☐ EXPEDITE
☐ No hearing set
☒ Hearing is set
Date: August 17, 2018
Time: 9:00 am
Judge: Hon. James Dixon

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

In re:

INITIATIVE NO. 1639

ROBIN BALL, a resident of the state of Washington; and the National Rifle Association,

Petitioners,

v.

KIM WYMAN, Washington State Secretary of State, in her official capacity,

Respondent.

ALAN GOTTLIEB and JULIANNE HOY VERSNEL

Petitioners,

v.

KIM WYMAN, Washington State Secretary of State, in her official capacity,

Respondent.

No. 18-2-03747-34

PETITIONERS' OPENING BRIEF IN SUPPORT OF APPLICATION FOR CITATION AND INJUNCTION

Immix Law Group PC

701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

TABLE OF CONTENTS

I. INTRODUCTION 1

I. FACTS 2

A. I-1639: An Initiative To The People 2

B. The Signature Petitions 3

C. The Secretary's Filing And Certification 3

D. The November Ballot And Voter Pamphlet 5

II. ARGUMENT 5

A. The Standard Of Review Is De Novo 6

B. Issue 1: Does the Secretary of State Have Authority to Examine Petitions for Compliance with Constitutional and Statutory Requirements? 6

1. Filing and Accepting the Petitions 7

2. Review of the Petitions Prior to Certification 7

C. Issue 2: The Certified Signatures Are Not In Support Of I-1639 10

D. No Reasonable Secretary of State Would Find Substantial Compliance 11

E. The Secretary's Certification Should Be Vacated and an Injunction Should Issue Preventing I-1639's Appearance on The Ballot 12

Immix Law Group PC

701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

TABLE OF AUTHORITIES

CASES

Community Care Coalition of Washington v. Reed, 165 Wash. 2d 606, 200 P.3d 701 (2009) 6
Coppernoll v. Reed, 155 Wash. 2d 290, 119 P.3d 318 (2005) 13
Costa v. Superior Court, 37 Cal. 4th 986, 128 P.3d 675 (2006) 13
In re Special Election on Moses Lake School District #161 Proposition 1, 2 Wash. App. 2d 689, 413 P.3d 577 (Div. 3 2018) 12
Matter of Estate of Thompson, 103 Wash. 2d 292, 692 P.2d 807 (1984) 9
People v. Hinkle, 130 Wash. 419, 227 P. 861 (1924) 9
Schrempp v. Munro, 116 Wash. 2d 929, 809 P.2d 1381 (1991) 7
State v. Superior Court of Thurston County, 81 Wash. 623, 143 P. 461 (1914) 12

STATUTES

RCW 29A.32.070 5
RCW 29A.32.080 ..... 5, 7, 10
RCW 29A.72.100 ..... 7, 10
RCW 29A.72.120 4
RCW 29A.72.140 4
RCW 29A.72.170 ..... 4, 7, 8
RCW 29A.72.180 7
RCW 29A.72.200 7
RCW 29A.72.210 4
RCW 29A.72.230 ..... 4, 8, 10, 11

OTHER AUTHORITIES

https://www.sos.wa.gov/office/news-releases.aspx#/news/1305 4

CONSTITUTIONAL PROVISIONS

Wash. Const. Art. II § 1(a) 1, 3, 6, 10
Wash. Const. Art. II § 1(d) 1, 7
Wash. Const. Art. II § 1(e) 7
Wash. Const. Art. II § 37 5

Immix Law Group PC

701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

I. INTRODUCTION

"The first power reserved by the people is the initiative." Wash. Const. Art. II § 1(a). The people thereby reserved the power to draft and adopt legislation directly, by popular vote, without action by the legislature. The Constitution establishes clear guidance for how the people exercise this reserved power, and the legislature has enacted legislation "especially to facilitate . . . operation" of the initiative power. The constitutional structure requires that legislation proposed by initiative be presented to voters at both phases of the initiative process: first, on the petition when sponsors solicit voter's signatures to qualify the initiative for the ballot or for presentation to the legislature, *see* Art. II § 1(a); and second, in the voter information pamphlet that the Secretary of State sends to voters "to reasonably assure that each voter will have the opportunity to study the measures prior to the election." Art. II § 1(d) . The Constitution thus requires that sponsors of initiatives, and the Secretary of State, ensure that each voter considering whether to support an initiative, at both steps in the process of direct democracy, has the opportunity to fully inform herself of the proposed change to the state's law.

Here, the sponsors of Initiative No. 1639 failed to comply with the Constitution and enabling legislation in soliciting voter support for putting I-1639 on the November ballot. I-1639 proposes to make significant additions and deletions from existing Washington state firearms law. The petitions circulated for signature and filed with the Secretary of State, however, do not contain the text of the initiative as filed with the Secretary and that she intends to print in the voter information pamphlet. Instead, it omits and indication of what existing state law is, and how the initiative proposes to change it. By omitting any strikethrough or underlining, the text on the petitions gives the false and misleading impression that the entire text will be added to the statute, or at least gives no indication to voters what portions are old and what portions are proposed additions. It also does not identify the deletions from existing

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

law that the sponsors hope to make.

The Secretary of State nonetheless decided to certify I-1639 for the next general election, mistakenly concluding that she lacks any authority to consider more than the validity and number of signatures appearing on petitions timely filed with her office. She erroneously concluded that she may not evaluate whether the petitions submitted in support of an initiative satisfy the constitutional and statutory requirements to include a "full, true, and correct copy" of the text of the initiative. Petitioners seek a ruling from this court that the Secretary of State not only possesses such authority, but in examining the petitions submitted in support of I-1639 the conclusion is inescapable that those petitions do not "substantially comply" with the requirement of a "full, true, and correct copy" of the text of the initiative. Consequently, plaintiffs request an order vacating her certification and an injunction prohibiting the inclusion of I-1639 on the November 2018 ballot.

I. FACTS

A. I-1639: An Initiative To The People

I-1639 began in an ordinary fashion: a sponsor filed a proposed text with the Secretary of State; the Office of Code Reviser put that text in a format that it believes complies with statutes, regulations, and Constitutional provisions governing amendment of existing law; the sponsor filed the final text with the Secretary. After a skirmish in Thurston County Superior Court regarding the ballot title, the text was finalized and filed with the Secretary of State.[1] That, then, is I-1639: a set of proposed amendments to various existing Washington state statutes concerning firearms. I-1639, the document filed with the Secretary of State and which the Secretary proposes to print in the voter's information pamphlet, demonstrates each proposed amendment by strikethroughs of text its sponsors will ask voters to remove from the existing law and underlines for text the sponsors will ask voters to add to existing law.

[1] That final text was appended to the Application for Citation and Injunction as an exhibit, and is attached hereto as Exhibit A to the Declaration of Joel Ard for the Court's convenience.

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

B. The Signature Petitions

The petition sponsors then sought voter support for putting I-1639 on the November ballot. To solicit that support, the sponsors "print[ed] blank petitions upon single sheets of paper . . ." RCW 29A.72.100. The front side of each sheet conformed to the statutory requirements: they were a minimum of 11" x 14", had lines for not more than 20 signatures, and contained the prescribed warning and title in the form required by RCW 29A.72.120, for petitions to the people. The front of each sheet, above the signature lines, included the required text:

> We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. 1639, entitled "Initiative Measure No. 1639 concerns firearms. This measure would increase background checks, training, age limitations, and waiting periods for sales or deliveries of semiautomatic assault rifles; criminalize noncompliant storage upon unauthorized use; allow fees; and enact other provisions. Should this measure be enacted into law? Yes [ ] No [ ]", a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the 6th day of November, 2018; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

However, the sponsors did not print on the reverse side of the petition the required "readable, full, true, and correct copy of the proposed measure . . ." RCW 29A.72.100. Instead, the reverse side of each sheet contains a litany of text with no strikethroughs or underlines, presenting the entire existing contents of the text filed with the Secretary of State as though it were all proposed new enactments. As such, the petitions do not comply with Art. II § 1(a), which requires of initiatives that "[e]very such petition shall include the full text of the measure so proposed."

C. The Secretary's Filing And Certification

The petition sponsors secured hundreds of thousands of signatures on tens of thousands of petitions, all containing this improper text on the reverse side. When they were submitted to the Secretary of State, she recognized that she was required to accept them for filing,

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

pursuant to RCW 29A.72.170. That statute gives the Secretary discretion to refuse to accept petitions for filing only if they are late, plainly lack sufficient signatures, or lack the warning required by RCW 29A.72.140 or oaths required by RCW 29A.72.120. Otherwise, "the secretary of state ***must*** accept and file the petition." RCW 29A.72.170 (emphasis added). And so she did.

Upon accepting the petition sheets for filing, the Secretary of State scanned them into digital files, and also "arrange[d] and assemble[d] the sheets containing the signatures into such volumes as will be most convenient for verification and canvassing and . . . consecutively number[ed] the volumes and stamp[ed] the date of filing on each volume." RCW 29A.72.210. Having done so, "the secretary of state . . . proceed[ed] to verify and canvass the names of the legal voters on the petition. . . us[ing] any statistical sampling techniques for this verification and canvass which have been adopted by rule as provided by chapter 34.05 RCW." RCW 29A.72.230. Once this process was completed, the Secretary determined that the sheets submitted by the proponents of I-1639 contain more than the required number of signatures of registered voters to qualify for the ballot. The Secretary has certified the petition and intends to present it to the voters in November.

At the same time, the Secretary did not determine that the petitions satisfied the legal requirements contained in the constitution and statutory procedures for the initiative process.[2] In fact, despite her "concerns" regarding the deficiencies in the petitions, she incorrectly concluded that her legal authority with respect to the certification decision did not extend to considering defects in the form of the petition.

[2] "Secretary Wyman said concerns remain about whether the format of the I-1639 petition signature sheets complies with constitutional and statutory requirements, and whether it sets a precedent for future petitions. However, the initiative complied with the requirements of RCW 29A.72.170, which limits the Secretary's authority over initiatives to specific criteria." https://www.sos.wa.gov/office/news-releases.aspx#/news/1305 (last accessed August 1, 2018).

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

D. The November Ballot And Voter Pamphlet

In order to present to Washington voters the option to enact I-1639 into law, the Secretary will include the ballot title on the ballot:

> Initiative Measure No. 1639 concerns firearms. This measure would increase background checks, training, age limitations, and waiting periods for sales or deliveries of semiautomatic assault rifles; criminalize noncompliant storage upon unauthorized use; allow fees; and enact other provisions. Should this measure be enacted into law? Yes [ ] No [ ]

She will also include in the voters' pamphlet the full text of the measure, as required by RCW 29A.32.070(10). The full text of the measure that will appear in the pamphlet is the text filed with the Secretary of State, complete with strikethroughs and underlines demonstrating the proposed amendments to existing law that voters will be asked to decide on. This text will therefore satisfy the statutory requirement that:

> Statewide ballot measures that amend existing law must be printed in the voters' pamphlet so that language proposed for deletion is enclosed by double parentheses and has a line through it. Proposed new language must be underlined. A statement explaining the deletion and addition of language must appear as follows: "Any language in double parentheses with a line through it is existing state law and will be taken out of the law if this measure is approved by voters. Any underlined language does not appear in current state law but will be added to the law if this measure is approved by voters."

RCW 29A.32.080. This also ensures that the initiative – both the text filed with the Secretary of State and the text presented to voters as a proposed amendment – complies with Art. II § 37 of the state constitution.

II. ARGUMENT

The Secretary has certified that a petition in support of I-1639 had more than the required number of signatures of Washington voters. As a result, absent relief from this court, she will include in the November general election ballot the question of whether voters approve of I-1639. In doing so, she will print the text of the initiative, as filed with her office, in the voter information pamphlet. But despite both constitutional and statutory mandate, not a single signature among those she certified actually appears on a petition with the required text of the

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

proposed law on it. Although each signature appears below an oath that the petition contained a full, true, and correct copy of I-1639, none did. Those petitions containing the signatures which the Secretary has certified are actually ***not*** valid petitions in support of I-1639.

A. The Standard Of Review Is De Novo

Before addressing how the Secretary of State erred in certifying I-1639, the Court must determine the standard by which it reviews her decision. If the Secretary's decision fell within her expertise, or evaluated whether the petitions, despite errors, nonetheless "substantially complied" with the constitutional and statutory requirements, then this Court would apply a deferential standard of review, and her decision could be overturned only if it was shown to be "arbitrary and capricious." *Community Care Coalition of Washington v. Reed*, 165 Wash. 2d 606, 200 P.3d 701 (2009). In this case, by contrast, the Secretary of State has made a legal determination that she is unable to reject a petition because of the "limited authority" that she exercises in determining whether to certify a petition.[3]. Consequently, the review of the Secretary's decision to certify I-1639 is de novo—first, to determine whether the Secretary of State *has* the authority to examine the petitions for compliance with constitutional and statutory requirements, and second, to determine what remedy is warranted as a result of the petitions' non-compliance with constitutional and statutory mandates.

B. Issue 1: Does the Secretary of State Have Authority to Examine Petitions for Compliance with Constitutional and Statutory Requirements?

"Every [initiative] petition shall include the full text of the measure so proposed." Art. II § 1(a). This simple requirement for initiative petitions is inherent to Washington's constitutional process of direct democracy, ensuring that each and every signature in support of placing an initiative on the ballot comes from a voter who had the opportunity to fully inform herself of the proposed changes that the initiative will make to existing law. Fulfilling its obligation to enact legislation to "facilitate [the] operation" of the initiative power, Art. II

[3] *See* Press Release cited in footnote 2, *supra*.

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

§ 1(d), the legislature enacted an essentially verbatim requirement into law, requiring petition sponsors to include on each petition "a readable, full, true, and correct copy of the proposed measure printed on the reverse side of the petition." RCW 29A.72.100. Similarly, the Secretary's statutory obligation to send a copy of the voters' pamphlet containing the full text of the initiative proposal to each household, RCW 29A.32.080, implements the constitutional requirement of Art. II § 1(e) , which requires "publicity of all laws or parts of laws . . . referred to the people" in order to "assure that each voter will have an opportunity to study the measures prior to election."

1. Filing and Accepting the Petitions

The Secretary of State has the obligation to police these requirements. However, as she correctly concluded, that obligation does not arise at the moment the petitions are presented for filing. At that moment, she may only reject petitions for lateness, for obviously lacking sufficient signatures, or for omitting the warnings and signature oaths for the signers and gatherers. RCW 29A.72.170. The Supreme Court has concurred that this initial and cursory review, of which only denied petition sponsors may seek judicial review, passes constitutional muster. RCW 29A.72.180; *Schrempp v. Munro*, 116 Wash. 2d 929, 809 P.2d 1381 (1991). This stands to reason, because the Secretary's decision is only whether to accept and preserve the physical petitions or destroy them as required by RCW 29A.72.200. At this stage, she makes no other determination about the petitions.

2. Review of the Petitions Prior to Certification

The Secretary's review, however, continues beyond the moment of accepting and filing the petitions. As noted above, "filing" the petitions consists of taking the physical paper, making copies of the pages, and organizing them in binders for review. After the petitions are filed, the Secretary must count the signatures and certify whether or not the petitions contain sufficient signatures in support of the measure. Any citizen dissatisfied with her determination – yea or nay – may seek review in this Court. And the Secretary's determination must, of

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

necessity, include a review of not merely the signatures, but the other contents of the petitions, as well – a step the Secretary omitted to undertake in this case.

As an illustrative example, consider that the sponsor of mythical initiative I-9999 presents a stack of 20,000 sheets to the Secretary at 4:59 pm on the very day that is four months prior to the general election. The Secretary barely has time for even a cursory review – the very kind of cursory review called for by RCW 29A.72.170. Upon that review, she identifies that the petition forms include space for 20 signatures, and many of the sheets have all the signature blanks filled out. She certainly cannot look at all 20,000 pages before the deadline, so she concludes that the petition does not "clearly bear[] insufficient signatures." *Id.* A glance at the clock informs her that the deadline for filing has not quite expired, and the first few among the petitions do have "the information required by RCW 29A.72.110, 29A.72.120, or 29A.72.130." *Id.* She therefore accepts them. Later, after they are scanned and put in binders, suppose it becomes apparent that half the sheets submitted have no signatures, or obviously false signatures. The Secretary has full authority to refuse to certify such an initiative.

But the Secretary might also discover during review that half the petitions are not in support of I-9999 at all, but instead are petitions containing valid signatures of voters, but with text in support of a completely different initiative, say I-4444. Even if every petition contains all of the information required by the constitution and by statute, and the number of signatures exceeds the minimum, the Secretary should not disclaim her responsibility to look beyond the number of signatures and thereby certify that I-9999 for the November election. She should reach the conclusion that the petitions filed with her office contain only 200,000 signatures in support of I-9999 and 200,000 who signed in support of I-4444.

In other words, the authority entrusted to the Secretary by RCW 29A.72.230 necessarily includes the authority to engage in a substantive review of whether the contents of the documents filed with her office *substantially comply* with the constitutional and statutory requirements. But in this case, the Secretary has not done so. Instead, her public statements

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

reflect her mistaken belief that she once she accepts a stack of petitions for filing, she lacks the authority to do anything more than count the number of signatures submitted. As such, this court must engage in the analysis she mistakenly avoided, namely, whether there was "substantial compliance" with the constitutional and statutory directions regarding the form of an initiative petition.

In concluding that she lacked the authority to review the contents of the petitions, the Secretary disregarded the Supreme Court's express recognition of her authority. "An examination of the petition filed with respondent to ascertain if it is in proper form for filing, complying with the formalities of the law as to its form and contents, and to ascertain if it has a sufficient number of signatures on the face of the petition to entitle it to be filed, involve administrative acts and matters of discretion." *People v. Hinkle*, 130 Wash. 419, 429, 227 P. 861, 865 (1924). Here, the petition absolutely failed to "comply[] with the formalities of the law as to its form and contents," yet the Secretary consider herself compelled to disregard that failure. In fact, as the Supreme Court held, her review of the petitions after they are filed includes the discretionary authority to reject those petitions which do not comply with the law. The Secretary undoubtedly has the authority – and indeed, the non-discretionary obligation – to reject signatures on papers ostensibly filed in support of one measure but, on review, obviously in support of a different one. She also has the authority and obligation to reject signatures on a document that fails to comply with the constitutional and statutory mandates to present singers with the text of the initiative.

Concluding that the legislature assigned this authority and responsibility to the Secretary as part of her canvass under 29A.72.230 is the only way to enforce the right of initiative as found in the constitution. "In interpreting the provisions of the constitution which preserve the right of initiative to the people, this court has consistently applied the rule that such provisions will be liberally construed to the end that the right of initiative be facilitated." *Matter of Estate of Thompson*, 103 Wash. 2d 292, 294–95, 692 P.2d 807, 808 (1984). That

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

liberal construction must preserve the right of initiative as it is written in the constitution, including the obligations imposed on petition sponsors that require them fully to inform voters of the contents of initiatives when soliciting signatures. That constitutional mandate, legislatively restated in RCW 29A.72.100, must be enforced by the Secretary as part of the canvass under RCW 29A.72.230. Otherwise, as the Secretary's statements and certification in this case show, initiative sponsors can, at their own option, write that clause out of the constitution and evade RCW 29A.72.100. Allowing interested private parties to make a dead letter of a vital protection found in the constitution cannot be a "liberal construction" of the statute that facilitates the right of initiative as constitutionally prescribed.

C. Issue 2: The Certified Signatures Are Not In Support Of I-1639

In the hypothetical case suggested in the previous section, half of the petitions submitted by the initiative sponsors were actually in support of a different initiative. They clearly should not be counted in determining whether to certify the initiative. Yet the facts in this case are not significantly different. The constitution is explicit: "Every such petition [in support of an initiative] shall include the full text of the measure so proposed." Art. II § 1(a). So are the statutory provisions describing the procedure for an initiative: Petitions in support of an initiative must have, on the reverse side, a "readable, full, true, and correct copy of the proposed measure . . ." RCW 29A.72.100. The "proposed measure" that must appear is the text filed with the Secretary of State, the same text that the Secretary will print in the voters' information pamphlet. It is a text that sets out in full the statutes to be amended, according to the required amendatory style of RCW 29A.32.080. In this way, the Legislature has facilitated the constitutional mandates of the initiative process to ensure that at all stages, the statutory requirements fully and faithfully implement the constitutional requirements, allowing every voter, at the petition and election phases, to fully inform himself of the exact contents of the proposed changes to the law.

In order to comply with the constitution and statutes, a petition in support of I-1639

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

must contain on its reverse side the full text of I-1639. It must be substantially the same as the text on file with the Secretary, the same text the Secretary will print in the voters' pamphlet. If it contains some other text—whether it is the text of another initiative or a recipe for apple pie—it does not satisfy the constitutional and statutory requirements. A document with some other text, even if it contains signatures of registered voters in the state of Washington, is not a petition in support of I-1639, and the Secretary should not count those signatures as supporting I-1639 when she makes her review under RCW 29A.72.230.

Here, none of the documents which the I-1639 sponsors filed with the Secretary contain the text of the initiative. No person reading the reverse side of the petitions could understand the current state of Washington's relevant laws, nor know which portions of the text propose additions to or subtractions from the statutes. Indeed, a person might readily conclude that no portion of the text on the reverse side is currently law in Washington, and support the document in the mistaken belief that Washington law does not contain what appear to be important restrictions on firearms, when in fact they are already part of the existing law that the actual initiative, as filed with the Secretary of State, would amend. Moreover, a reader might believe that, however undesirable some features of the initiative might be, they are outweighed by what appear to be necessary restrictions—which the reader is not told are already the law.

D. No Reasonable Secretary of State Would Find Substantial Compliance

As noted earlier, the Secretary of State made no determination as to whether, despite the lack of conformity of the petitions to the constitutional and statutory requirements, there was nonetheless "substantial compliance" such that the initiative should be certified. If there were sufficient time, the proper remedy would be in effect to "remand" this case to the Secretary for her to make such a determination, However, there is barely time for this case to be resolved on the merits and reviewed by the Supreme Court before the ballots must be printed. Therefore this court is put in the position of making that determination.

> Washington law defines "substantial compliance" as actual compliance in respect to the substance essential to every reasonable objective of a statute. The key to substantial

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

> compliance is the satisfaction of the substance essential to the purpose of the statute. The purpose for which the legislature adopts election notice statutes is to impart actual knowledge of the election to the voter.

In re Special Election on Moses Lake School District #161 Proposition 1, 2 Wash. App. 2d 689, 702, 413 P.3d 577, 583 (Div. 3 2018) (citations omitted).

When the I-1639 petitions submitted to the Secretary of State are examined with an eye to whether they satisfied the "substance essential to the purpose of the statute," the answer would plainly be "No." As a contrasting example, in *State v. Superior Court of Thurston County*, 81 Wash. 623, 143 P. 461 (1914), the Secretary of State refused to count the signatures that were submitted in support of an initiative because the certifying officer initialed the names "in common lead pencil instead of ink, as the statute in terms provides they shall be." *Id.* at 647. The Supreme Court understandably overruled the Secretary's decision and ordered that the signatures so certified should be counted. Similarly, some petitions contained more than twenty signatures, and did not appear on the numbered lines. For similar reasons the Supreme Court overruled the refusal to count those signatures.

Here, by contrast, the purpose of both the constitutional and the statutory requirements is to insure that those who sign the petition are adequately informed of the change(s) that the initiative would effect in existing law. Not only did the text on the reverse of the petitions not provide such information, but it actually provided misleading information concerning how Washington law would change if the initiative were adopted.

Consequently, the Secretary's determination that her office received a sufficient number of signatures on petitions in support of I-1639 is erroneous. Not one of the signatures appears on a petition which validly, and in accordance with constitutional and statutory mandates, requests the submission of I-1639 to the voters.

E. The Secretary's Certification Should Be Vacated and an Injunction Should Issue Preventing I-1639's Appearance on The Ballot

Washington courts, like those of most states which allow for initiatives, generally

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

refrain from pre-election challenges. "Preelection challenges to statewide initiatives and referenda fit into three categories: "(1) the measure, if passed, would be substantively invalid because it conflicts with a federal or state constitutional . . provision; (2) the procedural requirements for placing the measure on the ballot have not been met; and (3) the subject matter is not proper for direct legislation." *Coppernoll v. Reed*, 155 Wash. 2d 290, 297, 119 P.3d 318, 321 (2005). While the courts do not entertain the first type of challenge prior to an election, "[o]ur courts have entertained preelection review of the second type of challenge, a ballot measure's noncompliance with procedural requirements, including challenges to the requisite number of signatures, timing of filing, and ballot titles. . . Procedural preelection challenges generally do not raise concerns regarding justiciability because the sole inquiry is whether the proper procedures have been followed in order to invoke the initiative process in the first instance." *Id.* at 298-99.

The California Supreme Court, enforcing similar requirements of the initiative process, has agreed that a preelection challenge is the appropriate vehicle for resolving questions about the scope and effect of errors in the presentation of the text of the initiative on signature petitions. *See, e.g., Costa v. Superior Court*, 37 Cal. 4th 986, 128 P.3d 675 (2006) (holding that courts could consider preelection challenge on question of compliance with constitutional requirement to include text of proposed initiative on signature petitions).

Here, not only is the challenge ripe for adjudication, but the utter failure of the I-1639 petitions to comply with constitutional and statutory requirements compels the court first to vacate the previous certification and second to enjoin the presentation of I-1639 to Washington voters.

///

///

///

///

Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351

DATED August 1, 2018.

IMMIX LAW GROUP PC

By: _____

Joel B. Ard, WSBA # 40104
Immix Law Group PC
701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Attorneys for Petitioners Alan Gottlieb and Julianne Hoy Versnel

ALBRECHT LAW PLLC

By: _____

Matthew C. Albrecht, WSBA #36801
David K. DeWolf, WSBA #10875
421 W. Riverside Ave., Ste. 614
Spokane, WA 99201
(509) 495-1246
Attorneys for Petitioners Alan Gottlieb and Julianne Hoy Versnel

CERTIFICATE OF SERVICE

I CERTIFY UNDER PENALTY OF PERJURY under the laws of the United States that on August 1, 2018, I served the foregoing Opening Brief together with Petitioners' Proposed Findings of Fact and Conclusions of Law and Proposed Order, via email per agreement between the parties, on the following:

FOR RESPONDENT Secretary of State Kim Wyman	Rebecca R. Glasgow Rebecca.Glasgow@atg.wa.gov Callie A. Castillo Callie.Castillo@atg.wa.gov Kristin Jensen KristinJ@atg.wa.gov Stephanie Lindey StephanieL1@atg.wa.gov Attorneys for Secretary of State Kim Wyman
FOR PETITIONERS Robin Ball and National Rifle Association	Steve Fogg sfogg@corrcronin.com Eric Lindberg elindberg@corrcronin.com Christy Nelson cnelson@corrcronin.com Attorneys for Robin Ball and NRA
FOR INTERVENOR Safe Schools Safe Communities	Greg Wong greg.wong@pacificalawgroup.com Nicholas Brown nicholas.brown@pacificalawgroup.com Sarah Washburn sarah.washburn@pacificalawgroup.com Tricia O'Konek tricia.okonek@pacificalawgroup.com Dawn Taylor dawn.taylor@pacificalawgroup.com Attorneys for Intervenor Safe Schools Safe Communities

IMMIX LAW GROUP PC

By _____

Joel B. Ard, WSBA # 40104
Immix Law Group PC
Attorneys for Petitioners Alan Gottlieb and Julianne Hoy Versnel

701 5th Ave Suite 4710
Seattle, WA 98104
Phone: (206) 492-7531
Facsimile: 503-802-5351