



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Administration Division
PO Box 40100 • Olympia, WA 98504-0100 • (360) 753-6200

February 12, 2019

Open letter to Washington's sheriffs and police chiefs refusing to enforce Initiative 1639:

In November 2018, Washingtonians overwhelmingly adopted Initiative 1639.

Numerous sheriffs and police chiefs have stated that they will not implement or enforce the initiative. I want to share my thoughts on this important issue, which affects both the safety of our communities and respect for the rule of law.

Like all laws passed by the people of Washington and their representatives, Initiative 1639 is presumed constitutional. No court has ruled that this initiative is unconstitutional.

I will defend Initiative 1639 against any legal challenge. My office defeated the legal challenge to the previous gun safety initiative passed by the people, and I am confident we will defeat any constitutional challenge to Initiative 1639 as well. Local law enforcement officials are entitled to their opinions about the constitutionality of any law, but those personal views do not absolve us of our duty to enforce Washington laws and protect the public.

I would like to focus on one component of Initiative 1639 in which you play a vital role, and have a legal obligation. Effective July 1, Initiative 1639 requires enhanced background checks for the purchase of semiautomatic assault rifles, which are identical to the enhanced background checks currently required for all handgun purchases in Washington state. Just like handgun purchases, local law enforcement officials are required to perform these background checks.

Local law enforcement has been performing these enhanced background checks for all handgun purchases in Washington state for many years. These enhanced background checks keep guns out of the hands of dangerous individuals who lawfully cannot own firearms because of a mental illness or criminal record. As far as I know, no Washington sheriff or police chief has refused to perform these enhanced background checks for handguns. Why refuse to perform them for semiautomatic assault rifles?

I am deeply concerned that the failure of local law enforcement to perform Initiative 1639's background check requirement will jeopardize public safety in our state by allowing the sale of semiautomatic assault rifles to dangerous individuals not lawfully allowed to own a gun.

State law provides immunity to local law enforcement officers who run these checks "in good faith." However, in the event a police chief or sheriff refuses to perform the background check required by Initiative 1639, they could be held liable if there is a sale or transfer of a firearm to a dangerous individual prohibited from possessing a firearm and that individual uses that firearm to do harm. In short, the taxpayers of your city or county assume the financial risk of your decision to impose your personal views over the law.

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Outside your legal obligation to perform the background checks, you have discretion, of course, to prioritize your resources. This is a trust placed on you by the Washingtonians you serve. Enforcement discretion, however, cannot subvert the rule of law. All Washingtonians, including those of us in government, are equally subject to the law.

Analogies to marijuana and immigration law enforcement are misplaced. This is not a situation where the federal government is trying to force the state to enforce federal laws. Rather, Initiative 1639 was submitted to the people of Washington and was adopted as state law by nearly 60% of the people. No action by a city council or county commission can change this state law or the responsibilities and duties that the law vests in Washington's law enforcement agencies.

I am personally deeply opposed to the death penalty, and have maintained reservations about its constitutionality for many years – but my personal feelings about the death penalty did not impact my duties as Attorney General. Last October, our State Supreme Court unanimously ruled in *State v. Gregory* that Washington's death penalty was applied in an arbitrary and racially biased manner. Until the *Gregory* decision, however, my office continued to defend the death sentence in federal courts when death row inmates filed appeals, even after the Governor announced his moratorium. I did this out of respect for the rule of law. At the same time, I proposed legislation to the State Legislature to abolish the death penalty. If you personally disagree with Initiative 1639, seek to change it. Or file a lawsuit challenging it. But do not substitute your personal views over that of the people.

Under Article 1, Section 1 of the Washington State Constitution, "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights." As public officers, our duty is to abide by the will of the people we serve, and implement and enforce the laws they adopt. I encourage you to do so.

Sincerely,

A handwritten signature in blue ink that reads "Bob Ferguson". The signature is fluid and cursive, with "Bob" on the top line and "Ferguson" on the bottom line, with a long horizontal line extending from the end of "Ferguson".

BOB FERGUSON
Attorney General

RWF/jlg