

Approved by the Governor March 21, 1941.

ARGUMENT FOR REFERENDUM MEASURE NO. 23

Referendum No. 23 provides for appointment of an attorney by the Superior Court, to examine witnesses and give advice to grand juries. This examining and advisory power is vested in a disinterested, competent, special attorney appointed by the Court for grand juries, leaving to the prosecutor the right to appear before the grand jury and advise it in cases where he had initiated the proceedings.

Arguments for Referendum 23:

1. Provides an investigation of corruption in government, free from the influence of any political office holder.

2. The Superior Court, which is non-partisan and elected by the people, will appoint the attorney to assist and advise the grand jury.

3. The purpose of this measure is to support and secure honesty in public office. In actual operation it will also give moral and practical support to the prosecuting attorney.

4. The laws of our state provide that the prosecuting attorney shall be the official legal advisor of the other county officials. When a grand jury desires to investigate these other officials, it is often embarrassing to the prosecutor to advise the grand jury in connection with the investigation of these officials whom he has been advising and representing. In all such cases the grand jury and the public would be better served by an independent attorney who has no connection with the officials under investigation.

5. It provides a means to investigate the prosecuting attorney's office, which is impractical under the present laws.

6. The prosecuting attorney, under a separate measure (Referendum 24), retains his power and right to appear and advise the grand jury when he initiates the call for one.

7. When local government becomes extravagant or corrupt, many thousands, even hundreds of thousands of dollars of the taxpayers' money are

wasted. The compensation to the special attorney which the Court is authorized to allow, is trivial in comparison with the large savings to the taxpayer involved in the elimination of such waste by an independent grand jury.

This measure, passed by the 1941 Legislature and now referred to the voters for confirmation, creates a non-partisan and independent grand jury system. Grand juries are usually called to uncover governmental corruption. In the past they have often been ineffective because of the disinclination for one reason or another, of the prosecuting attorney, advisor of the grand jury, to expose corrupt officials with whom he is necessarily closely connected because of his official duties. This measure provides for a disinterested attorney to assist the grand jury. Being appointed by the Court, a non-partisan, elective body, he will be solely responsible to the Court and the People.

This measure provides a necessary means by which our citizens can effectively investigate their government and not be blocked by any political officeholder. It is, therefore, most democratic.

An independent investigation of public office is a wholesome thing. It tends to inspire in the people a respect for their honest officials, and in the officials a respect for the rights of the people. This measure aids the making of impartial investigations.

If the grand jury brings an indictment, the prosecuting attorney is to carry on the prosecution. There is no change in the law in this respect. Stenographic reports of the grand jury hearings will provide the prosecuting attorney the necessary information to prosecute.

This measure affords the People an effective device for governmental reform and restoration of honesty in public office. Every good citizen should vote for it.

JOHN M. CUSTER, Sponsor,
Representative, 36th District;
EDWARD J. REILLY, Speaker,
House of Representatives;
W. R. ORNDORFF, Senator,
Spokane County;
GEORGE C. KINNEAR,
Representative, King County;

CHARLES H. TODD, Representative,
44th District;
MRS. THOMAS E. KEHOE,
Representative, 3rd District;
JOHN R. JONES, Representative,
Okanogan-Douglas Counties;
JOSEPH E. HURLEY, Representative,
Spokane County.

STATE OF WASHINGTON--ss.

Filed in the office of the Secretary of State, June 21, 1941, by John M. Custer, State Representative, 36th District.

BELLE REEVES, Secretary of State.

ARGUMENT AGAINST REFERENDUM MEASURE NO. 23

Chapter 158, Session Laws of the State of Washington (Referendum No. 23) requires the Superior Court of each County to appoint a special attorney at grand jury sessions and provides a reasonable attorney fee for his services. Also, said special attorney shall not be subject in any way to the authority of the Prosecuting Attorney and said Prosecuting Attorney shall have no power to act or intervene.

The law should be repealed for the following reasons: A. It is completely antagonistic to the principles of the constitution of the State of Washington and of the United States, in that it violates the important fundamental Democratic principle that there shall be a complete segregation of the three branches of government, namely the legislative, executive and the judicial. By requiring the Superior Court of each county to appoint a special attorney at grand jury sessions the law merges the executive or administrative duties of the Prosecuting Attorneys into the judicial, because the appointment by the Court, of a "Special Attorney" permits the court complete control over the activities of said attorney in presenting evidence to the Grand Jury, and permits the Court through such attorney, to have a hand in preparing the prosecuting evidence.

The Court thereby becomes the prosecutor in preparation of the case for the prosecution and thereafter sits as judge to consider the evidence in cases prepared by himself or under his directions to the "Special Attorney." Thus the administrative duties of the Prosecuting Attorney are merged with the judicial duties of the Court. Such Courts under such conditions are bound to be prejudiced, therein defeating the democratic principle of segregation of the three branches of government.

B. The law imposes additional unnecessary expense to taxpayers. It provides for reasonable attorney's

fees for the "Special Attorney." The duly elected Prosecuting Attorney in each county is paid from tax funds. "Special Attorneys" appointed by the Court **must be paid in addition, under the law, thereby increasing expenses to taxpayers.**

C. The law, by stripping the Prosecuting Attorney of all power or authority over the "Special Attorney," deprives the Prosecuting Attorney from carrying out one of the fundamental duties of his office. The Prosecuting Attorney in each county is elected by the people, and is therefore responsible to the people. In addition to prosecuting offenders, the Prosecuting Attorney of a county has a second fundamental duty of protecting the rights of the innocent in such county.

How can the duly elected Prosecuting Attorney charged with protecting the rights and property of the citizens of a county do so when he "shall have no power to act or intervene" and when the "Special Attorney" shall "not be subject in any way to the authority of the Prosecuting Attorney"? Nothing could be more ridiculous than the faultily constructed Chapter No. 158, Session Laws, which was imposed upon the citizens of this state for the purpose of trying to control grand jury procedure, the reasons for which are known only to the sponsors of said law.

Chapter 158, Session Laws of the State of Washington should be **repealed**. Citizens of this state should vote **against** retaining the law on the statute books.

WASHINGTON STATE REFERENDUM
COMMITTEE,
By Tom Mulholland.

STATE OF WASHINGTON—ss.

Filed in the office of the Secretary of State, June 21, 1941, by Tom Mulholland, Washington State Referendum Committee.
BELLE REEVES,
Secretary of State.