

1 EXPEDITE

2 No hearing set

3 Hearing is set

4 Date: _____

5 Time: _____

6 Judge: Hon. Carol Murphy

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

8 IN AND FOR THE COUNTY OF THURSTON

9 In Re:

10 BALLOT TITLE AND SUMMARY FOR
11 INITIATIVE NO. 1639

No. 18-2-02506-34
(Consolidated)

SPONSOR PAUL KRAMER AND
SAFE SCHOOLS SAFE
COMMUNITIES' RESPONSE
BRIEF

12
13
14
15 **I. INTRODUCTION AND RELIEF REQUESTED**

16 Petitioners Joe Wilson, Glen Morgan, and the National Rifle Association (“NRA”)
17 (collectively, “Initiative Opponents”) fundamentally misunderstand both the proper statutory
18 scope of the Court’s inquiry in a ballot title challenge and the purpose and function of Initiative
19 No. 1639 (“I-1639”). The only inquiry before the Court is whether the ballot title and summary
20 accurately and impartially convey the essential contents of the measure itself. Initiative
21 Opponents’ petitions improperly ask this Court to go beyond the statutory requirements and
22 consider the legal merits of the measure and the policies that inform it. Initiative Opponents will
23 be given the opportunity to present their views on I-1639’s alleged impacts and policy objectives
24 during the election campaign. And, if I-1639 is approved by the voters, Initiative Opponents will
25 then have the opportunity to contest its legal merits in a post-election challenge. This proceeding
26
27

1 is not the time and place for either.

2 Further, Initiative Opponents propose specific revisions to the ballot title and summary
3 that are inaccurate, misleading, and prejudicial to the measure. Sponsor Paul Kramer and Safe
4 Schools Safe Communities (together, “Sponsors”) respectfully request that this Court reject
5 Initiative Opponents’ requested changes.
6

7 **II. ARGUMENT AND AUTHORITY**

8 **A. Initiative Opponents Ignore the Limited Purpose of a Ballot Title Challenge and** 9 **Ask this Court to Include Inaccurate and Prejudicial Language Based on** 10 **Political Arguments and Substantive Legal Theories.**

11 A ballot title proceeding is designed to ensure that voters are provided “notice of the
12 **measure’s** subject matter,” receive a “true and impartial description of the measure’s essential
13 contents,” “clearly identify the **proposition** to be voted on,” and not “create prejudice either for
14 or against the **measure.**” RCW 29A.72.050 (emphasis added). Voters are informed of what the
15 measure proposes to accomplish based on the ballot title, and are encouraged to inquire further
16 by reading the measure if interested in the details. Thus, the only document relevant to the
17 creation of the ballot title is the measure itself. Despite the narrow statutory purpose of a ballot
18 title challenge, Initiative Opponents ask this Court to look beyond the text of I-1639. They seek
19 to have the Court substantively interpret the legal merits of the measure and the policies it
20 advances, and replace accurate language with inaccurate and biased language to support their
21 policy preferences. But the scope of the Court’s inquiry here is far more conscribed. *See* RCW
22 29A.72.050, 29A.72.080. This Court should decline Initiative Opponents’ invitation to go
23 beyond the statutory purpose of a ballot title challenge proceeding.¹
24
25

26 ¹ Similarly, the Supreme Court refuses to weigh in on the substantive legal merits of initiatives pre-election because
27 “[s]uch review, if engaged in, would involve the court in rendering advisory opinions, would violate ripeness
requirements, would undermine the policy of avoiding unnecessary constitutional questions, and would constitute

1 **1. The terms “semiautomatic assault rifles” and “enhanced” are accurate and**
2 **impartial, and Initiative Opponents’ political arguments and bias claims do not**
3 **justify removing these terms.**

4 **a.) “Semiautomatic assault rifles” is a commonly understood term that accurately**
5 **describes the type of firearms at issue in I-1639.**

6 First, Initiative Opponent Morgan argues that the ballot title and summary should not
7 include the term “semiautomatic assault rifles” based on political rhetoric, asserting that “assault
8 rifles” is “emotionally biased” and an “inaccurate artful derogatory term of political
9 language...to promote certain specific types of firearm prohibitions.” Morgan Pet. at 4.² To the
10 contrary, “assault rifles” is a commonly used and objective term that has been part of the legal
11 and public discourse for many years. Indeed, “semiautomatic assault rifle” nearly matches the
12 term “semiautomatic assault weapons,” as used in the federal Public Safety and Recreational
13 Firearms Use Protection Act, P.L. 103-322, Title XI (1994) (commonly known as the “Federal
14 Assault Weapons Ban”). *See Pullman Arms Inc. v. Healey*, No. 16-CV-40136-TSH, 2018 WL
15 1319001, at *1 (D. Mass. Mar. 14, 2018). Further, the Washington Supreme Court and Court of
16 Appeals have repeatedly used the term “assault rifle” in their written opinions, indicating the
17 term is neither prejudicial nor confusing. *See, e.g., State v. Gaines*, 154 Wn.2d 711, 714-15, 116
18 P.3d 993 (2005); *State v. Batista*, 116 Wn.2d 777, 780, 808 P.2d 1141 (1991); *State v. Spencer*,
19 75 Wn. App. 118, 127, 876 P.2d 939 (1994); *State v. Monaghan*, 166 Wn. App. 521, 527, 270
20 P.3d 616 (2012); *State v. Carter*, 119 Wn. App. 221, 224, 79 P.3d 1168 (2003). The Supreme
21 Court has even used the exact term proposed in I-1639—“semiautomatic assault rifle.” *Batista*,
22 116 Wn.2d at 791. Moreover, the similar terms “assault weapon” and “semiautomatic assault
23

24
25
26 unwarranted judicial meddling with the legislative process.” *Futurewise v. Reed*, 161 Wn.2d 407, 410, 166 P.3d 708
27 (2007).

² Wilson also proposes a ballot title and summary that do not contain the term “semiautomatic assault rifles” but
 does not explain his reasoning for removing this term.

1 weapon” have been used in numerous bills introduced by the Washington legislature since 1990.³
2 And the term generally is understood by Washington voters, as evidenced by its frequent use in
3 local news publications.⁴ The term “semiautomatic assault rifles” is consistent with common
4 public understanding and helps inform voters considering I-1639 of the type of weapons
5 impacted by the measure. Its use is appropriate in the ballot title.
6

7 Morgan’s arguments are also unsupported by relevant authority. He cites no legal
8 authority for his allegation that the term “assault rifles” has a long history of misuse. In fact, his
9 cited cases do not address any kind of debate over use of the term “assault” at all; to the contrary,
10 both cases refer generally to bans on “assault weapons,” supporting the notion that this is a
11 commonly understood term. *See District of Columbia v. Heller*, 554 U.S. 570, 713 (2008)
12 (Breyer, J., dissenting); *McDonald v. City of Chicago*, 561 U.S. 742, 938-39 (2010) (Breyer, J.,
13 dissenting).
14

15 Finally, Initiative Opponents’ proposed alternatives to “semiautomatic assault rifles” are
16 inaccurate and vague. Morgan proposes “semi-automatic firearms” or “commonly owned semi-
17 automatic firearms,” Morgan Opening Br. at 6, but these terms are inaccurate because I-1639
18 does not address all semiautomatic firearms. For example, the semiautomatic assault rifle
19

20 ³ See S.S.B. 5444, 65th Leg., Reg. Sess. (Wash. 2018) (proposing same sale and purchase requirements for assault
21 weapons as for handguns); H.B. 1387, 65th Leg., Reg. Sess. (Wash. 2017) (proposing enhanced background checks
22 and licensure for assault weapons); H.B. 1134, 65th Leg., Reg. Sess. (Wash. 2017) (proposing ban/restrictions on
23 assault weapons); S.B. 5050, 65th Leg., Reg. Sess. (Wash. 2017) (same); H.B. 2354, 64th Leg., Reg. Sess. (Wash.
24 2016) (same); S.B. 5737, 63rd Leg., Reg. Sess. (Wash. 2013) (same); S.B. 6396, 61st Leg., Reg. Sess. (Wash. 2010)
25 (same); H.B. 1627, 59th Leg., Reg. Sess. (Wash. 2005) (same); S.B. 5475, 59th Leg., Reg. Sess. (Wash. 2005)
26 (same); S.B. 5971, 54th Leg., Reg. Sess. (Wash. 1995) (same); H.B. 2319, 53rd Leg., Reg. Sess. (Wash. 1994)
27 (same); H.B. 2540, 51st Leg., Reg. Sess. (Wash. 1990) (proposing tax on assault weapons); H.B. 2544, 53rd Leg.,
Reg. Sess. (Wash. 1994) (proposing ban on semiautomatic assault weapons).

⁴ See, e.g., Lisa Pemberton, “Assault Rifle Confiscated and Five Arrested After Brawl Outside Olympia Nightclub,”
The Olympian, available at <http://www.theolympian.com/news/local/crime/article167189302.html> (last accessed
May 22, 2018); Jill Colvin, “Trump Backs Off Plan to Quickly Raise Assault-Rifle Purchase Age to 21,” Seattle
Times, available at [https://www.seattletimes.com/nation-world/nation-politics/trumps-plan-will-look-to-harden-
schools-against-shootings/](https://www.seattletimes.com/nation-world/nation-politics/trumps-plan-will-look-to-harden-schools-against-shootings/) (last accessed May 22, 2018); see also Barry Meier and Michael J. de la Merced,
“Assault Rifles and Concealed Handguns at Center of a Changing Industry,” New York Times, available at
[https://www.nytimes.com/2016/06/22/business/assault-rifles-and-concealed-handguns-at-center-of-a-changing-
industry.html](https://www.nytimes.com/2016/06/22/business/assault-rifles-and-concealed-handguns-at-center-of-a-changing-industry.html) (last accessed May 22, 2018).

1 provisions do not apply to semiautomatic pistols. Rather, they are limited to semiautomatic **rifles**
2 as defined in the measure. *See* Sponsors’ Pet., Ex. A, § 16(25). Morgan also proposes the term
3 “certain common firearms,” Morgan Pet. at 7, but this term similarly fails to identify for voters
4 the specific firearms at issue and wrongly implies that I-1639 applies to a broader class of
5 firearms than the measure actually addresses. Further, whether these guns are “common” or
6 “commonly owned” is nowhere to be found in the measure itself; this type of political argument
7 is more appropriate for the persuasive discourse of the political campaign, not the ballot title.
8 Initiative Opponent Wilson’s proposed term, “certain guns,” suffers from the same vagueness
9 and inaccuracy problems as above.

11 The Attorney General’s proposed use of “semiautomatic assault rifles” is accurate,
12 informative to voters, and not prejudicial. The Court should retain this language.⁵

13 ***b.) “Enhanced” accurately and neutrally describes I-1639’s background check***
14 ***provisions.***

15 The new and additional background checks for purchasers and transferees of
16 semiautomatic assault rifles provided for in I-1639 are appropriately described as “enhanced
17 background checks” in the Attorney General’s ballot title. Nonetheless, Initiative Opponents
18 Morgan and NRA challenge the inclusion of “enhanced,” although for somewhat different
19 reasons.⁶ Morgan argues there is no such thing as an “enhanced” background check and that the
20 term is a “poll-tested term of art that refers to nothing new with the current background system.”
21 Morgan Pet. at 5. The NRA claims “enhanced” is misleading and unfairly prejudicial because it
22 implies that I-1639’s checks are improved or superior. NRA Pet. at 6. These arguments
23
24

25 ⁵ Sponsors and the NRA also both include “semiautomatic assault rifles” in their proposed ballot titles.

26 ⁶ Initiative Opponent Wilson does not specifically challenge the term “enhanced,” but does not include the term or
27 any mention of background checks in his proposed concise description and ballot measure summary. Given the
central importance of I-1639’s background check provisions to the measure as a whole, failing entirely to mention
them would render the concise description and summary misleading and inaccurate.

1 demonstrate a misunderstanding of both the plain meaning of “enhanced” and of Washington
2 law regarding background checks.

3 The word “enhance” is defined as “elevate, heighten, increase.” *See* Webster’s Third
4 New International Dictionary at 753 (1993).⁷ “Heighten” and “increase” is precisely what I-
5 1639’s background check provisions accomplish with respect to semiautomatic assault rifles.
6 Specifically, the existing statutory scheme regulating firearms has two levels of background
7 checks, depending on the type of weapon being acquired: (1) for purchasers or transferees of
8 long guns (rifles and shotguns), the dealer conducts a standard background check through the
9 National Instant Criminal Background Check System (“NICS”); and (2) for purchasers or
10 transferees of pistols, in addition to the NICS check there is a more rigorous check by local law
11 enforcement of state databases, which includes a check of the databases of the Washington State
12 Patrol, Department of Social and Human Services, and local mental health agencies. RCW
13 9.41.090, 9.41.092, 9.41.113. I-1639 changes current law by requiring purchasers or transferees
14 of semiautomatic assault rifles to undergo the enhanced background check that currently is
15 required only for pistols, in addition to the NICS check. *See* Sponsors’ Pet., Ex. A, § 3(2). The
16 measure thus imposes increased background check requirements for one class of rifles.
17 “Enhanced background checks” therefore accurately describes those new requirements under the
18 plain meaning definition of “enhanced” and does not create prejudice in favor of the measure.⁸
19

20
21
22 Moreover, the term “enhanced” is used elsewhere in the RCWs to indicate a similar
23 meaning (i.e., increased or heightened). RCW 46.20.202(3)(a) provides for issuance of an

24 ⁷ *See also* See Oxford University Press, Oxford English Dictionary, Enhance,
25 <https://en.oxforddictionaries.com/definition/enhance> (defining “enhance” as “[i]ntensify, increase, or further
26 improve the quality, value, or extent of”) (last accessed May 22, 2018); Merriam-Webster, Enhance,
27 <https://www.merriam-webster.com/dictionary/enhance> (defining “enhance” as “heighten, increase”) (last accessed
May 22, 2018).

⁸ The NRA admits that I-1639 imposes “additional” or “increased” background checks, *see* NRA Pet. at 6, both of which could be synonyms for “enhanced” under the definitions cited *supra*, p. 6 & footnote 7.

1 “enhanced driver’s license” that requires the applicant to provide information beyond that
2 required for a standard driver’s license, including proof of U.S. citizenship, identity, and state
3 residency. Here, I-1639 requires background checks for semiautomatic assault rifles that are
4 beyond those currently required. “Enhanced” is the most appropriate descriptor.

5
6 **2. Initiative Opponents’ argument that the fee authorized by I-1639 is legally a tax
is improper, premature, and irrelevant.**

7 Initiative Opponents ask this Court to consider whether the fee authorized by I-1639 is
8 legally a fee or a tax.⁹ As discussed above, it is the purpose and function of the measure, not its
9 merits or interpretation, that is the focus of the Court’s inquiry at this stage. The only question
10 before this Court, then, is whether the phrase “It would enact other firearm-related requirements,
11 including...fees” or, as more accurately proposed by Sponsors, “It would enact other firearm-
12 related requirements, including...administrative fees,” accurately and impartially describes the
13 relevant essential content of the measure. It does.

14
15 The Washington Supreme Court’s decision in *Wash. Ass’n for Substance Abuse &*
16 *Violence Prevention v. State*, 174 Wn.2d 642, 278 P.3d 632 (2012), assists in the Court’s inquiry
17 here. In that case, opponents argued that the ballot title for an initiative that included a license fee
18 based on sales of liquor was misleading to voters and thus violated the constitutional subject-in-
19 title rule because it did not “notify voters that the charges imposed are taxes.”¹⁰ *Id.* at 661-62.

20 The Court emphasized that the proper inquiry is not “on the legal distinction between taxes and
21 fees,” but instead on “the language of the initiative as the average informed voter would have
22

23
24 _____
25 ⁹ Initiative Opponents Morgan and Wilson both claim that I-1639’s fee is really a tax and propose use of the word
26 “tax” in the statement of subject, concise description, and ballot measure summary. Initiative Opponent NRA claims
27 that I-1639 imposes a new tax, but proposes the term “purchase fees” in its own versions of the concise description
and summary.

¹⁰ I-1183 proposed to “remove[] the State from the business of distributing and selling spirits and wine, impose[]
sales-based fees on private liquor distributors and retailers, and provide[] a distribution of \$10 million per year to
local governments for the purpose of enhancing public safety programs.” *Id.* at 646.

1 read it.” *Id.* at 665 n.5. The Court further determined that the “common understanding” of “fee”
2 is “a charge fixed by law or by an institution . . . for certain privileges or services.” *Id.* at 664
3 (internal citation omitted). Thus, without reaching the issue of whether the measure was legally a
4 fee or tax, *see id.* at 665 n.5, the Court held that the ballot title was not misleading to voters
5 because the “license issuance fees under I–1183 correspond with this common meaning.” *Id.* at
6 664.
7

8 The same rationale supports the fee language in the ballot measure summary here. This is
9 particularly true if the Court incorporates the additional language Sponsors suggest. Setting the
10 legal distinction between fees and taxes aside (a merits question that can only be decided post-
11 election, not here), the administrative fee authorized by I-1639 comports with the common
12 meaning of the word “fee” because it is a charge for certain services provided by state and local
13 entities in connection with verifying a person’s eligibility to purchase a semiautomatic assault
14 rifle. Like the ballot title for I-1183, the legal distinctions between fees and taxes are irrelevant,
15 particularly where, as here, “it can hardly be contended that anyone [is] likely to be deceived” by
16 the ballot measure summary. *Wash. Ass’n for Substance Abuse & Violence Prevention*, 174
17 Wn.2d at 664 (internal citation omitted). With the clarifying term Sponsors suggest—the word
18 “administrative”—voters will have sufficient information to vote or to decide to investigate the
19 measure further.¹¹ *Id.* at 664-65.
20
21

22 Regardless, Wilson and Morgan provide no relevant authority supporting their claim that
23
24

25 ¹¹ Addition of the word “administrative” as proposed by Sponsors also addresses Initiative Opponent NRA’s
26 concerns regarding notice to voters of the purpose of the fee. *See* NRA Pet. at 7. Given the 75-word limit for the
27 ballot measure summary and the minor significance of I-1639’s fee provision in the context of the measure as a
whole, describing the specific amount and payer of the fees is unnecessary. “Administrative fees” gives voters
sufficient information to investigate the measure further.

1 the fee at issue is actually a tax.¹² Wilson cites only to RCW 43.135.034(1)(b), which defines the
2 term “raises taxes” for certain purposes. But by its plain language, that statutory definition
3 applies only to the requirements of chapter 43.135 RCW, applies only to actions of the
4 legislature (not the people as is the case in an initiative), and applies only to actions that increase
5 “state tax revenue.” RCW 43.135.034(1)(b). None of these circumstances apply to I-1639’s fee,
6 which helps cover the additional administrative costs of conducting enhanced background
7 checks. The Attorney General, Sponsors, and the NRA properly describe the charge authorized
8 by I-1639 as a “fee” for purposes of the ballot title.¹³

10 Finally, all Initiative Opponents propose that I-1639’s fee (inaccurately termed a “tax” by
11 Morgan and Wilson) should be referenced in the concise description in addition to the ballot
12 measure summary. The ballot title, however, “need not be an index to the contents, nor must it
13 provide details of the measure.” *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183,
14 217, 11 P.3d 762 (2000). The administrative fee authorized by I-1639 is a minor part of a
15 measure with numerous substantive components. Given the limited words with which the
16 concise description must convey the more substantive subject matter of the initiative, the fee is
17 more properly set forth in the summary.
18
19
20
21

22 ¹² Initiative Opponent NRA also asserts that the fee advanced in the initiative may be used to fund “health care
23 facilities and other entities unrelated to the regulatory apparatus for firearms.” *See* NRA Pet. at 6. This is incorrect.
24 The fee related to those entities is used to address the “reporting requirements imposed” within the firearm
25 regulatory scheme. *See* Sponsors’ Pet., Ex. A, §3(7)(b)(ii).

26 ¹³ Even aside from the tax/fee distinction, Initiative Opponents mischaracterize I-1639’s authorized charge in their
27 statements of subject, proposed concise descriptions and summaries. Contrary to Initiative Opponents Wilson,
Morgan, and NRA’s arguments, the authorized charge would not be imposed on guns themselves, on “gun
ownership,” or solely on “sales” or “purchases” of guns. *See* Sponsors’ Pet., Ex. A, §3(7)(a) (“To help offset the
administrative costs of implementing this section as it relates to new requirements for semiautomatic assault rifles,
the department of licensing may require the dealer to charge each **semiautomatic assault rifle purchaser or
transferee** a fee not to exceed twenty-five dollars...”) (emphasis added).

1 **3. Initiative Opponent Wilson inappropriately includes constitutional argument in**
2 **his proposed ballot title.**

3 Wilson contends that the statement of subject, concise description, and ballot measure
4 summary should all refer to how I-1639 purportedly impairs and denies individuals’ right to bear
5 arms. *See* Wilson Pet. at 3-4, 6-7. This type of political argument goes not to the essential
6 contents of I-1639, but to Wilson’s interpretation of the alleged constitutional consequences of
7 the measure. This is inappropriate in the limited ballot title challenge context both because it
8 does not reflect the essential contents of the measure itself and because it attempts to have this
9 Court rule on a constitutional merits question before voters have even approved the measure.
10 Further, Wilson’s proposed concise description and summary language regarding individual
11 rights—“[t]his measure would...restrict an individual citizen right to bear arms in defense of
12 himself” and “[t]he right of the individual citizen to bear arms in defense of himself, or the state,
13 would be impaired if this measure was to be implemented into law”—is politically-charged
14 language that could create prejudice against the measure (and as Sponsors would argue in any
15 post-election merits challenge, it also is entirely inaccurate). This Court should reject Wilson’s
16 proposed language.
17
18

19 **B. The Specific Revisions that Initiative Opponents Propose are Inaccurate,**
20 **Misleading, and Unhelpful to Voters.**

21 Aside from the deficiencies addressed above, Initiative Opponents also propose other
22 specific revisions to the ballot title and summary that are inaccurate, misleading, and distort the
23 purpose and function of the measure.

24 First, Morgan and NRA propose alternative statements of subject stating that the measure
25 concerns “restrictions and taxes on firearm ownership,” “restrictions, taxes on firearms and
26
27

1 criminalization of certain firearm storage,” and “restrictions on firearms.” Morgan Pet. at 3¹⁴;
2 NRA Pet. at 8. But these proposed statements of subject are improper. The term “firearms” is
3 “sufficiently broad to reflect the subject of the measure, [and] sufficiently precise to give notice
4 of the measure’s subject matter,” as the ballot title statute requires. *See* RCW 29A.72.050(1).
5 Indeed, statements of subject are often single words that provide simple and broad notice of the
6 general topic of the measure. For example, the Attorney General often uses single words such as
7 “taxation,” “transportation,” and “firearms” to accurately reflect the subject matter of a measure
8 at a high-level.¹⁵ Similarly, this Court recently rejected a similar challenge to Initiative 1631’s
9 statement of subject, ruling that measure (a much longer and more complex initiative) accurately
10 could be summarized in a statement of subject consisting of the single word “pollution”.¹⁶ Here,
11 the NRA’s reliance on previous initiatives related to firearms, *see* NRA Opening Br. at 5, only
12 reinforces this point. Three of the four firearm initiative measures referenced by the NRA (No.
13 1059, No. 1062, and No. 1428) had narrowly tailored effects. The statements of subject for these
14 measures were therefore appropriately specific. As the NRA acknowledges, however, the fourth
15 measure (No. 1307) proposed “several alterations” to the firearms laws. The statement of
16 subject—“firearms”—was therefore correspondingly broad. The same is true here in a measure
17 that contains multiple provisions related to firearms.
18
19
20

21 Further, the focus on “restrictions” is neither accurate nor necessary. The principal focus

22 ¹⁴ Initiative Opponent Morgan also argues that I-1639’s restrictions on purchase and possession of semiautomatic
23 assault rifles by persons age 18-20 should be reflected in the statement of subject, though he does not propose
24 language to that effect. Regardless, this argument fails for the reasons set forth here.

25 ¹⁵ *See, e.g.*, Ballot Title for I-1611 (statement of subject of “taxation” for measure that required a balanced tax code),
26 available at https://www.sos.wa.gov/assets/elections/initiatives/ballottitleletter_1470.pdf; Ballot title for I-1637
27 (statement of subject of “firearms” for the “No gun until 21” initiative), available at
https://www.sos.wa.gov/assets/elections/initiatives/ballottitleletter_1528.pdf; Ballot Title for I-1579 (statement of
subject of “transportation” for the “Protect Gas Taxes and Toll Revenues Act”), available at
https://www.sos.wa.gov/assets/elections/initiatives/ballottitleletter_1434.pdf.

¹⁶ *See* Final Order, *In re Challenge to Ballot Title for Initiative to the People No. 1631*, No. 18-2-1614-34 (Apr. 6,
2018), available at https://www.sos.wa.gov/assets/elections/initiatives/ballottitleletter_1482.pdf.

1 of I-1639 is the creation of affirmative requirements for the purchase and possession of certain
2 semiautomatic firearms akin to the existing requirements in Washington for pistols. The measure
3 also creates new secure storage requirements and safety warning requirements that apply to all
4 firearms. To meet these goals the measure requires (among other things) that: semiautomatic
5 assault rifle purchasers provide proof of completion of a recognized firearm safety training
6 program; semiautomatic assault rifle purchasers undergo the same background check procedures
7 currently required for most pistol purchasers; safety warnings be given at the point of purchase
8 or transfer; dealers observe a 10-day waiting period before delivering semiautomatic assault
9 rifles to purchasers or transferees; dealers offer to sell or give firearm purchasers or transferees
10 secure gun storage/devices; and firearm owners use secure gun storage/devices that prevent
11 unauthorized use. *See* Sponsors’ Pet., Ex. A, §§ 3(2)-(6), 4(2), 5, 6(1)-(3). It is misleading,
12 incomplete, and inconsistent with the existing statutory structure to describe the myriad of these
13 provisions simply as “restrictions on firearms.” The single word “firearms” is a common and
14 accurate means to convey the initiative’s high-level subject, with more detail to follow in the
15 concise description and summary.

18 Second, Initiative Opponents contend that the ballot title should more explicitly reference
19 what they claim is I-1639’s “creation of new felony-level crimes based on firearm storage
20 violations,” “mandate to disable or lock away what amounts to effectively all firearms,” and
21 requirement that citizens “lock their arms up.” Morgan Pet. at 6; NRA Pet. at 6; Wilson Pet. at 4.
22 Initiative Opponents misunderstand I-1639’s secure gun storage provisions. As explained in
23 Sponsors’ Petition, I-1639 imposes criminal liability only if: (1) the firearm is not kept in secure
24 gun storage or secured with a device that prevents unauthorized use or discharge; (2) the owner
25 leaves the firearm in a location where the owner knows, or reasonably should know, a prohibited
26
27

1 person may gain access to the firearm; (3) a prohibited person does in fact obtain access to and
2 possession of the firearm; and (4) the prohibited person uses the firearm in specific harmful or
3 threatening ways. *See* Sponsors’ Pet., Ex. A, § 5(1)(a)-(b). The measure specifically does not
4 mandate use of particular secure gun storage/devices and, more important, does not impose
5 criminal penalties for the mere failure to use secure gun storage/devices or for “unauthorized
6 use.”¹⁷ Thus, the concise description and summary revisions proposed by Initiative Opponents
7 NRA and Morgan regarding secure storage are inaccurate, incomplete, and fail to give voters a
8 full picture of I-1639’s secure storage provisions.¹⁸

10 Third, Initiative Opponent NRA contends that I-1639’s prohibition on out-of-state
11 residents purchasing semiautomatic assault rifles in Washington should be specifically
12 mentioned in the ballot measure summary. The out-of-state resident restriction is both a minor
13 part of I-1639 and has less relevance for Washington voters compared to the measure’s other
14 provisions. As a logistical matter, the ballot measure summary’s 75-word limit cannot (and need
15 not) describe each and every provision of the measure. It is unnecessary to refer to this provision
16 in the summary.

18 Fourth, Morgan asserts the concise description and ballot measure summary should
19 include more explicit language regarding I-1639’s age requirements for the purchase and
20 possession of semiautomatic assault rifles. But his proposed language for the concise description,
21 “increase age restrictions for firearm ownership,” is misleading and inaccurate in that it suggests
22 I-1639’s age requirements apply to all firearms. In actuality, the new age minimum applies only

24 ¹⁷ Initiative Opponent NRA also asserts, without explanation, that under the secure storage provisions of the
25 initiative, a person could incur “derivative civil liability.” *See* NRA Pet. at 7. Once again, this type of argument
26 related to potential consequences of a measure is a political or post-election issue that falls outside the scope of this
27 ballot title proceeding.

¹⁸ Initiative Opponent Morgan’s claim that “criminals who successfully invade and steal firearms from a citizen’s
home can, by committing this crime, turn the victimized citizen into a criminal,” *see* Morgan Pet. at 6, is inaccurate.
See Sponsors’ Pet., Ex. A, § 5(3)(d).

1 with respect to semiautomatic assault rifles. *See* Sponsors’ Pet. at 8, 10. Morgan’s proposed
2 language for the ballot measure summary, “It would prohibit 18, 19, and 20-year-old adults from
3 possessing and purchasing of certain common firearms, due, in part to ‘insufficient brain
4 maturity,’” thus contains the same defects previously identified regarding overbroad use of the
5 word “firearms” and inappropriate use of the word “common.” Further, this language
6 inaccurately suggests that all possession by persons 18-20 years of age is prohibited, when in fact
7 I-1639 permits possession in certain locations and circumstances. *See* Sponsors’ Pet., Ex. A,
8 §13(3). And including any policy reasons for/against the measure’s requirements, such as “brain
9 maturity,” is not allowed in a ballot title. Morgan’s proposed summary language also purports to
10 quote language from I-1639, but the quoted language does not appear in the measure. This Court
11 should reject these proposed changes.
12

13
14 Fifth, Initiative Opponent NRA asserts without authority that the concise description
15 should include reference to I-1639’s required warnings because these new warnings are
16 “mandated speech” that do not fall under the category “other firearm-safety requirements” in the
17 concise description. NRA Pet. at 5. But NRA fails to explain why the measure’s warning
18 requirements do not fall under the term “other firearm-safety requirements” as used in the
19 concise description. By their plain language, I-1639’s warnings are intended to address specific
20 firearm safety risks. *See* Sponsors’ Pet., Ex. A, §§ 3(6)(b)(i)-(ii), 6(2)-(3). The measure’s
21 warnings are adequately encompassed by the concise description’s existing language, and the
22 ballot measure summary (with the improvements suggested by Sponsors) further clarifies that the
23 warnings are safety-related. The concise description requires no further explanation. Further,
24 NRA’s theory for including the warnings, that they are “mandated speech,” is a merits-tinged
25 argument on the constitutionality of the measure that is not proper in the limited ballot title
26
27

1 challenge context for reasons discussed above.

2 Finally, NRA claims the concise description and summary should describe I-1639's
3 training requirements as "new training" and "new firearm training," respectively. NRA Pet. at 6,
4 8-9. But the concise description drafted by the Attorney General already suggests that the
5 training is a new requirement. Moreover, the NRA's proposed language for the ballot measure
6 summary, "new firearm training," is inaccurate for the reasons discussed at page 12 of Sponsors'
7 Petition. Specifically, "firearm training" inaccurately suggests that the required training will
8 instruct trainees how to use firearms. Sponsors' proposed term, "safety training," more
9 accurately describes the language and intent of I-1639 with respect to training requirements.
10

11 III. CONCLUSION

12 Initiative Opponents' ballot title challenges improperly focus on the merits and policy of
13 I-1639, not on the measure's purpose and function. In addition, the specific revisions that
14 Initiative Opponents propose are inaccurate, misleading, and unhelpful to voters. Accordingly,
15 Sponsors respectfully request that the Court affirm the ballot title and summary the Attorney
16 General proposed, with the improvements Sponsors suggest, because it accurately and
17 impartially conveys the purpose and function of I-1639 to voters.
18

19
20 RESPECTFULLY SUBMITTED this 24th day of May, 2018.

21 PACIFICA LAW GROUP LLP

22 By: 

23 Gregory J. Wong, WSBA No. 39329
24 Nicholas W. Brown, WSBA No. 33586
25 Sarah S. Washburn, WSBA No. 44418

26 Attorneys for Petitioners Paul Kramer and
27 Safe Schools Safe Communities

CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 24th day of May, 2018 I caused to be served a true copy of the foregoing document upon:

<p>Anne Egeler Deputy Solicitor General Washington State Attorney General's Office anneE1@ATG.WA.GOV</p>	<p><input type="checkbox"/> via facsimile <input type="checkbox"/> via overnight courier <input type="checkbox"/> via first-class U.S. mail <input checked="" type="checkbox"/> via email <input type="checkbox"/> via electronic court filing <input type="checkbox"/> via hand delivery</p>
<p>Eric Lindberg elindberg@corrchronin.com Steven Fogg sfogg@corrchronin.com Benjamin Byers bbyers@corrchronin.com <i>Attorneys for Petitioner NRA</i> Christy Nelson, Legal Assistant cnelson@corrchronin.com</p>	<p><input type="checkbox"/> via facsimile <input type="checkbox"/> via overnight courier <input type="checkbox"/> via first-class U.S. mail <input checked="" type="checkbox"/> via email <input type="checkbox"/> via electronic court filing <input type="checkbox"/> via hand delivery</p>
<p>Glen Morgan glen@wethegoverned.com <i>Pro Se Petitioner</i></p>	<p><input type="checkbox"/> via facsimile <input type="checkbox"/> via overnight courier <input type="checkbox"/> via first-class U.S. mail <input checked="" type="checkbox"/> via email <input type="checkbox"/> via electronic court filing <input type="checkbox"/> via hand delivery</p>
<p>Joe Wilson joe@pedersonbros.com <i>Pro Se Petitioner</i></p>	<p><input type="checkbox"/> via facsimile <input type="checkbox"/> via overnight courier <input type="checkbox"/> via first-class U.S. mail <input checked="" type="checkbox"/> via email <input type="checkbox"/> via electronic court filing <input type="checkbox"/> via hand delivery</p>

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 24th day of May, 2018.



 Tricia O'Konek
 Legal Assistant