

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set:
4 Date:
5 Time:.

6 The Honorable Carol Murphy

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 In re:
10 CHALLENGE TO BALLOT TITLE
11 AND SUMMARY FOR INITIATIVE
12 MEASURE NO. 1639

NO. 18-2-02506-34
18-2-02551-34
18-2-02564-34
18-2-02579-34

ATTORNEY GENERAL'S
RESPONSE TO PETITIONS
CHALLENGING BALLOT TITLE
AND SUMMARY FOR INITIATIVE
MEASURE NO. 1639

13
14 **I. NATURE OF THE CASE**

15 This is a special statutory proceeding contesting the ballot title and ballot measure
16 summary prepared by the Attorney General's Office, as directed in RCW 29A.72.060, for
17 Initiative Measure No. 1639 to the People. The Petitioners are the National Rifle Association
18 (NRA), Glen Morgan, Joe Wilson, and Paul Kramer and the Safe Schools Safe Communities
19 political committee (Safe Schools).

20 **II. STATEMENT OF THE CASE**

21 **A. Statutory Framework**

22 The Attorney General is responsible for formulating a ballot title and summary for each
23 initiative measure received from the Secretary of State's Office. RCW 29A.72.060. The ballot
24 title must contain (a) a statement of subject of the measure; (b) a concise description of the
25 measure; and (c) a question whether the measure should be enacted into law.

1 RCW 29A.72.050(1);¹ *Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174
2 Wn.2d 642, 655, 278 P.3d 632 (2012).

3 **The statement of subject** “must be sufficiently broad to reflect the subject of the
4 measure” and “sufficiently precise to give notice of the measure’s subject matter.” It cannot
5 exceed ten words. RCW 29A.72.050(1). The ten words begin after the statutorily mandated
6 phrase, “Initiative Measure No. . . . concerns.” *Id.*

7 **The concise description** must be a “true and impartial description of the measure’s
8 essential contents, clearly identify the proposition to be voted on, and not, to the extent
9 reasonably possible, create prejudice either for or against the measure.” RCW 29A.72.050(1).
10 It cannot exceed thirty words. *Id.* The word count begins after the statutorily mandated phrase,
11 “This measure would” *Id.*

12 In addition to preparing a ballot title, the Attorney General is charged with providing
13 the Secretary of State with a **summary of the measure**, “not to exceed seventy-five words.”
14 RCW 29A.72.060.

15 The ballot title appears on petitions circulated for the measure (RCW 29A.72.120), in
16 the Voters Pamphlet if the measure qualifies to appear on the ballot (RCW 29A.32.070), and
17 on the ballot itself (RCW 29A.72.050). The ballot summary appears on all petitions directly
18 following the ballot title. RCW 29A.72.090.

19 **B. Ballot Title and Summary of Initiative 1639**

20 As required in RCW 29A.72.050 and .060, the Attorney General prepared the following
21 ballot title and summary for I-1639:²

22 **BALLOT TITLE**

23 Statement of Subject: Initiative Measure No. 1639 concerns firearms.

24 ¹ RCW 29A.72.050 and .060 are Attachment A to this brief.

25 ² The ballot title and ballot measure summary is Attachment B to this brief. Ballot titles and ballot
26 measure summaries are also available at <http://www.sos.wa.gov/elections/initiatives/Initiatives.aspx?y=2018&t=p>.

1 Concise Description: This measure would require enhanced background checks,
2 training, and waiting periods for sales or delivery of semiautomatic assault rifles;
3 criminalize certain storage and unauthorized use; impose age limitations; and
4 enact other firearm-safety requirements.

5 Should this measure be enacted into law? Yes [] No []

6 **BALLOT MEASURE SUMMARY**

7 This measure would require enhanced background checks, firearm training, and
8 waiting periods before semiautomatic assault rifles may be purchased or delivered.
9 It would impose age limitations on who may purchase or possess certain firearms,
10 including prohibiting firearm purchases by persons under age 21. It would require
11 certain secured firearm storage or trigger-locks, and criminalize certain firearm
12 storage if it results in unauthorized use. It would enact other firearm-related
13 requirements, including certain warnings, recordkeeping, and fees.

14 The ballot title was filed with the Secretary of State on May 9, 2018. On May 16, the
15 Petitioner(s) challenged the title.

16 **III. STANDARD OF REVIEW**

17 An appeal of a ballot title or summary is heard by the Thurston County Superior Court
18 under RCW 29A.72.080. The court's decision "shall be final," is heard without costs to either
19 party, and is not subject to appeal. RCW 29A.72.080; *Kreidler v. Eikenberry*, 111 Wn.2d 828,
20 834, 766 P.2d 438 (1989).

21 The ballot title and summary must satisfy the statutory standards in
22 RCW 29A.72.050(1) and .060, as set out in Section II.A. above. The Attorney General's
23 formulation of the ballot title and summary should stand unless a challenger demonstrates that
24 the formulation is statutorily deficient.

25 The ballot title "need not be an index to the contents, nor must it provide details of the
26 measure." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 217, 11 P.3d 762
(2000); *Wash. Fed'n of State Emps. v. State*, 127 Wn.2d 544, 555, 901 P.2d 1028 (1995). Where
the ballot title would lead to an inquiry into the body of the act, it has given notice to the voters of
what they are being asked to decide. *Wash. Fed'n of State Emps.*, 127 Wn.2d at 555.

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IV. ARGUMENT

The ballot title and summary prepared by the Attorney General complies with the law by providing an accurate, unbiased description of the measure. The alternatives offered by the challengers request that the court depart from that neutral language, and rewrite the ballot title and summary in a manner that will sway voters to their political position. The NRA, Wilson, and Morgan ask that the title and summary be slanted to promote their position that gun regulation is an unwise policy or constitutionally suspect. On the other side of the political spectrum, Safe Schools urges the court to rewrite the concise description in a manner that would omit a subject that may cause voters pause—the imposition of criminal sanctions for certain gun storage that results in unauthorized use of a firearm.

The court should reject these attempts to politicize the ballot title and affirm the neutral language now in place.

A. The Statement of Subject Is Sufficiently Broad to Cover the Subject Matter in a Neutral Fashion

The ballot title’s statement of subject is “sufficiently broad to reflect the subject of the measure” and “sufficiently precise to give notice of the measure’s subject matter,” as required by RCW 29A.72.050(1). The phrase “concerns firearms” encompasses the purchase and delivery requirements, fees, criminalization of certain storage, training, and all other aspects of the initiative. As required by law, there is not a single aspect of the initiative that does not fall within the umbrella of the statement of subject. In contrast, Petitioners NRA, Morgan, and Wilson ask the court to rewrite the statement of subject in a manner that would violate RCW 29A.72.050(1) by making the statement insufficient to encompass the topics addressed by the measure. To aid in comparison, the statement of subject and the proposed revisions are set out below:

1 **Statement of Subject:** Initiative Measure No. 1639 concerns firearms.

2 **NRA:** Initiative Measure No. 1639 concerns restrictions on firearms.

3 **Morgan:** Initiative Measure No. 1639 concerns restrictions and taxes on firearm
4 ownership.

5 **Wilson:** Initiative Measure No. 1639 concerns taxes and individual rights.

6
7 The NRA’s alternative limits the title to “restrictions on firearms.” It is surprising that
8 the NRA seeks to narrow the statement in a way that omits critical elements of the initiative.
9 Section 5(1)-(2) of I-1639 amends existing law by making it a class C felony, punishable
10 according to chapter 9A.20 RCW, to store firearms where a prohibited person may reasonably
11 be expected to gain access, if such storage results in unauthorized use of a firearm.
12 Criminalizing conduct is a constitutionally significant aspect of the measure that is not
13 reflected in the narrow statement offered by the NRA. In addition, the NRA’s narrow option
14 does not encompass the fee authorized by Section 3(7)(a) of the measure.
15

16 Like the option offered by the NRA, the versions offered by Morgan and Wilson are
17 insufficient to cover the new crime the initiative would enact. In addition, both Morgan and
18 Wilson inaccurately state that the measure concerns taxes. It does not. The Supreme Court has
19 often recognized that taxes and fees are significantly different, and give rise to different
20 constitutional concerns. *See, e.g., Watson v. City of Seattle*, 189 Wn.2d 149, 401 P.3d 1 (2017)
21 (holding that a municipal ordinance imposed a tax on gun sales, rather than a regulatory fee).
22 When money is collected to offset administrative costs, rather than to raise money for the
23 general fund, the law is a fee—not a tax. *Id.* Because I-1639 authorizes the imposition of a fee
24 to offset the administrative costs of the new purchase and transfer rules, rather than collection
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1 of funds to be deposited in the general fund, it imposes a fee. I-1639(7)(a). Therefore, the
2 language proposed by Morgan and Wilson is legally incorrect.

3 Finally, Wilson's proposal fails to meet the statutory requirements because it would
4 omit all mention of firearms. Given that every provision of the measure relates to firearms,
5 omitting that word from the statement of subject would mislead voters.

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7 **B. The Concise Description Accurately and Impartially Describes the Key Aspects of I-1639**

8 The concise description for I-1639 is a "true and impartial description of the measure's
9 essential contents," as required by RCW 29A.72.050(1). The challenges the ballot title has
10 drawn from those opposed to gun control, as well as those advocating for gun control,
11 illustrates the fact that the concise description uses appropriately impartial language to address
12 this polarizing topic. In contrast, with each proposed variation, the Petitioners seek to slant the
13 language to promote their political agenda.

14 The current concise description and the proposals are as follows:

15
16 **Concise Description:** This measure would require enhanced background checks,
17 training, and waiting periods for sales or delivery of semiautomatic assault rifles;
18 criminalize certain storage and unauthorized use; impose age limitations; and enact other
firearm-safety requirements.

19 **NRA:** This measure requires additional background checks, new training, and waiting
20 periods for sales of semiautomatic assault rifles; mandates firearm storage; imposes age
limitations and purchase fees; and requires posted warnings.

21 **Morgan:** This measure would criminalize uncompliant firearms storage, increase age
22 restrictions for firearm ownership, create new extended waiting periods, and impose new
taxes for sales and delivery of certain common firearms.

23 **Wilson:** This measure would tax the sale of certain guns. The right of the individual
24 citizen to bear arms in defense of himself, or the state, would be impaired if this measure
was to be implemented into law.

25 **Safe Schools:** This measure would require enhanced background checks, training, age
26 restrictions, and waiting periods for sales or delivery of semiautomatic assault rifles;

1 require secure gun storage that prevents unauthorized use; and enact firearm-safety
2 requirements.

3 The NRA's proposal is flawed for a number of reasons. First, RCW 29A.72.050(1)
4 mandates that the concise description begin with the words "this measure would." The NRA
5 proposes that the court violate the statute and begin with "this measure requires." Second, it
6 omits mention of a key provision: the imposition of criminal sanctions for unsafe storage when
7 it results in use of a firearm by unauthorized persons. I-1639 § 5(1)-(2). For example, a gun
8 owner could be charged with a class C felony if his weapon was left where others might find it,
9 a prohibited person found the weapon, and a personal injury or death occurred. The criminal
10 sanctions are an essential element of I-1639 which the concise description must identify.
11 RCW 29A.72.050(1). Third, the NRA proposal inaccurately states that the measure "imposes"
12 fees. It does not. Initiative 1639 states that the Department of Licensing "may" impose fees,
13 but does not require the agency to do so. I-1639 § 3(7)(a). Finally, it omits the "catch-all"
14 provision provided by the Attorney General to indicate that there are other aspects to the
15 measure which the voter may wish to investigate further. There is no need for this omission,
16 particularly since the NRA proposal does not use all of the words authorized by statute.
17 RCW 29A.72.050(1) (concise description may contain 30 words, beginning after the phrase
18 "this measure would").
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21 If all of the essential elements of the measure are listed, and the word cap has not been
22 reached, the Attorney General would have no objection to the NRA's suggestion that "requires
23 posted warnings" be added. Because the Attorney General used all of the permitted words to
24 describe the measure's key provisions, it included the "posted warnings" requirement in the
25 "catch-all" phrase "and enact other firearm-safety requirements."
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1 Morgan's suggestion would include mention of the criminal law change, but would
2 inaccurately describe the crime. Contrary to Morgan's proposal, criminal sanctions would not
3 be imposed on "uncompliant" storage. Criminal penalties would apply only if the storage led to
4 use of a firearm in a defined manner. I-1639 § 5. Morgan's proposal also drops a number of
5 other important aspects of the measure, including the enhanced background checks and
6 training requirements. These provisions would impact both purchasers and sellers of firearms.
7 Morgan's suggestion also incorrectly states that the measure would "impose new taxes." The
8 measure addresses fees, not taxes. As stated above, there is a significant legal difference
9 between a tax and a fee. *See, e.g., Watson*, 189 Wn.2d 149. And, the measure allows the
10 Department of Licensing the option of charging a fee, rather than actually imposing the fee. As
11 a result, if the voters adopt I-1639, it is possible that a fee will never be charged. Finally, like
12 the NRA, Morgan does not use all of the words permitted by RCW 29A.72.050(1). The statute
13 does not require that 30 words be used (after the phrase "this measure would"), but given the
14 number of provisions in the measure, every word should be used to convey information to the
15 voters.
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18 In his petition, Morgan contends that the concise description is not a true and impartial
19 description of the measure because it uses the term semiautomatic "assault rifles." Morgan Pet.
20 at 4. Contrary to Morgan's assertion, the word "assault" is not included as a "political term of
21 art." *Id.* The word is used in the concise description because it is the terminology used
22 throughout the initiative and the term is included in the measure's defined terms. I-1639
23 § 16(25). It would be inaccurate to depart from the defined terms of the measure and adopt
24 different language to comport with Morgan's political position.
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1 Wilson's proposal cannot be adopted because it uses four more words than
2 RCW 29A.72.050(1) permits, yet does not list any of the essential elements of the measure.
3 Like Morgan, Wilson incorrectly states that I-1639 would impose a tax. In addition, he
4 describes his understanding of the constitutional impact of the measure, rather than offering an
5 impartial statement of the measure's provisions.
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7 Safe Schools' proposal contains benign suggestions, incorrect statements, and misleading
8 omissions. Changing "age limitations" to "age restrictions" would make no difference. Safe
9 Schools' Pet. at 8. But Safe Schools is incorrect in stating that the measure only extends an
10 existing age limitation to semiautomatic assault rifles, rather than also imposing new requirements
11 to pistol transfers. *Id.* Current law restricts sales of pistols, but not transfers, to persons under age
12 21. *See* RCW 9.41.113(4); 18 U.S.C. § 922(b)(1). Initiative 1639 would restrict both sales and
13 transfers to persons under age 21. I-1639 § 13(1). Thus, if enacted, I-1639 would impose an
14 entirely new prohibition on the transfer of both semiautomatic assault rifles and pistols to persons
15 under age 21, even if the rifle or pistol was being transferred between family members, or the
16 transfer involved an antique firearm.
17

18 Safe Schools' suggested omission of any indication that the initiative imposes criminal
19 liability would cause the concise description to violate RCW 29A.72.050(1) by concealing an
20 essential aspect of the measure. Many Washingtonians possess firearms. The initiative would
21 not only impose firearm storage requirements, but make it a crime to violate the storage laws if
22 unauthorized use occurs. It is critical that the concise description inform voters that their
23 current conduct may be criminalized. The existing concise description does this by indicating
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1 that the measure would “criminalize certain storage and unauthorized use.” Safe Schools’
2 effort to hide this aspect of the measure is inconsistent with RCW 29A.72.050(1).

3 **C. The Ballot Summary Contains an Appropriately Neutral, 75 Word Description of**
4 **the Measure**

5 Like the concise description, the ballot summary contains an appropriate, unbiased
6 description of the key elements of I-1639. The Petitioners do not offer any accurate, neutral
7 suggestions that merit consideration. The summary and the four proposed alterations are as
8 follows:

9 **Summary:** This measure would require enhanced background checks, firearm training,
10 and waiting periods before semiautomatic assault rifles may be purchased or delivered. It
11 would impose age limitations on who may purchase or possess certain firearms, including
12 prohibiting firearm purchases by persons under age 21. It would require certain secured
firearm storage or trigger-locks, and criminalize certain firearm storage if it results in
unauthorized use. It would enact other firearm-related requirements, including certain
warnings, recordkeeping, and fees.

13 **NRA:** This measure would require additional background checks, new firearm training,
14 and waiting periods before semiautomatic assault rifles may be purchased or delivered.
15 It would impose limitations on who may purchase or possess certain firearms, including
16 prohibiting firearm purchases by persons under age 21 or out-of-state residents. It
would mandate secured firearm storage or trigger-locks, with criminal penalties for
noncompliance and unauthorized use. It would enact firearm purchase fees and
mandate posting certain warnings.

17 **Morgan:** This measure would criminalize certain firearm storage choices by citizens
18 who have otherwise committed no crime. It would prohibit 18, 19, and 20-year-old
19 adults from possessing and purchasing of certain common firearms, due, in part to
20 “insufficient brain maturity.” It would enact other firearm-related restrictions, including
certain new taxes, new background checks, waiting periods, warnings, and additional
recordkeeping requirements.

21 **Wilson:** This measure would tax the sale of certain guns. The right of the individual
22 citizen to bear arms in defense of himself, or the state, would be impaired if this
measure was to be implemented into law.

23 **Safe Schools:** This measure would require enhanced backgrounds checks, safety
24 training, and waiting periods before semiautomatic assault rifles may be purchased or
25 delivered. It would impose age restrictions on purchase and possession of
semiautomatic assault rifles by persons under age 21. It would require use and sales of
secure gun storage/devices and impose criminal liability for unsafe storage that results
26 in unauthorized use. It would enact other firearm-related requirements, including safety
warnings, recordkeeping, and administrative fees.

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2 Contrary to the NRA's argument, the existing summary alerts voters that the measure
3 requires warnings, contains a fee provision, and criminalizes unauthorized storage and use. The
4 NRA is correct in stating that the summary does not provide notice that I-1639 would place
5 restrictions on out-of-state purchasers. NRA Pet. at 7; I-1639 § 12. If there were room for an
6 additional provision in the summary, the Attorney General would have no objection to this
7 inclusion. However, the summary has reached the 75-word cap and there is no superfluous
8 language. The NRA's remaining suggestions would not materially alter the summary.
9

10 Morgan's suggestion describes the age restriction in excessive detail, resulting in
11 inadequate description of the measure's remaining provisions. As in his proposed concise
12 description, he incorrectly states that the measure would impose a tax rather than a fee. Most
13 importantly, he omits any reference to the criminal sanctions imposed by the measure.
14

15 Wilson's proposed summary suffers from the same infirmities presented by his proposed
16 concise description. It does not explain the essential elements of the measure and it incorrectly
17 states that I-1639 would impose a tax. In addition, the proposed summary provides argument
18 regarding the impact of the measure, rather than offering an impartial statement of the
19 measure's provisions.
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21 Safe Schools' proposal repeats the error made by its proposed concise description, by
22 indicating that the age restriction applies only to semiautomatic assault rifle sales. Safe Schools
23 Pet. at 11. Without any explanation, Safe Schools also suggests dropping the language referring to
24 trigger locks. But I-1639 requires dealers to provide either "a secure gun storage device, or a
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1 trigger lock or similar devise.” I-1639 § 6(1). Safe Schools’ remaining suggestions would not
2 materially alter the summary.

3 **V. CONCLUSION**

4 The Attorney General’s formulation of the ballot title and ballot measure summary for
5 Initiative No. 1639 satisfies the statutory standards set out in RCW 29A.72.050(1) and .060.
6 The Court should dismiss the Petition and affirm the Attorney General’s formulation of the
7 ballot title and ballot measure summary for I-1639
8

9 DATED this 24th day of May 2018.

10
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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I served a true and correct copy of the foregoing document via electronic mail on the following:

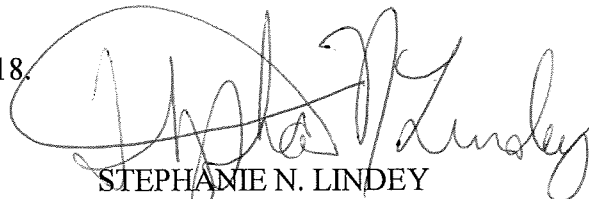
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DATED this 24th day of May 2018.


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