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SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

In re ballot title of 1639.

No. 18-2-02579-34

PETITIONER NATIONAL RIFLE
ASSOCIATION'S OPENING BRIEF
CHALLENGING BALLOT TITLE AND
MEASURE SUMMARY FOR INITIATIVE
I-1639

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I. INTRODUCTION

In the last legislative session, the Washington State Legislature rejected various measures intended to restrict and place impermissible burdens on Second Amendment rights. Now, a self-appointed activist group is bypassing the legislature and seeking to place Initiative Measure No. 1639 (“I-1639”), a dense 30-page assemblage of statutory text and edits, onto the November ballot. Petitioner National Rifle Association (“NRA”) objects to the Attorney General’s ballot title and summary. Potential petition signers deserve to understand the essential contents of I-1639 before deciding whether to sign, and voters must grasp the myriad changes and additions to Washington’s firearms laws before voting on I-1639.

If passed, I-1639 would, among other things, raise the minimum age to purchase many firearms well above the age of legal majority; mandate new government controlled training for

1 many firearm purchasers; introduce increased redundant background checks for many firearms;
2 require specific storage or disabling methods for effectively all firearms under threat of criminal
3 penalties based on the conduct of others; impose a new tax on the exercise of a fundamental right
4 in the form of a purchase fee; require mandated speech in the form of posted warnings for all
5 firearm purchases; and expand the enforcement authority of administrative agencies, including
6 the Department of Licensing.

7 The ballot title and measure summary proposed by the Attorney General for I-1639 are
8 not true and impartial descriptions of I-1639’s essential contents, as required by RCW
9 29A.72.050. In short, there are at least three issues with the ballot title and measure summary.
10 First, the statement of subject does not adequately or appropriately describe the essential contents
11 of the initiative. The initiative does not “concern firearms.” Instead, it “concerns *restrictions on*
12 *firearms*” as well as various other regulatory intrusions into personal liberties. Second, the concise
13 description, while attempting to be succinct fails to mention the new purchase fees, required
14 “warning” postings, sales restrictions, new training mandates, and new storage mandates. Third,
15 the ballot measure summary is not neutral and instead misleads the public, including failing to
16 fully describe the warnings, omitting the new fees applying to firearm purchases, omitting the
17 restrictions on sales to out-of-state residents, and failing to provide notice of the new training
18 requirements. Simply put, the language of all three aspects of the proposed ballot title and measure
19 summary are impermissibly designed to prejudice a voter in favor of the measure by omitting key
20 information and using language designed to sway an uninformed voter.

21 **II. BACKGROUND**

22 **A. Petitioner National Rifle Association**

23 Petitioner NRA is a non-profit organization with well over one hundred thousand members
24 and supporters in Washington. The NRA has, since its inception in 1871, been the premier
25 firearms education organization in the world. NRA is concerned that the ballot title for I-1639

1 must be fair and unbiased. From experience, NRA is aware Second Amendment rights sharply
2 divide our families and communities, and introduce vitriol among neighbors. As a result, it is
3 important to minimize misconceptions and omissions. For example, NRA wants to make sure
4 voters understand the scope and extent of the restrictions proposed by I-1639, and that these
5 restrictions would extend into private homes, not just to the purchase of firearms.

6 Petitioner has well over one hundred thousand-members in Washington who have a stake in the
7 subject matter covered by I-1639. For example, Robin Ball is a resident of Spokane County,
8 Washington. She is an NRA member, and a Refuse To Be A Victim Regional Counselor. The
9 Refuse To Be A Victim program teaches tips and techniques to promote safety and to avoid
10 becoming a crime victim. Hundreds of federal, state, and local law enforcement officials from
11 across the nation utilize this popular program in their crime prevention and community policing
12 initiatives. Ms. Ball, like many NRA members, is concerned about the availability of firearms
13 and requirements related to firearms storage that may compromise their right of self-defense.

14 **B. The Attorney General’s Ballot Title and Summary**

15 On May 9, 2018, the Attorney General filed with the Washington Secretary of State the
16 following proposed ballot title and summary for I-1639:

17
18 **BALLOT TITLE**

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

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

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

23 **BALLOT MEASURE SUMMARY**

24 This measure would require enhanced background checks, firearm training, and waiting periods
25 before semiautomatic assault rifles may be purchased or delivered. It would impose age limitations
on who may purchase or possess certain firearms, including 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.

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III. ISSUES PRESENTED

1. Whether the Court should revise the Attorney General’s Statement of Subject for I-1639 in order to convey the subject matter and essential contents of the measure more accurately and impartially?

2. Whether the Court should revise the Attorney General’s Concise Description for I-1639 in order to convey the subject matter and essential contents of the measure more accurately and impartially?

3. Whether the Court should revise the Attorney General’s Ballot Measure Summary for I-1639 in order to convey the subject matter and essential contents of the measure more accurately and impartially?

IV. EVIDENCE RELIED UPON

Petitioner relies upon the pleadings filed in this matter, including exhibits attached thereto.

V. ARGUMENT

A. Standard of Review

This Court has authority to review the Attorney General’s ballot title and summary under RCW 29A.72.080. Under RCW 29A.72.080, “[a]ny persons” may, within five days from the filing of the ballot title, appeal by petition and request amendment of the ballot title or summary by this Court. This Court’s review of the Attorney General’s ballot title and summary is de novo and final. *Id.*

Washington’s ballot title statute, RCW Chapter 29A.72, requires the ballot title for a referendum measure to include a “statement of subject,” which “must be sufficiently broad to reflect the subject of the measure, sufficiently precise to give notice of the measure’s subject matter, and not exceed ten words.” RCW 29A.72.050(1). The ballot title also must state a “concise description” of the referendum measure that “must contain no more than thirty words, be a true and impartial description of the measure’s essential contents, clearly identify the

1 proposition to be voted on, and not, to the extent reasonably possible, create prejudice either for
2 or against the measure.” *Id.* Washington’s ballot title statute also requires a summary of the
3 measure, not to exceed seventy-five words. RCW 29A.72.060.

4 **B. Statement of Subject**

5 The Attorney General’s proposed statement of subject provides that the Initiative concerns
6 “firearms.” Stating that the initiative is about “firearms” does not identify what the initiative really
7 changes about existing law. Every portion of the initiative either increases regulation of firearms,
8 restricts ownership or purchase of firearms by various sub-groups, imposes fees on purchases of
9 firearms, or transforms currently-lawful conduct into potentially criminal conduct, which could
10 be punishable by more than a year in prison.

11 Prior initiatives relating to specific firearms proposals have included a statement of subject
12 that provided more accurate and complete notice to the public than simply referencing “firearms”
13 in general. For example, Initiative Measure No. 1059 concerned “rights to self-defense and
14 privacy”; Initiative Measure No. 1062 concerned “firearms manufactured in Washington”; and
15 Initiative Measure No. 1428 concerned “hand guns in schools.”¹ Three out of the four firearms-
16 related initiatives filed in the last decade have included statements of subject that are more specific
17 than “concerns firearms.”

18 Accordingly, an accurate statement of subject consistent with the actual contents of I-1639
19 would be: “Initiative Measure No. 1639 concerns restrictions on firearms.”

20 **C. Concise Description**

21 The Attorney General’s concise description is flawed in several respects.²

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23
24 ¹ *But see* Initiative Measure No. 1307, which concerned “firearms.” I-1307, which did not obtain enough
25 signatures to appear on the ballot, proposed to prohibit government record-keeping of firearms ownership
and proposed several alterations to the laws surrounding mental health and firearms ownership.

² Petitioner withdraws its objection to the word limit for the concise description under RCW 29A.72.050.

1 1. Failure to Provide Notice of New Provisions

2 The concise description fails to provide any notice whatsoever to the public regarding
3 certain essential contents in I-1639.

4 **New Fees.** I-1639, in Section 3, imposes a new tax, characterized as a fee, of \$25 or more
5 for each purchase of a firearm that meets the definition of a “semiautomatic assault rifle.” This
6 new tax may be used to fund health care facilities and other entities that are unrelated to the
7 regulatory apparatus for firearms. Because the taxes are related to consumer purchases of
8 firearms, the Attorney General’s omission of the tax is unfairly prejudicial. Further, the purchase
9 tax does not fall under the catch-all of “other firearm-safety requirements.” Fees and taxes are
10 distinct from regulations, and notice of a fee or tax in I-1639 is essential to public understanding
11 of the initiative.

12 **Posting of “warnings.”** Under I-1639, all firearm purchases would come with multiple
13 warnings intended to discourage the purchase of firearms, mandated by the anti-firearm interest
14 group behind the initiative. Because the warnings are mandated speech, it does not fall under the
15 catch-all of “other firearm-safety requirements.” This mandated speech is an essential part of I-
16 1639, and the concise description’s omission of the mandated warnings is unfairly prejudicial.

17 2. Potential Crimes For Currently-Legal Firearms Storage

18 The concise description does not provide notice to the public that conduct, which is
19 currently lawful, would be transformed into criminal conduct, potentially punishable as a felony.
20 The Attorney General’s concise description includes “criminalize certain storage and
21 unauthorized use,” but this statement unfairly and prejudicially understates the potential
22 intrusiveness of the initiative and the personal stakes for many members of the public. While
23 mentioning “storage” and “criminalize,” the concise description does not convey the essential
24 truth of the initiative, which is a **new mandate to disable or lock away what amounts to**
25 **effectively all firearms as the failure to do so may result in criminal liability.** Although the

1 failure to follow the new storage mandate does not become criminal unless and until unauthorized
2 use occurs, that additional element requires no conduct by the gun owner, who would suddenly
3 be exposed to criminal (and derivatively civil) liability.

4 3. New Training Mandate

5 The concise description does not provide notice to the public that the “training” that I-
6 1639 requires is a brand-new requirement under Washington firearms law. Washington State does
7 not have any current training requirements for pistol purchases or concealed pistol licenses. At
8 minimum, the concise description should describe this portion of I-1639 as “new training” in order
9 to provide notice to the public that the proposed training is not currently in force.

10 4. Background Checks

11 The concise description misleadingly describes the background checks for “semiautomatic
12 assault rifle” as “enhanced.” What I-1639 actually proposes is to apply the existing requirements
13 for pistol sales to “semiautomatic assault rifles.” The term “enhanced” is unfairly prejudicial
14 because it suggests that the background checks are improved or superior, when in fact the
15 background check protocol that will be employed is more accurately and neutrally described as
16 “additional” or “increased.”

17 5. Petitioner’s Proposed Concise Description

18 Incorporating the above objections, a fair and accurate concise description would read:³

19
20 This measure would require additional background checks, new training, and
21 waiting periods for sales of semiautomatic assault rifles; mandate firearm storage;
22 impose age limitations and purchase fees; and require posted warnings.

23 For the Court’s reference, below is the Attorney General’s concise description for I-1639, marked
24 to reflect the changes Petitioner’s propose:

25 ³ To reflect Petitioner’s withdrawal of its word limit objection, the word “would” has been re-inserted and
the verb tense has been updated in Petitioner’s proposed concise description.

1 This measure would require ~~enhanced~~ additional background checks, new training,
2 and waiting periods for sales ~~or delivery~~ of semiautomatic assault rifles; mandate
3 ~~criminalize certain firearm~~ storage and ~~unauthorized use~~; impose age limitations
4 and purchase fees; and require posted warnings ~~enact other firearm safety~~
5 ~~requirements~~.

6 **D. Ballot Measure Summary**

7 The Attorney General’s ballot measure summary is flawed in several respects.

8 1. New Purchase Fees

9 The Attorney General’s ballot measure summary mentions “fees,” but without any context
10 or notice to the public regarding the amount, purpose, and payer of such fees. I-1639, in Section
11 3, imposes a new tax, characterized as a fee, of \$25 or more for each purchase of a firearm that
12 meets the definition of a “semiautomatic assault rifle.” This new fee may be used to fund health
13 care facilities and other entities that are unrelated to the regulatory apparatus for firearms. Because
14 the fees are related to consumer purchases of firearms, the ballot measure summary’s omission of
15 the full context surrounding the fees is unfairly prejudicial.

16 2. Restrictions on Out-of-State Purchasers

17 Section 12 of I-1639 prohibits dealer sales in Washington of any “semiautomatic assault
18 rifle” to a resident of another state. This is a significant restriction and is entirely omitted from
19 the ballot measure summary. In contrast, the age restrictions on purchasers is included in the
20 ballot measure summary. The exclusion of this restriction is arbitrary and prejudicial.

21 3. Potential Crimes for Currently Legal Firearms Storage

22 The ballot measure summary does not provide notice to the public that conduct, which is
23 currently lawful, may be changed into criminal conduct, potentially punishable as a felony. The
24 Attorney General’s ballot measure summary includes “require certain secured firearm storage or
25 trigger-locks,” but this statement does not provide notice to the public that the initiative is a new
mandate, backed by potential criminal penalties, to disable or store effectively all firearms.
Additionally, the ballot measure summary describes that I-1639 “criminalize[s] certain firearm

1 storage if it results in unauthorized use,” but this clause is too confusing. Criminal liability follows
2 only with noncompliance with the storage mandate, followed by third-party conduct constituting
3 unauthorized use. The public should clearly understand that while noncompliance with the
4 mandate is not immediately chargeable as a crime, the independent conduct of third parties
5 instantly transforms currently-legal storage methods into a crime.⁴

6 4. New Firearm Training

7 The ballot measure summary does not provide notice to the public that the “firearm
8 training” that I-1639 requires is a brand-new requirement under Washington firearms law.
9 Washington State does not have any current training requirements for pistol purchases or
10 concealed pistol licenses. At minimum, the ballot measure summary should describe this portion
11 of I-1639 as “new firearms training” in order to provide notice to the public that the requirement
12 to obtain training is a new obligation.

13 5. Background Checks

14 The ballot measure summary misleadingly describes the background checks for
15 “semiautomatic assault rifle” as “enhanced.” What I-1639 actually proposes is to apply the
16 existing requirements for pistol sales to “semiautomatic assault rifles.” The term “enhanced” is
17 unfairly prejudicial because it suggests that the background checks are improved or superior, when
18 in fact the background check protocol that will be employed is more accurately and neutrally
19 described as “additional” or “increased.”

20 6. Petitioner’s Proposed Ballot Summary

21 Incorporating the above objections, a fair and accurate ballot measure summary would
22 read:

23
24 _____
25 ⁴Public understanding of the potential criminal penalties for failure to follow the storage mandate is further
underscored because of the possibility of derivative civil liability standard based on these new legal
requirements.

1 This measure would require additional background checks, new firearm training,
2 and waiting periods before semiautomatic assault rifles may be purchased or
3 delivered. It would impose limitations on who may purchase or possess certain
4 firearms, including 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.

5 For the Court's reference, below is the Attorney General's ballot measure summary for I-1639,
6 marked to reflect the changes Petitioner proposes:

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

13 VI. CONCLUSION

14 In summary, Petitioner proposes the following statement of subject, concise description,
15 and measure summary as fair and impartial and accurately describing the initiative.

16 BALLOT TITLE

17 Statement of Subject: Initiative Measure No. 1639 concerns restrictions on
18 firearms.

19 Concise Description: This measure would require additional background checks,
20 new training, and waiting periods for sales of semiautomatic assault rifles; mandate
firearm storage; impose age limitations and purchase fees; and require posted
21 warnings.

22 BALLOT MEASURE SUMMARY

23 This measure would require additional background checks, new firearm training,
24 and waiting periods before semiautomatic assault rifles may be purchased or
delivered. It would impose limitations on who may purchase or possess certain
25 firearms, including prohibiting firearm purchases by persons under age 21 or out-
of-state residents. It would mandate secured firearm storage or trigger-locks, with

1 criminal penalties for noncompliance and unauthorized use. It would enact firearm
purchase fees and mandate posting certain warnings.

2 Petitioner respectfully requests that the Court review the ballot title and measure summary
3 in light of the proposed measure and Petitioner's objections, and determine that Petitioner's
4 proposed ballot title and measure summary most accurately and impartially convey the subject
5 matter and essential content of I-1639. A proposed order is attached.

6
7 DATED: May 21, 2018.

8 CORR CRONIN MICHELSON
9 BAUMGARDNER FOGG & MOORE LLP

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15 *Attorneys for Petitioner*

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DECLARATION OF SERVICE

The undersigned declares as follows:

1. I am employed at Corr Cronin Michelson Baumgardner Fogg & Moore LLP, attorneys of record for Petitioner National Rifle Association, LLC herein.

2. I hereby certify that on May 21, 2018, I caused a true and correct copy of the foregoing document to be served on the following parties as follows:

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

DATED this 21st day of May, 2018 at Seattle, Washington.

s/ Christy A. Nelson

Christy A. Nelson