

HB 2529 and SB 6503, to ban the people from voting on initiatives and referendums in odd-numbered years

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Key Findings

1. **House Bill 2529 and Senate Bill 6503 would ban the people's right to vote on initiatives and referendums in odd-numbered years.**
2. **Bill sponsors say they want to ban the people's right to vote on initiatives and referendums in odd-numbered years because of lower voter turnout.**
3. **The bills, however, would still allow local government officials to hold special elections to raise taxes without restriction in all years.**
4. **It is difficult to see why it would be acceptable to allow tax increases to appear on the ballot in odd-numbered years while denying Washingtonians their constitutional right to vote on initiatives and referendums in those same years.**
5. **Testifying on the proposal, Secretary Wyman noted the bills would limit the people's right of initiative and referendum and could add to voter fatigue by causing exceedingly long ballots.**

Introduction

Two bills have been proposed that would prohibit the right of the people to vote on initiatives and referendums in odd-numbered years. Although House Bill 2529 and Senate Bill 6503 would ban the people's right to vote on initiatives and referendums in odd-numbered years, they still would allow local government officials to hold special elections to raise taxes without restriction in all years.¹

The two bills have prompted considerable public concern about their fairness and legality. Among those testifying in opposition at a public hearing was Secretary of State Kim Wyman.²

Secretary Wyman noted the bills would limit the people's right of initiative and referendum and could add to voter fatigue by causing exceedingly long ballots. As an example, she pointed to the 1972 voters' guide (the last election before the 1973 law allowing odd-year elections) exceeded 100 pages and covered 24 ballot measures.³

Concerns about HB 2529 and SB 6503

The House Committee on State Government and Tribal Relations held a public

1 "HB 2529 - Concerning odd-numbered year elections," Washington State Legislature, introduced January 15, 2020, at <https://app.leg.wa.gov/bills/summary/BillNumber=2529&Year=2019&Initiative=false>, and "SB 6503 - Concerning odd-numbered year elections," Washington State Legislature, introduced January 20, 2020, at <https://app.leg.wa.gov/bills/summary/BillNumber=6503&Chamber=Senate&Year=2019>.

2 "House State Government and Tribal Relations Public Hearing on HB 2529," January 21, 2020, TVW, timestamp 42:52, at <https://www.tvw.org/watch/?clientID=9375922947&eventID=2020011230&startStreamAt=2572&autoStartStream=true>

3 "Official Voters Pamphlet," November 7, 1972, Washington Secretary of State, at https://www.sos.wa.gov/_assets/elections/voters%20pamphlet%201972.pdf

hearing on HB 2529 on January 22. According to the bill report (in-part):⁴

“The statewide general election in odd-numbered years is eliminated. Elections are permitted in odd-numbered years only for . . . special elections called for any purpose authorized by law . . .”

Before the public comment part of the hearing on HB 2529, the committee heard a presentation by Zoltan Hajnal, a professor of political science at the University of California at San Diego. The professor reported using even-numbered year elections:⁵

- “Increases the liberal vote share by 4%” and;
- “Increases the Democratic vote share by 4%.”

The political leanings of those who do or do not choose to exercise their right to vote in odd years should not be used to undermine the constitutionally protected right to propose ballot measures.

The Washington state constitution provides:⁶

- **“ARTICLE 1, SECTION 34 SAME.** The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: *Provided*, That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people.”

4 “HB 2529 – House Bill Analysis,” Washington State Legislature, January 22, 2020, at <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/House/2529%20HBA%20SGOV%2020.pdf?q=20200122203230>

5 “Testing the Impact of On Cycle Elections,” by Professor Zoltan Hajnal, January 21, 2020 House State Government and Tribal Relations Work Session, at <https://app.leg.wa.gov/committeeschedules/Home/Document/209890#toolbar=0&navpanes=0>

6 “Washington State Constitution,” Washington State Legislature, at <http://leg.wa.gov/CodeReviser/Pages/WAConstitution.aspx>

- **“ARTICLE 2, SECTION 1 LEGISLATIVE POWERS, WHERE VESTED.** The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature.”

Allowing votes on referendums

A referendum is filed when the people try to repeal a bill adopted by the Legislature. These act like a people’s veto of a law. A question came up during the public hearing on HB 2529 about whether the bill would be more acceptable if the proposed ban on voting on referendums during odd years were removed. While this would be less constitutionally suspect, due to the Legislature’s continued abuse of the emergency clause to deny the right of referendum, this would not be a meaningful exemption to the odd-year ban unless citizens also maintained their right to vote on initiatives in odd-numbered years.⁷

Here are some of the ballot measures and policy proposals that would have been prohibited if HB 2529 or SB6503 had been law (all odd-year elections):⁸

- Referendum 88: Legalizing affirmative action (2019)
- Initiative 976: Lowering car tab taxes (2019)
- Initiative 1401: Regulating animal trafficking (2015)

7 “Should it be easy to declare a referendum-killing ‘emergency’?,” by Jason Mercier, blogpost, Washington Policy Center, March 7, 2019, at <https://www.washingtonpolicy.org/publications/detail/should-it-be-easy-to-declare-a-referendum-killing-emergency>

8 “Election Results and Voters’ Pamphlets,” Washington Secretary of State, accessed on January 21, 2020 at <https://www.sos.wa.gov/elections/research/election-results-and-voters-pamphlets.aspx>

- Initiative 1164: Long-term care (2011)
- Initiative 1183: Legalizing private liquor sales (2011)
- Senate Joint Resolution 8206: Enhanced rainy-day account (2011)
- Referendum 71: Legalizing domestic partners (2009)
- Senate Joint Resolution 8206: Creating rainy-day account (2007)
- House Joint Resolution 4204: Allowing simple majority for school levies (2007)
- Initiative 900: Allowing performance audits of public agencies (2005)
- Initiative 901: Prohibiting smoking indoors (2005)
- Initiative 747: Limiting yearly property tax increases (2001)
- Initiative 773: Increasing tobacco taxes (2001)
- Initiative 775: Unionize in-home care workers (2001)

limits the opportunity for voters to participate in the governance of their state during those years.

Conclusion

Bill sponsors say they want to ban the people's right to vote on initiatives and referendums in odd-numbered years because of lower voter turnout. However, HB 2529 and SB 6503 would still allow local governments to hold special elections in odd-numbered years to increase tax levies.

It is difficult to see why it would be acceptable to allow tax increases to appear on the ballot in odd-numbered years while denying Washingtonians their constitutional right to vote on initiatives and referendums in those same years.

With Washington being an all vote-by-mail state with prepaid postage and same day registration, the concerns expressed regarding voter turnout are less about access and more about combating apathy. Prohibiting the right of initiative and referendum in odd-years does nothing to address this problem and instead

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Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body

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