

FILED
SUPREME COURT
STATE OF WASHINGTON
11/22/2023 1:18 PM
BY ERIN L. LENNON
CLERK

NO. 102569-6

SUPREME COURT OF THE STATE OF WASHINGTON

VET VOICE FOUNDATION, et al.,

Respondents,

v.

STEVE HOBBS, et al.,

Petitioners,

**APPENDIX TO PETITIONER STEVE HOBBS'S
MOTION FOR DISCRETIONARY REVIEW**

ROBERT W. FERGUSON
Attorney General

WILLIAM MCGINTY,
WSBA #41868
SUSAN PARK,
WSBA #53857
NATHAN BAYS,
WSBA #43025
Assistant Attorneys General
OID No. 91157
7141 Cleanwater Drive SW
PO Box 40111

TERA HEINTZ,
WSBA #54921
KARL DAVID SMITH,
WSBA #41988
Deputy Solicitors General
OID No. 91087
1125 Washington Street SE
Olympia, WA 98504-0100
(360) 753-6200
Karl.Smith@atg.wa.gov
Tera.Heintz@atg.wa.gov

Olympia, WA 98504-0111
(360) 709-6470
William.McGinty@atg.wa.gov
Susan.Park@atg.wa.gov
Nathan.Bays@atg.wa.gov

*Counsel for Petitioner
Defendant Steve Hobbs*

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Petitioner Steve Hobbs submits this Appendix in support of his Motion for Discretionary Review.

This document contains 14 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 22nd day of November 2023.

ROBERT W. FERGUSON
Attorney General

/s/ William McGinty

WILLIAM MCGINTY, WSBA #41868

NATHAN BAYS, WSBA #43025

SUSAN PARK, WSBA #53857

Assistant Attorneys General

William.McGinty@atg.wa.gov

Nathan.Bays@atg.wa.gov

Susan.Park@atg.wa.gov

OID No. 91157

7141 Cleanwater Drive SW

PO Box 40111

Olympia, WA 98504-0111

(360) 709-6470

KARL DAVID SMITH, WSBA #41988

TERA HEINTZ, WSBA #54921

Deputy Solicitors General

Karl.Smith@atg.wa.gov

Tera.Heintz@atg.wa.gov

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be served, via electronic mail, on the following:

Kevin J. Hamilton
Matthew Gordon
Heath L. Hyatt
Hannah Parman
Andrew Ferlo
Perkins Coie LLP
KHamilton@perkinscoie.com
MGordon@perkinscoie.com
HHyatt@perkinscoie.com
HParman@perkinscoie.com
AndrewFerlo@perkinscoie.com
EGonzalez@perkinscoie.com
JBible@perkinscoie.com
Counsel for Plaintiffs

Ann M. Summers
David J. Hackett
Lindsey Grieve
ann.summers@kingcounty.gov
david.hackett@kingcounty.gov
lindsey.grieve@kingcounty.gov
kris.bridgman@kingcounty.gov
rmunozcintron@kingcounty.gov
Counsel for King County Defendants

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

DATED this 22nd day of November 2023, at
Olympia, Washington.

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Vet Voice Foundation, et al.,

v.

Steve Hobbs, et al.

Supreme Court of the State of Washington

Cause No. 102569-6

APPENDIX TO PETITIONER'S MOTION FOR
DISCRETIONARY REVIEW

| Number | Description | Bates Stamp Numbers |
|---------------|---|----------------------------|
| 1. | Second Amended Complaint for Declaratory and Injunctive Relief | 1-43 |
| 2. | Plaintiffs' Motion for Summary Judgment | 44-102 |
| 3. | Declaration of Heath L. Hyatt in Support of Plaintiffs' Motion for Summary Judgment and its Support Exhibit A | 103-131 |
| 4. | King County Canvassing Board Members' Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment | 132-176 |
| 5. | Defendant Steve Hobbs's Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment | 177-227 |
| 6. | Declaration of William McGinty and its Supporting Exhibits, 1-5 | 228-423 |
| 7. | Declaration of Stuart Holmes and its Support Exhibit 5 | 424-445 |

| | | |
|-----|--|---------|
| 8. | Declaration of Mark Songer and its Support Exhibit 1 | 446-486 |
| 9. | Declaration of Dr. Robert Stein and its Supporting Exhibit 1 | 487-528 |
| 10. | Declaration of Sharla Comastro | 529-538 |
| 11. | Plaintiffs' Omnibus Opposition to Defendants' Cross Motions for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment; Response to Amici | 539-599 |
| 12. | Second Declaration of William McGinty and its Supporting Exhibits 6 and 8 | 600-657 |
| 13. | Second Declaration of Stuart Holmes and its Supporting Exhibit 7 | 658-663 |
| 14. | Order Re: Plaintiffs' Motion for Summary Judgment; Defendant Hobbs' Cross Motion for Summary Judgment; and Defendant King County Canvassing Board Members' Cross Motion for Summary Judgment | 664-688 |
| 15. | Defendants' Joint Unopposed Motion to Certify October 12, 2023 Order Pursuant to RAP 2.3(b)(4) | 689-698 |
| 16. | Declaration of William McGinty in Support of Defendants' Joint Unopposed Motion to Certify October 12, 2023 Order Pursuant to RAP 2.3(b)(4) and its Supporting Exhibit 1 | 699-709 |

| | | |
|-----|---|---------|
| 17. | Order Granting Defendants' Joint Unopposed Motion to Certify October 12, 2023 Order Pursuant to RAP 2.3(b)(4) | 710-712 |
| 18. | Notice of Discretionary Review to Supreme Court | 713-715 |
| 19. | King County Canvassing Board Defendants' Notice of Discretionary Review to Court of Appeals Division I | 716-718 |
| 20. | Defendant Steve Hobbs's Notice for Discretionary Review to the Court Of Appeals, Division I | 719-722 |

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

THE HONORABLE CATHERINE SHAFFER

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

VET VOICE FOUNDATION, THE
WASHINGTON BUS, EL CENTRO DE
LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL,
GABRIEL BERSON, AND MARI
MATSUMOTO

Plaintiffs,

v.

STEVE HOBBS, in his official capacity as
Washington State Secretary of State,
JULIE WISE, in her official capacity as the
Auditor/Director of Elections in King
County and a King County Canvassing
Board Member, SUSAN SLONECKER, in
her official capacity as a King County
Canvassing Board Member, AND
STEPHANIE CIRKOVICH, in her official
capacity as a King County Canvassing
Board Member,

Defendants.

No. 22-2-19384-1 SEA

SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

-1

161433291.4

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs VET VOICE FOUNDATION, THE WASHINGTON BUS, EL CENTRO DE LA RAZA, KAELEENE ESCALANTE MARTINEZ, BETHAN CANTRELL, GABRIEL BERSON, AND MARI MATSUMOTO (collectively, “Plaintiffs”) file this Complaint for Declaratory and Injunctive Relief against Defendants STEVE HOBBS, in his official capacity as the Washington State Secretary of State, JULIE WISE, in her official capacity as the Auditor/Director of Elections in King County and a King County Canvassing Board Member, SUSAN SLONECKER, in her official capacity as a King County Canvassing Board Member, AND STEPHANIE CIRKOVICH, in her official capacity as a King County Canvassing Board Member, and allege as follows:

NATURE OF THE ACTION

1. “[T]he right to vote is a fundamental right afforded to the citizens of Washington State.” *Madison v. State*, 161 Wn.2d 85, 95, 163 P.3d 757 (2007). “The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Gold Bar Citizens for Good Gov’t v. Whalen*, 99 Wn.2d 724, 730, 665 P.2d 393 (1983) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). Further, “[i]t is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections.” RCW 29A.04.205 (emphasis added).

2. For every Washington State voter, this fundamental right is contingent on an arbitrary, fundamentally flawed, and unlawful signature verification requirement.

3. Signature verification is touted as a voter verification tool, where an election official (a minimally trained layperson) visually compares the voter’s signature from the

1 ballot envelope to whatever signature is on file. Washington law requires election officials
2 to verify that a voter’s signature on a ballot declaration is the same as the signature of that
3 voter in the registration files of the county. RCW 29A.40.110(3) (the “Signature
4 Verification Requirement”). If the election official determines that a voter’s signature does
5 not “match” the file signature, the ballot is rejected and will not be counted unless the voter
6 takes additional burdensome steps to prove the voter’s identity. But unlike DNA markers
7 that are unique to the individual and constant throughout their life, signatures can and do
8 vary for many reasons. And unlike the high degree of certainty in DNA analysis, signature
9 matching is an inherently fraught endeavor. Even highly trained writing analysts who have
10 at their disposal the latest tools and the luxury of time make mistakes. Washington election
11 officials tasked with comparing signatures have none of those advantages—they lack
12 extensive training and proper tools and are hard-pressed for time. And, of course, election
13 officials are human: they make mistakes, they are rushed to “verify” millions of signatures
14 in just a few weeks, they are not experts in handwriting analysis, they are not trained as
15 such, and they may only have old, unrepresentative, or otherwise flawed signatures against
16 which to compare the signature on the ballot envelope. And if an election official errs by
17 rejecting a lawfully cast ballot, voters are not always able to take the additional steps
18 demanded by the state to prove their identity, even if they want to. For those deployed
19 overseas in the military, citizens traveling abroad, voters temporarily out of state, voters in
20 remote locations without access to email or phone service, or those with disabilities that
21 make consistent signatures difficult or impossible, and those without the time or funds to
22 devote to justifying their right to vote, this requirement strips them of their right to vote, by
23 the tens of thousands.
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 4. From the 2018 Primary Election through the 2022 Primary Election,
2
3 Washington’s Signature Matching Requirement has actually disenfranchised more than
4
5 113,000 Washington voters. King County alone disenfranchised over 42,000 of those
6
7 voters. Tens of thousands more have had their ballots initially rejected but then managed to
8
9 demonstrate that their signatures were, in fact, genuine—plainly proving that election
10
11 officials erred in rejecting them in the first place. As of November 14, 2022, Washington’s
12
13 Signature Verification Requirement has rejected over 36,000 ballots in the 2022 General
14
15 Election. But this burden, and outright disenfranchisement, falls with dramatic
16
17 disproportional impact on certain groups.

18 5. While Washington’s Signature Verification Requirement harms voters of all
19
20 stripes, some groups are disproportionately impacted, and others are especially vulnerable to
21
22 disenfranchisement. Among those disproportionately impacted by Washington’s Signature
23
24 Verification Requirement are voters under 40: 18 to 21-year-old voters have their votes
25
26 rejected at approximately 10 times the rate of voters over 40, 22 to 30-year-old voters have
27
28 their votes rejected over 6 times the rate of voters over 40, and 31 to 40-year-old voters have
29
30 their votes rejected at over 3 times the rate of voters over 40. Latino voters, Black voters,
31
32 and Asian voters have their votes rejected at approximately double the rate of white voters.
33
34 King County’s Signature Verification Requirement disenfranchises these groups with
35
36 similar disparity. Active-duty military personnel and their families who are stationed away
37
38 from Washington during an election have their votes rejected at approximately twice the rate
39
40 of non-military voters. Voters with serious medical conditions that impact muscular control
41
42 of hands and arms are especially vulnerable to disenfranchisement under this requirement, as
43
44 are non-native English speakers or those who speak no English at all. Indeed, the
45
46
47

1 Washington State Auditor made many similar findings in an analysis of rejected ballots after
2 the 2020 General Election.
3

4
5 6. And nowhere else in a citizen's life does such a Signature Verification
6 Requirement exist: Washingtonians do not have their signatures scrutinized to prove their
7 identity when they sign wills, property deeds, vehicle titles, tax declarations, tax returns,
8 driver's licenses, gun licenses, contracts, or other legally significant documents. Indeed,
9 affidavits and declarations offered in Washington (and federal) courts are routinely accepted
10 without being subject to this faux science signature matching requirement. Lawyers sign
11 complaints, judgments, and legal liens without such scrutiny. Washington citizens are born,
12 marry, divorce, adopt children, and die with formal county and state documentation, none of
13 which is subjected to this requirement.
14
15
16
17
18
19
20
21

22
23 7. Washington's Signature Verification Requirement is purportedly designed to
24 prevent fraudulent votes from being counted. But voter fraud is exceedingly rare in
25 Washington, and few—if any—cases of voter fraud have been caught and prosecuted
26 through signature matching. Therefore, Washington's Signature Verification Requirement
27 has disenfranchised tens of thousands of lawful voters for no discernable benefit.
28
29
30
31

32
33 8. Plaintiffs challenge the constitutionality of this Signature Verification
34 Requirement. In particular, Plaintiffs challenge the statutory requirement that election
35 officials verify that the voter's signature on the ballot declaration is the same as the signature
36 or signatures on file for that voter before that ballot is counted. RCW 29A.40.110(3).
37 Plaintiffs do not independently challenge the implementing regulations regarding ballot
38 declaration signature verification, but the invalidation of the statute would result in the
39 invalidation or nullification of those regulations.
40
41
42
43
44
45
46
47

1 of the Bus’s core activities is mobilizing young voters through voter registration, voter
2 education, and voter turnout. To date, Bus has registered nearly 72,000 voters, deployed
3 thousands of volunteers, and made hundreds of thousands of voter contacts in Washington
4 State. As part of its voter education and voter turnout programs, the Bus uses funds and
5 diverts resources to inform voters about the Signature Verification Requirement. The Bus
6 also devotes resources and volunteers to “curing” ballots that were rejected for non-
7 matching signatures through phone calls, in-person engagement, and other efforts to reach
8 affected voters.
9

10
11
12
13
14
15
16
17 12. Plaintiff El Centro de la Raza (“El Centro”) is a non-profit, non-partisan
18 501(c)(3) organization grounded in the Latino community of Washington State. El Centro’s
19 mission is to unify all racial and economic sectors; to organize, empower, and defend the
20 basic human rights of our most vulnerable and marginalized populations; and to bring
21 critical consciousness, justice, dignity, and equity to all the peoples of the world. El Centro
22 de la Raza means The Center for People of All Races. While El Centro has a wide array of
23 programs, it is well known for its voter registration and get-out-the-vote efforts. As part of
24 those get-out-the-vote efforts, El Centro conducts education campaigns to ensure voters
25 have all the information that they need to vote, including how and where to cast a ballot.
26 These education campaigns include e-mails to its network, announcements on radio
27 programming, social media, answering questions from individual voters about their ballots
28 and voting procedures, and other volunteer efforts to boost civic engagement through voting.
29 El Centro also recognizes that people of color, especially Latino voters, are
30 disproportionately impacted by Washington’s Signature Verification Requirement. Indeed,
31 El Centro has participants who have been disenfranchised by Washington’s Signature
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 Verification Requirement. Election officials even wrongly rejected El Centro’s Executive
2
3 Director’s ballot for non-matching signatures in the 2022 General Election.

4
5 13. Plaintiff Kaeleene Escalante Martinez (“Ms. Escalante Martinez”) is a
6
7 resident of King County, Washington. Ms. Escalante Martinez is a young Latina voter who
8
9 has had her ballot rejected three times in as many elections because election officials
10
11 mistakenly determined that her ballot signature did not match her signature on file. In the
12
13 2020 General Election, election officials mistakenly rejected her signature on her ballot.
14
15 When she submitted her ballot in that election, she was a U.S. citizen and a Washington
16
17 resident, fully eligible to vote in the election; she selected her preferred candidates and
18
19 sealed her ballot in the provided envelope, and signed and dated the ballot declaration. She
20
21 then timely returned her ballot. In short, she did everything that was required of her to cast
22
23 her ballot and exercise her fundamental right to vote. When notified of the county’s
24
25 erroneous rejection of her signature, Ms. Escalante Martinez went further: she carefully
26
27 completed and submitted the required paperwork to prove to election officials that she voted
28
29 her ballot, as she declared in the first instance. None of that mattered. Her vote was not
30
31 counted. Ms. Escalante Martinez was stripped of her right to vote by Washington’s
32
33 Signature Verification Requirement.

34
35 14. Astonishingly, the same thing happened—*again*—during the 2022 Primary
36
37 Election, when election officials mistakenly rejected her signature on her ballot for the
38
39 second time. When she submitted her ballot in that election, she was a U.S. citizen and a
40
41 Washington resident, fully eligible to vote in the election; she selected her preferred
42
43 candidates and sealed her ballot in the provided envelope, and signed and dated the ballot
44
45 declaration. She then timely returned her ballot. In short, she did everything that was
46
47 required of her to cast her ballot and exercise her fundamental right to vote. After learning

1 that her signature had been rejected yet again, she was so frustrated that she did not even
2
3 bother attempting to prove that election officials made a mistake in rejecting her ballot a
4
5 second time.

6
7 15. Ms. Escalante Martinez recently learned that, remarkably, *for a third time in*
8
9 *as many elections*, election officials mistakenly rejected her signature on her ballot.

10
11 16. Despite having her ballots rejected by election officials in the 2020 General
12
13 Election, the 2022 Primary Election, and the 2022 General Election, Ms. Escalante Martinez
14
15 plans to vote in future elections.

16
17 17. Plaintiff Bethan Cantrell (“Ms. Cantrell”) is a resident of King County,
18
19 Washington. Ms. Cantrell has a chronic condition that makes writing and signing her name
20
21 extremely uncomfortable. For this reason, she often signs her name on documents quickly
22
23 and more simply as opposed to using her formal signature, which takes longer and is more
24
25 involved. In the 2020 General Election, election officials mistakenly rejected her signature
26
27 on her ballot. When she submitted her ballot in that election, she was a U.S. citizen and a
28
29 Washington resident, fully eligible to vote in the election; she selected her preferred
30
31 candidates and sealed her ballot in the provided envelope, and signed and dated the ballot
32
33 declaration. She then timely returned her ballot. In short, she did everything that was
34
35 required of her to cast her ballot and exercise her fundamental right to vote. Despite having
36
37 her ballot rejected by election officials in 2020, Ms. Cantrell voted in the 2022 General
38
39 Election and plans to vote in future elections.

40
41 18. Plaintiff Gabriel Berson, M.D. (“Dr. Berson”) is a resident of King County,
42
43 Washington and has been a pediatrician in the area for over 15 years. As a pediatrician, Dr.
44
45 Berson signs many documents every day. Dr. Berson signs his name several different ways
46
47 on a regular basis.

1 19. In the 2020 General Election, election officials mistakenly rejected Dr.
2
3 Berson’s signature on his ballot. When he submitted his ballot in that election, he was a
4
5 U.S. citizen and a Washington resident, fully eligible to vote in the election; he selected his
6
7 preferred candidates and sealed his ballot in the provided envelope, and signed and dated the
8
9 ballot declaration. Dr. Berson returned his ballot before Election Day. In short, he did
10
11 everything that was required of him to cast his ballot and exercise his fundamental right to
12
13 vote.

14 20. Dr. Berson never received any notice that his ballot had been rejected.
15
16 Instead, a vigilant neighbor informed Dr. Berson that his name was on the public list of
17
18 voters who had ballots rejected for signature discrepancies. Dr. Berson submitted an official
19
20 form to election officials to “cure” his ballot. On October 30, 2020, King County Elections
21
22 acknowledged receipt of the “cure” form, but he never received any further information or
23
24 communications. Despite submitting the required “cure” form, Dr. Berson’s vote was never
25
26 counted. Despite having his ballot rejected by election officials in 2020, Dr. Berson voted in
27
28 the 2022 General Election and plans to vote in future elections.

29 21. Plaintiff Mari Matsumoto (“Ms. Matsumoto”) is an Asian and White resident
30
31 of King County. Ms. Matsumoto is also an attorney. As an attorney, Ms. Matsumoto signs
32
33 many documents every day, and her signature gets progressively fluid throughout the day.
34
35

36 22. In the 2022 General Election, election officials mistakenly rejected Ms.
37
38 Matsumoto’s signature on her ballot. When she submitted her ballot in that election, she
39
40 was a U.S. citizen and a Washington resident, fully eligible to vote in the election; she
41
42 selected her preferred candidates and sealed her ballot in the provided envelope, and signed
43
44 and dated the ballot declaration. She then timely returned her ballot. In short, she did
45
46
47

1 everything that was required of her to cast her ballot and exercise her fundamental right to
2 vote.
3

4
5 23. Ms. Matsumoto received an automated call from King County Elections
6 requesting she call back. Ms. Matsumoto called King County elections officials for more
7 information and was informed that the signature on her ballot did not match the signature on
8 file for her. Ms. Matsumoto was told to fill out and submit a “signature resolution form” to
9 the King County elections office. Ms. Matsumoto also received additional guidance on how
10 to properly sign the resolution form so that her ballot would be counted. As instructed, Ms.
11 Matsumoto filled out and returned the form by mail.
12
13
14
15
16
17

18
19 24. Days later, Ms. Matsumoto received notice that there were still issues with
20 her signature, and her ballot would not be counted. She called King County elections
21 officials again and was instructed to again fill out and submit a “signature resolution form.”
22 This time, Ms. Matsumoto received guidance on how to properly sign the resolution form
23 that was inconsistent with the previous guidance she had received. On November 9, 2022,
24 as instructed, Ms. Matsumoto again filled out and returned the form by e-mail. On that
25 form, she provided her name, date of birth, phone number, e-mail address, and two
26 signatures. Despite twice attempting to prove her identity to election officials by submitting
27 the required forms and providing other personal information that would prove her identity
28 such as her date of birth, Ms. Matsumoto’s ballot was ultimately still rejected for non-
29 matching signatures.
30
31
32
33
34
35
36
37
38
39

40
41 25. Despite having her ballot rejected by election officials in 2022, Ms.
42 Matsumoto plans to vote in future elections.
43

44
45 26. Defendant Steve Hobbs is the Secretary of State of Washington (“Secretary
46 Hobbs”) and is sued in his official capacity. Secretary Hobbs is “the chief election officer
47

1 for all federal, state, county, city, town, and district elections.” RCW 29A.04.230. In this
2 role, Secretary Hobbs is responsible for administrating presidential primary, state primary,
3 and state general elections and training and certifying state and local elections personnel.
4
5 RCW 43.07.310. Secretary Hobbs is further responsible for promulgating rules relating to
6
7 elections, including “standards for the verification of signatures on ballot declarations.”
8
9 RCW 29A.04.611(54). Secretary Hobbs, personally and through the conduct of his
10
11 employees, officers, agents, and servants, acted under the color of State law at all times
12
13 relevant to this action.
14
15

16
17 27. Defendant Julie Wise is the Auditor/Director of Elections in King County.
18
19 Defendant Susan Slonecker is a Supervising Attorney at the King County Prosecuting
20
21 Attorney’s Office. Defendant Stephanie Cirkovich is the Chief of Staff at the King County
22
23 Council. Ms. Wise, Ms. Slonecker, and Ms. Cirkovich are sued in their official capacities as
24
25 members of the King County Canvassing Board (“Canvassing Board”). The Canvassing
26
27 Board canvasses returns for all elections. RCW 29A.60.010. Only the Canvassing Board
28
29 may reject a ballot for non-matching signatures. *See* RCW 29A.60.050. The Canvassing
30
31 Board wrongly rejected Ms. Escalante Martinez’s, Ms. Cantrell’s, Dr. Berson’s, and Ms.
32
33 Matsumoto’s ballots, along with thousands of other King County voters. Ms. Wise,
34
35 Ms. Slonecker, and Ms. Cirkovich, personally and through the conduct of their employees,
36
37 officers, agents, and servants, acted under the color of State law at all times relevant to this
38
39 action.
40

41 JURISDICTION AND VENUE

42
43 28. This Court has original jurisdiction over the subject matter of this action
44
45 pursuant to Article IV, Section 6 of the Washington State Constitution, RCW 2.08.010, and
46
47 RCW 7.24.010.

1 35. In the 2018 General Election, over 17,600 Washington voters had their
2 lawfully cast ballots rejected because election officials erroneously concluded that their
3 ballot signature did not “match” the signature on file with election officials.
4

5
6 36. In the 2022 Primary Election, over 10,000 Washington voters had their
7 lawfully cast ballots rejected because election officials erroneously concluded that their
8 ballot signature did not “match” the signature on file with election officials.¹
9

10
11 37. King County consistently disenfranchises thousands of voters through the
12 Signature Verification Requirement. From the 2018 Primary Election through the 2022
13 Primary Election, King County’s Signature Verification Requirement disenfranchised over
14 42,000 voters, including Ms. Escalante Martinez, Ms. Cantrell, Dr. Berson, and Ms.
15 Matsumoto. While the 2022 General Election has not yet been certified, as of November 14,
16 2022, King County is poised to disenfranchise around 14,000 voters for non-matching
17 signatures.
18

19 38. These tens of thousands of voters have had their ballots rejected for virtually
20 no discernable benefit to the integrity of Washington State elections.
21

22 39. The Signature Verification Requirement purports to address a problem that,
23 by any reasonable measure, is virtually non-existent in Washington. Secretary Hobbs’s
24 predecessor, Secretary Kim Wyman, who served as Washington State Secretary of State
25 from 2013 to 2021, was only able to identify 11 charged cases of voter fraud (which
26 included voter registration fraud) between 2007 and 2017.² Of the 3,317,019 ballots cast in
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

42 _____
43 ¹ While the total number of rejected ballots in the 2018 General Election and the 2022 Primary
44 Election were lower than in the 2020 General Election, turnout in the 2018 General Election and the 2022
45 Primary Election was lower. The rate of rejection across all three elections was nearly the same.

46 ² Olympian Editorial Board, Editorial, These Voter Fraud Charges Just Might Stick, Olympian (Sept.
47 21, 2017), available at <https://advance.lexis.com/api/document?id=urn:contentItem:5PHX-X3Y1-JC3J-X02N-00000-00&idtype=PID&context=1000516>.

1 Washington in the November 2016 General Election for the Office of President of the
2 United States, prosecutors only initiated *two* criminal prosecutions. In other words,
3 prosecutors charged with fraud only 0.00006% of voters who cast ballots.
4
5

6 40. Even the Heritage Foundation could find only six cases of convicted voter
7 fraud in Washington State between 2004 and 2010.³ During that period, there were over
8 10.6 million votes cast in general elections alone. Putting aside primary and special election
9 votes, the rate of convicted voter fraud in general elections only during that same period was
10 0.000057%.
11
12

13 41. Moreover, the Signature Verification Requirement is not effective at catching
14 rare instances of potential fraud. In all, after the 2020 General Election, King County
15 disenfranchised nearly 8,000 voters but only referred 35 *possible* cases of voting fraud to
16 prosecutors. In other words, of the 8,000 disenfranchised voters, less than half of one
17 percent of those disenfranchised voters were referred to prosecutors for *possible* voting
18 fraud.
19
20

21 42. And of the very few voters who have cast fraudulent ballots in Washington
22 elections, few, if any, of those voters were caught *because of* Washington's Signature
23 Verification Requirement.
24
25

26 43. Washington's Signature Verification Requirement disenfranchises tens of
27 thousands of voters for no discernable benefit.
28
29

30 **B. Washington's Electoral Scheme**

31 44. Washington has a long history of voting by mail. In 1915, voters expecting
32 to be at least 25 miles from their assigned precinct on Election Day could request an
33
34

35
36
37
38
39
40
41
42
43
44
45
46 ³ The Heritage Foundation Database does not include any cases of voter fraud after 2010. Election
47 Fraud Cases, Heritage Foundation, available at <https://www.heritage.org/voterfraud/search?state=WA>.

1 absentee ballot. By 1974, all voters became eligible to request an absentee ballot without a
2 reason or excuse. In 2005, the Washington Legislature authorized vote-by-mail as a
3 permanent option for all elections. In 2011, after 38 of 39 counties switched to vote-by-
4 mail, the Washington Legislature required vote-by-mail on a statewide basis. Elections
5 Div., Wash. Sec’y of State, Washington State Vote-By-Mail (VBM) Fact Sheet (2021).
6
7
8
9

10 45. Today, every active registered Washington voter receives a mail ballot for
11 each general election, special election, or primary election, which is mailed by local election
12 officials at least 18 days before each election. RCW 29A.40.010; 070.
13
14

15 46. Washington law requires that on each ballot, the voter must “swear under
16 penalty of perjury that he or she meets the qualifications to vote and has not voted in any
17 other jurisdiction at this election.” RCW 29A.40.091(2). Washington law also requires that
18 the declaration also “clearly inform the voter that it is illegal to vote if he or she is not a
19 United States citizen; it is illegal to vote if he or she is serving a sentence of total
20 confinement under the jurisdiction of the department of corrections for a felony conviction
21 or is currently incarcerated for a federal or out-of-state felony conviction; and it is illegal to
22 cast a ballot or sign a ballot declaration on behalf of another voter.” *Id.* Each voter must
23 sign this declaration in order to have their vote counted. *Id.*
24
25
26
27
28
29
30
31
32
33

34 47. Washington law requires election officials to “examine the . . . signature on
35 the declaration before processing the ballot” and “verify that the voter’s signature on the
36 ballot declaration is the same as the signature of that voter in the registration files of the
37 county.” RCW 29A.40.110(3).
38
39
40
41
42
43
44
45
46
47

1 **C. Washington Provides Limited Signature Verification Guidance That**
2 **Requires Election Officials to Make Subjective, Arbitrary**
3 **Determinations**

4 48. The only qualifications for those conducting signature verification are that
5 they take an oath and be “instructed in the signature verification process.” *Id.*
6

7 49. Election officials designated to verify ballot declaration signatures are not
8 handwriting experts and are not recruited based on any experience they have in validating
9 signatures for any purpose. *See* RCW 29A.40.110(3).
10

11 50. Although “personnel assigned to verify signatures must receive training on
12 statewide standards for signature verification,” RCW 29A.40.110, Washington law does not
13 prescribe sufficient standards that would allow election officials to distinguish between
14 authentic and inauthentic signatures, leaving the fate of each voter’s ballot to an election
15 official’s subjective and arbitrary visual inspection. In fact, the limited guidance that the
16 State does provide encourages election officials to invalidate signatures on the basis of
17 minor, easy-to-misinterpret discrepancies.
18

19 51. Washington law, for instance, instructs elections officials to determine if
20 there is “general uniformity and consistency between signatures” and if signatures differ in
21 slant, scale, size, style, irregular spacing, or the “most distinctive, unusual traits of the
22 signature.” WAC 434-379-020. As if to highlight the constitutional infirmities of this
23 requirement, Washington law cautions that “[a] single distinctive trait is insufficient to
24 conclude that the signatures are by the same writer.” *Id.* Instead, the law says, to conclude a
25 signature is done by the same writer, “[t]here must be a combination or cluster of shared
26 characteristics.” *Id.*
27

28 52. The Washington State Patrol offers a single training to election officials on
29 signature verification. Yet, even after attending this training, election officials must make
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 subjective, arbitrary determinations. And the training magnifies the constitutional problems
2 inherent in the signature verification requirement.
3


4
5 53. At the outset, the training highlights the fundamental flaws inherent to the
6 signature verification of ballots. The training admits that a layperson, such as election
7 officials who have only received some minimal training, can only “often” accurately verify
8 signatures. It takes “the aptitude and years of training and experience of a Forensic
9 Document Examiner” to “achieve[] greater accuracy.” Moreover, the training acknowledges
10 that handwriting analysis is much more difficult with signatures than with more text “due to
11 [the] limited amount of writing in a signature.”
12
13
14
15
16
17

18
19 Moreover, the statewide training encourages reviewers to err on the side of
20 invalidating signatures, stating that “[i]f a questioned signature is later identified as genuine,
21 that does not create a significant problem” and that “[i]f there is a single fundamental
22 difference between the questioned and genuine signatures, then a conclusion of genuineness
23 is incorrect.” It instructs them to “concentrate[e] on the general characteristics” of
24 signatures and lists proportions, skill, placement, style, alignment, slope, spacing, speed,
25 continuity, pressure, construction, proportions, ticks, size, and oddities as things for
26 reviewers to consider.
27
28
29
30
31
32
33

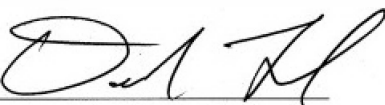
34 The following six examples appear in the statewide training.
35
36

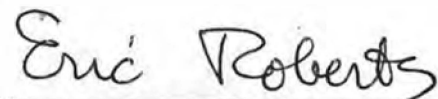
37
38
39 x 

40
41 David Fish




42 Eric Roberts

43
44
45 x 



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

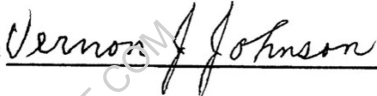
x 
Jeff Jagmin

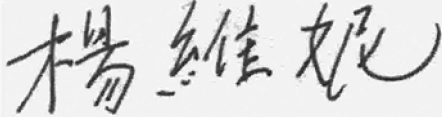
x 
Mark J. Strongman

x 

x 


Yang Wei Ni (楊維妮)

x 
Vernon J. Johnson



x 

54. According to the Washington State Patrol's training, four out of the six examples listed above were written by the same person (*i.e.*, valid matching signatures). The signatures written by the same people, according to the training, are David Fish, Eric Roberts, Mark Strongman, and Yang Wei Ni. The signatures written by different people (*i.e.*, fraudulent signatures), according to the training, are Jeff Jagmin and Vernon J. Johnson.

55. But even if there were adequate training and election judges had adequate resources, erroneous determinations of voter identity are inevitable because those casting the ballots are human, as, of course, are those who are reviewing the signatures.

1 **D. Washington’s Signature Verification Requirement Is Highly Error-**
2 **Prone and Unduly Burdens the Right to Vote**

3
4 56. Because Washington’s Signature Verification Requirement relies on
5 determinations made by untrained laypersons, it is highly error-prone. Studies conducted by
6 handwriting experts have repeatedly found that signature verification by laypersons is
7 inherently unreliable. *See, e.g.,* Rory Conn, Gary Fielding, et al., *Signature Authentication*
8 *by Forensic Document Examiners*, 46 J. of Forensic Sci. 884–88 (2001).
9

10
11
12
13 57. Critically, for the purposes of voting, errors committed by laypersons skew
14 more heavily toward the misidentification of authentic signatures as forgeries. In one study,
15 for instance, laypersons falsely declared authentic signatures to be inauthentic at least 26
16 percent of the time. *Id.* In that same study, laypersons falsely declared forged signatures to
17 be authentic just six percent of the time. *Id.* In other words, lay election officials are much
18 more likely to incorrectly *invalidate* genuine signatures than to incorrectly validate non-
19 genuine signatures. Washington’s cure numbers bear out the research: tens of thousands of
20 voters “cured” ballots rejected for perceived signature matches in the 2020 General Election,
21 demonstrating that these voters had their signatures wrongly rejected in the first place.
22

23
24 58. This propensity to misidentify authentic signatures as forgeries is due in part
25 to lay election officials’ unawareness of the many reasons that a voter might produce two
26 signatures that look different. Signatures are the product of a motor program developed in
27 the brain after practice and executed with neuromuscular coordination. Many factors
28 influence this process, which is why no two complex, skillfully written signatures of one
29 writer have ever been found to be alike at the microscopic level. These factors include age,
30 illness, injury, medicine, eyesight, alcohol or drugs, pen type, ink, surface—especially if
31 signing on an electronic device, like many voters do at the Washington Department of
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 Licensing, where many voter registrations occur—position, paper quality, and one’s
2 psychological state of mind (*i.e.*, distress, anger, fear, depression, happiness, and
3 nervousness). *See* Roy A. Huber & A.M. Headrick, *Handwriting Identification: Facts and*
4 *Fundamentals* (CRC Press, Boca Raton, FL, 1999); Tomislav Fotak, et al., *Handwritten*
5 *signature identification using basic concepts of graph theory*, 7 *WSEAS Transactions on*
6 *Signal Processing* 145, 145 (2011).
7
8
9
10
11

12 59. Another reason for the high rate of error, according to experts, is that
13 signature reviewers need at least ten comparison signatures, adequate time for review, and
14 access to magnification and lighting equipment in order to compare signatures accurately.
15 Yet, Washington election officials (who are largely untrained in signature matching to begin
16 with) are afforded neither the time nor the resources recommended by experts.
17
18
19
20
21

22 60. It is, therefore, inevitable that election officials will erroneously reject
23 legitimate ballots due to misperceived signature mismatches, resulting in the
24 disenfranchisement of eligible voters and rejection of properly cast ballots.
25
26
27
28

29 **E. The Signature Verification Requirement Has Disproportionate Impacts**
30 **on Certain Populations Statewide**

31 61. The Signature Verification Requirement disproportionately impacts young
32 voters statewide.
33
34

35 62. In the 2020 General Election, approximately 34% of the accepted ballots
36 were cast by voters under 40, yet those voters made up approximately 75% of the total
37 ballots rejected under the Signature Verification Requirement.
38
39
40

41 63. The youngest voters were hit the hardest. Voters aged 18 to 21 had their
42 ballots rejected at **10 times** the rate of voters over 40. Despite making up only 4.5% of the
43
44
45
46
47

1 total voting population in the 2020 election, these voters accounted for almost 19% of the
2
3 ballots rejected under the Signature Verification Requirement.

4
5 64. Slightly older voters were disproportionately affected, too. Voters aged 22 to
6
7 30 had their ballots rejected over *6 times* the rate of voters over 40. Despite making up
8
9 approximately 13% of the total voters in the 2020 General Election, these voters accounted
10
11 for one-third of the ballots rejected under the Signature Verification Requirement.

12
13 65. The Signature Verification Requirement also disproportionately
14
15 disenfranchises voters of color. In the 2020 General Election, Latino, Black, and Asian
16
17 voters had their ballots rejected at approximately double the rate of white voters.

18
19 66. White voters made up approximately 74% of the accepted ballots but
20
21 accounted for approximately 62% of ballots rejected under the Signature Verification
22
23 Requirement. Latino voters made up approximately 7% of the accepted ballots but
24
25 accounted for approximately 10% of ballots rejected under the Signature Verification
26
27 Requirement.

28
29 67. Asian voters made up approximately 7% of the accepted ballots but
30
31 accounted for approximately 10% of ballots rejected under the Signature Verification
32
33 Requirement. Black voters made up approximately 4% of the accepted ballots but
34
35 accounted for approximately 8% of ballots rejected under the Signature Verification
36
37 Requirement.

38
39 68. The Signature Verification Requirement has the most disproportionate
40
41 disenfranchising effect on young voters of color. In the 2020 General Election, Latino,
42
43 Asian, and Black voters under age 30 had their ballots rejected for signature discrepancies
44
45 between approximately 10 and 16 times the rate of white voters over age 40.
46
47

1 69. Again, the effects are most pernicious among the youngest voters. Hispanic
2
3 and Black voters ages 18 to 21 had their ballots rejected under the Signature Verification
4
5 Requirement at approximately *16 times* the rate of white voters over age 40.
6

7 70. Asian voters ages 18 to 21 had their ballots rejected under the Signature
8
9 Verification Requirement at approximately *12 times* the rate of white voters over age 40.
10

11 71. Hispanic, Black, and Asian voters ages 22 to 30 had their ballots rejected
12
13 under the Signature Verification Requirement at approximately *10 times* the rate of white
14
15 voters over age 40.
16

17 72. Non-native English speakers are also disproportionately affected by
18
19 Washington’s Signature Verification Requirement. An immigrant who learned to write in a
20
21 script other than English, such as Chinese, will show greater natural variation when signing
22
23 a document in English than native writers. And where the voter’s native script is written
24
25 right to left, the elector’s signature may also be more likely to show variations in letter
26
27 slanting. While election officials may be familiar with certain more common, typically
28
29 Caucasian nicknames, they are likely to be less familiar with the nicknames of non-native
30
31 English speakers and other minorities. For example, an election official might deem “Bob”
32
33 and “Dick” to be common nicknames of “Robert” and “Richard” but fail to identify “Lalo”
34
35 as a diminutive of “Eduardo” or “Chuy” as a nickname for “Jesús.” Indeed, RCW
36
37 29A.60.165(2)(c) compounds this problem by allowing election officials to count ballots
38
39 where the voter signed with a “common” nickname, and of course, the handwriting must be
40
41 “clearly” the same. As a result, the signature verification requirement results in a disparate
42
43 impact on language minority groups.
44
45
46
47

1 **F. The Signature Verification Requirement Has Disproportionate Impacts**
2 **on the Same Populations in King County**

3 73. The Signature Verification Requirement also disproportionately impacts
4 young voters in King County.
5

6 74. Again, the youngest voters are harmed the most. In the 2020 General
7 Election, King County voters aged 18 to 21 had their ballots rejected at approximately **8**
8 **times** the rate of voters over 40. Despite making up less than 4.5% of the total voting
9 population, voters aged 18 to 21 accounted for approximately 16% of the ballots rejected
10 under the Signature Verification Requirement.
11

12 75. King County Voters aged 22 to 30 had their ballots rejected over 4 times the
13 rate of voters over 40. Voters in this age group accounted for approximately 33% of the
14 ballots rejected under the Signature Verification Requirement, even though they made up
15 approximately 15% of the total voters in the 2020 General Election.
16

17 76. The Signature Verification Requirement also disproportionately impacts King
18 County voters of color. In the 2020 General Election, Latino, Black, and Asian voters had
19 their ballots rejected twice as often as white voters.
20

21 77. The Signature Verification Requirement has an even greater disproportionate
22 disenfranchising impact on young people of color in King County.
23

24 78. In the 2020 General Election, Latino voters ages 18 to 21 had their ballots
25 rejected under the Signature Verification Requirement at approximately **16 times** the rate of
26 white voters over age 40. Young Black voters had their ballots rejected at approximately **15**
27 **times** the rate of white voters over age 40. And young Asian voters had their ballots rejected
28 at approximately 10 times the rate of white voters over age 40.
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 79. Hispanic and Black voters ages 22 to 30 had their ballots rejected under the
2 Signature Verification Requirement at approximately *10 times* the rate of white voters over
3 age 40. Asian voters ages 22 to 30 had their ballots rejected under the Signature Verification
4 Requirement at approximately *7 times* the rate of white voters over age 40.
5
6

7
8
9 **G. The Signature Verification Requirement Disproportionately Impacts**
10 **Active-Duty Military and Overseas Voters**

11 80. Signature matching also disproportionately disenfranchises military and
12 overseas voters. Members of the United States Army, Navy, Air Force, Marine Corps,
13 Space Force, and Coast Guard, among others (and their spouses and dependents) who are
14 residents of Washington and otherwise eligible voters in Washington but are absent from the
15 state because they are on active duty, may submit ballots under more flexible circumstances
16 (“Active-Duty Military Voters”), as can certain qualifying overseas voters (“Overseas
17 Voters”). *See* WAC 434-235-010; 040.
18
19

20 81. Active-Duty Military Voters have their ballots rejected for non-matching
21 signatures at nearly twice the rate of the rest of the population. According to the Election
22 Administration and Voting Survey 2020 Comprehensive Report, in the 2020 General and
23 Primary Election, of those Active-Duty Military Voters who had their ballots rejected, 98%
24 of them were rejected under the Signature Verification Requirement. These numbers do not
25 include the Active-Duty Military Voters who initially had their ballots rejected but were able
26 to prove their identity. In short, if Active-Duty Military Voters had their ballots rejected in
27 Washington, that rejection was almost certainly a result of Washington’s Signature
28 Verification Requirement.
29
30

31 82. Washington residents living abroad have their ballots rejected at one-and-a-
32 half the rate of the rest of the population. According to the Election Administration and
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 Voting Survey 2020 Comprehensive Report, in the 2020 General Election, of those
2
3 Overseas Voters who had their ballots rejected, 97% were rejected under the Signature
4
5 Verification Requirement.
6

7 **H. Other Groups Are Especially Vulnerable to Disenfranchisement**
8 **Through the Signature Verification Requirement**
9

10 83. Washington’s Signature Verification Requirement is especially likely to
11
12 disenfranchise groups of voters who are more likely to naturally exhibit wide ranges of
13
14 variation in their signatures or those unable to take the time or spend the money to meet the
15
16 burdensome “cure” process of proving why the county was wrong to reject their signatures
17
18 in the first place.

19
20 84. Older voters, for example, are more likely to exhibit a greater range of
21
22 variation in their signatures. The tendency to stop and start while writing a signature
23
24 increases with age. Likewise, the vertical size and velocity of signatures decrease with age.
25
26 Signing a second time for such voters hardly addresses the problem: the second signature is
27
28 no more likely to match than the first.

29
30 85. Election officials who are not aware of the potential for wider variations
31
32 among elderly writers are likely to misinterpret variations in the signatures as differences,
33
34 leading to additional invalidation of bona fide votes.

35
36 86. Voters with a disability or illness or who are taking certain prescription drugs
37
38 that affect neuromuscular control coordination are likely to exhibit a much wider range of
39
40 variation in their signatures than might normally occur in individuals without such a
41
42 disability, illness, or prescription drug. Voters with Parkinson’s and Alzheimer’s, for
43
44 example, tend to write much smaller than the average individual, but that tendency could
45
46 change depending on the prescribed medication. Voters who have lost the use of their
47

1 dominant hand and learned to write with their non-dominant hand will also show a wider
2 variation in their signatures. The longer a person writes with their non-dominant hand, the
3 more consistent the signature will become, but that signature will never likely appear
4 completely normal and natural, especially to a lay observer. This increased variation may
5 make it nearly impossible for a layperson, or a trained expert, to make a determination of
6 authenticity or verify the voter's identity. And for these voters, too, the "cure" process
7 offers cold comfort: the second signature is no more likely to match than the first. The
8 state's demand that these particularly vulnerable voters provide additional proof of their
9 identity imposes a uniquely cruel burden on those least able to meet it.

10
11
12
13
14
15
16
17
18
19 **I. Whether a Voter's Ballot Will Be Accepted or Rejected Depends in**
20 **Large Part on What County They Vote In**

21 87. Compounding the risk of erroneous deprivation is the fact that the fate of a
22 Washingtonian's mail ballot may depend on where they live. Indeed, the widely varying
23 levels of rejection rates among Washington counties underscore the inherent unreliability of
24 the Signature Verification Requirement. Franklin County had the highest rate of rejected
25 ballots for non-matching signatures, with a nearly 1.2 percent rejection rate, and two
26 counties (Columbia and Clackamas) reported no ballots rejected for non-matching
27 signatures.

28 88. There was also wide variation in rejection rates for the counties with the
29 greatest number of cast ballots. In the ten counties with the largest number of cast votes,
30 rejection rates for non-matching signatures ranged from just under one percent in
31 Snohomish County to .12 percent in Yakima County—a nearly eight-fold difference. The
32 rate of rejection for King County is over 5 times higher than Yakima County.
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 **J. The Signature Verification Requirement Imposes an Undue Burden on**
2 **the Right to Vote That Is Not Justified by Any Legitimate, Much Less**
3 **Compelling, State Interest**

4 89. The Signature Verification Requirement purports to serve as a check on both
5 systemic and isolated attempts at fraud, but it is unnecessary—both because other safeguards
6 against fraud exist and because voter fraud is exceedingly rare.
7
8

9
10 90. This disenfranchising scheme cannot be justified by any fraud-prevention
11 interest because voter fraud is virtually non-existent in Washington, as discussed in Section
12 *A supra.*
13
14

15 91. The Signature Verification Requirement is also duplicative of multiple other
16 safeguards against fraud already in place.
17
18

19 92. Washington maintains records identifying who was sent a mail ballot and
20 when, *see* WAC 434-250-130, and voters can obtain a replacement ballot if they did not
21 receive one. *See* RCW 29A.40.070. Thus, access to a voter's ballot is controlled, and any
22 third-party attempt to intercept and vote a mailed ballot would likely be uncovered when the
23 elector complains that she did not receive her ballot or when she attempts to cast a
24 duplicative vote.
25
26

27 93. Further, each ballot is verified by comparing the information on the return
28 envelope to the registration records to ensure that the ballot was submitted by an eligible
29 voter who had not yet voted. WAC 434-250-120. Washington law also criminalizes
30 making misrepresentations relating to the declaration of qualifications to cast a ballot. RCW
31 29A.84.680.
32
33

34 94. Washington law also requires that all mail ballot envelopes contain a self-
35 affirmation stating:
36
37
38
39
40
41

1 I do solemnly swear or affirm under penalty of perjury that I
2 am:

3
4 A United States citizen;

5
6 A Washington state resident that meets the requirements for
7 voting mandated by state law;

8
9 At least 18 years old on Election Day, or 17 years old at the
10 primary and 18 years old by the day of the November general
11 election;

12
13 Voting only once in this election and not voting in any other
14 United States jurisdiction;

15
16 Not serving a sentence of total confinement under the
17 jurisdiction of the Department of Corrections for a
18 Washington felony conviction or currently incarcerated for a
19 federal or out-of-state felony conviction;

20
21 Not disqualified from voting due to a court order; and

22
23 Aware that it is illegal to forge a signature or cast another
24 person's ballot and that attempting to vote when not qualified,
25 attempting to vote more than once, or falsely signing this
26 declaration is a felony punishable by a maximum
27 imprisonment of five years, a maximum fine of \$10,000, or
28 both.

29
30 WAC 434-230-015.

31
32 95. The Secretary of State's website allows a voter to check the status of his or
33 her mail ballot, including when the ballot was sent and whether it has been accepted. *See*
34 *VoteWA.gov*, <https://voter.votewa.gov/WhereToVote.aspx>. King County also allows voters
35 to track their ballot status through text and email alerts. *See* Renata Geraldo, *King County*
36 *Adds Email, Text Ballot Tracker Ahead of WA Election*, *Seattle Times* (Oct. 24, 2022),
37 [https://www.seattletimes.com/seattle-news/politics/king-county-adds-email-text-ballot-](https://www.seattletimes.com/seattle-news/politics/king-county-adds-email-text-ballot-tracker-ahead-of-wa-election/)
38 [tracker-ahead-of-wa-election/](https://www.seattletimes.com/seattle-news/politics/king-county-adds-email-text-ballot-tracker-ahead-of-wa-election/).
39
40
41
42
43
44
45
46
47

1 96. Washington, along with 30 other states and the District of Columbia, also
2
3 participates in the Electronic Registration Information Center (“ERIC”). ERIC tracks voters
4
5 who have moved from one member state to another and receives data on deceased voters
6
7 from the Social Security Administration. ERIC then provides that information to the
8
9 relevant member states so that the member states can catch voters who try to vote in
10
11 multiple states or people who cast ballots on behalf of deceased voters.

12 97. The Secretary of State also works with the Social Security Administration,
13
14 the Washington Department of Licensing, the Washington Department of Health, the
15
16 Washington Department of Corrections, and the Office of the Administrator of the Courts to
17
18 improve the accuracy of voter registration data and catch potential fraudulently cast ballots
19
20 or votes from ineligible voters.

21 98. Opportunities for fraud are few and far between and, in any event, would be
22
23 detected by the redundant verification processes already in place. The Signature
24
25 Verification Requirement provides little, if any, additional benefit but is exercised at a great
26
27 cost—the disenfranchisement of tens of thousands of eligible voters.
28
29

30
31 **K. Washington’s Limited Cure Process Places Additional Unnecessary**
32 **Burdens on Voters**

33 99. Despite the heightened risk of erroneous rejection inherent in Washington’s
34
35 Signature Verification Requirement, Washington law requires voters who otherwise did
36
37 everything required of them, only to see their ballot rejected because of an election official’s
38
39 error in matching the voter’s signature, to take additional steps to get their vote counted.
40

41 100. When a mailed ballot is rejected due to an alleged mismatch determination,
42
43 the county auditor shall mail a notice to the voter and provide the procedures to fix the
44
45 election official’s mistake. WAC 434-261-050(1). If the ballot is not received or the ballot
46
47

1 has not been “cured” by three business days before certification of the election, the county
2 auditor must “attempt” to call the voter to provide notice of the rejected ballot. *Id.*
3

4
5 101. The process to correct the election official’s mistake depends on the alleged
6 defectiveness of the signature. *See id.* 3, 4(a), 4(b), (5)-(7).
7

8
9 102. In general, to correct the election official’s mistake, the voter must either go,
10 in person, to the county election official’s office and sign a new voter registration form, *id.*
11 3(a), or the voter must sign and return a signature update form, the ballot declaration, and
12 the voter registration oath to the county auditor no later than the day before certification of
13 the election. *Id.* 3(b). The signature on the ballot declaration and the signature update form
14 must match. *Id.* In other words, despite this additional effort, the voter may still have their
15 ballot rejected.
16
17

18
19 103. The cure procedure, moreover, imposes additional costs on voters who
20 already have taken all necessary steps to cast their mail ballot, only to be subjected to the
21 additional burden of providing evidence to rebut an inherently flawed signature mismatch
22 determination.
23
24

25
26
27
28
29
30
31 **L. The Washington State Auditor Confirmed the Numerous Problems with**
32 **Washington’s Signature Verification Requirement**
33

34 104. The Washington State Auditor conducted an audit of ballots cast in nine
35 counties during the 2020 General Election (the “Audit”). The Audit reached several
36 startling conclusions.
37
38

39 105. First, the Audit determined that “the county where a ballot was cast was the
40 most significant variable related to rejection.” Indeed, the Audit estimated that ballots
41 submitted to some counties were four to seven times more likely to be rejected than ballots
42 submitted to other counties.
43
44
45
46
47

1 106. Second, the Audit recognized that the Signature Verification Requirement is
2 subject to human judgment and arbitrary determinations that cannot be solved through
3 standards and trainings. More specifically, the Audit found that “even experienced
4 reviewers can come to different conclusions” about whether a ballot signature matches the
5 signature on file. Auditors “observed county officials debate and reverse decisions about
6 signature matches.” The Audit determined that “employees from the Secretary of State’s
7 office sometimes disagreed with each other about signature matches.” The auditors
8 themselves “disagreed on whether many of the signatures matched.”
9

10
11
12
13
14
15
16
17 107. Third, the Audit concluded that election officials employed statewide criteria
18 differently. For example, the Audit notes that “some signature reviewers said they look for
19 at least three similarities while others could not articulate or specify how many similarities
20 they look for.”
21
22

23
24
25 108. Fourth, the Audit concluded that young voters saw far higher rejection rates
26 for non-matching signatures than older voters.
27

28
29 109. Fifth, Black, Native American, Latino and Hispanic, Asian and Pacific
30 Islander voters all had their ballots rejected *at least* twice as often as white voters.
31

32
33 110. Sixth, the Audit “estimated that non-English speakers were much more likely
34 to have ballots rejected.” The Audit “estimated that voters in [King County] casting non-
35 English ballots had a 47 percent greater likelihood of ballot rejection than voters who cast
36 English-language ballots.”
37
38

39
40
41 111. Seventh, the Audit concluded that inexperienced voters were significantly
42 more likely to have their ballots rejected. According to the Audit, “[t]he rejection rate of
43 ballots cast by first-time voters was more than five times greater than for voters with
44 previous voting experience.” And “voters who had their 2020 primary election ballot
45
46
47

1 rejected were almost four times more likely to have their 2020 General Election ballot
2 rejected.”
3
4

5 **FIRST CAUSE OF ACTION**
6 **VIOLATION OF ARTICLE I SECTION 19 OF THE WASHINGTON STATE**
7 **CONSTITUTION - ALL DEFENDANTS**
8 **(UNCONSTITUTIONAL BURDEN ON THE RIGHT TO VOTE)**
9

10 112. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the
11 allegations in paragraphs 1-105 above.
12

13 113. Article I, Section 19 of the Washington State Constitution provides: “[a]ll
14 elections shall be free and equal, and no power, civil or military, shall at any time interfere
15 to prevent the free exercise of the right of suffrage.”
16
17

18 114. “The Washington Constitution grants the right to vote to all Washington
19 citizens on equal terms.” *Madison v. State*, 161 Wn. 2d 85, 97, 163 P.3d 757 (2007).
20
21

22 115. Because the right to vote is “fundamental for all citizens,” restrictions on that
23 right are “subject to strict scrutiny, meaning they must be narrowly tailored to further a
24 compelling state interest.” *Madison*, 161 Wn.2d at 99, 163 P.3d 757.
25
26

27 116. Washington’s Signature Verification Requirement is plainly a restriction on
28 the right to vote: it requires that Washington voters produce signatures that satisfy election
29 officials or face a burdensome process to prove their identity, and it entirely disenfranchises
30 tens of thousands of fully qualified Washington voters who did *everything* required of them
31 to cast their vote.
32
33

34 117. A signature is not a reliable way to determine someone’s identity. Signatures
35 vary and evolve for innumerable legitimate reasons. It defies common sense and common
36 experience to assume—as Washington’s signature verification scheme assumes—that
37 signatures remain static or that election officials with minimal training and enormous
38
39

1 pressures upon them are able to make meaningful judgments about signatures. Indeed, the
2 widely varying results of this faux science signature verification scheme among counties and
3 among different populations within the state dramatically demonstrate its inherent
4 unreliability.
5
6
7

8
9 118. The Signature Verification Requirement does not further a legitimate, let
10 alone compelling, state interest, especially in light of the multiple overlapping safeguards in
11 place to prevent voter fraud and particularly when voter impersonation fraud is exceedingly
12 rare. Of those rare potential cases of voter fraud, few, if any, of the cases were caught
13 because of the Signature Verification Requirement. The vast majority of those potential
14 cases of voter fraud were caught through the various and overlapping safeguards in
15 Washington State elections. Those safeguards include participation in ERIC, frequent
16 updates to the voter registration database to remove deceased voters, ballot tracking, and
17 other mechanisms. Any minimal state interest furthered by the Signature Verification
18 Requirement is greatly outweighed by its mass disenfranchising effects.
19
20
21
22
23
24
25
26
27

28
29 119. The cumulative disenfranchising effects of the Signature Verification
30 Requirement demonstrate that, even if it furthered a state interest, it is not narrowly tailored.
31 From 2018 through the 2022 Primary, over 113,000 fully qualified American citizens and
32 Washington voters have been stripped of their right to vote as a result of the unconstitutional
33 Signature Verification Requirement. In that same time period, tens of thousands more
34 voters initially had their ballots rejected but were able to meet the state's burdensome "cure"
35 process. The burden on those voters is significant, and it is disproportionately applied to
36 Hispanic, Black, and Asian Washington citizens and to disabled and younger voters. The
37 disproportionate disenfranchisement of these voters violates the Washington Constitution's
38 mandate that the right to vote be equally granted to all citizens.
39
40
41
42
43
44
45
46
47

1 upon fundamental rights. Indeed, it strips the most fundamental of all rights—the right to
2 vote—from tens of thousands of Washington voters every election.
3

4
5 125. “The Washington Constitution grants the right to vote to all Washington
6 citizens on equal terms.” *Madison v. State*, 161 Wn. 2d 85, 97, 163 P.3d 757 (2007). But
7 election officials do not allow the exercise of that right on equal terms. Instead, the
8 Signature Verification Requirement employs “favoritism and special treatment for a few, to
9 the disadvantage of others.” *Ockletree v. Franciscan Health Sys.*, 179 Wn. 2d 769, 776, 317
10 P.3d 1009 (2014).
11

12
13
14
15
16 126. By Washington State’s own admission, the Signature Verification
17 Requirement disproportionately impacts Black voters, Latino voters, Asian and Pacific
18 Islander voters, Native American voters, and young voters. The Signature Verification
19 Requirement also disproportionately impacts Active-Duty Military Voters, Ethnic
20 minorities, and non-native English speakers. Voters with certain disabilities, certain
21 illnesses or that take certain prescription drugs are also especially vulnerable to
22 disenfranchisement.
23

24
25
26
27
28
29
30 127. The Signature Verification Requirement, therefore, disparately impacts these
31 groups in the exercise of their fundamental right to vote. This burden is not justified by any
32 legitimate, much less compelling, state interest. Nor is Washington’s Signature Verification
33 Requirement narrowly tailored to achieving any such purpose.
34

35
36
37
38
39 128. Injunctive and declaratory relief is needed to resolve this existing dispute,
40 which presents an actual controversy between the Defendants and Plaintiffs, who have
41 adverse legal interests because the Signature Verification Requirement will subject Plaintiffs
42 to serious, concrete, and irreparable injuries by burdening Plaintiffs’ fundamental right to
43 vote.
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

**THIRD CAUSE OF ACTION
VIOLATION OF ARTICLE I SECTIONS 3 AND 12 OF THE WASHINGTON
STATE CONSTITUTION
(COUNTY DISPARITY; DUE PROCESS)**

129. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1-122 above.

130. Article I, Section 3 of the Washington State Constitution provides, “[n]o person shall be deprived of life, liberty, or property, without due process of law.”

131. By Washington State’s own admission, “the county where a ballot was cast was the most significant variable related to rejection.” County election officials implement the Signature Verification Requirement with widely different results in rejection rates. Rates of voter disenfranchisement for non-matching signatures ranged from zero to more than one percent, and there was wide variation in rejection rates for the counties with the greatest number of cast ballots. In the ten counties with the largest number of cast votes, rejection rates for non-matching signatures ranged from just under one percent in Snohomish County to .12 percent in Yakima County—a nearly 8-fold difference. The rate of rejection for King County is over 5 times higher than Yakima County.

132. Such widely varying levels of disenfranchisement based solely on a voter’s residence violate the due process clause and the privileges and immunities clause of the Washington Constitution.

133. Injunctive and declaratory relief is needed to resolve this existing dispute, which presents an actual controversy between the Defendants and Plaintiffs, who have adverse legal interests because the Signature Verification Requirement will subject Plaintiffs to serious, concrete, and irreparable injuries by burdening Plaintiffs’ fundamental right to vote.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

**FOURTH CAUSE OF ACTION
VIOLATION OF ARTICLE I SECTION 3 OF THE WASHINGTON STATE
CONSTITUTION - ALL DEFENDANTS
(ARBITRARY AND CAPRICIOUS GOVERNMENT ACTION)**

134. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1-127 above.

135. “Substantive due process protects against arbitrary and capricious government action.” *Carlson v. San Juan Cty.*, 183 Wn. App. 354, 375, 333 P.3d 511 (2014).

136. Under the Signature Verification Requirement, the right to vote turns on a lightly trained election official’s subjective and arbitrary determination of whether a signature matches other signatures on file. Even the limited training that election officials receive as part of the Signature Verification Requirement acknowledges that a layperson, such as election officials who have only received some minimal training, can only “often” accurately verify signatures. Instead, it takes “the aptitude and years of training and experience of a Forensic Document Examiner” to “achieve[] greater accuracy.” Moreover, the training acknowledges that handwriting analysis is much more difficult with signatures “due to [the] limited amount of writing in a signature.”

137. The disparities among county rejection rates, high overall rejection rates in many counties, disparities among rejection rates based on age and race, the thousands of voters who “cure” mistakenly rejected ballots, and the low success rate of catching actual fraudulent ballots highlight the arbitrary and capricious nature of this requirement.

138. Injunctive and declaratory relief is needed to resolve this existing dispute, which presents an actual controversy between the Defendants and Plaintiffs, who have adverse legal interests because the Signature Verification Requirement will subject Plaintiffs

1 to serious, concrete, and irreparable injuries by burdening Plaintiffs' fundamental right to
2
3 vote.

4
5 **FIFTH CAUSE OF ACTION**
6 **VIOLATION OF RCW 29A.04.206 - ALL DEFENDANTS**
7 **(RIGHT TO VOTE)**

8
9 139. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the
10 allegations in paragraphs 1-132 above.

11
12 140. RCW 29A.04.206(1) provides that: "The rights of Washington voters are
13 protected by its constitution and laws and include the following fundamental rights: (a) The
14 right of qualified voters to vote at all elections[.]"

15
16 141. To register to vote in Washington, a person must be over eighteen years old,
17 a citizen of the United States, and have lived in the state, county, and precinct for thirty days
18 before the election. Wash. Const. Art. VI, sec. 1.

19
20 142. It is not a requirement that a voter consistently produce, or be able to
21 produce, a signature identical or even similar to that provided on their voter registration.
22 Nevertheless, tens of thousands of voters have had their ballots rejected for exactly that
23 reason.

24
25 143. Disenfranchising voters for failing to perform an action that is not a
26 requirement for voter eligibility violates their rights under RCW 29A.04.206.

27
28 144. Injunctive and declaratory relief is needed to resolve this existing dispute,
29 which presents an actual controversy between the Defendants and Plaintiffs, who have
30 adverse legal interests because the Signature Verification Requirement subjects Plaintiffs to
31 serious, concrete, and irreparable injuries due to deprivation of Plaintiffs' rights.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Vet Voice Foundation, The Washington Bus, El Centro de la Raza, Kaeleene Escalante Martinez, Bethan Cantrell, Gabriel Berson, and Mari Matsumoto pray for the following relief:

A. A declaration that RCW 29A.40.110(3), the statute that requires signature verification in Washington, violates Sections 3, 12, and 19 of Article I of the Washington Constitution and RCW 29A.04.206;

B. A declaration that using signature verification on ballot declarations as a basis to reject or challenge an otherwise lawfully cast ballot violates Sections 3, 12, and 19 of Article I of the Washington Constitution and RCW 29A.04.206;

C. An order preliminarily and permanently enjoining Washington election officials from using signature verification on ballot declarations as a basis to reject or challenge an otherwise lawfully cast ballot;

D. An order preliminarily and permanently enjoining the Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them from implementing, enforcing, or giving any effect to the Signature Verification Requirement;

E. An order that, because the statute that requires signature verification is unconstitutional, all rules and regulations that implement the Signature Verification Requirement are void;

F. For Plaintiffs' costs of suit, including Plaintiffs' reasonable attorneys' fees;
and

G. For such other relief as the Court may deem just and proper.

DATED this 5th day of April, 2023.

s/ Kevin J. Hamilton, WSBA No. 15648
KHamilton@perkinscoie.com

s/ Matthew Gordon, WSBA No 41128
MGordon@perkinscoie.com

s/ Heath L. Hyatt, WSBA No 54141
HHyatt@perkinscoie.com

s/ Hannah Parman, WSBA No 58897
HParman@perkinscoie.com

s/ Andrew Ferlo, WSBA No 60131
AndrewFerlo@perkinscoie.com

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Plaintiffs Vet Voice Foundation,
The Washington Bus, El Centro de la Raza,
Kaeleene Escalante Martinez, Bethan Cantrell,
Gabriel Berson, and Mari Matsumoto

CERTIFICATE OF SERVICE

On April 5, 2023, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

| | | |
|---|-------------------------------------|---|
| Karl D. Smith, Deputy Solicitor General | <input type="checkbox"/> | Via hand delivery |
| Tera M. Heintz, Deputy Solicitor General | <input type="checkbox"/> | Via U.S. Mail, 1st Class, Postage Prepaid |
| William McGinty, Assistant Attorney General | <input type="checkbox"/> | Via Overnight Delivery |
| Susan Park, Assistant Attorney General | <input type="checkbox"/> | Via Facsimile |
| 1125 Washington Street SE | <input checked="" type="checkbox"/> | Via Eservice |
| PO Box 40100 | | |
| Olympia, WA 98504-0100 | | |
| (360) 752-6200 | | |
| Karl.Smith@atg.wa.gov | | |
| Tera.Heintz@atg.wa.gov | | |
| William.McGinty@atg.wa.gov | | |

| | | |
|--|-------------------------------------|---|
| <i>Attorneys for Defendant Steve Hobbs</i> | | |
| David J. Hackett | <input type="checkbox"/> | Via hand delivery |
| Ann Summers | <input type="checkbox"/> | Via U.S. Mail, 1st Class, Postage Prepaid |
| Lindsey Grieve | <input type="checkbox"/> | Via Overnight Delivery |
| Senior Deputy Prosecuting Attorneys | <input type="checkbox"/> | Via Facsimile |
| 516 Third Avenue, #W554 | <input checked="" type="checkbox"/> | Via Eservice |
| Seattle, WA 98104 | | |
| (206) 477-1120 | | |
| david.hackett@kingcounty.gov | | |
| ann.summers@kingcounty.gov | | |
| lindsey.grieve@kingcounty.gov | | |

Attorneys for Defendants Julie Wise, Susan Slonecker, and Stephanie Cirkovich

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

EXECUTED at Seattle, Washington, on April 5, 2023.


June Starr

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

THE HONORABLE MARK A. LARRAÑAGA
Hearing Date: September 12, 2023
Hearing Time: 8:30 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

VET VOICE FOUNDATION, THE
WASHINGTON BUS, EL CENTRO DE
LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL,
GABRIEL BERSON, and MARI
MATSUMOTO,

Plaintiffs,

v.

STEVE HOBBS, in his official capacity
as Washington State Secretary of State,
JULIE WISE, in her official capacity as
the Auditor/Director of Elections in King
County and a King County Canvassing
Board Member, SUSAN SLONECKER,
in her official capacity as a King County
Canvassing Board Member, and
STEPHANIE CIRKOVICH, in her
official capacity as a King County
Canvassing Board Member,

Defendants.

No. 22-2-19384-1 SEA

PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT

PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

TABLE OF CONTENTS

Page

1
2
3
4
5 I. Introduction..... 1
6
7 II. Relief Requested..... 3
8
9 III. Statement of Facts..... 3
10 A. Washington’s Signature Verification Requirement..... 3
11 B. The Signature Verification Requirement Imposes Severe Burdens on
12 the Right to Vote and Disproportionately Affects Vulnerable Voters 5
13 1. Voters’ Signatures Inevitably Vary Over Time..... 5
14 2. The Signature Verification Requirement Consistently
15 Disenfranchises Tens of Thousands of Washington Voters 6
16
17 C. The Signature Verification Requirement Disproportionately
18 Disenfranchises Voters of Color, Young Voters, UOCAVA Voters,
19 and First-Time Voters..... 11
20 1. The Signature Verification Requirement Disproportionately
21 Disenfranchises Voters of Color..... 11
22 2. The Signature Verification Requirement Disproportionately
23 Disenfranchises Young Voters 13
24 3. The Signature Verification Requirement Disproportionately
25 Disenfranchises Young Voters of Color..... 14
26 4. The Signature Verification Requirement Disproportionately
27 Disenfranchises UOCAVA Voters 14
28 5. The Signature Verification Requirement Disproportionately
29 Disenfranchises First-Time Voters 14
30 6. Non-Native English Speakers Have Their Ballots Rejected at
31 Higher Rates 15
32 7. The Signature Verification Requirement Disproportionately
33 Disenfranchises Those Who Have Already Had Their Ballots
34 Rejected for Non-Matching Signatures in the Past..... 15
35 8. Residents of Less Affluent and More Diverse Areas Have
36 Their Ballots Rejected at Higher Rates 15
37
38
39
40
41
42
43
44
45
46
47

TABLE OF CONTENTS
(continued)

| | | Page |
|----|---|-------------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | 9. The Signature Verification Requirement Negatively Impacts | |
| 7 | Voters With Disabilities or Other Physical Limitations | 16 |
| 8 | | |
| 9 | D. The Signature Verification Requirement Affects Voters Differently | |
| 10 | Across All Washington Counties..... | 16 |
| 11 | | |
| 12 | E. Washington Voters Who Have Their Ballots Rejected for a Non- | |
| 13 | Matching Signature Are Less Likely to Vote in Future Elections..... | 20 |
| 14 | | |
| 15 | F. Numerous Attempts to Implement Various Reforms and Best | |
| 16 | Practices Have Failed to Cure High Rejection Rates | 20 |
| 17 | | |
| 18 | G. The Signature Verification Requirement Has Disenfranchised Tens of | |
| 19 | Thousands of Voters for No Discernable Benefit..... | 23 |
| 20 | | |
| 21 | 1. The Signature Verification Requirement Has Not Caught a | |
| 22 | Single Case of Convicted Voter Fraud | 23 |
| 23 | | |
| 24 | 2. Washington State Employs Numerous and Overlapping | |
| 25 | Procedures to Detect Fraudulent Ballots | 24 |
| 26 | | |
| 27 | 3. Other States Recognize the Shortcomings of Signature | |
| 28 | Verification and Refuse to Use It | 26 |
| 29 | | |
| 30 | H. The Signature Verification Requirement Is Inherently Subjective..... | 27 |
| 31 | | |
| 32 | I. Signature Verification Is Incompatible With Sound Election | |
| 33 | Administration..... | 27 |
| 34 | IV. Statement of Issues | 29 |
| 35 | V. Evidence Relied Upon | 29 |
| 36 | VI. Authority | 29 |
| 37 | | |
| 38 | A. Legal Standard | 29 |
| 39 | | |
| 40 | B. The Signature Verification Requirement Unconstitutionally Violates | |
| 41 | the Right to Vote Guaranteed in Article I, Section 19..... | 30 |
| 42 | | |
| 43 | 1. The Signature Verification Requirement Cannot Withstand | |
| 44 | Strict Scrutiny | 31 |
| 45 | | |
| 46 | C. The Signature Verification Requirement Violates the Privileges and | |
| 47 | Immunities Clause | 41 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| D. The Signature Verification Requirement Is Inherently and Unconstitutionally Arbitrary in Violation of the Substantive Due Process Clause of Article I, Section 3 | 44 |
| E. The Signature Verification Requirement Arbitrarily and Inherently Values the Voters in Some Counties Over the Voters in Other Counties | 45 |
| VII. Conclusion | 47 |

RETRIEVEDFROMDEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

Page(s)

CASES

Am. Legion Post No. 149 v. Wash. State Dep’t of Health,
164 Wn.2d 570, 192 P.3d 306 (2008).....41

Ams. for Prosperity Found. v. Bonta,
--- U.S. ---, 141 S. Ct. 2373 (2021).....39

Bush v. Gore,
531 U.S. 98 (2000).....46

City of Seattle v. State,
103 Wn.2d 663, 694 P.2d 641 (1985).....31

Collier v. City of Tacoma,
121 Wn.2d 737, 854 P.2d 1046 (1993).....34, 39

Democratic Exec. Comm. of Fla. v. Lee,
915 F.3d 1312 (11th Cir. 2019).....40

Dowler v. Clover Park Sch. Dist. No. 400,
172 Wn.2d 471, 258 P.3d 676 (2011).....29

Elster v. City of Seattle,
193 Wn.2d 638, 444 P.3d 590 (2019).....31

Estate of Becker v. Avco Corp.,
187 Wn.2d 615, 387 P.3d 1066 (2017).....29

Fish v. Schwab,
957 F.3d 1105 (10th Cir. 2020).....32, 33, 34, 38

Fla. Democratic Party v. Detzner,
No. 4:16cv607-MW/CASE, 2016 WL 6090943 (N.D. Fla. Oct. 16, 2016).....31, 40, 46

Foster v. Sunnyside Valley Irr. Dist.,
102 Wn.2d 395, 687 P.2d 841 (1984).....30

TABLE OF AUTHORITIES
(continued)

Page(s)

| | | |
|----|--|----------------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | <i>Jones v. United States Postal Serv.</i> , | |
| 7 | 488 F. Supp. 3d 103 (S.D.N.Y. 2020), order clarified, No. 20 CIV. 6516 | |
| 8 | (VM), 2020 WL 6554904 (S.D.N.Y. Sept. 29, 2020) | 46 |
| 9 | | |
| 10 | <i>League of Women Voters of Kansas v. Schwab</i> , | |
| 11 | 63 Kan. App. 2d 187, 525 P.3d 803 (2023)..... | 31, 41 |
| 12 | | |
| 13 | <i>League of Women Voters of N. Carolina v. North Carolina</i> , | |
| 14 | 769 F.3d 224 (4th Cir. 2014) | 33 |
| 15 | | |
| 16 | <i>League of Women Voters of Ohio v. Brunner</i> , | |
| 17 | 548 F.3d 463 (6th Cir. 2008) | 46, 47 |
| 18 | | |
| 19 | | |
| 20 | <i>Locke v. City of Seattle</i> , | |
| 21 | 162 Wn.2d 474, 172 P.3d 705 (2007)..... | 29 |
| 22 | | |
| 23 | <i>Macias v. Dep't of Labor & Indus. of the State of Wash.</i> , | |
| 24 | 100 Wn.2d 263, 668 P.2d 1278 (1983) | 32 |
| 25 | | |
| 26 | <i>Madison v. State</i> , | |
| 27 | 161 Wn.2d 85, 163 P.3d 757 (2007)..... | 30, 31, 42, 43 |
| 28 | | |
| 29 | | |
| 30 | <i>Martin v. Kemp</i> , | |
| 31 | 341 F. Supp. 3d 1326 (N.D. Ga. 2018)..... | 41 |
| 32 | | |
| 33 | <i>Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.</i> , | |
| 34 | 196 Wn.2d 506, 475 P.3d 164 (2020)..... | 42, 44 |
| 35 | | |
| 36 | <i>Matter of Recall of Inslee</i> , | |
| 37 | 199 Wn.2d 416, 508 P.3d 635 (2022)..... | 39 |
| 38 | | |
| 39 | | |
| 40 | <i>Ne. Ohio Coal. for Homeless v. Husted</i> , | |
| 41 | 696 F.3d 580 (6th Cir. 2012) | 44 |
| 42 | | |
| 43 | <i>Obama for Am. v. Husted</i> , | |
| 44 | 697 F.3d 423 (6th Cir. 2012) | 33 |
| 45 | | |
| 46 | | |
| 47 | | |

TABLE OF AUTHORITIES
(continued)

Page(s)

1
2
3
4
5
6 *Ohio State Conf. of NAACP v. Husted,*
7 768 F.3d 524 (6th Cir. 2014), *vacated on other grounds*, No. 14-3877,
8 2014 WL 10384647 (6th Cir. Oct. 1, 2014)33, 34
9
10 *OneAmerica Votes v. State,*
11 23 Wn. App. 2d 951, 518 P.3d 230 (2022).....39
12
13 *Pilloud v. King Cty. Republican Cent. Comm.,*
14 189 Wn.2d 599, 404 P.3d 500 (2017).....34
15
16 *Pub. Integrity All., Inc. v. City of Tucson,*
17 836 F.3d 1019 (9th Cir. 2016)33
18
19
20 *Quinn v. State,*
21 526 P.3d 1 (Wash. 2023)42
22
23
24 *Reynolds v. Sims,*
25 377 U.S. 533 (1964).....46
26
27 *Rickert v. State, Pub. Disclosure Comm’n,*
28 161 Wn.2d 843, 168 P.3d 826 (2007).....38, 39
29
30 *Saucedo v. Gardner,*
31 335 F. Supp. 3d 202 (D.N.H. 2018).....41
32
33 *Schroeder v. Weighali,*
34 179 Wn.2d 566, 316 P.3d 482 (2014).....42
35
36 *State ex rel. Pub. Disclosure Comm’n v. 119 Vote No! Comm.,*
37 135 Wn.2d 618, 957 P.2d 691 (1998).....31
38
39
40 *State of Wash. v. Daniel Lee Brewer,*
41 Cause No. 21-1-01476-1 (Sup. Ct. Pierce Cty. 2021)23
42
43 *State of Wash. v. Russell Lawrence Hobbs,*
44 Cause No. 21-1-01478-8 (Sup. Ct. Pierce Cty. 2021)23
45
46
47

TABLE OF AUTHORITIES
(continued)

Page(s)

State of Wash. v. Tamara Dawn Armatis,
Cause No. 21-1-01479 (Sup. Ct. Pierce Cty. 2021).....23

State v. Osman,
157 Wn.2d 474, 139 P.3d 334 (2006).....31

Washington Election Integrity Coalition United v. Wise,
Case No. 21-2-12603-7 KNT (Sup. Ct. King Cty. 2023).....24

Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n,
141 Wn.2d 245, 4 P.3d 808 (2000)30

Yim v. City of Seattle,
194 Wn.2d 682, 451 P.3d 694(2019), *as amended* (Jan. 9, 2020).....44, 45, 46

STATUTES

RCW 29A.04.20629

RCW 29A.08.01024

RCW 29A.08.12524, 25

RCW 29A.08.810 *et seq.*25

RCW 29A.40.091(2).....4

RCW 29A.40.110(3).....1, 4

RCW 29A.60.05026

RCW 29A.60.14026

RCW 29A.60.1654

RCW 29A.84.13025

TABLE OF AUTHORITIES
(continued)

Page(s)

RULES

CR 30(b)(6).....10, 20

CR 56(c).....29

OTHER AUTHORITIES

NATIONAL WEATHER SERVICE, HOW DANGEROUS IS LIGHTNING,
<https://www.weather.gov/safety/lightning-odds> (last visited July 25,
2023).....23

WA Const., Art. I, Section 3..... passim

WA Const., Art. I, Section 12..... passim

WA Const., Art. I, Section 19.....3, 29, 30, 31

WA Const., Art. VI, Section 1.....31

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

I. Introduction

Consistent penmanship is not a constitutional prerequisite to vote in Washington State. Yet, Washington’s statutory signature verification requirement has disenfranchised over 170,000 voters in the last seven years because election officials thought these voters’ signatures did not “match” their voter file signatures. *See* RCW 29A.40.110(3). The true cost of signature verification is even higher because election officials rejected *twice as many* ballots for purportedly non-matching signatures, forcing voters to jump through additional hoops to prove to election officials that they did in fact cast their vote. Half of those rejected ballots were “cured,” highlighting the absurdity of the signature verification requirement by demonstrating that election officials mistakenly rejected all of those “cured” ballots in the first place. Many more voters try, without success, to cure their ballots. Others simply do not have the time or resources to take the burdensome additional steps to correct election officials’ mistake. And still others never have the opportunity because they never learn that their ballot was rejected. Washington’s signature verification requirement is a guilty-until-proven-innocent regime, an abhorrence to our constitutional system in general and intolerable when it strips eligible voters of their right to vote.

Worse, the pernicious effects of Washington’s signature verification requirement are not borne equally. Instead, it disproportionately disenfranchises Washington’s most vulnerable communities: voters of color, young voters, uniformed servicemembers serving outside of Washington, citizens living abroad, first-time voters, voters with physical limitations, and voters who speak a language other than English. The differences are stark: young Hispanic voters’ are disenfranchised at *17 times the rate* of older White voters; voters who do not speak English as a first language are *47 percent more likely* to have their ballots

1 rejected; and first-time voters are *five times more likely* to have their ballots rejected than
2 voters with experience voting, all due to Washington’s signature verification requirement.
3

4
5 Worse still, the widespread disenfranchisement benefits no one. While ostensibly
6 deployed as a means to “verify” a voter’s identity, signature verification is nothing more than
7 election integrity theater. Despite disenfranchising over 170,000 voters in the last seven years,
8 Defendants cannot identify even *a single case* of convicted voter fraud caught by the signature
9 verification requirement. And of the tens of thousands of voters King County alone has
10 disenfranchised for non-matching signatures, only 0.2 percent were even referred to
11 prosecutors in the first place.
12
13
14
15
16
17

18 The constitutional problems with signature verification are not simply a matter of
19 implementation—the whole enterprise is fundamentally flawed and incompatible with sound
20 election administration, as King County’s experience demonstrates. King County has long
21 understood that signature verification is problematic, and, to their credit, has been working
22 for years to reduce rejection rates, increase cure rates, and eliminate the signature verification
23 requirement’s disparate impacts. King County has gone above and beyond what Washington
24 law requires. Despite this effort, King County still consistently has one of the highest rejection
25 rates of any county in Washington.
26
27
28
29
30
31
32
33

34 This should come as no surprise, given all the non-fraudulent reasons why a voter’s
35 signature could vary including age, disease, type of pen used, and carelessness. As a result,
36 even when election officials go above and beyond, as they have in King County, there will
37 still be an unacceptable rate of wrongly rejected ballots. No combination of tweaks,
38 adjustments, or policy changes will align this requirement with the promises of Washington’s
39 constitution. Signature verification is not and cannot be constitutional.
40
41
42
43
44
45
46
47

1 Washington does not impose a signature verification requirement in any other realm
2 of a citizen's life. Washingtonians do not have their signatures scrutinized to prove their
3 identity when they sign wills, property deeds, vehicle titles, tax declarations, tax returns,
4 driver's licenses, gun licenses, contracts, or other legally significant documents. Affidavits
5 and declarations offered in Washington (and federal) courts are routinely accepted without
6 being subject to this faux science. Lawyers sign complaints, judgments, and legal liens
7 without such scrutiny. Washington citizens are born, marry, divorce, adopt children, and die
8 with formal county and state documentation, none of which is subjected to this requirement.
9

10 This fundamentally flawed practice, on its face, violates Sections 3, 12, and 19 of
11 Article I of the Washington State Constitution. Disenfranchising hundreds of thousands of
12 fully qualified Washington voters who did everything required of them to lawfully cast their
13 ballots, using a subjective process, and causing a dramatically disproportionate impact on
14 minority and younger voters, cannot possibly be justified on the basis of imagined "election
15 security" concerns when the process has *never* identified even one instance of voter fraud.
16

17 **II. Relief Requested**

18 Plaintiffs respectfully request a declaration that the signature verification requirement
19 violates Sections 3, 12, and 19 of Article I of the Washington Constitution and an order
20 enjoining Washington election officials from using it as a basis to reject or challenge an
21 otherwise lawfully cast ballot.
22

23 **III. Statement of Facts**

24 **A. Washington's Signature Verification Requirement**

25 Every Washington voter who casts a ballot by mail must sign a declaration on the back
26 of the ballot envelope and "swear under penalty of perjury that he or she meets the
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 qualifications to vote and has not voted in any other jurisdiction at this election” (“Ballot
2 Declaration”). RCW 29A.40.091(2).
3

4
5 After county election officials receive a voted ballot, they must verify that the voter’s
6 signature on the Ballot Declaration is “the same as the signature of that voter in the registration
7 files of the county.” RCW 29A.40.110(3) (the “Signature Verification Requirement”).
8
9

10
11 If election officials determine that a voter’s signature does not “match” the file
12 signature, the ballot is rejected and will not be counted unless the voter takes additional steps
13 to prove the voter’s identity. These additional steps are commonly referred to as “curing” the
14 ballot.
15
16

17
18 The first step in the cure process is notifying the voter. Election officials are required
19 by law to mail a notice of a rejected non-matching signature ballot. RCW 29A.60.165. Some
20 counties go further and make multiple phone calls or send emails. The mailed notice includes
21 a declaration. If a voter signs and returns that declaration, election officials conduct signature
22 verification *again* on the notice itself, by comparing the signature on the notification form
23 against the signature on the voter’s Ballot Declaration. If the election officials decide the
24 signatures match, the vote is counted, but otherwise the ballot is rejected and the voter is
25 disenfranchised.
26
27
28
29
30
31
32
33

34
35 Of course, if the voter does not receive any notification, they are unable to respond to
36 the demand for additional proof. Deployed service members, for example, may not receive
37 such a notification or be able to respond in time. So, too, for voters who are traveling or are
38 temporarily abroad or in remote regions, voters who are hospitalized, voters who don’t have
39 reliable mail or internet service, or voters who have moved or are in the process of moving.
40
41
42
43
44
45
46
47

1 **B. The Signature Verification Requirement Imposes Severe Burdens on the Right**
2 **to Vote and Disproportionately Affects Vulnerable Voters**

3
4 **1. Voters’ Signatures Inevitably Vary Over Time**

5 Signatures vary for all kinds of non-fraudulent reasons, including whether the writer
6 is sitting or standing, the surface on which the signer is writing, the pen a writer is using,
7 whether the writer is taking certain prescription drugs, whether the writer has multiple
8 signatures, and even carelessness, close concentration, or stress. Declaration of Heath Hyatt,¹
9 Ex. A Report of Dr. Linton Mohammed (“Mohammed Report”) 9-13. Plaintiffs and the
10 dozens of declarations submitted in support of this motion illustrate this fundamental reality.
11
12

13
14
15
16
17 As a pediatrician, Dr. Gabriel Berson signs many documents every day and signs his
18 name several different ways. His ballot was wrongly rejected in the 2020 general election.
19 Declaration of Gabriel Berson (“Berson Decl.”) ¶¶ 3–9. Dan Tanedo of Woodinville has
20 changed his signature over time and now has both a “short” signature and a “long” signature
21 that he uses for different purposes. His ballot was wrongly rejected in the 2022 general
22 election. Declaration of Dan Tanedo ¶ 6. Sarah Pugh of Vancouver, a notary, signs
23 documents all the time, so she changed her signature to make it shorter and simpler, only to
24 have her ballot rejected in the 2022 primary election. Declaration of Sarah Pugh ¶ 1. Emily
25 Cook from Bonney Lake has a self-described “squiggly” signature, and Rachel Larson from
26 Seattle has a signature that “can be a bit sloppy and varies sometimes.” Declaration of Emily
27 Cook ¶ 6; Declaration of Rachel Larson ¶ 6. Their ballots were mistakenly rejected in the
28 2022 general and primary elections, respectively. None of these varying signatures made
29 these voters ineligible to vote.
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

¹ All exhibits are to the Declaration of Heath Hyatt unless otherwise indicated.

1 **2. The Signature Verification Requirement Consistently Disenfranchises**
2 **Tens of Thousands of Washington Voters**

3
4 From the 2016 general election through the February 2023 special election, the
5 Signature Verification Requirement disenfranchised over 170,000 voters. Ex. B Report of Dr.
6 Michael Herron (“Herron Report”), 63-64. In just the 2020-2022 general and primary
7 elections, approximately 69,000 voters’ ballots were disqualified, including ballots of almost
8 24,000 voters in each of the last two general elections. Ex. C Report of Dr. Maxwell Palmer
9 (“Palmer Report”) 4.
10
11

12 The true impact of the Signature Verification Requirement is significantly higher
13 because Washington election officials initially rejected tens of thousands of *additional* ballots
14 for non-matching signatures. In the 2020 and 2022 general and primary elections, Washington
15 election officials initially rejected almost 148,000 ballots for non-matching signatures, and
16 nearly 79,000 of those voters took additional burdensome steps to cure their ballots by proving
17 that election officials had erred. In other words, election officials mistakenly rejected *at least*
18 79,000 ballots—more than half of the total ballots that they rejected for non-matching
19 signatures. *Id.* 11.
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 The chart below from Dr. Palmer’s report reflects the final status of ballots initially
2 rejected for non-matching signatures. *Id.* 12.
3
4
5



6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 The number of cured ballots is far from the only evidence of mistaken rejections.
29 Many other voters who lawfully cast their ballots and were otherwise eligible to vote, such as
30 Dr. Berson and Mari Matsumoto, went through the additional burdensome steps to cure but
31 inexplicably still had their ballots rejected. Berson Decl. ¶¶ 6–9; Declaration of Mari
32 Matsumoto ¶¶ 6–8. The same thing happened to Jacinda Chaney of Tacoma, Pamela
33 Casacuberta of Redmond, Russell Chiupka of Shoreline, Stephen Forman of Bellevue,
34 Samantha Trost of Battle Ground, and Michael Bochantin of Maple Valley. Declaration of
35 Jacinda Chaney ¶¶ 7–9; Declaration of Pamela Casacuberta ¶¶ 7–8; Declaration of Russell
36 Chiupka ¶¶ 7–8; Declaration of Stephen Forman ¶¶ 6–7; Declaration of Samantha Trost ¶¶ 6–
37 8; Declaration of Michael Bochantin ¶¶ 6–8. Thor Carpenter of Carnation tried to cure his
38
39
40
41
42
43
44
45
46
47

1 ballot *twice in the same election*, yet still had his ballot rejected. Declaration of Thor
2 Carpenter ¶¶ 6–15. Each of these voters was disenfranchised despite doing everything
3 required of them under the Washington Constitution, *plus* everything asked of them by local
4 election officials to cure their ballots.
5
6

7
8 Other voters, such as Timothy Jensen and Ronit Gourarie of Kirkland, Radu Cimpian
9 of Kenmore, Shannon Hoyle of Redmond, Elizabeth Muzik of Vancouver, and Edie Crawford
10 of Seattle, never received notice that their ballots had been rejected. Declaration of Timothy
11 Jensen ¶ 6; Declaration of Ronit Gourarie ¶ 7; Declaration of Radu Cimpian ¶ 6; Declaration
12 of Shannon Hoyle ¶ 6; Declaration of Elizabeth Muzik (“Muzik Decl.”) ¶ 3; Declaration of
13 Edie Crawford ¶ 1. Jayson Agli of Kennewick serves our country in the Air Force. He was
14 stationed in Georgia during the 2020 general election when his ballot was rejected. He never
15 received any notice from Benton County and only recently learned that his ballot was rejected.
16 Declaration of Jayson Roy Agli ¶ 1. And some voters received notice only after the deadline
17 to cure had passed. Anthony Pellitteri received notice from Spokane County that his ballot
18 was rejected about a month after the election ended. Declaration of Anthony Pellitteri ¶ 6.
19 Each of these voters did not even have a chance to prove to election officials that they in fact
20 cast their ballots, and they, too, were disenfranchised despite doing everything required of
21 them under the Washington Constitution.
22
23

24
25 Other voters simply did not have the time, opportunity, or resources to cure. Leslie
26 Pratt of Dallesport was in declining health, yet, hand shaking, she held her pen and signed her
27 ballot. She was devastated when she learned her ballot had been rejected for a non-matching
28 signature because she knew that would be her last election. She felt degraded, like she had
29 done something wrong. Ms. Pratt died less than two weeks later. Her vote did not count.
30 Declaration of Gary Pratt ¶¶ 1, 9.
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 Amanda Dodson of Long Beach, Melissa Dylan of Poulsbo, Julie Conner, formerly of
2 Vancouver, and Kimberly Guadalupe of Mountlake Terrace are all working single moms with
3 limited time. Declaration of Amanda Dodson ¶ 1; Declaration of Melissa Dylan ¶ 7;
4 Declaration of Julie Conner ¶ 1; Declaration of Kimberly Guadalupe ¶ 1. Kara Kelly of
5 Seabeck did not get instructions on how to cure her ballot until three days before the deadline,
6 the same time her family was closing on their new home. Declaration of Kara Kelly ¶ 1.
7 Whitney Krebs of Seattle learned that her ballot had been rejected three days before the
8 deadline to fix her ballot while she was packing for a weekend camping trip with her young
9 child. Declaration of Whitney Krebs ¶ 7. Elizabeth Wilmerding Greninger of SeaTac was
10 traveling and transitioning to a new job when she learned that her ballot had been rejected.
11 Declaration of Elizabeth Wilmerding Greninger ¶ 8. Charlotte Gavell of Seattle was traveling
12 without access to a printer when she learned that her ballot had been rejected. Declaration of
13 Charlotte Gavell ¶ 6. These voters were likewise disenfranchised despite doing everything
14 required of them under the Washington Constitution.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

29 Other voters have been disenfranchised multiple times. Plaintiff Kaeleene Escalante
30 Martinez has had her ballot rejected *three times* in recent years. Declaration of Kaeleene
31 Escalante Martinez (“Escalante Martinez Decl.”) ¶¶ 3, 7, 11, 16. Ashley Stroble of Sequim
32 had her ballot rejected in the 2022 primary and general elections. She never received notice
33 that her ballot was rejected in the primary and only learned about the general election when
34 her mother, who was checking ballot statuses online for the family, called to tell her it had
35 been rejected. Declaration of Ashley Stroble (“Stroble Decl.”) ¶ 7. Elizabeth Muzik of
36 Vancouver had her ballot rejected in the 2022 primary election and again in the February 2023
37 special election. Ms. Muzik only recently learned her 2022 primary election ballot had been
38 rejected. Muzik Decl. ¶¶ 1, 3.
39
40
41
42
43
44
45
46
47

1 Plaintiffs Ms. Escalante Martinez, Ms. Cantrell, Dr. Berson, Ms. Matsumoto, and the
2
3 61 additional voters who submitted declarations in support of this motion are among the many
4
5 thousands of Washington voters who were all wrongfully disenfranchised by the Signature
6
7 Verification Requirement *at least once*. Even Defendant Julie Wise, the Director of Elections
8
9 for King County and a member of the King County Canvassing Board, had her ballot wrongly
10
11 rejected *twice* for a non-matching signature. Ex. D, Response to Request for Admission No.
12
13 1.²

14
15 Defendants admit that at least some of those 170,000 voters whom the Signature
16
17 Verification Requirement has disenfranchised in the last seven years did in fact sign their
18
19 Ballot Declaration and cast their ballot. Ex. E, CR 30(b)(5) Deposition of Secretary Hobbs
20
21 (“Secretary Dep.”) 67:22-68:2 (“So the Secretary of State acknowledges that some of the
22
23 ballots that are rejected were, in fact, signed by the voter him or herself and not by another
24
25 person. A. Yes.”).

26
27 But Defendants have *no idea* how many ballots have been wrongly rejected. *Id.* 70:3-
28
29 24; KCE Dep. I 52:9-54:2; 83:1-4 (“Is it true that King County Elections doesn't know how
30
31 many of those 8,090 ballots were cast fraudulently? A. Correct.”); 95:14-25. Indeed, they
32
33 have not bothered to figure out the rate of wrongful disenfranchisement. Secretary Dep.
34
35 229:10-230:5 (“Just asking if the Secretary of State has undertaken any analysis to determine
36
37 the rate at which election officials accurately reject signatures as nonmatching. A. No, no.”).

38
39 The Washington State Legislature was so concerned about the high rates of ballot
40
41 rejections for non-matching signatures that it “mandated a performance audit” of
42
43

44 ² The King County Canvassing Board has delegated most of its election authority, including the
45
46 implementation of the Signature Verification Requirement and referring cases of potential voter fraud
47 to prosecutors, to King County Elections. Ex. F CR 30(b)(6) Deposition of King County Elections
(Janice Case) (“KCE Dep. I”) 20:17-25; 21:1-25.

1 Washington's Signature Verification Requirement. Ex. G Evaluating Washington's Ballot
2 Rejection Rates ("Audit") 11. Pursuant to that mandate, the Washington State Auditor
3 conducted an audit of ballots cast (and ballot signatures reviewed) in 10 counties during the
4 2020 general election, which showed a "disturbing trend" of disproportionate
5 disenfranchisement of many different groups of Washington voters. See KCE Dep. I 112:2-
6 12 (Regarding the Auditor's conclusions, "It does display a—a disturbing trend.").
7
8
9

10
11
12
13 **C. The Signature Verification Requirement Disproportionately Disenfranchises**
14 **Voters of Color, Young Voters, UOCAVA Voters, and First-Time Voters**

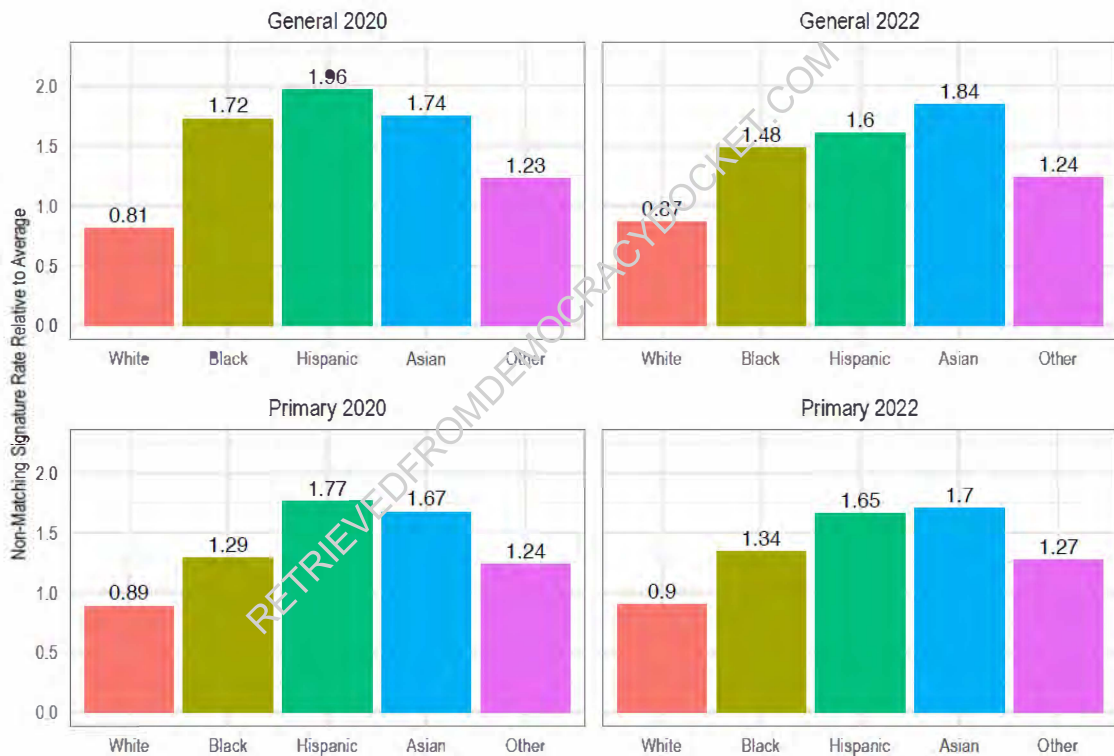
15 The Audit's undisputed conclusions are that the Signature Verification Requirement
16 disproportionately disenfranchises voters of color, young voters, first-time voters, non-
17 English speakers, and those who have previously had ballots rejected for non-matching
18 signatures. See Secretary Dep. 41:13-42:22; 43:5-16; KCE Dep. I. 91:8-13; 92:1-5. For the
19 categories of voters for whom data was available, Plaintiffs' expert Dr. Maxwell Palmer
20 analyzed additional statewide election results and confirmed both the Audit's conclusions
21 about the 2020 general election and that the pattern of disproportionate disenfranchisement in
22 that election was no outlier. Palmer Report. Dr. Palmer also determined that UOCAVA voters
23 are disproportionately rejected. Ex. I Second Supplemental Report of Dr. Maxwell Palmer
24 ("Second Supp Palmer Report") 1-2.
25
26
27
28
29
30
31
32
33
34

35
36 **1. The Signature Verification Requirement Disproportionately**
37 **Disenfranchises Voters of Color**

38 The Signature Verification Requirement disproportionately disenfranchises voters of
39 color. Specifically, the Audit determined that Black voters had their ballots rejected for non-
40 matching signatures *at four times* the rate of White voters. Native American and Hispanic
41 voters had their ballots rejected for non-matching signatures at *2.5 times* the rate of White
42 voters. For Asian voters the rate was nearly double. Audit 19. The Secretary acknowledges
43
44
45
46
47

1 that the disparities in rejection rates for different racial and ethnic groups are unacceptable—
2
3 but defends the statute nonetheless. Secretary Dep. 43:5-16.

4
5 Dr. Palmer confirmed that the 2020 general election was no outlier; over the last four
6
7 major elections for which data are available, voters of color have had their ballots rejected for
8
9 non-matching signatures at significantly higher rates compared to White voters across the
10
11 state. The chart below from Dr. Palmer’s report reflects the relative rates of rejection based
12
13 on race for these four elections. *Id.* at 6.

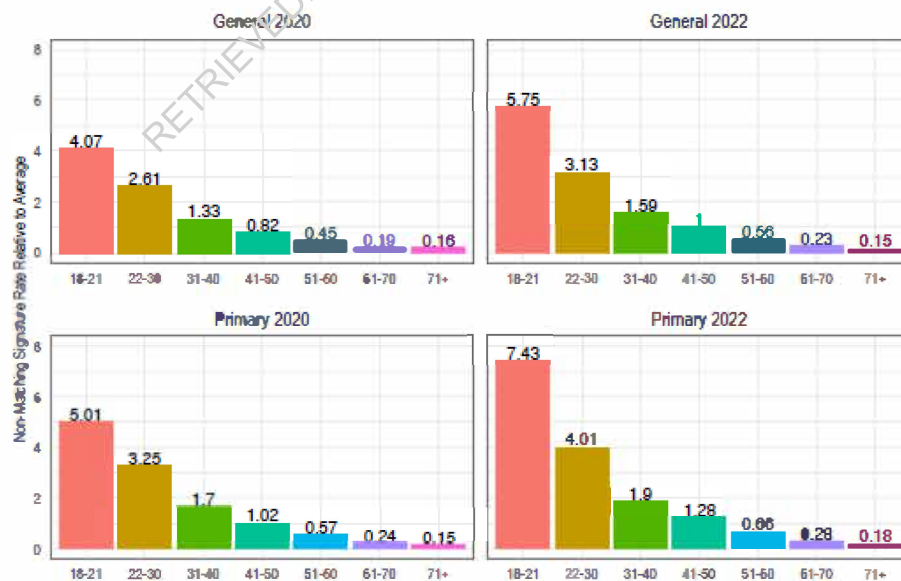


1 **2. The Signature Verification Requirement Disproportionately**
 2 **Disenfranchises Young Voters**

3
 4 Age plays an important role in signature variations. Young writers are less likely to
 5 have the stable, consistent signatures that are developed later in life, meaning voters will
 6 generally have greater signature variation in their early years. Mohammed Report 9-13.
 7
 8

9
 10 The Signature Verification Requirement disproportionately disenfranchises young
 11 voters by wide margins. Specifically, in the 2020 general election, the Audit determined that
 12 voters aged 18 to 21 had their ballots rejected at **10 times** the rate of voters 45 and older.
 13 Voters aged 22 to 25 had their ballots rejected at **over seven times** the rate of voters 45 and
 14 older. Audit 17.
 15
 16

17
 18 Again, Dr. Palmer showed that this selective disenfranchisement of young voters was
 19 present in each of the last four major elections and throughout the state. Dr. Palmer concluded
 20 that in the 2022 general election, young voters had their ballots rejected at the same or even
 21 higher rates than in the 2020 general election. Palmer Report 8. The chart below from Dr.
 22 Palmer’s report reflects the relative rates of rejection based on age for these four elections:
 23
 24
 25
 26
 27
 28
 29



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

3. The Signature Verification Requirement Disproportionately Disenfranchises Young Voters of Color

The combined effects on young voters of color are particularly stark. For example, in the 2020 general election, a Black voter aged 18-21 was *18 times more likely* to have a ballot rejected for a non-matching signature than a White voter over 40. A Hispanic voter aged 18-21 in that same election was over *17 times more likely* to have a ballot rejected for a non-matching signature. *Id.* 10.

4. The Signature Verification Requirement Disproportionately Disenfranchises UOCAVA Voters

The Signature Verification Requirement also disproportionately disenfranchises citizens living abroad and uniformed service members who are serving overseas and their families who have special procedures available for voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act. (“UOCAVA” voters). In each of the last six major elections, UOCAVA voters had their ballots rejected at higher rates—*up to twice as often* as non-UOCAVA voters. On average, UOCAVA voters were *1.6 times more likely* to have their ballots rejected for non-matching signatures. Ex. I Second Supplemental Report of Dr. Maxwell Palmer (“Second Supp. Palmer Report”) 2. Indeed, King County has known *for years* that UOCAVA voters are “significantly impacted by the current signature requirement.” Ex. J.

5. The Signature Verification Requirement Disproportionately Disenfranchises First-Time Voters

First-time voters also have their ballots rejected at higher rates. Audit at 18; Secretary Dep. 28:13-19. Specifically, the Audit determined that the rejection rate for first-time voters in the 2020 general election was “more than five times greater than for voters with previous voting experience.” (Cleaned up). Audit 18.

1 **6. Non-Native English Speakers Have Their Ballots Rejected at Higher**
2 **Rates**

3
4 The Audit also determined that, in King County specifically, voters who cast non-
5 English ballots were 47 percent more likely to have their ballots rejected than voters who cast
6 English-language ballots. *Id.* 19. This aligns with Plaintiffs’ expert Dr. Linton Mohammed’s
7 observation that voters who first learned to write in non-Latin-based languages, such as
8 Chinese, or in languages that are written right to left, such as Urdu, are more likely to show
9 greater variation in their signatures and thus are more likely get their signature rejected.
10 Mohammed Report 13.
11

12 **7. The Signature Verification Requirement Disproportionately**
13 **Disenfranchises Those Who Have Already Had Their Ballots Rejected**
14 **for Non-Matching Signatures in the Past**

15
16 Repeated rejection and disenfranchisement are also prevalent. The Audit concluded
17 that “voters who had their 2020 Primary Election ballot rejected were almost four times more
18 likely to have their 2020 general election ballot rejected.” (Cleaned up). Audit 18. Ms.
19 Escalante Martinez (ballot rejected *three times* since the 2020 general election) illustrates the
20 point. Escalante Martinez Decl. ¶¶ 3, 7, 11. As do Ashley Stroble of Sequim and Elizabeth
21 Muzik of Vancouver, who have each been disenfranchised twice in the last two years. Stroble
22 Decl. ¶ 1; Muzik Decl. ¶ 2.
23

24 **8. Residents of Less Affluent and More Diverse Areas Have Their Ballots**
25 **Rejected at Higher Rates**

26
27 Between 2017 and 2020, voters in less affluent and more diverse areas of King
28 County—those with more people of color and lower English proficiency—consistently had
29 their ballots rejected for various signature issues at higher rates than less diverse and more
30 affluent parts of the county. *See* KCE Dep. I. 87:16-89:25.
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

9. The Signature Verification Requirement Negatively Impacts Voters With Disabilities or Other Physical Limitations

Voters with certain disabilities, diseases such as Parkinson’s or Alzheimer’s, or other physical limitations are also negatively impacted by the Signature Verification Requirement. These voters are more likely to show wider variations in their signatures that are more likely to appear different and, by consequence, get rejected at higher rates. *See* Mohammed Report 14. King County has known *for years* that voters with disabilities are “significantly impacted by the current signature requirement.” Ex. J.

For example, Ms. Cantrell has a chronic condition that makes writing and signing her name extremely uncomfortable. As a result, she often signs her name on documents quickly and more simply as opposed to using her formal signature, which takes longer and is more involved. Declaration of Bethan Cantrell ¶ 3. Her ballot was mistakenly rejected in the 2020 general election. *Id.* ¶ 4.

Reginald Branston of Gig Harbor is in his 80s and has a disease that limits his ability to write and keep his hands steady. His ballot was mistakenly rejected in the 2022 primary election. Declaration of Dawn Branston ¶ 3.

Denise Ericson of Lynnwood has had arthritis for most of her life. Her handwriting constantly changes to the point that every few years, her signature looks different. Ms. Ericson’s ballot was mistakenly rejected in the 2020 general election. Declaration of Denise Ericson ¶ 1.

D. The Signature Verification Requirement Affects Voters Differently Across All Washington Counties

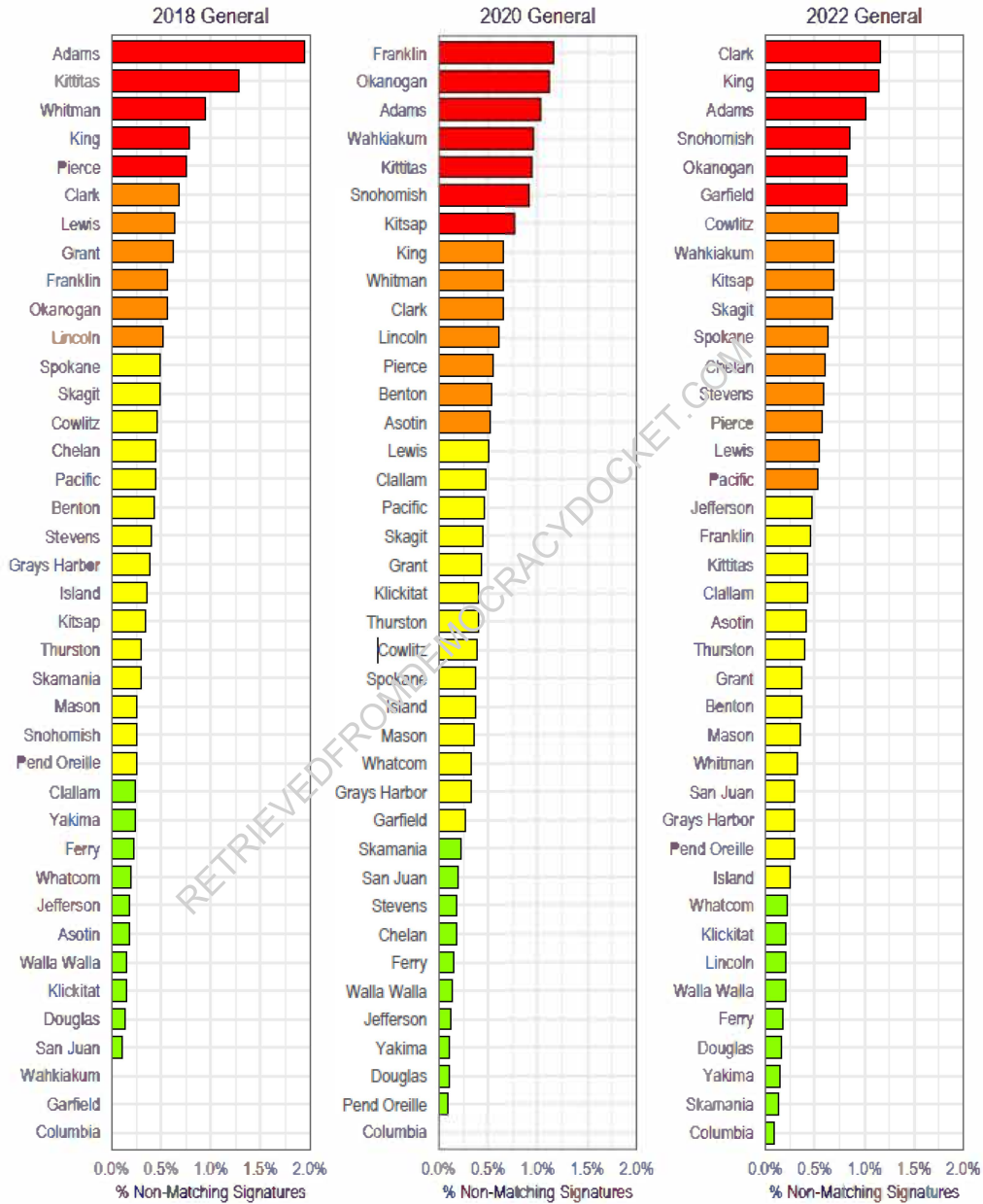
Though applying the same statute, Washington’s 39 counties vary considerably in the rates at which voters are disenfranchised for non-matching signatures. The Audit concluded that “[f]or the 2020 general election, the county where a ballot was cast was the most

1 significant variable related to rejection.” Indeed, “ballots submitted to some counties were
2 four to seven times more likely to be rejected than ballots submitted to other counties.” Audit
3
4
5 3.

6
7 Dr. Palmer confirmed that the wide range of rejection rates among the counties in the
8
9 2020 general election was not an outlier. For example, in the 2018 general election, the county
10 with the highest rejection rate, rejected ballots at *18 times the rate* of San Juan County Adams
11 County. Similarly, in the 2022 general election, the county with the highest rejection rate,
12 Clark County, rejected ballots at *almost 13 times the rate* of Columbia County. Palmer Report
13
14
15
16
17 14.

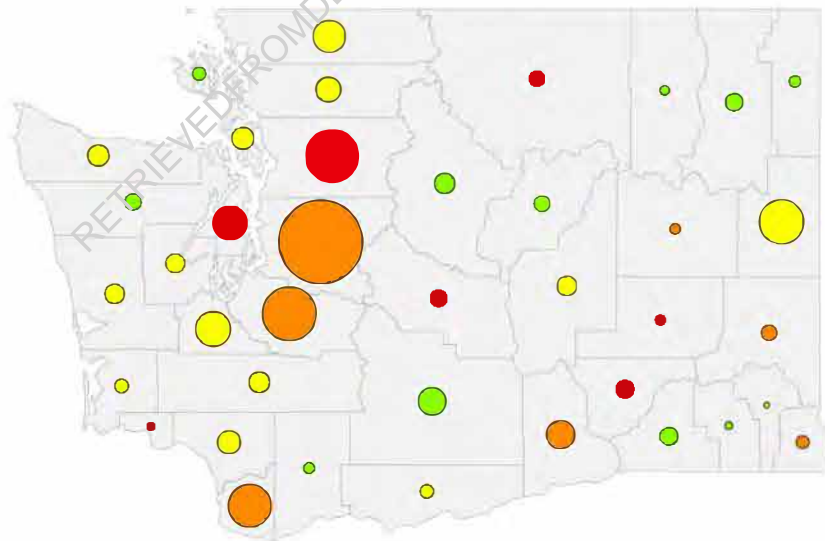
18
19 Moreover, rejection rates vary significantly within the same county across election
20 years. For example, the rejection rate for non-matching signatures in Franklin County was
21 0.57 percent in 2018, 1.16 percent in 2020, and 0.45 percent in 2022. Adams County had the
22 opposite pattern; rather than peaking in 2020 like Franklin County, the rejection rate for non-
23 matching signatures in Adams County was 1.94 percent in 2018, 1.04 percent in 2020, and
24
25
26
27
28 1.02 percent in 2022. *Id.* 14.
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 The chart below from Dr. Palmer's report reflects the ballots rejected for non-matching
 2 signatures in each county in the 2018, 2020, and 2022 general elections. *Id.* 15.
 3
 4



1 Rejection rates vary even when accounting for population. For example, the three
2 least populous counties in Washington (Wahkiakum, Columbia, and Garfield) rejected no
3 ballots based on signature verification in the 2018 general election. But in the 2020 general
4 election, Wahkiakum had the 4th highest rejection rate of any county while Garfield had the
5 28th highest, and Columbia still had the lowest. In the 2022 general election, Columbia was
6 the lowest yet again, but Garfield had the 6th highest rejection rate, and Wahkiakum had the
7 8th highest rejection rate. *Id.* 15.

8
9
10
11
12
13
14
15 The graphic below from Dr. Palmer's report reflects the rate of non-matching
16 signatures by county in the 2020 general election. Each circle is sized by the number of ballots
17 cast in the county, and the circles are shaded by the percentage rejected for non-matching
18 signatures, where green indicates the lowest rates of rejection and red indicates the highest
19 rates of rejection. *Id.* 14.



1 **E. Washington Voters Who Have Their Ballots Rejected for a Non-Matching**
2 **Signature Are Less Likely to Vote in Future Elections**

3
4 The effects of signature verification disenfranchisement are not limited to a single
5 election. On the contrary, voters who had their ballots rejected for non-matching signature in
6 the 2020 general election were less likely to vote in 2022. *Id.* 13. Specifically, voters who
7 were forced to cure a ballot for a non-matching signature in 2020 were, on average, 7.0
8 percentage points less likely to vote in the 2022 general election than voters whose ballots
9 were accepted without challenge. *Id.* And voters whose ballots were rejected for a non-
10 matching signature in 2020 and not cured were *over 27 percent less likely to vote in the 2022*
11 *general election.* *Id.* Larissa Perara of Shelton is one of those voters. She’s in her 20s. Her
12 ballot was mistakenly rejected in the 2020 general election. She tried to “cure” her ballot but
13 never heard from local election officials whether her vote was counted. Ms. Perara was so
14 upset, frustrated, and disappointed by the entire process that she has not voted since her ballot
15 was rejected. Declaration of Larissa Perara ¶¶ 8–9.

16
17
18
19
20
21
22
23
24
25
26
27
28 **F. Numerous Attempts to Implement Various Reforms and Best Practices Have**
29 **Failed to Cure High Rejection Rates**

30 For at least five years, King County Elections has been trying different strategies to
31 both reduce the rate of ballots challenged for non-matching signatures and increase cure rates.
32 Ex. K, CR 30(b)(6) Deposition of King County Elections II (“KCE Dep. II”) 75:24-76:15.
33 But none of those efforts has had a material impact, either on the overall rate of rejections or
34 on the disproportionate disenfranchisement of the most vulnerable voting populations.
35
36
37
38
39

40 The Audit identified best practices that counties should implement to reduce the initial
41 challenge rate and increase the cure rate, and King County has implemented “virtually all” of
42 them, KCE Dep. II 69:11-22, including:
43
44
45

- 46
47
- Using “experienced employees to review ballot signatures.” *Id.* 63:2-8.

- 1 • Reviewing “signatures more than once before officially challenging ballots”
2 for non-matching signatures. *Id.* 63:9-12.
- 3
- 4 • Making “multiple attempts to contact voters using various methods such as
5 email and text,” to reach voters who have had their ballots rejected. *Id.* 63:9-
6 12. Indeed, King County “goes above and beyond what the state law requires”
7 to notify voters that their ballots have been rejected for a non-matching
8 signature. *Id.* 50:8-12.
- 9
- 10 • Contacting challenged voters within a day; *Id.* 65:21-66:1.
- 11
- 12 • Sending cure letters with prepaid postage on return envelopes. *Id.* 63:17-19.
- 13
- 14 • Providing cure letters in the voter’s preferred language. *Id.* 66:2-5.
- 15
- 16 • Sending signature update forms even to voters who have had their ballots
17 accepted. *Id.* 63:20-64:9.
- 18
- 19 • Including a “full page in the voter pamphlet talking about signatures and how
20 they’re used and how they’re important” and including language “on the ballot
21 envelope itself about the fact that we are looking at your signature and
22 comparing it[.]” *Id.* 64:10-20.
- 23
- 24 • Conducting “signature-specific social media outreach ... targeting higher
25 challenge rate areas.” *Id.* 65:2-3.
- 26
- 27 • Translating outreach and social media materials into different languages served
28 in the county. *Id.* 65:12-19.
- 29
- 30 • Collecting multiple comparator signatures of a voter’s signature during the
31 curing process. *Id.* 67:22-68:1.

32 King County even goes beyond the Auditor’s recommended “best practices.” For
33 example, all election officials engaged in signature verification go through implicit bias
34 training because “King County acknowledges that individual implicit biases can influence
35 decisions about whether to accept or reject a signature[.]” KCE Dep. II 26:2-10; 84:1-7.

36 But despite all of King County’s efforts to reduce rejection rates and increase cure
37 rates, King County still consistently ranks among the Washington counties with the highest
38 rates of disenfranchisement due to non-matching signatures. For example, in the 2022 general
39 election, King County had the second highest rate of disenfranchisement. Palmer Report 15.
40
41
42
43
44
45
46
47

1 In the general and primary elections from 2018 through 2022, King County *alone*
2 disenfranchised around 37,000 voters for non-matching signatures. Supplemental Report of
3 Dr. Maxwell Palmer (“Supp. Palmer Report”) 2. In the 2020 general election, King County
4 initially challenged almost 16,000 ballots for non-matching signatures. Ex. L. Just under half
5 of those voters cured their ballots, proving that King County Elections *wrongly rejected*
6 *thousands of ballots*. Ultimately, over 8,000 voters were disenfranchised in the 2020 general
7 election. In the 2022 general election, when King County had implemented every one of the
8 best practices discussed above, *more than 10,000 voters—a record number for King County—*
9 *were disenfranchised for supposedly non-matching signatures.* Supp. Palmer Report 2.

10 King County has also seen “disturbing trends” in the racial disparities. KCE Dep. I.
11 112:2-12. King County disproportionately disenfranchised voters of color in both 2020 and
12 2022, with the greatest disparity in the 2020 general election in King County. There, Black,
13 Hispanic, and Asian voters had their ballots rejected at *more than double* the rate of White
14 voters. Supp. Palmer Report 3.

15 King County also disproportionately disenfranchised young voters in 2020 and 2022.
16 In the 2022 general election, voters under 40 were over *4 times more likely* to have a ballot
17 rejected for a non-matching signature than a voter over 40, and voters aged 18-21 were nearly
18 *10 times as likely* to have their ballots rejected compared to a voter over 40. The disparities
19 were even worse in the 2022 primary election. *Id.* 7.

20 Similar to the numbers statewide, King County disproportionately disenfranchised
21 young voters of color at staggering rates. In the 2020 general election, a Black voter aged 18-
22 21 was *17.5 times more likely* to have a ballot rejected for a non-matching signature than a
23 White voter over 40, and a Hispanic voter aged 18-21 was *18.2 times more likely* to have a
24 ballot rejected. *Id.* 7.

1 In short, as a voter fraud detection device, the Signature Verification Requirement is
2 virtually useless (as demonstrated in the discussion below). But as a device to selectively
3 suppress votes from minority and younger voters, it is *extraordinarily* effective.
4
5

6
7 **G. The Signature Verification Requirement Has Disenfranchised Tens of
8 Thousands of Voters for No Discernable Benefit**
9

10 **1. The Signature Verification Requirement Has Not Caught a Single Case
11 of Convicted Voter Fraud**
12

13 Despite disenfranchising thousands of voters for non-matching signatures, Defendants
14 *cannot identify a single case of convicted voter fraud* that was caught by the Signature
15 Verification Requirement *in the last 11 years, during which Washington residents cast*
16 *roughly 56 million mail-in ballots.* Herron Report 2-3.
17
18

19 Indeed, election fraud in Washington State, in general, is extremely rare. Defendants
20 are able to identify only 40 **total** cases (at most) of voter fraud, which resulted in a conviction
21 or guilty plea in the last 11 years, a voter fraud rate of 0.000071 percent. *Id.* 39. This is, at
22 the risk of stating the obvious, vanishingly small—there is a greater chance that one of the
23 undersigned will be struck by lightning this year (0.000081 percent chance).³
24
25

26 In fact, the Signature Verification Requirement has failed to catch what few cases of
27 voter fraud *have* resulted in a guilty plea or conviction in recent years.⁴
28
29

30
31
32
33
34
35 ³ NATIONAL WEATHER SERVICE, HOW DANGEROUS IS LIGHTNING,
36 <https://www.weather.gov/safety/lightning-odds> (last visited July 25, 2023).
37

38 ⁴ Ex. M, *State of Wash. v. Daniel Lee Brewer*, Cause No. 21-1-01476-1 (Sup. Ct. Pierce Cty. 2021)
39 (Brewer pleaded guilty after fraudulently signing a deceased relative's ballot, but Pierce County
40 election officials concluded Brewer's signature matched the deceased voter's signature and counted
41 the ballot); Ex. N *State of Wash. v. Tamara Dawn Armatis*, Cause No. 21-1-01479 (Sup. Ct. Pierce
42 Cty. 2021) (Armatris pleaded guilty after fraudulently signing her deceased husband's ballot, but Pierce
43 County election officials concluded Armatis's signature matched the deceased voter's signature and
44 counted the ballot); Ex. O *State of Wash. v. Russell Lawrence Hobbs*, Cause No. 21-1-01478-8 (Sup.
45 Ct. Pierce Cty. 2021) (Hobbs pleaded guilty after fraudulently signing his deceased wife's ballot, but
46 Pierce County election officials concluded Hobbs's signature matched the deceased voter's signature
47 and counted the ballot).

1 And even if the Court were to consider *potential cases* of voter fraud referred to
2 prosecutors, the Signature Verification Requirement has caught very few.⁵ Between 2020 and
3
4 2022, King County Elections referred 58 cases of voter fraud that the King County Defendants
5
6 contend were caught solely because of the Signature Verification Requirement. All such
7
8 referrals “were declined and no charges were filed.” Ex. P King County Defendants’
9
10 Response to Plaintiffs’ Second Interrogatories 7-8. During this same period, King County
11
12 disenfranchised over 25,000 voters for non-matching signatures. Supp. Palmer Report at 2.
13
14 In other words, *King County referred less than one-quarter of one percent of the ballots that*
15
16 *it rejected for non-matching signatures to prosecutors*, a tacit admission that for all of the
17
18 others (99.79 percent of rejected ballots) it had no reason to suspect wrongdoing. Looking at
19
20 the election as a whole, King County referred a mere 0.0016 percent of all votes cast during
21
22 that period to prosecutors.
23

24
25 **2. Washington State Employs Numerous and Overlapping Procedures to**
26 **Detect Fraudulent Ballots**

27 Washington State already employs many overlapping and widespread procedures to
28
29 detect fraudulent ballots, including:
30

31 Voter Registration: Washington maintains a centralized voter registration database.
32
33 When they register, voters provide basic information including their mailing address.
34
35 RCW 29A.08.010; RCW 29A.08.125. Election officials then verify the individual’s identity.
36
37 Secretary Dep. 81:25-83:12. Each voter receives a unique voter identification number.
38
39

40
41 _____
42 ⁵ Plaintiffs submit that the Court should not consider potential cases of voter fraud referred to
43 prosecutors that did not lead to a criminal conviction or guilty plea, let alone charges filed, in its
44 evaluation of the Signature Verification Requirement. Referrals to prosecutors are nothing more than
45 allegations of voter fraud, untested, and unproven. This Court need not look far back in time for
46 examples of unfounded allegations of voter fraud. *E.g.*, Ex. Q, *Washington Election Integrity*
47 *Coalition United v. Wise*, Case No. 21-2-12603-7 KNT (Sup. Ct. King Cty. 2023) (dismissed on
summary judgment).

1 Washington law imposes fines and/or imprisonment on individuals who provide false
2 information during that process. RCW 29A.84.130. A voter's registration may also be
3 challenged. RCW 29A.08.810 *et seq.*
4

5
6 Voter List Maintenance: Washington election officials are required to maintain the
7 accuracy of the voter list and ensure that only eligible voters are allowed to vote. RCW
8 29A.08.125. This maintenance includes updating addresses of those who have moved within
9 Washington, removing those who moved out of Washington State, passed away, are ineligible
10 because of a felony, and are inactive. Secretary Dep. 81:25-88-19.
11

12
13 Ballot Security: Election officials assign a unique number to each ballot issued to a
14 voter, ensuring that only one ballot is accepted per voter. Once a ballot has been returned,
15 election officials use the unique ballot number to ensure that the voter has not already cast a
16 ballot. Secretary Dep. 97:16-100:4. All voters must sign their declaration affirming their
17 eligibility to vote under penalty of perjury. Herron Report at 11.
18

19
20 Ballot Notification and Vigilant Voters: Voters statewide can track their ballot status
21 through vote.wa.gov. King County also offers email and text alerts about ballot status to all
22 voters who sign up. KCE Dep. II 48:19-49:1. These alerts and status trackers allow voters
23 multiple avenues to report suspicious behavior including someone else voting their ballot.
24

25
26 Post-Election Fraud Detection: After an election, officials conduct additional reviews
27 of the voter list for potential fraud by comparing the voter list with other states (looking for
28 multi-state voters), other counties (double voters), and vital records (deceased people who cast
29 a ballot). Ex. R, Defendant Secretary Hobbs's Response to Plaintiffs First Interrogatories 20.
30

31
32 Post-Election Audits: Election officials are required to conduct a full audit of any
33 ballots that were duplicated and at least one broader audit of ballots cast. *Id.*
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 County Canvassing Board: The County Canvassing Board has the authority to reject
2
3 any challenged or questioned ballot. RCW 29A.60.140; RCW 29A.60.050.

4 Unlike the Signature Verification Requirement, these provisions actually benefit
5
6 election security and have caught cases of election fraud. *See* footnote 4 above.
7

8
9 **3. Other States Recognize the Shortcomings of Signature Verification and**
10 **Refuse to Use It**

11 Eight states and the U.S. Virgin Islands accept votes by mail but do not conduct
12
13 signature verification on the ballots before accepting them. In fact, two of these states,
14
15 Pennsylvania and Connecticut, recently considered adding a signature verification
16
17 requirement and rejected it. In 2021, Pennsylvania’s governor vetoed House Bill 1300
18
19 because “the legislation is incurably riddled with unacceptable barriers to voting, including:
20
21 ... Requiring an arbitrary signature match for mail-in ballots without a system to cure[.]” Ex.
22
23 S. In 2022, during a Connecticut state legislative hearing, the Connecticut secretary of state
24
25 rejected signature verification saying: “But signature verification processes are notoriously
26
27 unreliable.” The secretary continued:
28

29
30 If someone is sending back an application of absentee ballot,
31 and they’re on the list, and they are [sic] live at that address,
32 and they are signing something under penalty of fraud, and
33 years in prison, that they are that person. I think that’s the best
34 we can do ... Signatures change, you couldn’t -- it would be
35 very, very difficult to even verify to [sic] similar signatures.
36 You know, it’s just the whole signature verification process is
37 extremely difficult to verify using a signature, that’s all I’ll say,
38 you know, it’s not something, you know, I’ve looked at it, they
39 do it in some states. It’s an extremely expensive, cumbersome
40 system. You have to train local people to map signatures.
41 They’re not comfortable with it. They’re not handwriting
42 experts.
43
44

45
46
47 Ex. T 52-53.

1 **H. The Signature Verification Requirement Is Inherently Subjective**

2
3 The Washington State Auditor recognizes that “[s]ignature verification is ultimately
4 subject to human judgment” and “deciding whether a signature matches is inherently
5 subjective[.]” Audit 17. Defendants agree. Secretary Dep. 42:23-43:4; KCE Dep. II 83:18-
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
those biases can influence our decisions to accept or reject a signature.”).

The Auditor further found that “even experienced reviewers can come to different conclusions”:

We observed county officials debate and reverse decisions about signature matches. Similarly employees from the Secretary of State’s office sometimes disagreed with each other about signature matches. Members of our own team participating in the review also disagreed on whether many of the signatures matched. We also found that county officials interpreted statewide criteria for signature verification differently.

Audit 16.

Perhaps most alarmingly, the “Audit found few discernable patterns that helped explain differences in rejection rates.” *Id* 17. Except, of course, the impact on minority and younger voters. That much, at least, is neither disputed nor subject to reasonable dispute.

35 **I. Signature Verification Is Incompatible With Sound Election Administration**

36
37
38
39
40
41
42
43
44
45
46
47
Given the higher error rates and disparate treatment, it should come as no surprise that signature verification is simply incompatible with sound election administration.

Signature verification inevitably results in widespread disenfranchisement. It is an imperfect art even under the best of circumstances. Even under optimal conditions such as 1) an analysis conducted by a forensic document examiner, 2) who has adequate time (approximately one hour for simple signatures and a minimum of two to four hours for a

1 complex one), 3) with 10-15 contemporaneous comparator samples, 4) with adequate
2 equipment (including magnification tools and proper lighting), 5) and excellent eyesight, there
3 will be a non-trivial rate of error and a non-trivial rate of inconclusive results that will
4 inevitably lead to voters whose ballots are rejected for non-matching signatures. Mohammed
5 Report 7-8. One study found that even certified and trained forensic document examiners
6 wrongly concluded that *genuine signatures* were *non-genuine* seven percent of the time. *Id*
7
8
9
10
11
12
13
14

15 Election administration does not allow for optimal conditions for signature
16 verification, which inevitably results in more errors and more voters whose ballots are
17 wrongfully rejected for non-matching signatures. For example, a proper signature analysis of
18 a “simple” signature could still take up to an hour because of its few distinguishing features.
19 A complicated signature requires *a minimum of two to four hours* to conduct a proper
20 analysis. But the careful and time-consuming analyses required to minimize errors simply
21 cannot work in the context of elections. In the 2020 general election, election officials
22 received over 4.1 million ballots. Even under the implausible assumption that every signature
23 was “simple,” that would still require 4.1 million man-hours. King County acknowledges that
24 it does not have “weeks or years” to validate signatures. KCE Dep. II 88:8-10 (“People would
25 go nuts.”). Instead, King County expects its first-level reviewers to review each signature in
26 *about five seconds*. KCE Dep. II 30:22-31:10. Secretary Hobbs suggests that election
27 officials can do signature verification in *three seconds*. Secretary Dep. 202:25-203:17. It is
28 also not practical for Washington election officials to have the *minimum* 10-15
29 contemporaneous comparator signatures in their review.
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

45 The error rate inherent in signature verification used in election administration could
46 likely be reduced *if* each Washington county had trained forensic document examiners who
47

1 had the right equipment, 10-15 comparator signatures available for each voter, and,
2 collectively, millions of hours to devote to the task. See Mohammed Report 2-3. But, of
3 course, that's entirely unrealistic, and even so, some voters would still be disenfranchised.
4
5

6 7 **IV. Statement of Issues**

8 Whether Washington's Signature Verification Requirement violates Article I, Sections
9 3, 12, and 19 of the Washington State Constitution and RCW 29A.04.206.
10

11 **V. Evidence Relied Upon**

12 Plaintiffs rely on the declarations of Plaintiffs, the Declaration of Heath Hyatt and the
13 attached exhibits including deposition transcripts, exhibits, expert reports, discovery
14 responses, and other documents, and declarations of the additional 61 witnesses filed in
15 support of this Motion.
16
17
18
19
20
21

22 **VI. Authority**

23 **A. Legal Standard**

24 Summary judgment is appropriate when "there is no genuine issue as to any material
25 fact and . . . the moving party is entitled to judgment as a matter of law." *Locke v. City of*
26 *Seattle*, 162 Wn.2d 474, 483, 172 P.3d 705 (2007) (alteration in original); CR 56(c). "A
27 genuine issue of material fact exists when reasonable minds could differ on the facts
28 controlling the outcome of the litigation." *Dowler v. Clover Park Sch. Dist. No. 400*, 172
29 Wn.2d 471, 484, 258 P.3d 676 (2011). Courts consider all facts in the light most favorable to
30 the nonmoving party. *Id.* at 485. Summary judgment should be granted "if reasonable minds
31 could reach only one conclusion from the evidence presented." *Estate of Becker v. Avco*
32 *Corp.*, 187 Wn.2d 615, 621, 387 P.3d 1066 (2017).
33
34
35
36
37
38
39
40
41
42
43

44 Here, the key facts on which this motion is based are undisputed. The numbers of
45 disenfranchised voters and the devastating disproportionate impact on minority and younger
46
47

1 voters all are matters of public record and have been admitted by Defendants. There is also
2 no reasonable dispute that Plaintiffs and declarants did everything required of them to cast a
3 lawful ballot: They were each over the age of 18, a citizen of the United States and
4 Washington State, had not been convicted of a felony (or have had their civil rights restored),
5 were lawfully registered, and received, voted, and timely returned their ballots—in each case
6 after signing the declaration appearing on the outside of the ballot return envelope under
7 penalty of perjury, as required. It cannot be reasonably disputed that each of them was
8 wrongfully disenfranchised because of the Signature Verification Requirement.
9

10
11 The Signature Verification Requirement is facially unconstitutional in violation of
12 Section 19, 12, and 3 of the Washington State constitution because it is fundamentally flawed
13 and incompatible with sound election administration, and because it disenfranchises tens of
14 thousands with no discernable benefit to election security.⁶
15

16
17 **B. The Signature Verification Requirement Unconstitutionally Violates the Right**
18 **to Vote Guaranteed in Article I, Section 19**
19

20
21 “The Washington Constitution grants the right to vote to all Washington citizens on
22 equal terms.” *Madison v. State*, 161 Wn.2d 85, 97, 163 P.3d 757 (2007). The Washington
23 Constitution “goes further to safeguard the right to vote than does the federal constitution”
24 because it, “unlike the federal constitution, specifically confers upon its citizens the right to
25 ‘free and equal’ elections.” *Foster v. Sunnyside Valley Irr. Dist.*, 102 Wn.2d 395, 404, 687
26 P.2d 841 (1984); *Madison*, 161 Wn.2d at 96. See Article I, Section 19 of the Washington
27 State Constitution (“All elections shall be free and equal, and no power, civil or military, shall
28
29
30
31
32
33
34
35
36
37
38
39
40
41

42
43 ⁶ In a facial constitutional challenge, a plaintiff must demonstrate that the statute at issue is
44 unconstitutional on its face, regardless of how it is applied. *Wash. State Republican Party v. Wash.*
45 *State Pub. Disclosure Comm’n*, 141 Wn.2d 245, 282 n.14, 4 P.3d 808 (2000). In an “as applied”
46 challenge, a plaintiff must demonstrate that an otherwise-constitutional statute offends the constitution
47 because of the way in which it has been applied. *Id.* Here, Plaintiffs submit that Washington’s
signature verification statute is facially unconstitutional – as the record rather vividly demonstrates.

1 at any time interfere to prevent the free exercise of the right of suffrage.”). Unlike age,
2 citizenship status, and residency, consistent penmanship is not a constitutional requirement to
3 vote. See Article VI, Section 1 of the Washington Constitution (listing eligibility
4 requirements).
5
6
7

8
9 **C. The Signature Verification Requirement Cannot Withstand Strict Scrutiny**

10 The Washington Supreme Court has emphatically declared that, because the right to
11 vote is “fundamental for all citizens,” restrictions on that right are “subject to strict scrutiny,
12 meaning they must be narrowly tailored to further a compelling state interest.” *Madison*, 161
13 Wn.2d at 99; *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006) (strict scrutiny applies
14 when “state action threatens a fundamental right.”); *City of Seattle v. State*, 103 Wn.2d 663,
15 670, 694 P.2d 641 (1985) (“any statute which infringes upon or burdens the right to vote is
16 subject to strict scrutiny.”); see also *League of Women Voters of Kansas v. Schwab*, 63 Kan.
17 App. 2d 187, 224, 525 P.3d 803, 831 (2023) (applying strict scrutiny “[b]ecause there was “no
18 question that the right to vote is a fundamental right protected by the Kansas Constitution,”);
19 *Fla. Democratic Party v. Detzner*, No. 4:16cv607-MW/CASE, 2016 WL 6090943, at *6 (N.D.
20 Fla. Oct. 16, 2016) (“If disenfranchising thousands of eligible voters does not amount to a
21 severe burden on the right to vote, then this Court is at a loss as to what does.”).
22
23
24
25
26
27
28
29
30
31
32
33

34 Defendants bear the burden of showing that a statute survives strict scrutiny. *Elster v.*
35 *City of Seattle*, 193 Wn.2d 638, 642, 444 P.3d 590 (2019); see also *State ex rel. Pub.*
36 *Disclosure Comm’n v. 119 Vote No! Comm.*, 135 Wn.2d 618, 628, 957 P.2d 691 (1998)
37 (noting that states “rarely meet” the burden required by strict scrutiny). Defendants cannot
38 meet either prong of this high standard.
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

a. **The Signature Verification Requirement Does Not Further Any Compelling State Interest**

Defendants do not dispute that the Signature Verification Requirement has disenfranchised over 170,000 fully qualified voters since 2016 (with a disproportionate impact on minority and younger voters) but nevertheless defend the statute by claiming it furthers three state interests:

- **Election Security:** The Signature Verification Requirement ensures that the voter who was supposed to cast a ballot actually cast that ballot as opposed to someone else casting their ballot. Secretary Dep. 18:1-12; KCE Dep. I 25:7-11; 27:19-28:3.
- **Greater Access to Elections:** The Signature Verification Requirement does not impose barriers to voting such as an identification requirement. Secretary Dep. 18:21-20:20; 242:11-243:6.
- **Voter Confidence in Elections:** The Signature Verification Requirement boosts confidence in the integrity of Washington elections and that voters' ballots will count. Secretary Dep. 43:17-45:6; KCE Dep. I 25:7-11.

None of these supposed state interests can withstand scrutiny of any kind—much less the “rarely” met strict scrutiny standard demanded by Washington law—because there is no evidence that the Signature Verification Requirement actually advances any of these interests and, in fact, the undisputed evidence shows precisely the opposite. *See, e.g., Macias v. Dep’t of Labor & Indus. of the State of Wash.*, 100 Wn.2d 263, 274, 668 P.2d 1278 (1983) (when reviewing state’s own data, the Court noted that it was “doubtful whether the cited rationale would survive even a rational relationship test”); *See Fish v. Schwab*, 957 F.3d 1105, 1126 (10th Cir. 2020) (“Thus, we agree with the Secretary that Kansas’s interest in counting only the votes of eligible voters is legitimate in the abstract, but, on this record, we do not see any

1 evidence that such an interest made it necessary to burden voters' rights here."); *League of*
2
3 *Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 246 (4th Cir. 2014) ("North
4 Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district
5 court's portrayal of the facts suggests that those are anything other than merely imaginable.");
6
7 *Obama for Am. v. Husted*, 697 F.3d 423, 433–34 (6th Cir. 2012) (by not providing actual
8 evidence regarding regulation, state failed to justify its "sufficiently weighty" interest, let
9 alone a "compelling" interest); *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024
10 n.2 (9th Cir. 2016) (holding courts must consider "not only a given law's impact on the
11 electorate in general, but also its impacts on subgroups, for whom the burden, when considered
12 in context, may be more severe.").

13
14
15
16
17
18
19
20
21 Defendants cannot "articulate specific, rather than abstract state interests, and
22 explain why the particular restriction imposed is actually necessary, meaning it actually
23 addresses, the interest put forth." *Ohio State Conf. of NAACP v. Husted*, 768 F.3d 524, 545
24 (6th Cir. 2014), *vacated on other grounds*, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct.
25 1, 2014).

26
27
28
29
30
31 **(i) Defendants Identify No Evidence That the Signature**
32 **Verification Requirement Actually Advances Any State**
33 **Interest**

34
35 **Election Security.** The election security rationale is wholly unsupported by the record
36 before this Court. Defendants candidly acknowledge that neither they nor the Auditor have
37 any data or any evidence that shows whether ballots rejected for non-matching signatures
38 "were actually submitted and signed by someone other than the voter as opposed to just being
39 signed in a different way by the actual voter." Secretary Dep. 254:14-20; 156:5-24 ("Okay.
40 Secretary doesn't know one way or the other? A. Right."). That's fatal. *See, e.g., Collier v.*
41 *City of Tacoma*, 121 Wn.2d 737, 755, 854 P.2d 1046 (1993) (striking down prohibition on
42
43
44
45
46
47

1 political yard signs because the city failed to support claim that the prohibition advanced any
2 compelling state interest); *see also Pilloud v. King Cty. Republican Cent. Comm.*, 189 Wn.2d
3 599, 606, 404 P.3d 500 (2017) (holding campaign finance statute unconstitutional after
4 proponent failed to “present evidence to support” claim that the law was necessary to advance
5 compelling state interest).
6
7
8
9

10 Without even knowing whether *any* of the hundreds of thousands of ballots rejected
11 for non-matching signatures were actually fraudulent, Defendants cannot possibly meet their
12 burden to show disenfranchising voters serves a compelling state interest. *See Fish*, 957 F.3d
13 at 1132 (finding the state’s interests were insufficiently weighty to justify voting restrictions
14 because the Secretary could not point to “concrete evidence” that the state interests merited
15 imposing such restrictions); *Ohio State Conf. of NAACP*, 768 F.3d at 547 (a handful of
16 examples of voter fraud and general testimony was insufficient to prevent a “precise” problem
17 of voter fraud).
18
19
20
21
22
23
24
25

26 Moreover, Defendants acknowledge that they have conducted no reviews, no analyses,
27 and no studies to determine whether the Signature Verification Requirement actually election
28 security or prevents voter fraud. Secretary Dep. 228:15-229:9 (“[t]here has been none.”),
29 254:14-20 (“Q. But neither the Secretary of State nor the State Auditor has weighed in or has
30 any data or evidence on whether any of those ballots that were rejected were actually
31 submitted and signed by someone other than the voter as opposed to just being signed in a
32 different way by the actual voter, correct? A. Correct, or the reverse of that.”); KCE Dep. I
33 34:3-15 (“We have not conducted any studies.”).
34
35
36
37
38
39
40
41
42

43 Indeed, the Secretary has never even talked to any voters who have had their ballots
44 rejected to see whether they were the voters who actually signed the Ballot Declaration.
45 Secretary Dep. 230:6-18.
46
47

1 Moreover, the Secretary has no evidence that there are any higher rates or incidences
2 of fraud in any of the eight states and the U.S. Virgin Islands that accepts returned absentee
3 ballots without signature verification. See Section III.G.3; Secretary Dep. 59:17-24 (“I would
4 say we—we don’t have any data that shows—or studies that we’ve conducted that show a
5 comparative rate of what life without signature verification would be like.”). The election
6 security rationale, in short, is wholly unsupported by the record.
7
8
9
10
11

12 **Access to Elections.** The access to elections rationale is similarly unsupported.
13 Defendants admit that they do not know whether signature verification actually increases
14 access to voting compared to other methods of “verification.”⁷ Secretary Hobbs
15 acknowledges that Washington has “never done anything to study whether there are feasible
16 alternatives to signature verification[.]” Secretary Dep. 26: 19-23. Secretary Hobbs has never
17 tried nor experimented with alternatives to the Signature Verification Requirement. Secretary
18 Dep. 25:7-23; 20:22-21:7. And, neither Defendant has put forth evidence that the Signature
19 Verification Requirement actually facilitates the greatest access to voting among other
20 verification methods.
21
22
23
24
25
26
27
28
29

30 **Voter Confidence.** Defendants’ final rationale, voter confidence, is likewise bereft
31 of support. Defendants have no idea whether the Signature Verification Requirement actually
32 increases voter confidence in elections, as opposed to *decreasing* voter confidence by
33 disenfranchising fully qualified voters at the brisk pace of up to 24,000 voters per election.
34 Neither the Secretary nor King County has studied the matter. Secretary Dep. 48:7-16 (“Has
35 the Secretary of State conducted any analysis or study of whether signature verification affects
36 voter confidence in elections? A. No. We haven’t done any studies, per se, on that particular
37
38
39
40
41
42
43
44
45

46 ⁷ Of course, it is more than a little ironic that the state would attempt to defend a practice that regularly
47 denies over 20,000 voters the ability to vote as preserving “access to elections.”

1 topic.”); 50:8-18; 51:12-15 (“I’m asking about if the Secretary is aware of any studies or data
2 that analyze relationships between signature verification and voter confidence. A. I’m not
3 aware of any.”); 251:13-18 (“None. We haven’t studied that the signature verification if
4 removed would impact voter confidence.”); KCE Dep. I 28:13-29:1 (“I cannot recall any
5 studies that King County Elections has conducted with regards to voter confidence and the
6 signature-matching process.”). Instead, King County Elections relies on an “unknown
7 number” of “anecdotal” conversations to support its conclusion. KCE Dep. I 29:3-30:1.
8
9

10 This lack of evidence and lack of investigation falls dramatically short of justifying a
11 practice that disenfranchises tens of thousands of fully qualified Washington voters who did
12 everything required of them and—worse—places that burden disproportionately on the
13 shoulders of minority and younger voters. The state, in short, stumbles at the very threshold
14 of the strict scrutiny analysis by failing to even examine *whether* the Signature Verification
15 Requirement furthers any of the purported state interests it identifies, let alone provide
16 evidence that it does.
17
18
19
20
21
22
23
24
25
26
27

28
29 **(ii) The Undisputed Evidence Shows That the Signature**
30 **Verification Requirement Does Not Advance Any of the**
31 **Three State Interests**
32

33 In fact, the undisputed evidence demonstrates that the Signature Verification
34 Requirement does not actually advance the state’s interests.
35

36 **Election Security.** The Signature Verification Requirement does not make
37 Washington elections more secure. As discussed in Section III.G.1, Defendants cannot
38 identify *a single case of voter fraud—ever, at any time*—that was caught by the Signature
39 Verification Requirement and led to a conviction or guilty plea. While Defendants claim
40 election officials referred *some suspected cases of voter fraud* to prosecutors that were
41
42
43
44
45
46
47

1 discovered solely because of the Signature Verification Requirement, local prosecutors upon
2 investigation declined to bring charges in any of those cases. Not even one.
3

4
5 But even if the Court were to consider *potential cases* of suspected voter fraud referred
6 to prosecutors, the Signature Verification Requirement has only flagged a few such instances.
7
8 As discussed in Section IV.B.a.ii above, between 2020 and 2022, King County Elections
9 referred only 0.21 percent of the ballots that it rejected for non-matching signatures to
10 prosecutors and 0.0016 percent of all ballots cast between 2020 and 2022 in King County.
11
12

13
14 And, as discussed in Section III.G.1, the Signature Verification Requirement failed to
15 catch three fraudulently signed ballots cast in 2020 on behalf of voters who died before casting
16 their ballot.
17
18

19
20 **Access to Elections.** The Signature Verification Requirement in fact *reduces* access
21 to elections by placing additional burdens on the right to vote by requiring tens of thousands
22 of voters *every election* to “cure” ballots and, for those who cannot, by stripping them of their
23 right to vote at the outrageous rate of up to (so far) 24,000 voters per election. The Signature
24 Verification Requirement has disenfranchised over 170,000 Washingtonians since 2016 and
25 69,000 voters in the general and primary elections alone, and it imposed a greater burden on
26 an additional 79,000 voters from 2020 through 2022 who had to (and did) prove to election
27 officials’ satisfaction that their signatures were in fact their signatures. Only in a truly
28 Orwellian sense could this be called increasing “access to elections.” And, as discussed in
29 Section III.E, having a ballot rejected for a non-matching signature, whether it is cured or not,
30 reduces the likelihood that a voter will vote again in the future by up to 27 percent. Palmer
31 Report 13.
32
33
34
35
36
37
38
39
40
41
42
43

44 This burden would be bad enough (and equally unconstitutional) if it were imposed
45 equally throughout the population. But it isn’t. The burden disproportionately falls on voters
46
47

1 of color, young voters, young voters of color, active-duty military voters and their families
2 serving abroad and overseas citizens, first-time voters, voters with disabilities or certain
3 diseases, voters who do not speak English as a first language, voters with disabilities, voters
4 who live in less affluent and more diverse areas, voters who live in certain counties, and voters
5 who have had their ballots rejected before. *See* Sections III.C–III.D.
6
7
8
9

10 **Voter Confidence.** The Signature Verification Requirement erodes, rather than
11 enhances, voter confidence in elections. Over 20 declarants who have been disenfranchised
12 by the Signature Verification Requirement expressed concern “that the signature verification
13 system may prevent myself and many of my fellow citizens from being able to exercise their
14 right to vote.” *E.g.*, Muzik Decl. ¶ 10; Stroble Decl. ¶ 11. That concern isn’t speculation; it’s
15 from affected voters themselves. And that concern is borne out in the statewide data. As Dr.
16 Palmer found, the over 32,000 voters who cured ballots challenged for a non-matching
17 signature in the 2020 general election were seven percent less likely to vote in the 2022 general
18 election. In fact, the nearly 24,000 voters who were disenfranchised by the Signature
19 Verification Requirement in the 2020 general election were 27 percent less likely to vote in
20 the 2022 general election. That’s a significant decrease in voter confidence. *See Fish*, 957
21 F.3d at 1115, 1134–35 (when a regulation enacted under guise of “safeguarding voter
22 confidence” results in disenfranchising otherwise eligible voters, it may “have the inadvertent
23 effect of eroding, instead of maintaining, confidence in the electoral system.”). *See also*
24 *Rickert v. State, Pub. Disclosure Comm’n*, 161 Wn.2d 843, 855, 168 P.3d 826 (2007)
25 (challenged statute failed strict scrutiny because it undermined the state’s interest in assuring
26 public confidence in elections).
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

b. The Signature Verification Requirement Is Not Narrowly Tailored to Serve a Compelling State Interest

Even if Defendants could show that the Signature Verification Requirement advanced a compelling state interest—and they cannot—they could not meet their burden to demonstrate that it is the “least restrictive means available” to serve the state’s compelling interests. *OneAmerica Votes v. State*, 23 Wn. App. 2d 951, 989, 518 P.3d 230 (2022). *See also Matter of Recall of Inslee*, 199 Wn.2d 416, 431, 508 P.3d 635 (2022) (A statute is narrowly tailored if “the means chosen are not substantially broader than necessary to achieve the government’s interest.”); *Collier*, 121 Wn.2d at 758 (city ordinances limiting pre-election posting of signs were not narrowly tailored).

The Signature Verification Requirements is anything *but* narrowly tailored. It is, in fact, wildly overinclusive. Defendants have disenfranchised over 170,000 voters since 2016 and subjected around 170,000 additional voters to additional burdens, but they cannot identify *a single case of voter fraud*, ever, that was caught by the Signature Verification Requirement and led to a conviction or guilty plea. This is the very definition of an overbroad sweep.⁸ A law that creates such a *massive* gulf between the harm it seeks to prevent and the cudgel it wields to prevent such harm cannot possibly be considered to be “narrowly tailored.” *See, e.g., Ams. for Prosperity Found. v. Bonta*, --- U.S. ---, 141 S. Ct. 2373, 2386 (2021) (“[t]here is a dramatic mismatch, however, between the interest that the Attorney General seeks to promote and the disclosure regime that he has implemented in service of that end.”).

Not only does the Signature Verification Requirement not work, but it is also redundant. Washington already has a robust series of overlapping mechanisms to protect the

⁸ And, as discussed in Section IV.B.a.ii above, King County referred only 0.21 percent of the voters it disenfranchised and 0.0016 percent of all votes cast from 2020 through 2022 to prosecutors. It is simply inconceivable that a statute that wrongly disenfranchises at least 99.79 percent of those that fall within its ambit is “narrowly tailored.”

1 integrity of its elections at every step of the voting process including through voter
2 registration, voter list maintenance ballot security and tracking, post-election fraud detection,
3 post-election audits, and the inherent powers of the county canvassing boards to reject
4 challenged or questioned ballots. *See* Section G.II above.
5
6

7
8
9 But perhaps most importantly, voters sign the ballot envelope declaration under
10 penalty of perjury. Voters who sign a false declaration can—and should be—prosecuted for
11 that crime. Prosecuting those who submit fraudulent ballots would advance the same interests
12 as the state advances here. In fact, actually prosecuting suspected voter fraud would advance
13 those interests far better than the Signature Verification Requirement. And doing so would
14 bring the full weight of Washington’s police powers to bear on those citizens actually guilty
15 of a crime—rather than broadly stripping fundamental civil rights from, literally, *hundreds of*
16 *thousands* of lawful voters who did everything constitutionally required of them. Such an
17 approach would be “narrowly tailored.” Washington’s “guilty until proven innocent”
18 approach is not.
19
20

21
22
23
24
25
26
27
28
29 Courts in other jurisdictions find signature verification requirements deeply
30 problematic. In *Detzner*, a federal court found that Florida’s signature verification
31 requirement could not satisfy strict scrutiny. 2016 WL 6090943, at *7. The court found that
32 the requirement, which “categorically disenfranchised thousands of voters arguably for no
33 reason other than they have poor handwriting or their handwriting has changed over time,”
34 constituted a severe burden on the right to vote and enjoined the scheme. *Id.*⁹
35
36
37
38
39

40
41
42
43
44
45
46
47

⁹ In fact, courts have struck down signature verification requirements even under the flexible—and more lenient—federal approach. *See, e.g., Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1320 (11th Cir. 2019) (in rejecting state signature verification requirement, the court noted that “even if election officials uniformly and expertly judged signatures, rightful ballots still would be rejected just because of the inherent nature of signatures.”). Additionally, courts have found that these signature verification requirements violate due process. *See, e.g., Saucedo v. Gardner*, 335 F. Supp. 3d 202, 206 (D.N.H. 2018) (striking down a signature verification requirement on due process concerns, noting

1 Kansas has similarly considered the constitutionality of its own signature verification
2 requirement and found that because it infringes the fundamental right to vote a challenge to it
3 triggers strict scrutiny review. *League of Women Voters of Kansas*, 63 Kan. App. 2d at 224.
4
5 The court found that the state’s signature verification requirement “burdens the whole
6 electorate because signatures are wrongly mismatched.” *Id.* at 212. Because there was “no
7 question that the right to vote is a fundamental right protected by the Kansas Constitution,”
8 the court held that strict scrutiny—not the lesser federal standard—applied to a challenge to
9 the state’s signature matching program. *Id.* at 205, 208.
10
11
12
13
14
15

16 The Signature Verification Requirement places extraordinary burdens on lawful
17 Washington voters by the tens of thousands per election, without advancing any compelling
18 state interests. As a result, it necessarily fails strict scrutiny.
19
20
21
22

23 **D. The Signature Verification Requirement Violates the Privileges and Immunities**
24 **Clause**

25 The Signature Verification Requirement also violates the Washington Constitution’s
26 Privileges and Immunities Clause because it favors certain classes of voters—including White
27 voters, voters over 40, voters without physical limitations, and voters who speak English,
28 among others—and weighs their votes more heavily than those of other Washington voters.
29
30
31
32

33 “Equal protection requires that all persons similarly situated should be treated alike.”
34 *Am. Legion Post No. 149 v. Wash. State Dep’t of Health*, 164 Wn.2d 570, 608, 192 P.3d 306
35 (2008) (internal quotation marks omitted). Article I, Section 12 provides that “[n]o law shall
36 be passed granting to any citizen, class of citizens, or corporation other than municipal,
37 privileges or immunities which upon the same terms shall not equally belong to all citizens,
38 or corporations.” The Privileges and Immunities Clause “was intended to prevent favoritism
39
40
41
42
43
44

45 _____
46 that the requirement was “fundamentally flawed.”); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1339–40
47 (N.D. Ga. 2018) (enjoining signature match scheme because it violated due process guarantees).

1 and special treatment for a few to the disadvantage of others,” and it “is more protective than
2 the federal equal protection clause” and sometimes requires an “independent analysis.”
3
4 *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 196 Wn.2d 506, 518–19, 475 P.3d 164 (2020)
5
6 (finding statute exempting agricultural workers from overtime pay a violation of the Privileges
7 and Immunities Clause).
8
9

10 This more protective “independent analysis” applies here because the Signature
11 Verification Requirement not only implicates but also infringes the fundamental right to vote.
12
13 *Id.* (“The independent analysis applies only where a law implicates a ‘privilege or immunity’
14 as defined in our early cases distinguishing the fundamental rights of state citizenship.”);
15
16 *Madison*, 161 Wn.2d at 95–96 (“[W]e conclude that the right to vote is a privilege of state
17 citizenship, implicating the privileges and immunities clause of the Washington
18 Constitution.”).
19
20
21
22
23
24

25 The independent analysis asks two questions: “whether a challenged law grants a
26 privilege or immunity for purposes of our state constitution” and “whether there is a
27 reasonable ground for granting that privilege or immunity.” *Martinez-Cuevas*, 196 Wn.2d at
28 519 (exemption of agricultural workers from overtime pay conferred a privilege or immunity
29 on dairy farmers from paying their workers mandatory overtime pay) (internal quotation
30 marks omitted). If both prongs are satisfied, the Court must determine what level of scrutiny
31 is appropriate to find “reasonable grounds.” *See Quinn v. State*, 526 P.3d 1, 20–21 (Wash.
32 2023) (“We have recognized that the level of scrutiny applied when determining whether a
33 reasonable ground exists in distinguishing between classifications has differed depending on
34 the issues involved.”) (internal quotation marks omitted); *Schroeder v. Weighall*, 179 Wn.2d
35 566, 577, 316 P.3d 482 (2014) (“[A]rticle I, section 12 requires us to apply different levels of
36 scrutiny depending on whether the challenged law burdened a suspect class, a fundamental
37
38
39
40
41
42
43
44
45
46
47

1 right, an important right or semisuspect class, or none of the above.”);The Signature
2 Verification Requirement grants privileges and immunities to certain classes of voters, but the
3 state has no reasonable grounds for doing so.
4
5

6 First, the Signature Verification Requirement grants the privilege of voting and an
7 immunity from disenfranchisement to those who have consistent penmanship to the exclusion
8 of those who do not. This favors the votes of White voters, older voters, voters with
9 experience voting, voters who speak English as a first language, voters who live in wealthier
10 and less diverse areas, voters who do not have UOCAVA status, and voters in good physical
11 health.
12
13
14
15
16
17

18 Second, there are no reasonable grounds for disenfranchising 170,000 voters with the
19 Signature Verification Requirement and subjecting around 170,000 more to additional
20 burdens to have their lawfully cast ballot count. Because voting is a fundamental right of the
21 utmost importance and the Signature Verification Requirement directly infringes that right,
22 the Court should apply strict scrutiny in determining whether a reasonable ground exists.
23 *Madison*, 161 Wn.2d at 95–96 (“[T]he right to vote is a fundamental right afforded to the
24 citizens of Washington State.”).
25
26
27
28
29
30
31

32 For the reasons stated in Section IV.B.1 above, the Signature Verification Requirement
33 cannot survive strict scrutiny.
34
35

36 The Washington State Supreme Court has recently applied a different, less stringent
37 reasonable grounds standard to economic regulations that nonetheless implicates fundamental
38 rights protected by the Privileges and Immunities Clause. While this standard has been
39 sparsely applied to statutes that implicate fundamental rights, it has not been applied to a
40 statute such as the Signature Verification Requirement that has deprived 170,000 voters of the
41 fundamental right to vote.
42
43
44
45
46
47

1 In any event, the Signature Verification Requirement would not meet even this lower
2 reasonable grounds standard. That test is more exacting than rational basis review and
3 requires the Court to “scrutinize the legislative distinction to determine whether it in fact
4 serves the legislature’s stated goal.” *Martinez-Cuevas*, 196 Wn.2d at 523. “The provision
5 must be justified in fact and theory,” and the Court must weigh *actual evidence* as opposed to
6 speculation or hypotheses. *Id.* (“[A] court will not hypothesize facts to justify a legislative
7 distinction ... Speculation may suffice under rational basis review, but article I, section 12’s
8 reasonable ground analysis does not allow it.”). *Id.*

9 As discussed in Section VI.B.1.a above, there is no evidence that the Signature
10 Verification Requirement actually advances the state’s goals. In fact, the practical effect of
11 the Signature Verification Requirement is likely the opposite. Defendants rely on speculation,
12 hypotheses, and unsupported theories to advance the Signature Verification Requirement.
13 That is plainly insufficient under the reasonable grounds test. *Martinez-Cuevas*, 196 Wn.2d
14 at 523.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29 **E. The Signature Verification Requirement Is Inherently and Unconstitutionally**
30 **Arbitrary in Violation of the Substantive Due Process Clause of Article I,**
31 **Section 3**

32 Article I, Section 3 of the Washington Constitution “protects against arbitrary and
33 capricious government action even when the decision to take action is pursuant to
34 constitutionally adequate procedures.” *Yim v. City of Seattle*, 194 Wn.2d 682, 688–89, 451
35 P.3d 694(2019), *as amended* (Jan. 9, 2020) (“substantive due process claims are subject to the
36 same standards as federal substantive due process claims”). “The Due Process Clause protects
37 against extraordinary voting restrictions that render the voting system ‘fundamentally
38 unfair.’” *Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 597–98 (6th Cir. 2012) (poll
39 worker error caused thousands of voters to cast wrong-precinct provisional ballots and those
40
41
42
43
44
45
46
47

1 votes were not counted). Within the context of a substantive due process claim, “state
2 interference with a fundamental right is subject to strict scrutiny.” *Yim*, 194 Wn.2d at 689.
3

4 As discussed in Section IV.B.1 above, the Signature Verification Requirement cannot
5 survive strict scrutiny. Consistently rejecting the ballots of tens of thousands of voters based
6 on the flawed and arbitrary science of signature verification is fundamentally unfair,
7 especially when, as discussed above, those voters did everything required of them to vote.
8 The fundamental unfairness of the Signature Verification Requirement is only compounded
9 by the fact that voters like many of the declarants above never received notice that their ballot
10 was rejected, were too busy or did not have the resources to fix the election official’s mistake,
11 or jumped through all of the necessary hoops to fix their ballots but still were disenfranchised.
12

13 Moreover, Defendants and the Washington State Auditor all agree that signature
14 verification is ultimately subjective and prone to implicit biases. *See* Section III.H above.
15 King County Elections confirmed that its experienced reviewers can come to different
16 conclusions, and, even after discussing the same signature, can still have different views.
17 When there are differing opinions about a signature, the most senior person simply decides,
18 even when not all the experienced reviewers agree with that decision. KCE Dep. II 96:1-
19 97:24. This is arbitrary decision making.
20

21 But perhaps most alarmingly, the “Audit found few discernable patterns that helped
22 explain differences in rejection rates.” Such a conclusion reflects quintessential arbitrary and
23 capricious government actions that are nothing but fundamentally unfair.
24

25 **F. The Signature Verification Requirement Arbitrarily and Inherently Values the**
26 **Voters in Some Counties Over the Voters in Other Counties**
27

28 Because the Signature Verification Requirement favors the voters in some counties
29 over others by failing to uniformly apply the Signature Verification Requirement, it also
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 violates the Privileges and Immunities Clause of Article I, Section 12 and the substantive due
2 process clause of Section 3. *See* Section IV.C above; *Yim*, 194 Wn.2d at 688–89. “The right
3 to vote is protected in more than the initial allocation of the franchise. Equal protection applies
4 as well to the manner of its exercise. Having once granted the right to vote on equal terms,
5 the State may not, by later arbitrary and disparate treatment, value one person’s vote over that
6 of another.” *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (discussing disparate standards and
7 procedures among counties); *see also Reynolds v. Sims*, 377 U.S. 533, 567 (1964) (“The fact
8 that an individual lives here or there is not a legitimate reason for overweighting or diluting
9 the efficacy of his vote.”); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th
10 Cir. 2008) (alleged failure to allocate voting machines among counties “proportionately to the
11 voting population” in each county, which “caus[ed] more severe wait times in some counties
12 than in others,” unconstitutionally violated voters’ rights “based on where they live”); *Jones*
13 *v. United States Postal Serv.*, 488 F. Supp. 3d 103, 127–36 (S.D.N.Y. 2020), order clarified,
14 No. 20 CIV. 6516 (VM), 2020 WL 5554904 (S.D.N.Y. Sept. 29, 2020) (“[T]he lack of
15 uniformity in the Postal Service’s treatment of Election Mail among local post offices will
16 result in intrastate and interstate disparities in citizens’ voting power.”); *Detzner*, 2016 WL
17 6090943, at *7 (“This court is deeply troubled by the complete lack of uniformity” in the
18 “crazy quilt of conflicting and diverging procedures” used to compare signatures).
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

37 Despite the same fundamentally flawed Signature Verification Requirement being
38 deployed in every county, outcomes for voters are wildly different because such an inherently
39 subjective standard cannot be applied uniformly. *Jones*, 488 F. Supp. 3d at 135 (USPS “has
40 given no persuasive assurances that the “practices” it touts to ensure the delivery of Election
41 Mail will be uniformly applied.”). Indeed, the Washington State Auditor concluded that “the
42
43
44
45
46
47

1 county where a ballot was cast was *the most significant variable related to rejection.*” Audit
2
3 at 53 (emphasis added).

4
5 General election data from 2018 through 2022 show a wide range of rejection rates
6
7 among the counties. In the 2018 general election, for example, Adams County
8
9 disenfranchised two percent of its voting population for non-matching signatures, whereas
10
11 Columbia County did not disenfranchise anyone. In the 2020 general election, 0.58 percent
12
13 of all ballots cast in Washington were rejected for non-matching signatures. But, in Franklin
14
15 County, the rate of rejection was more than twice the statewide rate, and Columbia County
16
17 did not reject a single ballot for a non-matching signature. The ballot rejection rate in Franklin
18
19 County, which had the highest rate of rejections for non-matching signatures, was **12.5 times**
20
21 **higher** than the rate in Pend Oreille County, which had the lowest rate of any county that
22
23 rejected at least one ballot for a non-matching signature. Palmer Report 1. *See Brunner*, 548
24
25 F.3d at 478 (allegations that poll workers disbursed provisional ballots incorrectly, causing 22
26
27 percent of them to be discounted statewide and over 39 percent in one county, among other
28
29 allegations could amount to unconstitutional deprivation of the right to vote based on where
30
31 they live).

32
33 This county-by-county disparate treatment, valuing the votes of voters in counties with
34
35 lower rejection rates over those who live in counties with higher rejection rates, is a hallmark
36
37 violation of equal protection and Washington’s Privileges and Immunities Clause.

38 39 VII. Conclusion

40
41 Washington’s Signature Verification Requirement imposes an unlawful and
42
43 unconstitutional burden on Washington voters, stripping the most precious and fundamental
44
45 civil right from tens of thousands of fully qualified voters who did everything required to
46
47 exercise the franchise. This faux science penmanship requirement does nothing to advance

1 any compelling state interest and is most certainly not “narrowly tailored” to advance such an
2 interest. Its undisputed—and shameful—disparate impact on young and minority voters only
3 adds gratuitous insult to constitutional injury. For the reasons stated, Plaintiffs respectfully
4 submit that summary judgment should be entered.
5
6
7
8
9

10
11
12
13 Dated: July 27, 2023

s/ Kevin J. Hamilton

14
15 I certify that this motion/memorandum
16 contains 13,423 words, in compliance with the
17 Local Civil Rules and the July 11, 2023
18 Stipulation, Dkt. # 76.
19

Kevin J. Hamilton, WSBA No. 15648
KHamilton@perkinscoie.com
Matthew P. Gordon, WSBA No. 41128
MGordon@perkinscoie.com
Heath L. Hyatt, WSBA No. 54141
HHyatt@perkinscoie.com
Hannah E.M. Parman, WSBA No. 58897
HParman@perkinscoie.com
Andrew Ferlo, WSBA No. 60131
AndrewFerlo@perkinscoie.com
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Telephone +1.206.359.8000
Facsimile +1.206.359.9000

CERTIFICATE OF SERVICE

On July 27, 2023, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

| | |
|---|--|
| <p>Attorneys for Defendant Steve Hobbs Karl D. Smith, Deputy Solicitor General Tera M. Heintz, Deputy Solicitor General William McGinty, Assistant Attorney General 1125 Washington Street SE, PO Box 40100 Olympia, WA 98504-0100 (360) 752-6200 Karl.Smith@atg.wa.gov Tera.Heintz@atg.wa.gov William.McGinty@atg.wa.gov</p> | <p><input type="checkbox"/> Via hand delivery <input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via Eservice</p> |
| <p>Attorneys for Defendants Julie Wise, Susan Slonecker, and Stephanie Cirkovich David J. Hackett Ann Summers Lindsey Grieve Senior Deputy Prosecuting Attorneys 516 Third Avenue, #W554 Seattle, WA 98104 (206) 477-1120 david.hackett@kingcounty.gov ann.summers@kingcounty.gov lindsey.grieve@kingcounty.gov</p> | <p><input type="checkbox"/> Via hand delivery <input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input checked="" type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via Eservice</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

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

EXECUTED at Seattle, Washington, on July 27, 2023.


June Starr

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

THE HONORABLE MARK A. LARRAÑAGA
Hearing Date: September 12, 2023
Hearing Time: 8:30 am

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

VET VOICE FOUNDATION, THE
WASHINGTON BUS, EL CENTRO DE
LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL,
GABRIEL BERSON, and MARI
MATSUMOTO,

Plaintiffs,

v.

STEVE HOBBS, in his official capacity
as Washington State Secretary of State,
JULIE WISE, in her official capacity as
the Auditor/Director of Elections in King
County and a King County Canvassing
Board Member, SUSAN SLONECKER,
in her official capacity as a King County
Canvassing Board Member, and
STEPHANIE CIRKOVICH, in her
official capacity as a King County
Canvassing Board Member,

Defendants.

No. 22-2-19384-1 SEA

**DECLARATION OF HEATH L.
HYATT IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 I, Heath L. Hyatt, hereby declare as follows:

2
3 1. I am an associate at the law firm Perkins Coie LLP and counsel for Plaintiffs
4 Vet Voice Foundation, the Washington Bus, El Centro de la Raza, Kaeleene Escalante
5 Martinez, Bethan Cantrell, Gabriel Berson, and Mari Matsumoto, (collectively, “Plaintiffs”)
6
7 in this action. I make this declaration based on personal knowledge and I am competent to
8
9 do so.
10

11
12 2. Attached as **Exhibit A** is a true and correct copy of the Declaration of
13
14 Dr. Linton Mohammed containing his expert testimony in this matter (“**Mohammed**
15
16 **Report**”).
17

18
19 3. Attached as **Exhibit B** is a true and correct copy of the Declaration of
20
21 Dr. Michael Herron containing his expert testimony in this matter (“**Herron Report**”).
22

23
24 4. Attached as **Exhibit C** is a true and correct copy of the Declaration of
25
26 Dr. Maxwell Palmer containing his expert testimony in this matter (“**Palmer Report**”).
27

28
29 5. Attached as **Exhibit D** is a true and correct copy of Defendant Julie Wise’s
30
31 Responses to Plaintiffs’ First Requests for Admission.
32

33
34 6. Attached as **Exhibit E** is a true and correct copy of excerpts from the May 8,
35
36 2023, Deposition of Smart Holmes testifying as a CR 30(b)(6) witness on behalf of
37
38 Defendant Secretary Steve Hobbs. (“**Secretary Dep.**”).
39

40
41 7. Attached as **Exhibit F** is a true and correct copy of excerpts from the May
42
43 11, 2023, Deposition of Janice Case testifying as a CR 30(b)(6) witness on behalf of
44
45 Defendants Julie Wise, Susan Slonecker, and Stephanie Cirkovich (“**KC Dep. I**”).
46

47
48 8. Attached as **Exhibit G** is a true and correct copy of a Performance Audit
49
50 called “Evaluating Washington’s Ballot Rejection Rate,” conducted by the Office of the
51
52 Washington State Auditor Pat McCarthy (the “**Audit**”).

1 9. Attached as **Exhibit H** is a true and correct copy of the Second Declaration
2 of Dr. Maxwell Palmer containing his supplemental expert testimony in this matter (“**Supp.**
3 **Palmer Report**”).
4

5
6 10. Attached as **Exhibit I** is a true and correct copy of the Third Declaration of
7 Dr. Maxwell Palmer containing his second supplemental expert testimony in this matter
8 (“**Second Supp. Palmer Report**”).
9

10
11 11. Attached as **Exhibit J** is a true and correct copy of KC-VetVoice- 11491
12 titled King County Department of Elections 2019 Legislative Priorities.
13

14
15 12. Attached as **Exhibit K** is a true and correct copy of excerpts from the
16 May 11, 2023, Deposition of Jerelyn Hampton testifying as a CR 30(b)(6) witness on behalf
17 of Defendants Julie Wise, Susan Slonecker, and Stephanie Cirkovich (“**KC Dep. II**”).
18

19
20 13. Attached as **Exhibit L** is a true and correct copy of the document titled 2020
21 Nov Gen – Distribution of Voters with Signature Challenged & Cured (11/23/2020 CERT).
22

23
24 14. Attached as **Exhibit M** is a true and correct copy of Hobbs-008770, *State of*
25 *Washington v. Daniel Lee Brewer*, Cause No. 21-1-01476-1 (Pierce Cty. Sup. Ct. 2021).
26

27
28 15. Attached as **Exhibit N** is a true and correct copy of Hobbs-008739, *State of*
29 *Washington v. Taramora Dawn Armatiss*, Cause No. 21-1-01479-6 (Pierce Cty. Sup. Ct.
30 2021).
31

32
33 16. Attached as **Exhibit O** is a true and correct copy of Hobbs-008796, *State of*
34 *Washington v. Russell Lawrence Hobbs*, Cause No. 21-1-01478-8 (Pierce Cty. Sup. Ct.
35 2021).
36

37
38 17. Attached as **Exhibit P** is a true and correct copy of King County Canvassing
39 Board Defendants’ Answers and Responses to Plaintiffs’ Second Interrogatories and
40 Requests for Production.
41
42
43
44
45
46
47

1 18. Attached as **Exhibit Q** is a true and correct copy of the Order Granting
2 Defendants/Counterclaimants Julie Wise and King County’s Motion for Summary Judgment
3 in case number Washington Election Integrity Coalition United v. Wise, Case No. 21-2-
4 12603-7 KNT (King Cty. Sup. Ct. June 15, 2023).
5
6

7
8 19. Attached as **Exhibit R** is a true and correct copy of Plaintiffs’ First
9 Interrogatories and Requests for Production to Defendant Steve Hobbs and Defendant
10 Hobbs’ Answers and Objections Thereto.
11
12

13 20. Attached as **Exhibit S** is a true and correct copy of the June 30, 2021 letter
14 from Pennsylvania Governor Tom Wolf to the Honorable Representatives of the
15 Commonwealth of Pennsylvania.
16
17

18 21. Attached as **Exhibit T** is a true and correct copy of an excerpt from the
19 transcript of a hearing before the Connecticut Government Administration and Elections
20 Committee on March 4, 2022.
21
22

23 I declare under penalty of perjury under the laws of the State of Washington that the
24 foregoing is true and correct.
25
26

27 Executed in Seattle, Washington on July 27th, 2023.
28

29 /s/ Heath L. Hyatt
30

31 Heath L. Hyatt
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Exhibit A

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

THE HONORABLE MARK A. LARRAÑAGA
Hearing Date: September 12, 2023

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

VET VOICE FOUNDATION, THE
WASHINGTON BUS, EL CENTRO DE
LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL,
GABRIEL BERSON, and MARI
MATSUMOTO,

Plaintiffs,

v.

STEVE HOBBS, in his official capacity
as Washington State Secretary of State,
JULIE WISE, in her official capacity as
the Auditor/Director of Elections in King
County and a King County Canvassing
Board Member, SUSAN SLONECKER,
in her official capacity as a King County
Canvassing Board Member, and
STEPHANIE CIRKOVICH, in her
official capacity as a King County
Canvassing Board Member,

Defendants.

No. 22-2-19384-1 SEA

**DECLARATION OF LINTON
MOHAMMED IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 I, Linton Mohammed, hereby declare as follows:

2
3 1. I am a U.S.-certified and internationally recognized Forensic Document
4 Examiner, and the focus of my research and professional experience is on handwriting and
5 signature identification and the scientific approach to analyzing questioned signatures.. I
6
7 have been engaged by Plaintiffs' Counsel, Perkins Coie LLP, to provide an expert report in
8
9 the matter of *Vet Voice Foundation, et al. v. Steve Hobbs et al.* (No. 22-2-19384-1-SEA). I
10
11 make this declaration based on personal knowledge and I am competent to do so.
12

13
14 2. Attached as **Exhibit 1** is a true and correct copy of the report that I prepared
15
16 in connection with this case that contains my testimony in this matter.
17

18
19
20 I declare under penalty of perjury under the laws of the State of Washington that the
21
22 foregoing is true and correct.
23

24
25 Executed in Poway CA on July 26th, 2023.
26

27
28 
29
30 Linton Mohammed
31

CERTIFICATE OF SERVICE

On July __, 2023, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

Attorneys for Defendant Steve Hobbs

Karl D. Smith, Deputy Solicitor
General Tera M. Heintz, Deputy Solicitor General
William McGinty, Assistant Attorney General
1125 Washington Street SE, PO Box 40100
Olympia, WA 98504-0100 (360) 752-6200
Karl.Smith@atg.wa.gov
Tera.Heintz@atg.wa.gov
William.McGinty@atg.wa.gov

- Via hand delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Delivery
- Via Email
- Via Eservice

Attorneys for Defendants Julie Wise, Susan Slonecker, and Stephanie Cirkovich

David J. Hackett
Ann Summers
Lindsey Grieve
Senior Deputy Prosecuting Attorneys
516 Third Avenue, #W554
Seattle, WA 98104
(206) 477-1120
david.hackett@kingcounty.gov
ann.summers@kingcounty.gov
lindsey.grieve@kingcounty.gov

- Via hand delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Delivery
- Via Email
- Via Eservice

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

EXECUTED at Seattle, Washington, on July __, 2023.

TypistClosingName

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY**

VET VOICE FOUNDATION, THE
WASHINGTON BUS, EL CENTRO DE LA
RAZA, KAELEENE ESCALANTE MARTINEZ,
BETHAN CANTRELL, GABRIEL BERSON,
and MARI MATSUMOTO,

Plaintiffs,

v.

STEVE HOBBS, in his official capacity as
Washington State Secretary of State, JULIE
WISE, in her official capacity as the
Auditor/Director of Elections in King County and
a King County Canvassing Board Member,
SUSAN SLONECKER, in her official capacity as
a King County Canvassing Board Member, and
STEPHANIE CIRKOVICH, in her official
capacity as a King County Canvassing Board
Member,

Defendants.

EXPERT REPORT OF DR. LINTON A. MOHAMMED

I am a Forensic Document Examiner (“FDE”), certified by the American Board of Forensic Document Examiners, Inc. (“ABFDE”). I have been engaged in this matter on behalf of Plaintiffs to opine on the reliability of signature matching as a way of verifying a voter’s identity such as the requirement for signature verification in Washington state pursuant to RCW 29A.40.110(3).

For the reasons stated below, it is my professional opinion that signature matching to verify a voter’s identity is fundamentally incompatible with election administration and will inevitably result in the mistaken rejection of voters’ ballots based on erroneous determinations that ballot signatures are not genuine.

Even under optimal conditions for signature matching—i.e., each signature was reviewed by a certified FDE who had sufficient time to review each signature, sufficient samples for comparison, and all the necessary tools for signature verification, errors would still be made, resulting in valid signatures being rejected and a significant rate of inconclusive results.

In the suboptimal conditions in which ballot signatures are actually reviewed in elections today, error rates will inevitably be higher, and errors of erroneous rejection are much more common than erroneous acceptance, for several reasons. First, it is not feasible for each ballot signature to be reviewed by an FDE because there are less than 100 FDEs certified by the ABFDE in the entire country. Even FDEs will make non-trivial errors in matching signatures or reach a non-trivial number of inconclusive results. But non-FDEs, such as Washington election officials, have a significantly higher rate of error in determining whether signatures are genuine. Non-FDEs are also more likely to wrongly determine that authentic signatures are not genuine than to make the opposite error. In other words, non-FDE election officials are significantly more likely than certified FDEs to make an incorrect signature comparison determination and are particularly likely to incorrectly conclude that signatures are not signed by the same person, resulting in the incorrect rejection of a voter's vote-by-mail ballot.

Second, the number of ballot signatures to analyze would require millions of hours of review time. In my experience, proper signature comparison takes around an hour for a simple signature and *at minimum* two to four hours for a complex signature. In the 2022 general election, Washington election officials received over 3.1 million ballots. In the 2020 general election Washington election officials received over 4.15 million ballots. At a minimum, it would require over 3 million person-hours to analyze the signatures of each vote cast in the 2022 general election and over 4 million person-hours in the 2020 general election. This is a very conservative number because not every signature is simple. This also assumes that each signature is reviewed only once.

Third, it is unlikely that election officials have or could have a sufficient number of contemporaneous comparison signatures (generally 10-15 samples) to conduct a more effective

signature comparison or adequate tools, including proper lighting and magnification equipment. Fewer contemporaneous comparator signatures is associated with higher rejection rates because reviewers are more likely to conclude that a variation among the signatures indicates that the reviewed signature is not authentic. But signatures vary for a whole host of reasons. Indeed, nobody signs the same way twice.

Instead of being reviewed by an FDE under optimal conditions, ballot signatures are necessarily reviewed by non-FDE election officials who do not have the luxury of adequate time, who likely have fewer comparator signatures, and who may not have ideal equipment. As a result, Washington state's signature verification requirement, or signature matching in general, is simply not a reliable tool to verify a voter's identity.

I. QUALIFICATIONS

I am a U.S.-certified and internationally recognized FDE, and the focus of my research and professional experience is on handwriting and signature identification and the scientific approach to analyzing questioned signatures. I am, and since 1998 have continuously been, certified by the ABFDE, the certifying board for FDEs in North America. I am also certified in document examination by the Chartered Society of Forensic Sciences (United Kingdom). I specialize in the forensic science of analyzing genuine, disguised, and simulated signatures.

I co-founded and am currently the principal at Forensic Science Consultants, Inc., where I conduct forensic document examination casework and research on handwriting and signature examination as well as other forensic document examination (e.g., document alterations, obliterations, indented impressions, or pages added or removed). I am also an adjunct professor at Oklahoma State University, where I teach graduate courses on the scientific examination of questioned documents.

During and prior to my time with Forensic Science Consultants, Inc., and for nearly fourteen years, I worked as Forensic Document Examiner and Senior Document Examiner for the San Diego Sheriff's Department Regional Crime Laboratory. There, I conducted examinations of signatures and handwriting for cases investigated by San Diego County agencies

as well as by local police, state, and federal agencies. I also served as Technical Lead of the Questioned Documents Section of the San Diego County Sheriff's Regional Crime Laboratory, where I trained investigators and attorneys, provided expert testimony, conducted research, and produced the Questioned Documents Section Quality Manuals. Prior to that, I worked internationally as an FDE at the Laboratory of the Government Chemist (England), the Caribbean Institute of Forensic Investigations Ltd. (West Indies), and the Trinidad and Tobago Forensic Science Center (West Indies). In those roles, I conducted forensic document examinations and testified in criminal and civil cases for multiple police forces and other government agencies.

I am a Fellow of the Questioned Documents Section of the American Academy of Forensic Sciences ("AAFS"), a Fellow and diplomate of the Chartered Society of Forensic Sciences (formerly The Forensic Science Society), and a member of the Canadian Society of Forensic Science. I served as the Chair of the AAFS Questioned Documents Section from 2016 to 2018. I am an appointed member and former Chair of the Academy Standards Board, which was formed by the AAFS to develop consensus-based standards for the forensic sciences. I am an appointed member of the Research and Technology Transfer Advisory Board of the Center for Statistics and Applications in Forensic Evidence (CSAFE).

I served as a member of the National Institute of Standards and Technology's Expert Working Group on Human Factors in Handwriting Examination, the National Institute of Standards and Technology Organization of Scientific Area Committees' Physics/Pattern Interpretation Scientific Area Committee, and the Scientific Working Group on Documents. I have previously served as President, Vice President, Treasurer, and Director of the American Society of Questioned Document Examiners ("ASQDE").

I am the editor of the Journal of the American Society of Questioned Document Examiners. I served on the editorial review board of the Journal of Forensic Sciences from 2005-2020, and also served on the editorial review board of Forensic Science and Technology from 2015-2020. I am also a guest reviewer for the following journals: Forensic Science International,

Science & Justice, Australian Journal of Forensic Science, Egyptian Journal of Forensic Sciences, IEEE Transactions on Cybernetics, and International Journal on Document Analysis and Recognition.

I have published nineteen (19) peer-reviewed articles on signature and handwriting examination and forensic document examination. Many of my articles focus on the analysis of genuine, disguised, and forged signatures, and handwriting examination. I have also given numerous presentations and workshops on signature and document examination worldwide, including in the United States, Australia, Brazil, Canada, Croatia, China, Latvia, Poland, Saudi Arabia, Scotland, and Turkey.

In 2019, I authored a book titled *Forensic Examination of Signatures*, which describes and discusses state of the art techniques and research in signature examination.¹ I co-authored a book in 2012 titled *The Neuroscience of Handwriting: Applications for Forensic Document Examination*, which integrates research in the fields of motor control, neuroscience, kinematics, and robotics to evaluate questioned signatures and handwriting.² The book sets forth, among other things, the scientific fundamentals of motor control as relevant to handwriting; the impact of age, disease, and medication on handwriting; and a quantitative approach to signature authentication, including kinematic and laboratory analyses of genuine versus disguised versus forged signatures.

In 2022, I received the Albert S. Osborn Award of Excellence from the American Society of Questioned Document Examiners (ASQDE). This award “was created to recognize those individuals who have contributed above and beyond what is expected of a Society member.” It is the highest award given by the ASQDE. In 2019, I received the American Academy of Forensic Sciences Questioned Documents Section Ordway Hilton Award “In Recognition of Outstanding Contributions to Forensic Document Examination.” In 2012, I received the American Board of

¹ Mohammed, L. (2019). *Forensic Examination of Signatures*. San Diego: Elsevier.

² Caligiuri, M.P., & Mohammed, L.A. (2012). *The Neuroscience of Handwriting: Applications for Forensic Document Examination*. Boca Raton: CRC Press/Taylor & Francis Group.

Forensic Document Examiners' New Horizon Award "In Recognition of [My] Exceptional Contributions in Scientific Research for the Advancement of Forensic Document Examination."

I have testified as an expert witness in court and depositions more than 200 times on issues of signature, handwriting, and document examination in both civil and criminal cases, including cases in the United States, England, Trinidad & Tobago, and St. Vincent and the Grenadines.

My testimony in cases involving signature-matching processes related to vote-by-mail ballots or, as they are referred to in most states, absentee ballots, has been accepted in several courts. *See, e.g., League of Women Voters of Arkansas v. Thurston*, Case No. 60CV-21-3138 (Pulaski County Circuit Court 2022); *Richardson v. Tex. Sec'y of State*, No. SA-19-cv-963, 2020 WL 5367216, at *23, *28 (W.D. Tex. Sept. 8, 2020); *Self Advocacy Solutions N.D. v. Jaeger*, No. 3:20-cv-71, 2020 WL 2951012, at *2, *9 (D.N.D. June 3, 2020); *Frederick v. Lawson*, No. 1:19-cv-1959, 2020 WL 4882696, at *14 (S.D. Ind. Aug. 20, 2020); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 212-13 (D.N.H. 2018); *see also Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1320 (11th Cir. 2019). No court has ever excluded or discredited my opinions.

I received a Ph.D. from La Trobe University in Melbourne, Australia in human biosciences, where I wrote my thesis on signature examination: "*Elucidating static and dynamic features to discriminate between signature disguise and signature forgery behavior.*" Prior to that, I received my undergraduate degree in science at the University of West Indies; underwent a two-year training program in document examination at the Trinidad and Tobago Forensic Science Center; and received a Master of Forensic Sciences degree from National University in San Diego, California.

My *curriculum vitae* is attached as Exhibit A. I am being compensated at a rate of \$400.00 per hour. My compensation in this matter is not in any way contingent on the content of my opinion or the outcome of this matter.

II. MATERIALS REVIEWED

III. I have reviewed the Second Amended Complaint for Declaratory and Injunctive Relief, Signature Verification 2018 and 2021 PowerPoint presentations, Signature Verifications handouts revised in 2015 and 2019, and Washington Secretary of State Frequently Asked Questions on Voting by Mail. These presentations and handouts were prepared by Document Examiners at the Washington State Patrol Spokane Laboratory for training of election officials in signature verification. **CONCLUSIONS AND OPINIONS**

A. **In My Opinion, Verifying a Voter's Identity Through Signature Matching Is Likely to Result in Many Erroneously Rejected Ballots In Part Because Proper Signature Verification Is Incompatible With Election Administration**

The minimum requirements to conduct a proper signature verification analysis include: 1) an analysis conducted by a trained and certified FDE; 2) adequate time (approximately one hour for a simple signature and a minimum of two to four hours for a complex signature); 3) an adequate number of contemporaneous comparator samples (generally 10-15); 4) adequate equipment, including magnification tools and proper lighting; and 5) excellent eyesight.³ Even under these conditions, there will be a non-trivial rate of error in addition to a non-trivial rate of inconclusive results. The expected error rate is even higher within the context of election administration, where it is not feasible to meet these standards because the vast majority of election officials are not trained FDEs, they do not have the time to spend hours examining each signature, and they tend not to have 10-15 contemporaneous signature samples for comparison.

B. **Certified FDEs Are Best Equipped to Conduct Signature Matching, But FDEs Still Make Errors and Reach Inconclusive Results**

Determining whether a signature is genuine or not is a difficult task for even a trained FDE, as signatures may be written in different styles with varying levels of readability and variability. Given the complexity and the inherent limitations of matching signatures, FDEs inevitably make errors in matching signatures and reach inconclusive results for others, even with adequate time and proper equipment. That said, FDEs will be significantly more accurate in conducting signature matching than non-FDEs. Non-FDEs, such as election officials in

³ Merlino, M., Freeman, T., Dahir, V., Springer, V., et al. (Jan. 2015). Validity, Reliability, Accuracy, and Bias in Forensic Signature Identification. Department of Justice Grant 2010-DN-BX-K271, Document 248565, <https://www.ncjrs.gov/pdffiles1/nij/grants/248565.pdf>.

Washington, have a significantly higher rate of error in determining whether signatures are genuine. Non-FDEs are also more likely to wrongly determine that authentic signatures are not genuine than to make the opposite error. In other words, Washington election officials are significantly more likely than trained FDEs to make an incorrect signature comparison determination and are particularly likely to incorrectly decide that the signatures are not signed by the same person.

FDE certification requires extensive training and experience, which significantly minimizes any risk of error in document examination or signature matching. Becoming an FDE requires at least two, and typically three, years of full-time training with an experienced examiner, with at least eighteen (18) months of training in the examination of signatures and handwriting. FDEs learn the science of signature examination, gain experience in casework, and are tested for proficiency.⁴

There are two types of errors in signature examination. Type I errors occur when a non-genuine signature is deemed to be genuine, and Type II errors occurs when a genuine signature is concluded to be non-genuine. In a 2001 study, trained FDEs made Type II errors in 7% of cases.

C. Non-FDEs Make More Type II Errors Than FDEs.

Individuals without FDE training and certification are more likely to make Type II errors. In that same 2001 study, non-FDEs made Type II errors in 26% of cases. In other words, non-FDEs erroneously determined that an authentic signature was not authentic more than a quarter of the time, and more than 3 ½ times as often as FDEs. It should be noted that in the 2001 study, six (6) comparator signatures were used. If a ballot signature is compared to only one or a couple comparators, I would expect that the Type II error rate for both experts and non-FDEs would increase significantly.

The higher rate of error among non-FDEs generally results from the inability to distinguish between normal “variations” in one individual’s signatures as opposed to

⁴ SWGDOC Standard for Minimum Training Requirements for Forensic Document Examiners, www.swgdoc.org.

“differences” resulting from multiple signers. Non-FDEs cannot reliably determine whether signatures are written by different individuals, or whether the signatures are written by one person but exhibit natural variations. An individual’s signatures may vary for myriad reasons, including age, health, native language, and writing conditions. Non-FDEs lack the tools and training to properly account for signature variation, which leads to erroneous mismatch determinations, which are particularly pronounced in populations with greater signature variability, such as the elderly, disabled, individuals suffering from poor health, young voters (ages 18 to 25), and non-native English speakers.⁵ Non-FDEs also typically fail to account for different signature styles and features, leading to erroneous rejections.

D. Non-FDEs, and Even FDEs, Cannot Account for the Many Reasons for Naturally Varying Signatures.

Determining whether signatures are made by the same or different individuals requires a reviewer to discern whether a feature or combination of features in signatures are “differences” or “variations.” In the field of signature examination, unexplainable “*differences*” between signatures suggest that different individuals wrote the signatures, whereas “*variations*” between signatures mean that one individual wrote the signatures. Determining whether signature features are “differences” or “variations” is one of the most difficult determinations in signature examinations, even for experienced FDEs.

Signatures are the product of a motor program developed in the brain after practice, and then executed with neuro-muscular coordination. Many factors can influence an individual’s motor program and neuro-muscular coordination. These factors cause variations in each person’s signature.⁶ Variations are deviations of personal, subconscious characteristics normally demonstrated in the habits of each writer. Individuals may have narrow, moderate, or wide ranges of natural variation. A writer’s range of variation can be determined when an adequate

⁵ See Hilton, O. (1969). Consideration of the writer’s health in identifying signatures and detecting forgery. *Journal of Forensic Sciences*, Vol. 14, No. 2, pp. 157-166.

⁶ Mohammed, *supra* note 1. Pp. 5-11.

amount of specimen signatures is examined. A significant “difference” is a characteristic that is structurally divergent between handwritten items, is outside the range of variation of the writer, and that cannot be reasonably explained.⁷

Some writers may have a very wide range of variation. Figure 1 illustrates four signatures of one writer (redacted) that exhibit wide variation, and if compared, may easily be mistaken as signatures written by four different individuals. Any one signature compared with the other three could be determined by a lay person to be not genuine.

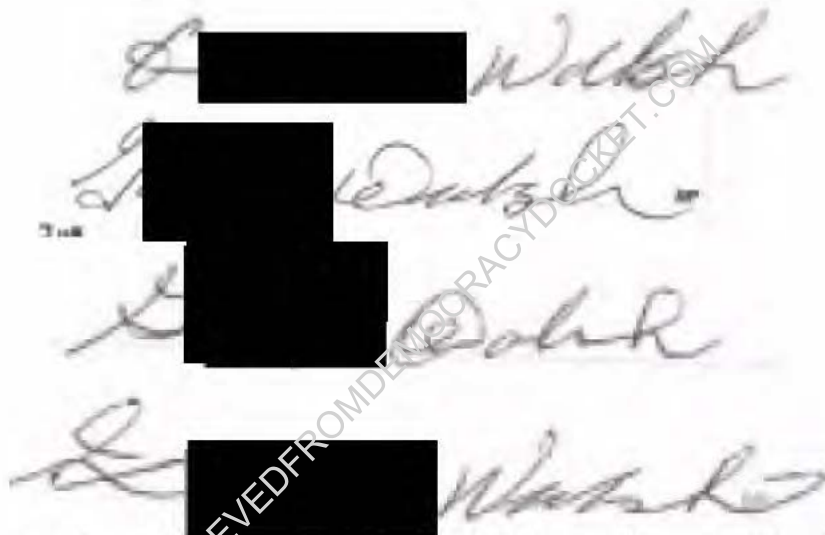


Figure 1 *Four signatures of one individual exhibiting a wide range of variation.*

To properly determine whether signatures are written by the same individual, one must consider the various reasons why features of the same individual’s signatures may appear visually different. To do so, reviewers must possess an adequate number of sample signatures to demonstrate the writer’s range of variation. In one of the leading textbooks on handwriting examination, authors Roy Huber & A.M. Headrick identified twenty common reasons why individuals’ signatures may appear to show variations:

⁷ SWGDOC, Standard for the Examination of Handwritten Items, www.swgdoc.org.

- Adequacy of standards (or samples)—inadequate standards in terms of quantity of signature samples and contemporaneousness of signature samples will not be representative of the writer's range of variation. Variations may therefore be interpreted as differences.
- Accidental occurrences—i.e., these are one-off variations that will not appear in the specimen signatures.⁸ Misinterpretation may lead to a decision of difference versus variation.
- Alternative styles—i.e., some writers have alternate signature styles. This may not be represented in the specimens.
- Ambidexterity.
- Carelessness or negligence on the part of the writer.
- Changes in the health condition of the writer.
- Changes in the physical condition of the writer—e.g., fractures, fatigue, or weakness may alter features of an individual's signature.
- Changes in the mental condition or state of the writer.
- Concentration on the act of writing.
- Disguise or deliberate change.
- Influence of drugs or alcohol.
- Influence of medications.
- Intentional change for later denial.
- Nervous tension.
- Natural variations—i.e., inherent variation as a result of differences in neuro-muscular coordination.
- Writing conditions—e.g., the writer's place or circumstances, such as in a moving vehicle or at a stationary table.

⁸ A specimen signature is a signature that is known to have been written by a person. It is not disputed. Typical specimens are Driver's Licenses and Identification Cards.

- Writing instrument—e.g., a pen versus a stylus.
- Writing position—e.g., the writer’s stance.
- Writing surface—e.g., paper versus electronic screen.
- Writing under stress.⁹

Examiners must consider each of these reasons in determining whether a feature is a “difference” created by different writers or whether the feature is simply a “variation” from the same writer. It is very unlikely that layperson election officials will have the knowledge, training, and experience to properly account for these factors. Similarly, the Washington signature verification statutes do not require election officials to consider, let alone collect and retain for later review, adequate (generally 10 to 15) contemporaneous samples, as would be necessary for even a trained and experienced expert to distinguish a “difference” from a “variation.”

Studies have also shown that illiterate writers, writers for whom English is a second language, elderly writers, disabled writers, and writers with health conditions tend to have less pen control than most other writers, and therefore would have a greater range of variation in their signatures.¹⁰ The increased variation in the signatures of these groups only compounds non-FDEs’ tendencies to err on the side of incorrectly finding authentic signatures to be non-genuine. Of course, non-FDE election officials are unlikely to be armed with this personal information about each voter, so they are more likely will not know how to account for it.

Since signatures are developed as a motor program in the brain, the signatures of writers for whom English is a second language are more likely to exhibit wide ranges of variation, as

⁹ Huber, R.A. & Headrick, A.M. (1999). *Handwriting Identification: Facts and Fundamentals*. Boca Raton, FL: CRC Press.

¹⁰ See, e.g., Hilton, O. (1969). Consideration of the writer’s health in identifying signatures and detecting forgery. *Journal of Forensic Sciences*, Vol. 14, No. 2, pp. 157-166; Hilton, O. (1965). *A further look at writing standards*. *Journal of Criminal Law, Criminology, and Police Science*, Vol. 56, No. 3, pp.383; Hilton, O. (1956). Influence of serious illness on handwriting identification, *Postgraduate Medicine*, Vol. 19, No. 2.

these writers will have to discard their former learned motor program and develop a new one for their new signature style.¹¹ For instance, a writer who first learned to write in a non-Latin-based script, such as Chinese, will naturally show more variation when signing a document in English than a native writer. Likewise, where the writer's native language is written right to left, such as Urdu, the writer's signature may also be more likely to show variations in letter slanting.

The handwriting of young voters (ages 18 to 25) can cause particular difficulties even for trained FDEs because young voters are not likely to have fully developed signatures. According to Huber & Headrick, "the development and progress of one's handwriting passes through four stages in the course of a lifetime: (1) the formative stage, (2) the impressionable or adolescent stage, (3) the mature stage, and (4) the stage of degeneration."¹² The signatures of young voters will fall between stages 2 and 3. The U.S. Postal Service has reported that "writer[s] achieve graphic maturity by the 20th birthday."¹³ Young writers today will likely not have developed signatures until later in life. This is exacerbated by the increased use of technology, including personal identification numbers ("PINs") and other non-handwritten forms of communication or identification, which results in young people using handwriting and written signatures less often. Thus, it follows that their signature development can reasonably be expected to take longer than for previous generations. This will lead to an increased range of variation in a young writer's signature. Comparisons by non-FDEs using signatures provided by young voters' will exacerbate the potential for error in rejecting their ballots.¹⁴

¹¹ Mohammed, *supra* note 1 at pp. 5-11.

¹² Huber, R.A. & Headrick, A.M. (1999). *Handwriting Identification: Facts and Fundamentals*. Boca Raton, FL: CRC Press.

¹³ Bureau of the Chief Postal Inspector (1966), *20th Century Handwriting Systems and Their Importance to the Document Analyst*.

¹⁴ Cusack, C.T & Hargett, J.W. (1989). A Comparison Study of the Handwriting of Adolescents. *Forensic Science International*, 42(3):239-248.

E. Non-FDEs, and Even FDEs, Cannot Always Account for Increased Variation in Signatures of Voters with Disabilities.

Signatures are executed by means of neuromuscular coordination. A motor program developed in the brain signals the muscles to produce handwriting movements. Any disability, illness, or drug that affects neuromuscular coordination will influence the production of signatures. Various diseases that affect motor neurons and neurological pathways can affect the appearance of signatures of the afflicted individual.

Diseases with Lewy bodies such as Parkinson's and Alzheimer's also affect signatures. Writers with these diseases tend to write much smaller (micrographia), and this tendency may change depending on medication. Individuals who have lost their dominant hand and must learn to write with their other hand will also exhibit wide variation in their handwriting. An example of such individuals are veterans who have been injured in war. The longer a person writes with a non-dominant hand, the more the quality of handwriting will improve. However, it will likely never appear completely normal and natural.¹⁵

It is highly likely that writers with disabilities will exhibit a wider range of variation in their signatures than might normally be seen in the signatures of a healthy, skilled writer. Evaluation of signatures executed by ill or disabled writers requires the evaluator to have wide experience with different types of signatures and accurate knowledge of the physical conditions of the individual as this relates to their handwriting.¹⁶ This analysis would be challenging even for a trained FDE, and is virtually impossible for a non-FDE to conduct with any degree of accuracy. And, without an adequate number of contemporaneous comparator samples, non-FDEs are unlikely to see the whole range of variations.

¹⁵ Lanners, B. (2018). A New-Dominant Hand: Training the Non-Dominant Hand to Perform the Complex Task of Handwriting. *Journal of the American Society of Questioned Document Examiners*, Volume 21, Number 2, pp. 13-28.

¹⁶ Hilton, O. (1969). Considerations of the writer's health in identifying signatures and detecting forgery. *Journal of Forensic Sciences*, Vol. 14, No2, 2, pp. 157-166.

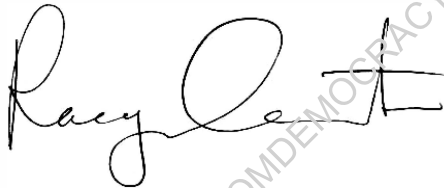
F. **Non-FDEs, and Even FDEs, Cannot Always Account for The Different Signature Styles and Features, Leading to Erroneous Rejections.**

One of the reasons that accurate signature comparison determinations prove difficult, even for a trained FDE, is that signatures are written in three different styles¹⁷ as illustrated in Figure 2:

- Text-based: Nearly all the letters can be interpreted.



- Mixed: More than two, but not all, letters can be interpreted.



- Stylized: No letters can be interpreted.



Figure 2 *Examples of three signature styles.*

These signature styles exhibit significantly different characteristics that impact the signature-matching analysis and, by extension, the determination of whether signatures are

¹⁷ Mohammed, L., Found, B., Rogers, D. (2008). Frequency of signature styles in San Diego County. *Journal of the American Society of Questioned Document Examiners*, Vol. 11, No. 1.

genuine. For example, kinematic features of signatures, such as size, velocity, changes of acceleration, and pen pressure are important in determining whether a signature is genuine. Yet these kinematic features vary between the same individual's signatures, with the degree of variations often dependent on the signature style. The kinematic features of stylized signatures, for example, vary more significantly than the kinematic features of text-based signatures. And the less legible a signature becomes, the more the election official depends on their pattern recognition ability. Thus, signature styles can have an impact on the determination of genuineness or non-genuineness. Unfamiliarity with the different signature styles may impact a reviewer's ability to determine whether two signatures come from the same person and would likely cause a lay person to decide that the compared signatures exhibit "differences" when the changes in features are simply "variations."

To determine whether signatures are made by the same individual, a reviewer should focus on holistic features of signatures, such as alignment, slant, pen lifts, rhythm, the size of writing, the slope or slant of the letters, or other characteristics that are diagnostic of the process used to create signatures. These features are subtle, and a writer is usually unaware of the features, as they are excited by the writer's subconscious motor program. These subtle features provide significant evidence of genuineness because they occur in natural handwriting. Non-FDEs, however, often focus instead on more eye-catching features in evaluating signatures. For example, an eye-tracking study on signature examination found that "lay participants focused to a greater extent on individual features such as arches, eyelets, hooks, shoulders, connections, troughs, or other individual features" that catch the eye, and "appear[ed] less likely to use holistic features" when evaluating signatures.¹⁸ Properly utilizing the subtle, holistic features of signatures to determine genuineness, however, requires both training and adequate time for review.

¹⁸ Merlino, *supra* note 10.

G. In My Opinion, the Conditions of Election Administration Exacerbate the Likelihood of Erroneous Ballot Rejection.

The likelihood of ballots being improperly rejected for perceived signature mismatches is higher because the vast majority, if not all, election officials are not FDEs and do not have sufficient training, experience, time, contemporaneous comparator signatures, or equipment.

H. The Vast Majority of Election Officials Are Not Trained FDEs.

There are far too few FDEs nationwide to conduct signature matching for millions of ballots in Washington elections. There are less than 100 certified FDEs in the entire country.¹⁹ As a result, the vast majority of election officials are not certified FDEs, and for the reasons discussed above, non-FDEs are more likely to erroneously reject ballots for perceived signature mismatches.

In Washington's voting system, a Type II error would be an election official making a determination that the ballot signatures and the reference signature for one voter are not genuine when in fact, the signatures were written by the voter. With this Type II error, the voter's ballot would be rejected due to a perceived non-matching signature. The data indicate that non-FDE election officials will make more such errors of rejection, at about 3.5 times the rate of FDEs. And FDEs themselves make errors and reach inconclusive opinions on a signature.

Even Washington training materials reflect an understanding that non-FDE election officials will make more mistakes than trained FDEs. In a section of the 2019 Signature Verification Handout headed General Principles, the authors of the handout (both Washington State Patrol Forensic Document Examiners) state: "A layperson can examine signatures and often determine whether they are genuine or non-genuine. The Forensic Document Examiner, however, achieves greater accuracy by conducting examinations that have three distinct processes: Analysis, Comparison, Evaluation. Many non-FDEs can competently apply the first two processes; however, the third is a skill that requires the aptitude and years of training and experience of a Forensic Document Examiner." This is a correct statement, and it accurately

¹⁹ <https://abfde.org/find-an-expert/>

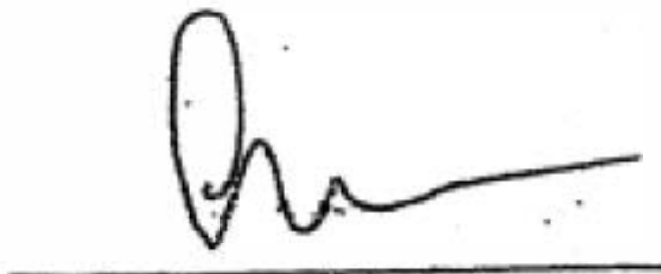
describes one reason why non-FDEs are much more likely to make errors in signature verification.

I. **Election Officials Do Not Have the Time to Conduct Adequate Signature Matching.**

In my experience, it takes a significant amount of time to properly analyze each signature. A *minimum of two to four hours* is required to conduct a signature comparison, given optimum conditions, when reviewing complex signatures, which are the product of a combination of the formation, concatenation, intersection of the strokes, and number of turning points that comprise the signature, original documents, and an adequate number of specimen signatures. (See Figure 3(a)) The examination requires that the signatures be sketched, and the fine and subtle details of the questioned and reference signatures be examined and compared in detail. Usually, examinations are conducted more than once as a check and balance. Given the limited time that election officials have to evaluate the signature on the voter's vote-by-mail ballot envelope, they are even more likely to make errors.



(a)



(b)

Figure 3 *Examples of a complex signature (a), and a simple signature (b).*

The time taken to review a simple signature (See Figure 3(b)) may be less as there are fewer features to analyze. Nevertheless, it may take at least 60 minutes to conduct a thorough examination and comparison. And while it may be faster to review a simple signature, the results of a comparison are often inconclusive because there are fewer distinguishing features.

The time required to properly analyze signatures is fundamentally incompatible with election administration. An adequate review of each signature on a ballot cast in states like Washington with millions of mail-in ballots would result in millions of person-hours spent reviewing signatures. Conducting an adequate signature analysis on such a scale is just not feasible. The obvious result is that election officials spend far less time than needed for a thorough signature review, which will result in significantly more errors. In the 2022 general election, Washington election officials received over 3.1 million ballots. In the 2020 general election Washington election officials received over 4.15 million ballots. Even under the unrealistic assumption that all the signatures being examined are simple signatures, then in 2022, 3.1 million hours would be required for signature review, and in 2020, 4.15 million hours would have been required.

J. Election Officials Do Not Have Enough Contemporaneous Comparator Signatures to Conduct Adequate Signature Matching.

Even for trained FDEs, Washington's signature matching requirement would be prone to erroneous determinations due to the limited number of contemporaneous comparison signatures that are typically available, and the problem is even more significant for non-FDEs.

Normally, FDEs require at least 10 to 15 specimen signatures for comparison with a questioned signature, and often more if issues such as age or illness are involved. Hilton (1971) recommended that the examiner should strive for a minimum of 40 to 50 signatures carefully selected in terms of date, purpose, and circumstances under which they were written.²⁰ These

²⁰ Hilton, O. (1971). Do we really have adequate signature standards? *Journal of the Forensic Science Society*, Vol. 11, Issue 3, pp. 145-149.

specimens are required to adequately determine the range of variation of the writer and properly account for the reasons for variation within an individual's signatures discussed above. Indeed, nobody signs the same way twice: no two complex, skillfully written, genuine signatures of one writer have ever been found to be exactly alike, but such a statement should be understood to be true speaking microscopically, and not as the carpenter measures.²¹ Inadequate standards, or failure to use adequate specimens fully representing the range of variation in a writer's signature, is a well-known source of error.²²

Features observed in the questioned signature(s) may not be observed in the inadequate specimens. This may lead to an erroneous interpretation of a feature as a difference (two writers) not a variation (one writer). When election officials compare the signature on the voter's ballot envelope with only one or a few reference signatures in the voter's registration record, it will be extremely difficult, if nigh impossible, to distinguish accurately between features, variations, or differences for the reasons discussed above.

K. Election Officials Likely Do Not Have Proper Equipment to Conduct Signature Matching, Which Will Likely Lead to Erroneous Determinations.

In my experience, election officials conducting signature matching are not provided proper equipment such as magnification equipment (microscopes) and lighting equipment.²³ The average unaided or so-called naked eye can distinguish separate lines up to a fineness of only about 200-250 to the inch; lines finer than this appear as a solid shade or tint.²⁴ Low-power stereo microscopes and digital microscopes can assist election officials reach more accurate conclusions (when adequately trained to use those tools). At the very least, each election official

²¹ Osborn, A. (1910). *Questioned Documents*. The Lawyers' Publishing Co.: Rochester, NY, p. 281.

²² Huber, R.A. & Headrick, A.M. (1999). *Handwriting Identification: Facts and Fundamentals*. Boca Raton, FL: CRC Press.

²³ Osborn, A. S. (1929). *Questioned Documents*. 2nd. Ed. Boyd Printing Company, Albany, N.Y., USA (“[T]he microscope is the instrument which makes it possible to see physical evidence directly that otherwise may be invisible. . .”).

²⁴ Osborn, *ibid*, page 71.

who is reviewing signatures should be provided with a good quality 5X hand magnifier and a light source such as a pencil flashlight. Without this type of equipment, even a well-trained eye may err more often in making signature authenticity determinations.

As discovery is ongoing and documents continue to be exchanged as part of this process, I reserve the right to supplement my opinions if and when new information becomes available during the course of this litigation.


IV. CONCLUSION

For the reasons stated above, it is my professional opinion that signature matching to verify a voter's identity is fundamentally incompatible with election administration and will inevitably result in the mistaken rejection of voters' ballots based on erroneous determinations that ballot signatures are not genuine. After all, signatures vary for a whole host of reasons, and nobody signs the same way twice.

Even under optimal conditions for signature matching—i.e., each signature was reviewed by a certified FDE who had sufficient time to review each signature, had sufficient samples for comparison, and had all the necessary tools for signature verification—errors would still be made, resulting in valid signatures being rejected and a significant rate of inconclusive results.

Instead of being reviewed under optimal conditions, ballot signatures are necessarily reviewed by non-FDE election officials who do not have the luxury of adequate time, who likely have fewer comparator signatures, and who may not have ideal equipment. Under such circumstances, more errors are likely, particularly Type II errors that result in the improper rejection of ballots. As a result, Washington state's signature verification requirement, or signature matching in general, is simply not a reliable tool to verify a voter's identity.

* * *


Linton Mohammed, Ph.D., D-ABFDE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

| | | |
|---|---|---------------------------|
| |) | |
| VET VOICE FOUNDATION, THE |) | |
| WASHINGTON BUS, EL CENTRO DE LA |) | No. 22-2-19384-1 SEA |
| RAZA, KAELEENE ESCALANTE |) | |
| MARTINEZ, BETHAN CANTRELL, AND |) | |
| DAISHA BRITT; |) | KING COUNTY CANVASSING |
| |) | BOARD MEMBERS' OPPOSITION |
| |) | TO PLAINTIFFS' MOTION FOR |
| Plaintiffs, |) | SUMMARY JUDGMENT AND |
| v. |) | CROSS MOTION FOR SUMMARY |
| |) | JUDGMENT |
| STEVE HOBBS, in his official capacity as |) | |
| Washington State Secretary of State, JULIE |) | |
| WISE, in her official capacity as the |) | |
| Auditor/Director of Elections in King County |) | |
| and a King County Canvassing Board Member, |) | |
| SUSAN SLONECKER, in her official capacity |) | |
| as a King County Canvassing Board Member, |) | |
| AND STEPHANIE CIRKOVICH, in her |) | |
| official capacity as a King County Canvassing |) | |
| Board Member; |) | |
| |) | |
| |) | |
| Defendants. |) | |

TABLE OF CONTENTS

| | | |
|------------|--|----------|
| I. | INTRODUCTION AND RELIEF REQUESTED | 4 |
| II. | STATEMENT OF FACTS | 5 |
| A. | IN ENACTING WASHINGTON'S ELECTION SYSTEM, THE LEGISLATURE BALANCED VOTER ACCESS WITH PROTECTING THE INTEGRITY OF THE ELECTORAL PROCESS, AND ENACTED | |

| | | |
|----|---|----|
| 1 | MEASURES SUCH AS SIGNATURE VERIFICATION TO PREVENT FRAUD IN ELECTIONS. | 5 |
| 2 | | |
| 3 | B. THE SIGNATURE VERIFICATION PROCESS REQUIRED BY RCW 29A.40.110 HAS BEEN A KEY ASPECT OF FRAUD PREVENTION FOR MAILED BALLOTS IN WASHINGTON FOR OVER 100 YEARS. | 7 |
| 4 | | |
| 5 | C. SIGNATURE VERIFICATION IS WIDELY USED AS AN ELECTION SECURITY MEASURE. | 9 |
| 6 | | |
| 7 | D. THE LEGISLATURE MANDATED AN AUDIT OF BALLOT REJECTION RATES IN WASHINGTON; THE STATE AUDITOR CONCLUDED THAT DISPARITIES IN REJECTION RATES ARE NOT THE RESULT OF BIAS AND THE LEGISLATURE TOOK NO ACTION. | 9 |
| 8 | | |
| 9 | E. IN KING COUNTY, THE SIGNATURE VERIFICATION PROCESS WORKS FOR THE OVERWHELMING MAJORITY OF VOTERS. | 10 |
| 10 | 1. King County Election Workers Conducting Signature Verification Receive Training Prior to Every Election | 10 |
| 11 | 2. King County Elections Utilizes Strategies for Quality Control of the Signature Verification Process. | 10 |
| 12 | | |
| 13 | 3. The Signature Verification Process in King County Requires Two Levels of Review Before A Signature is Challenged. | 11 |
| 14 | 4. The Cure Process Utilized in King County is Robust. | 12 |
| 15 | 5. KCE Endeavors to Educate All Voters About the Importance of Ballot Return Envelope Signatures. | 14 |
| 16 | | |
| 17 | 6. The Rate of Challenged Ballots in King County Fluctuates But is Consistently Low. | 14 |
| 18 | 7. The Declarations Submitted by Plaintiffs Do Not Show That The Signature Verification Process is Unworkable For King County Voters. | 15 |
| 19 | | |
| 20 | F. PREVENTING VOTER FRAUD AND MAINTAINING VOTER CONFIDENCE ARE PARAMOUNT GOALS FOR ELECTION OFFICIALS, AS WELL AS VOTING ACCESSIBILITY. | 16 |
| 21 | III. STATEMENT OF ISSUES | 17 |
| 22 | IV. EVIDENCE RELIED ON | 18 |
| 23 | V. ARGUMENT | 19 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

A. PLAINTIFF’S ACTION SHOULD BE DISMISSED FOR FAILING TO JOIN INDISPENSABLE PARTIES, NAMELY THE 38 OTHER COUNTIES THAT CONDUCT ELECTIONS. 19

B. PLAINTIFFS’ LAWSUIT MUST BE DISMISSED BECAUSE THEY FAIL TO PRESENT A COLORABLE FACIAL CHALLENGE TO RCW 29A.40.110(3). 21

1. Plaintiffs Have Limited Themselves to a Facial Challenge to RCW 29A.40.110(3). 21

2. Plaintiffs’ Facial Challenge Fails With Their Admission That Some Counties Have Excluded Few or No Ballots Under RCW 29A.40.110(3). 22

C. WASHINGTON’S LONG-STANDING SIGNATURE VERIFICATION REQUIREMENT COMPORTS WITH ARTICLE. 1, § 19. 24

1. The Washington Legislature Has Broad Constitutional Authority to Regulate the Method of Voting. 24

2. Legislative Regulation of the Manner of Elections Is Not Subject to Strict Scrutiny. 27

3. The Signature Verification Requirement Is a Reasonable Regulation and Proper Control of the Voting Process to Ensure Election Security. 30

4. If Strict Scrutiny Applied, Summary Judgment For Plaintiffs Would Not Be Warranted. 33

D. WASHINGTON’S LONG-STANDING SIGNATURE VERIFICATION REQUIREMENT COMPORTS WITH THE PRIVILEGES AND IMMUNITIES CLAUSE OF ARTICLE 1, § 12. 36

E. WASHINGTON’S LONG-STANDING SIGNATURE VERIFICATION REQUIREMENT COMPORTS WITH SUBSTANTIVE DUE PROCESS UNDER ARTICLE 1, § 3. 40

F. INVALIDATION OF THE SIGNATURE VERIFICATION REQUIREMENT INVALIDATES UNIVERSAL VOTE BY MAIL IN WASHINGTON BECAUSE IT HAS LONG BEEN INTEGRAL TO MAIL VOTING AND IS NOT SEVERABLE. 42

VI. CONCLUSION 44

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 The Washington Legislature has broad discretion under the state constitution to provide
3 for the method of voting. Preventing election fraud and maintaining voter confidence are
4 paramount goals for the legislature and election officials, and have been recognized by courts as
5 compelling state interest. In enacting universal mail voting in 2011, the legislature balanced
6 voter access with election security. The signature verification requirement challenged by
7 Plaintiffs in this lawsuit is an integral part of that balancing.

8 In fact, signature verification has been a key aspect of preventing election fraud in
9 Washington for over 100 years. Signature verification is also widely used in other states.
10 Washington’s signature verification requirement is workable for the vast majority of voters of all
11 racial and ethnic backgrounds in King County and throughout the state.

12 Although Plaintiffs ask this Court to enjoin all Washington election officials, they have
13 failed to join county election officials from the 38 other counties they wish this Court to enjoin.
14 These other officials are indispensable parties, and for this reason alone Plaintiffs’ relief cannot
15 be granted and the lawsuit should be dismissed.

16 Moreover, although Plaintiffs have averred in previous pleadings that they are bringing a
17 *facial* challenge to the signature verification requirement, much of their briefing and evidence
18 would only be appropriate for an “*as applied*” challenge. Plaintiffs have failed to show beyond
19 a reasonable doubt, as they must, that the signature verification requirement on its face cannot be
20 constitutionally administered. As a reasonable regulation of the method of voting that applies to
21 all voters equally and serves compelling, not just important, state interests, the signature
22 verification requirement on its face easily passes the applicable constitutional tests.
23

1 For these reasons, Defendants King County Canvassing Board Members (hereinafter “the
2 Canvassing Board”) respectfully request that this Court grant the Canvassing Board’s motion for
3 summary judgment, and deny Plaintiffs’ motion for summary judgment, by concluding as a
4 matter of law that Plaintiffs have failed to show that the long-standing signature verification
5 requirement contained in RCW 29A.40.110(3) is facially invalid under the Washington State
6 Constitution.

7 II. STATEMENT OF FACTS

8 A. In Enacting Washington’s Election System, the Legislature Balanced Voter Access 9 with Protecting the Integrity of the Electoral Process, and Enacted Measures Such as Signature Verification to Prevent Fraud in Elections.

10 In 2011, the Washington Legislature adopted universal mail voting statewide for all
11 elections. RCW 29A.40 *et seq.*; Laws of 2011, ch. 10, § 35. Since 2011, every person registered
12 to vote in Washington receives a ballot mailed to their registered address before each upcoming
13 election until the death or disqualification of the voter, cancellation of the voter’s registration, or
14 placement of the voter on inactive status. RCW 29A.40.010, .091. Washington voters have the
15 option to return their ballot through the mail with prepaid postage, drop it into a secure ballot
16 drop box, or complete their ballot at a voting center. RCW 29A.40.010, .091. Registered voters
17 may request a replacement ballot by mail, electronically, or in person. RCW 29A.40.070(3).

18 To provide additional access to voting, each county is required to open a voting center to
19 be open during business hours during the 18 days prior to any election. RCW 29A.40.160.
20 Larger counties that have more than one city with a population over 100,000 must have
21 additional voting centers. RCW 29A.40.160(2)(b). At voting centers, voters who cannot sign
22 their name may be identified by another registered voter. *Id.* A voter who has already returned a
23

1 ballot who requests to vote at a voting center is issued a provisional ballot, which is not counted
2 if the voter has also voted by regular ballot. RCW 29A.40.160(14).

3 The Legislature enacted multiple safeguards to ensure that the universal mail voting
4 process is secure from election fraud. Ballots mailed to voters include a security envelope in
5 which to conceal the ballot after voting, a larger return envelope, and a declaration on the
6 envelope that the voter must sign and date. RCW 29A.40.091. The declaration must be signed
7 and dated in order for the ballot to be valid. *Id.* In the declaration, the voter must be clearly
8 informed that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if
9 he or she is serving a sentence of total confinement under the jurisdiction of the department of
10 corrections for a felony conviction or is currently incarcerated for a federal or out-of-state felony
11 conviction; and it is illegal to cast a ballot or sign a ballot declaration on behalf of another voter.
12 *Id.* By signing, the voter swears under penalty of perjury that he or she meets the qualifications
13 to vote, and has not voted in any other jurisdiction in that election. *Id.*

14 To prevent tampering with ballots, ballot drop boxes must be constructed of durable
15 material and secured to the ground to prevent removal. WAC 434-250-100. Election officials
16 are required to prevent overflow of ballot drop boxes, to empty drop boxes in teams of two, to
17 record the date and time the ballots are removed and the names of people removing them, and to
18 transport the ballots in secure, labelled containers for counting. RCW 29A.40.170.

19 The processing of returned ballots is governed by RCW 29A.40.110. To ensure that
20 ballots are valid, election personnel designated to process ballots examine the postmark and
21 signature before processing the ballot. *Id.* Personnel assigned to verify signatures are required
22 to undergo training on the statewide standards for signature verification. *Id.* Those personnel
23 are required to verify that the voter's signature on the ballot declaration is the same as the

1 signature of that voter “in the registration files of the county.” *Id.* The statute directs that “[a]
2 variation between the signature of the voter on the ballot declaration and the signature of that
3 voter in the registration files due to the substitution of initials or the use of common nicknames is
4 permitted so long as the surname and handwriting are clearly the same.” *Id.*

5 The Washington Legislature has enacted a voting process that has one of the lowest
6 “costs of voting” in the nation. Schraufnagel, et al., *Cost of Voting in the American States: 2022*,
7 21 Election L.J. 220 (2023); Dec. of Summers, Ex. 8, at 36.¹ Professor Scot Schraufnagel and
8 his colleagues developed a cost of voting index in 2018. *Id.* at 33. The cost of voting index
9 measures provisions such as registration deadlines, registration restrictions, the availability of
10 early voting, and voting convenience. *Id.* at 34. In 2022, Washington ranked second out of the
11 50 states with the lowest cost of voting. *Id.* at 36. By another measure, “item response theory,”
12 Washington ranked first out of the 50 states with the lowest cost of voting. *Id.* at 39.²

13 **B. The Signature Verification Process Required by RCW 29A.40.110 Has Been a Key**
14 **Aspect of Fraud Prevention for Mailed Ballots in Washington For Over 100 Years.**

15 Signatures have been an integral part of election security in Washington for over 100
16 years. In 1905, Washington voters were required to sign poll books “opposite to the original
17 signature of the voter offering to vote, which original signature shall be concealed as not be seen
18 by the voter offering to vote.” Laws of 1905, Ch. 39, § 2; Dec. of Summers, Ex. 1, at 3. In
19 1921, the legislature began requiring county auditors to compare the signature on an absentee
20 voter affidavit with the signature on a voter certificate so that the auditor could determine the
21 “signatures are made by the same person.” Laws of 1921, Ch. 143, §§ 3-4 ; Dec of Summers,
22

23 ¹ The page number cited is the consecutively-paginated number for exhibits required by LCR 7.

² Plaintiffs’ expert Dr. Herron cites to Prof. Schraufnagel’s cost of voting index in his report.
Sub 78, at 45.

1 Ex. 2, at 7. In 1963, the legislature expanded absentee voting by allowing all duly registered
2 voters to vote by absentee ballot for any election if they expected to be absent from their precinct
3 on election day, or were unable to appear in person due to illness or disability. Former RCW
4 29.36.010; Laws of 1963, Ex. Sess., Ch. 23, § 1; See Dec. of Summers, Ex. 3, at 11. The request
5 for an absentee ballot could not be approved unless the voter’s signature on the request
6 “compare[d] favorably with voter’s signature upon his permanent registration card.” *Id.* In
7 addition, a completed absentee ballot had to be accompanied by a declaration under penalty of
8 perjury that the voter had the legal right to vote, and had not voted another ballot. Former RCW
9 29.36.030; Laws of 1963, Ex. Sess., Ch. 23, § 3. The processing of absentee ballots required the
10 canvassing board or its representative to verify that the voter’s signature on the ballot declaration
11 was the same as the signature on the application for the absentee ballot. Former RCW
12 29.36.060; Laws of 1963, Ex. Sess., Ch. 23, § 5.

13 In 1977, the Legislature expanded absentee voting to “any duly registered voter.” Former
14 RCW 29.36.010; Laws of 1977, 1st Ex. Sess., Ch. 361, § 76; Dec. of Summers, Ex. 4, at 18. The
15 signature verification requirement remained essentially the same. *Id.*, § 78.

16 In 2006, the Legislature amended RCW 26.40.110 to allow the use of automated
17 verification systems approved by the Secretary of State in the signature verification process for
18 absentee ballots. Laws of 2006, ch. 207, § 4 ; Dec. of Summers, Ex. 6, at 18. The Legislature
19 also required training on statewide standards for signature verification in 2006. Laws of 2006,
20 ch. 206, § 6; Dec. of Summers, Ex. 5, at 23.

21 In amending RCW 29.40.110 in 2011 in order to adopt universal voting by mail, the
22 Legislature retained the long-standing signature verification requirement that had previously
23 been utilized for absentee ballots. Laws of 2011, ch. 10, § 41; Dec. of Summers, Ex. 7, at 30.

1 **C. Signature Verification Is Widely Used as an Election Security Measure.**

2 Many other states use a signature verification process in their election process, either as
3 part of universal mail voting, or to verify absentee ballots. These states include: Arizona,
4 California, Colorado, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts,
5 Michigan, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio,
6 Oregon, Tennessee, Texas, Utah, and West Virginia.³ See National Conference of State
7 Legislatures, [https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-](https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots)
8 [absentee-mail-ballots](https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots). In lieu of signature verification, some states employ other means of voter
9 identity verification. For example, Arkansas requires a copy of a photo identification.⁴ Georgia
10 and Minnesota require the voter to provide a driver’s license or identification card number, or the
11 last four digits of the voter’s Social Security Number.⁵

12 **D. The Legislature Mandated an Audit of Ballot Rejection Rates in Washington; The**
13 **State Auditor Concluded That Disparities in Rejection Rates Are Not the Result of**
14 **Bias and the Legislature Took No Action.**

15 In 2020, the legislature mandated a performance audit of ballot rejection rates in the 2020
16 general election to be conducted by the state auditor’s office. Sub 78, Dec. of Hyatt, Ex. G, at
17 310.⁶ King County was one of the counties included in the audit. *Id.* at 324. While the auditor’s
18 report found disparities in rejection rates for young voters, male voters and certain racial and

19 ³ Ariz. Rev. Stat. § 16-550; Cal. Elec. Code § 3019; Colo. Rev. Stat. § 1-7.5-107.3; Fla. Stat. §
20 101.68; Haw. Rev. Stat. § 11-106; 10 Ill. Comp. Stat. 5/19-8; Ind. Code § 3-11.5-4-13.5; Iowa
21 Code § 53.18; Ky. Rev. Stat. § 117.087; Me. Rev. Stat. tit. 21-A, § 756; Mass. Gen. Laws ch. 54,
22 § 94; Mich. Comp. Laws § 168.766; Mont. Code § 13-13-241; Nev. Rev. Stat. § 293C.26327;
23 N.H. Rev. Stat. § 657:17-a; N.J. Stat. § 19:63-17; N.Y. Elec. Law § 9-209 (McKinney); N.D.
Cent. Code § 16.1-07-12; Ohio Rev. Code § 3509.06; Or. Rev. Stat. § 254.431; Tenn. Code § 2-
6-202; Tex. Elec. Code § 87.027; Utah Code § 20A-3a-401; W. Va. Code § 3-3-10.

⁴ Ark Code § 7-5-409(b)(4), 7-5-412, 7-5-416.

⁵ Ga. Code § 21-2-384, 21-2-386(a)(1); Minn.Stat. § 203B.07, 203B.121.

⁶ Plaintiffs’ declaration does not have consecutively paginated attachment page numbers as
required by King County LCR 7(b)(5)(B)(vii). For the Court’s convenience, the page citation
herein is to the PDF page number.

1 ethnic groups, they found no evidence of bias. *Id.* at 316 (stating “We found no evidence of bias
2 when counties accepted or rejected ballots.”) They were unable to identify any one policy or
3 practice that led to disparities. *Id.* at 320 (stating “The lack of one identifiable cause suggests
4 that multiple factors affect the rate and no one practice is responsible.”) Trained auditors
5 reviewed 7,200 signatures and “overwhelmingly concurred with counties’ decisions about which
6 ballots to accept and reject.” *Id.* at 304, 314. The report, dated February 1, 2022, was reviewed
7 by the Joint Legislative Audit and Review Committee. *Id.* at 305. The legislature has taken no
8 action to change the signature verification requirement since receiving the report.

9 **E. In King County, the Signature Verification Process Works for the Overwhelming**
10 **Majority of Voters.**

11 1. King County Election Workers Conducting Signature Verification Receive Training
12 Prior to Every Election.

13 All full-time employees of King County Elections (KCE) that are responsible for
14 signature verification attend an annual training on signature verification provided by the
15 Secretary of State’s Office. Declaration of Jerelyn Hampton, ¶ 4. The lead employees of the
16 signature verification and envelope review work groups are full time King County Elections
17 employees. *Id.*, ¶ 5. In addition, short-term temporary staff are hired to conduct the signature
18 verification process. *Id.* They receive a two-to-three-hour training on the signature verification
19 process before each election. *Id.*, ¶ 6. All returning employees repeat the training for each
20 election. *Id.* The signature verification training for temporary staff consists of a PowerPoint
21 presentation based on the information from the annual training provided by the Secretary of
22 State’s Office, as well as anti-bias training. *Id.*

23 2. King County Elections Utilizes Strategies for Quality Control of the Signature
Verification Process.

1 During each election, the lead of the signature verification work group conducts an audit
2 of 100% of the first batch of 250 ballot signatures completed by each member of the signature
3 verification work group to confirm that each group member understands the process and is
4 conducting verification consistently with the training. *Id.*, ¶ 8. If needed, additional training is
5 provided. *Id.* In addition, every week during an election, one batch of ballots verified by every
6 signature verification work group member is randomly selected to be audited by the lead of the
7 signature verification work group to ensure consistency with training standards. *Id.*, ¶ 9.

8 3. The Signature Verification Process in King County Requires Two Levels of Review
9 Before A Signature is Challenged.

10 When ballots are completed and returned to KCE by voters, the ballot return envelopes are
11 first processed through mail-sorting machines that capture a digital image of the signature area on
12 the ballot return envelope. *Id.*, ¶ 10. The digital image also captures the barcode on the envelope,
13 which is a unique identifying number for that specific ballot packet. *Id.* The digital images of the
14 voter signatures from the envelopes are uploaded to the statewide election management system,
15 called VoteWA. *Id.*, ¶ 12. The software displays the image of the signature from the envelope
16 with the signatures contained in the VoteWA voter registration file for that voter on a computer
17 screen. *Id.* The members of the signature verification work group compare the signature from the
18 envelope with all signatures in the registration file to determine if it is the same as any of them
19 pursuant to RCW 29A.40.110(3) and the standards set forth in WAC 434-379-020. *Id.* When the
20 signature verification work group is verifying signatures, the display contains no information about
21 the voters' race, ethnicity, or military status. *Id.*, ¶ 14.

22 If the verifier determines that the signature from the envelope does not share characteristics
23 with any of the signatures in the voter's registration file, the verifier flags the signature for further
review. *Id.*, ¶ 16. Another staff person from the envelope review work group conducts the second

1 review. *Id.* If the envelope review staff person determines that the signature from the envelope
2 matches any of the signatures in the voter's registration file, the ballot will be accepted without
3 further review. *Id.* If the envelope review staff person agrees that the signature from the envelope
4 does not share characteristics with any of the signatures in the voter's registration file, the ballot
5 is challenged. *Id.*

6 4. The Cure Process Utilized in King County is Robust.

7 When a ballot is challenged for either having no signature or a non-matching signature,
8 KCE sends the voter a letter by first class mail advising them that their ballot has been challenged
9 and providing them with a signature resolution form to sign and return, with a prepaid return
10 envelope. *Id.*, ¶ 18 and Ex. 3, and 43-45. The form provides three spaces for a voter to provide
11 three separate versions of their signature. *Id.*

12 In addition to sending a letter, if the voter has provided a phone number with their return
13 envelope or if there is a phone number on file for that voter, KCE places an automated courtesy
14 telephone call to that number within a few days of the challenge. *Id.*, ¶ 19. The courtesy call
15 informs the recipient that there is an issue with the signature on the ballot return envelope and
16 instructs the recipient to contact KCE. *Id.* Within three days of certification, KCE places a second
17 automated telephone call to voters if their signature challenge remains unresolved. *Id.*

18 If the voter provided an email address with the return envelope or if there is an email
19 address on file for that voter, KCE will also send an email with the same information. *Id.* The
20 first email is sent within a few days of the challenge and an additional email is sent within three
21 days of certification if the signature challenge is still unresolved. *Id.*

22 The KCE website also allows a voter to download the signature resolution form when their
23 signature has been challenged. *Id.*, ¶ 20.

1 A King County voter may return a signed signature resolution form by mail using the
2 prepaid return envelope that is enclosed with the cure form. *Id.*, ¶ 22. Alternatively, a King County
3 voter may return the form by taking a picture of it with their phone and sending it via email, by
4 fax, or in person at any of the six off-site vote centers in general elections and five off-site vote
5 centers for the primary elections. *Id.* At a vote center, the voter may view the signatures that are
6 in their voter registration file in the VoteWA election management system as long as they provide
7 photo identification. *Id.*

8 KCE also offers ballot tracking. *Id.* King County voters can sign-up to receive text
9 messages, emails, or both, to be alerted when their ballot is mailed and received, if there is an issue
10 with their signature and when their signature has been verified. *Id.* Voters may sign up for ballot
11 alerts on the KCE website. *Id.* The alerts are available in seven languages. *Id.* Voters who receive
12 an alert that their signature has been challenged can click on a link in the email or text print the
13 signature resolution form from the KCE website. *Id.* Starting in November 2023, King County
14 voters will be able to access an online portal and electronically resolve their signature issue. *Id.*

15 When a signature resolution form is returned after a challenge for a non-matching
16 signature, a member of the envelope review work group makes a determination whether any
17 signatures on the signature resolution form match the signature on the challenged ballot return
18 envelope. *Id.*, ¶ 23. If so, the ballot is accepted. *Id.* If not, the ballot is rejected. *Id.* All
19 returned signature resolution forms are reviewed by a second member of the envelope review
20 team to ensure the appropriate decision was made. *Id.* If there was a questioned decision, the
21 resolution form is reviewed by the envelope review workgroup lead or supervisor. *Id.*

22 When a signature challenge is cured, the signatures on the cure form are added to voter
23 registration file in VoteWA for future elections. *Id.*, ¶ 25.

1 5. KCE Endeavors to Educate All Voters About the Importance of Ballot Return
2 Envelope Signatures.

3 The instruction sheet enclosed in the ballot materials for the August 2023 primary
4 election highlights the importance of the voter's signature on the ballot return envelope.

5 Declaration of Julie Wise, ¶ 14. The instruction sheet reads as follows:

6 Your signature matters. Make it match.

7 Your signature doesn't need to be fancy or even be legible, but it does have to
8 match what's on file. If you're unsure of what's on file, a good place to look is your
9 driver's license or state ID as we get many signatures from the Dept. of Licensing.

10 Keep your signature current to make sure we can count your ballot. You can
11 learn more about your signature and why it matters at kingcounty.gov/elections/signature.

12 *Id.*

13 KCE has been partnering with Voter Education Fund grant recipients, including the
14 Washington Bus Education Fund, El Centro de la Raza, the Urban League of Metropolitan
15 Seattle and the Latino Community Fund of Washington State to decrease inequities in voter
16 registration and voting, specifically in historically disenfranchised communities. *Id.*, ¶ 22. This
17 includes educating voters about the signature verification process and the importance of
18 providing updated signatures to KCE. *Id.*

19 Currently, KCE is in the process of mailing signature update forms to all registered voters
20 in King County to ask for updated signatures. *Id.*, ¶ 21. Voters may return the form to KCE by
21 email, in-person, or by mail (with a prepaid return envelope). *Id.* KCE is mailing signature
22 update letters to voters in phases, starting with voters in zip codes with the highest signature
23 challenge rates. Declaration of Janice Case, ¶ 8. As of July 2023, KCE has mailed 395,457
signature update letters and received approximately 30% of signature update forms. *Id.*

6. The Rate of Challenged Ballots in King County Fluctuates But is Consistently Low.

1 The rate of challenge for non-matching signatures in King County has varied between
2 0.50% and 1.84% in the elections between 2018 and 2022. *Id.*, ¶ 10. The rate that ballots that
3 were challenged for non-matching signatures and not cured (and therefore rejected) has varied
4 between 0.27% and 1.14% in the elections between 2018 and 2022. *Id.*, ¶ 11.

5 In contrast, the rate of challenge for *missing* signatures in King County has varied
6 between 0.23% and 1.04% in the elections between 2018 and 2022.⁷ *Id.*, ¶ 12. The rate that
7 ballots were challenged for missing signatures and not cured (and thus rejected) in King County
8 has varied between 0.10% and 0.41% for those elections.⁸ *Id.*, ¶ 13.

9 Consistently then, more than 98% of King County voters succeed in submitting matching
10 ballot signatures. This is true not just for the population as a whole, but for the racial subgroups
11 examined by Plaintiff's expert, Dr. Palmer. The lowest rate of acceptance in King County
12 identified by Dr. Palmer was for Hispanic voters in 2020 General Election, an acceptance rate of
13 98.16 %. Sub 78, Exhibit H, at 375 (Figure 1).

14 7. The Declarations Submitted by Plaintiffs Do Not Show That The Signature
15 Verification Process is Unworkable For King County Voters.

16 The declarations from King County voters submitted by Plaintiffs undercut their claims
17 that the signature verification process as administered by King County is unworkable. Of the 32
18 declarations provided from King County voters that are not plaintiffs, over half (17) were
19 notified that their signatures did not match but made no attempt to cure their ballots. Subs 86,
20 89, 110, 111, 112, 118, 119, 120, 124, 126, 128, 130, 132, 135, 136, 138, 141. An additional
21 eight, successfully cured their ballots. Subs 91, 92, 93, 95, 102, 116, 125, 134. Only five claim
22 they were not notified. Subs 97, 98, 99, 100, 129. However, King County records show that

23 ⁷ Excluding the March 2020 Presidential Primary Election.

⁸ Again, excluding the March 2020 Presidential Primary Election.

1 they are incorrect, and that they received timely notification by mail. Dec. of Hampton, ¶¶ 30-
2 34, Exs. 4-8, at 47-65. Only two of the King County voters assert that they tried but were
3 unsuccessful in curing their ballots. Subs 96, 131.

4 As for the plaintiffs themselves, Ms. Cantrell has successfully voted in five elections
5 since 2020. Dec. of Hampton, ¶ 27. Mr. Berson has successfully voted in eight elections since
6 2020. *Id.*, ¶ 28. And Ms. Matsumoto has successfully voted in seven elections since 2020. *Id.*,
7 ¶ 29.

8 **F. Preventing Voter Fraud and Maintaining Voter Confidence Are Paramount Goals**
9 **For Election Officials, As Well as Voting Accessibility.**

10 KCE is committed to increasing both accessibility and security in King County elections.
11 Declaration of Julie Wise, ¶ 10. KCE mails every registered voter in King County a ballot for
12 every election. *Id.*, ¶ 12. If a voter's ballot is lost or damaged, King County's Online Ballot
13 Marking Program is available to all registered voters and allows voters who have access to the
14 internet and a printer to access and print a replacement ballot. *Id.*, ¶ 13.

15 Because of King County's racial and ethnic diversity, KCE has makes complete voting
16 materials available in both English, Chinese, Vietnamese, Spanish, Korean, Russian and Somali.
17 *Id.*, ¶ 11. Voters may sign up to receive their voting materials in any one of these languages. *Id.*

18 At the same time, the signature verification requirement remains a key security aspect of
19 Washington's vote by mail system. *Id.*, ¶ 25. Without the signature verification requirement,
20 there is no mechanism to verify that a ballot has been returned by the registered voter. *Id.*
21 Washington elections would be vulnerable to widespread voter fraud without the signature
22 verification requirement, and as a result, public trust in elections would decline. *Id.*

23 Public trust and confidence in elections are critical. *Id.*, ¶ 26. Democracy is only as
strong as voters' belief in the electoral system. *Id.* At a time when trust in elections still feels

1 tenuous, the signature verification requirement provides an important checkpoint to ensure that
2 ballots are cast by the intended voter. *Id.* It provides a tangible process to point to when
3 skeptics, or bad actors, attempt to sow doubt in elections with stories of stolen mail or mass-
4 printed ballots. *Id.*

5 III. STATEMENT OF ISSUES

- 6 1. Should summary judgment be granted for Defendants where Plaintiffs failed to join
7 indispensable parties—the elections officials from other counties—whom they seek to
8 enjoin? **Yes.**
- 9 2. Should summary judgment be granted for Defendants where Plaintiffs have brought a
10 facial challenge and failed to show that no set of circumstances exist in which the
11 signature verification requirement can be constitutionally applied? **Yes.**
- 12 3. Should summary judgment be granted for Defendants where Plaintiffs have failed to
13 prove that the signature verification requirement is not within the legislature's
14 constitutional power to regulate the method of voting pursuant to article 4, § 6, and thus
15 not in violation of article 1, § 19? **Yes.**
- 16 4. Should summary judgment be granted for Defendants where Plaintiffs have failed to
17 prove that the signature verification requirement, which applies to every voter, is an
18 unconstitutional grant of favoritism prohibited by the privileges and immunities clause of
19 article 1, § 12? **Yes.**
- 20 5. Should summary judgment be granted for Defendants where Plaintiffs have failed to
21 prove that the signature verification requirement, which properly regulates the method of
22 voting and does not interfere with any fundamental right, violates substantive due process
23 pursuant to article 1, § 3? **Yes.**

- 1 6. Should summary judgment be granted for Defendants where, even if strict scrutiny were
2 to apply, the signature verification requirement is a reasonable means of conducting
3 universal mail voting that is not substantially broader than necessary to achieve the
4 compelling state interests of election security and public confidence in elections? **Yes.**
- 5 7. Can this Court conclude that the signature verification requirement is severable from the
6 universal mail voting system, where it has been integral to the system since its adoption
7 in 2011? **No.**
- 8 8. Will declaring the signature verification requirement unconstitutional invalidate the
9 universal mail voting system because it is not severable? **Yes.**

11 **IV. EVIDENCE RELIED ON**

12 This motion is based on the records and pleadings on file herein, as well as the following:

- 13 1. Declaration of Julie Wise in Support of King County Canvassing Board Members’
14 Motion for Summary Judgment, and exhibit;
- 15 2. Declaration of Janice Case in Support of King County Canvassing Board Members’
16 Motion for Summary Judgment, and exhibit;
- 17 3. Declaration of Jerelyn Hampton in Support of King County Canvassing Board Members’
18 Motion for Summary Judgment, and exhibits;
- 19 4. Second Declaration of Jerelyn Hampton in Support of King County Canvassing Board
20 Members’ Motion for Summary Judgment;
- 21 5. Declaration of Brett Bishop in Support of King County Canvassing Board Members’
22 Motion for Summary Judgment, and exhibit; and
23

1 6. Declaration of Ann Summers in Support of King County Canvassing Board Members'
2 Motion for Summary Judgment, and exhibits.

3 **V. ARGUMENT**

4 **A. Plaintiff's Action Should Be Dismissed for Failing to Join Indispensable Parties,**
5 **Namely the 38 Other Counties That Conduct Elections.**

6 Plaintiffs ask this court to declare signature verification requirements invalid and enjoin
7 all Washington election officials conducting signature verification as required by statute.
8 However, this Court cannot order this broad relief because Plaintiffs failed to join indispensable
9 and necessary parties, namely the 38 other county canvassing boards. Neither the King County
10 Canvassing Board nor the Secretary of State represent the other counties that Plaintiffs seek to
11 enjoin.

12 Failure to join an indispensable party is grounds for dismissal of the action. *Auto. United*
13 *Trades Org. v. State*, 175 Wn.2d 214, 222, 285 P.3d 52 (2012). Once the defendant presents
14 facts showing “an unjoined indispensable party,” the burden shifts to the plaintiff “to negate this
15 conclusion and a failure to meet that burden will result in the joinder of the party or dismissal of
16 the action.” *Id.* (quoting 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal
17 Practice & Procedure § 1609, at 130 (3d ed.2001). Although dismissal for failure to join the
18 remaining 38 county canvassing boards is a “drastic remedy,” it was patently unreasonable for
19 Plaintiffs to believe that it was possible to bind all counties by only suing King County’s board
20 and the Secretary of State. *Id.* The time for joining additional parties has expired. Moreover, it
21 would prejudice newly-joined who have had no opportunity to participate in discovery.

22 It would be patently unfair to enjoin the other 38 county canvassing boards without
23 giving them the opportunity to appear and litigate this action. Washington operates a county-
based elections system. The county auditor, or elections director in a charter county, is the “ex

1 officio supervisor of all primaries and elections, general or special.” RCW 36.22.220; RCW
2 29A.04.025, .216. Each county has its own canvassing board, comprised of the county auditor or
3 elections director, the prosecuting attorney, and the chair of the county legislative body. RCW
4 29A.60.140. Once elections are canvassed, the results are provided to the Secretary of State.
5 The Secretary canvasses no ballots and operates no elections. The Secretary has no
6 responsibility to ensure that individual signatures match before counting a ballot. This is the sole
7 province of county officials charged by statute with the actual job of operating elections.

8 A judgment in this case would certainly bind the Secretary and the King County
9 Canvassing Board, but it would have no impact on election officials in the remaining 38
10 counties. They would continue under a mandatory duty, imposed by statute, to require signature
11 verification before counting a ballot. There is certainly no authority for the Secretary to
12 somehow “direct” non-parties not to follow a statute. The counties that Plaintiffs have failed to
13 join in this matter have a right to litigate the merits of a facial challenge to the verification
14 statute. Because Plaintiffs have failed to place the remaining 38 counties before this Court, they
15 have failed to join indispensable parties and their suit must be dismissed.

16 In the recent case of *Donald J. Trump for President, Inc. v. Boockvar*, 493 F.Supp.3d
17 331, 374-75 (W.D. Pa. 2020), the court held that the failure to name all the county election
18 boards precluded the requested relief: “Here, if the county boards were not named defendants in
19 this case, the Court would not be able to provide Plaintiffs complete relief should Plaintiffs prove
20 their case. That's because the Court could not enjoin the county boards if they were not parties.”
21 The county elections boards were necessary and indispensable parties because “if county boards
22 engage in unconstitutional conduct, the Court would not be able to remedy the violation by
23 enjoining only Secretary Boockvar.” *Id.* at 375. “To grant Plaintiffs relief, if warranted, the

1 Court would need to enter an order affecting all county boards of elections—which the Court
2 could not do if some county boards were not joined in this case.” *Id.*

3 Plaintiff’s failure to join the other 38 counties is particularly problematic in the elections
4 context. If this Court enjoined only King County’s verification of signatures, it would cause
5 “inconsistent rules and procedures [to] be in effect throughout the [state].” *Id.* at 375. Plaintiffs’
6 requested relief requires them to join all counties to this action, but Plaintiffs have failed to take
7 this necessary step. Because the “only way to ensure that any illegal or unconstitutional conduct
8 is uniformly remedied, permanently, is to include all county boards in this case,” Plaintiff’s case
9 must be dismissed for a violation of the joinder rule. *Id.* at 376.

10 **B. Plaintiffs’ Lawsuit Must Be Dismissed Because They Fail To Present A**
11 **Colorable Facial Challenge To RCW 29A.40.110(3).**

12 Although Plaintiffs are limited to a facial challenge to the signature matching statute,
13 RCW 29A.40.110(3), their brief makes an improper “as applied” challenge. Through countless
14 anecdotal declarations and expert reports, Plaintiffs assert various ways that the signature
15 matching requirement has been applied, but fail to argue that any alleged flaws in the signature
16 matching process arise from the statute itself. None of the facts they raise are relevant to a facial
17 challenge. As a result, summary judgment is properly granted for the Canvassing Board.

18 1. Plaintiffs Have Limited Themselves to a Facial Challenge to RCW
19 29A.40.110(3).

20 In order to defeat the Secretary’s venue motion, Plaintiffs voluntarily limited themselves
21 to a facial challenge to the signature matching statute. In response to the Secretary’s venue
22 motion, Plaintiffs stated that they were only “challeng[ing] the constitutionality of RCW
23 29A.40.110(3).” Sub. 46 at 1. In reply, the Secretary indicated that he “would welcome an
amendment of Plaintiffs’ complaint to challenge only the constitutionality of RCW

1 29A.40.110(3).” Sub. 47 at 3. Based on this exchange, Judge Shaffer denied the motion to
2 change venue: “Secretary Hobb’s motion is DENIED, *on condition Plaintiff within 30 days*
3 *moves to amend the complaint per the offer in the response to this motion.*” Sub. 48, at 2
4 (emphasis added).

5 In accord with Judge Shaffer’s order, Plaintiffs filed an amended complaint “to further
6 clarify that Plaintiffs challenge the constitutionality of the statutory requirement for ballot
7 signature verification, RCW 29A.40.110(3).” Sub. 61 at 4. The Secretary questioned whether
8 this was sufficiently clear, but according to Plaintiffs, their second amended complaint “made it
9 ‘even more apparent’ that Plaintiffs *challenge only RCW 29A.40.110(3).*” Sub. 59 at 3 (emphasis
10 added). Thus, in accord with their complaint, Plaintiffs motion for summary judgment is limited
11 to the sole claim “that Washington’s signature verification statute is facially unconstitutional.”
12 Sub. 77, at 30 n.6.

13 Having prevailed on the venue motion by limiting their complaint to a facial challenge,
14 Plaintiffs are estopped from converting their action into an as applied challenge. *Bartley-*
15 *Williams v. Kendall*, 134 Wn. App. 95, 98, 138 P.3d 1103 (2006) (“Judicial estoppel is an
16 equitable doctrine that precludes a party from asserting one position in a court proceeding and
17 later seeking an advantage by taking a clearly inconsistent position.”). Moreover, because
18 defendants have prepared their case, named witnesses, conducted discovery, etc. in reliance on
19 Plaintiff’s emphatic claim that they were limiting themselves to a facial challenge, it would be
20 prejudicial to allow Plaintiffs to change horses at this late date.

21 2. Plaintiffs’ Facial Challenge Fails With Their Admission That Some Counties
22 Have Excluded Few or No Ballots Under RCW 29A.40.110(3).

23 The exclusive focus of a facial challenge is the language of the statute: “In facial
challenges, we consider only if the ordinances’ language violates the constitution and not

1 whether the ordinance would be constitutional ‘as applied’ to the facts of a particular case.”
2 *Rental Hous. Ass'n v. City of Seattle*, 22 Wn. App. 2d 426, 437, 512 P.3d 545 (2022). *See also*
3 *Tunstall v. Bergeson*, 141 Wn.2d 201, 220-21, 5 P.3d 691 (2000) (“the court's focus when
4 addressing constitutional facial challenges is on whether the statute's language violates the
5 constitution”). The language of RCW 29A.40.110(3) is prosaic, imposing only the requirement
6 that “[p]ersonnel shall verify that the voter's signature on the ballot declaration is the same as the
7 signature of that voter in the registration files of the county.” The basic requirement of signature
8 verification for voting exists in many other states and has been a feature of the method of voting
9 in Washington since early statehood.

10 Nothing about the statutory requirement to verify signatures on mail ballots necessarily
11 leads to the parade of horrors that Plaintiffs posit in their declarations. There is no line that can
12 be drawn between the Legislature’s unremarkable verification requirement and Plaintiff’s claims
13 of wonton signature rejection and disparate impacts. The alleged flaws – to the extent they exist
14 – would arise from execution of the statute, not an inherent flaw in the requirement itself. Such
15 evidence of how the statute is applied is not relevant to a facial challenge. Because Plaintiffs fail
16 to explain how the language of the statute itself is unconstitutional, they fail in their burden to
17 prove RCW 29A.40.110(3) is unconstitutional beyond a reasonable doubt,⁹ especially when
18 facial challenges are “generally disfavored.” *State v. McCuiston*, 174 Wn.2d 369, 389, 275 P.3d
19 1092 (2012).

21 ⁹ Statutes are presumed to be constitutional, and the party challenging the constitutionality of a
22 statute bears the burden of proving unconstitutionality beyond a reasonable doubt. *State v.*
23 *Fraser*, 199 Wn.2d 465, 509 P.3d 282 (2022). A party has met that burden when “argument and
research show that there is no reasonable doubt that the statute violates the constitution.” *Id.*
(quoting *Amalgamated Transit Union Local No. 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762
(2000)).

1 Indeed, when lodging a facial challenge to an elections statute, “a plaintiff can only
2 succeed in a facial challenge by ‘establish[ing] that no set of circumstances exists under which
3 the Act would be valid,’ *i.e.*, that the law is unconstitutional in all of its applications.”
4 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008)
5 (*quoting United States v. Salerno*, 481 U.S. 739, 745 (1987)). A facial claim fails “if there are
6 any circumstances where the [challenged law] can constitutionally be applied.” *Rental Housing*,
7 *supra*, 22 Wn. App. 2d at 437 (*quoting Wash. State Republican Party v. Wash. State Pub.*
8 *Disclosure Comm’n*, 141 Wn.2d 245, 282 n.14, 4 P.3d 808 (2000)). Stated differently, Plaintiffs
9 bear the high burden of demonstrating “that the statute cannot be properly applied *in any*
10 *context.*” *State v. Birge*, 16 Wn. App. 2d 16, 39, 478 P.3d 1144 (2021) (*quoting State v.*
11 *Evergreen Freedom Found.*, 192 Wn.2d 782, 796, 432 P.3d 805 (2019)).

12 As a result of this standard, the declarations submitted by Plaintiffs do not preclude
13 summary judgment for the Canvassing Board and Secretary. Because the legally relevant
14 question is whether “no set of circumstances exists” where the statute can be constitutionally
15 applied, summary judgment should be entered for Defendants because the court can conceive of
16 facts supporting the constitutional application of RCW 29A.40.110(3). *City of Redmond v.*
17 *Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004). This Court need look no farther than
18 Plaintiffs’ own briefing. They list counties in their summary judgment motion that have little or
19 no rejection of ballots pursuant to the signature verification requirement. Sub 77, at 17-18.
20 Plaintiffs’ facial challenge therefore fails.

21 **C. Washington’s Long-standing Signature Verification Requirement Comports with**
22 **Article. 1, § 19.**

- 23 1. The Washington Legislature Has Broad Constitutional Authority to Regulate
the Method of Voting.

1 The framers of state constitution set the qualifications for voting and granted broad
2 authority to the legislature to regulate the method of voting, which includes the way in which
3 voters prove that they are qualified to register and vote. Signature verification, which ensures
4 the identity of electors who cast ballots, is one example of regulating the method of voting.

5 The Washington Constitution explicitly authorizes the legislature to regulate the method
6 of voting:

- 7 • Article 4, § 6 provides: “All elections shall be by ballot. The legislature shall provide for
8 such method of voting as will secure to every elector absolute secrecy in preparing and
9 depositing his ballot.”
- 10 • Article 6, § 1 provides: “All persons of the age of eighteen years or over who are citizens
11 of the United States and who have lived in the state, county, and precinct thirty days
12 immediately preceding the election at which they offer to vote, except those disqualified
13 by Article 6, § 3 of this Constitution, shall be entitled to vote at all elections.”¹⁰
- 14 • Article 1, § 19 of the Washington Constitution provides: “All elections shall be free and
15 equal, and no power, civil or military, shall at any time interfere to prevent the free
16 exercise of the right of suffrage.”

17 Under these provisions, the state constitution defines who may vote and the legislature is
18 authorized to provide for the method and proper conduct of elections. *State ex rel. Kurtz v.*
19 *Pratt*, 45 Wn.2d 151, 156, 273 P.2d 516 (1954). The *right* to vote is a constitutional right
20 guaranteed by article 6, § 1, but “the *manner* in which the franchise shall be exercised is purely
21 statutory.” *State ex. rel Carroll v. Superior Ct. of Washington for King Cnty.*, 113 Wash. 54, 57,
22

23 _____
¹⁰ Article 6, § 3 disqualifies persons convicted of infamous crimes and the mentally incompetent from voting.

1 193 P. 226 (1920) (quoting *State ex rel. Shepard v. Superior Ct. of King Cnty.*, 60 Wash. 370,
2 372, 111 P. 233 (1910)). The legislature may not “destroy the franchise, but it may control and
3 regulate the ballot, so long as the right is not destroyed or made so inconvenient that it is
4 impossible to exercise it.” *State ex rel. Shepard*, 60 Wash. at 372. Article 1, § 19 “does not
5 mean that voters may go to the polls at any time and vote on any question they see fit, but only at
6 the stated times provided by the statutes relating to elections.” *State v. Wilson*, 137 Wash. 125,
7 132, 241 P. 970 (1925). It also “does not mean that elections and voters may not be regulated
8 and properly controlled.” *Id.* “[W]e have historically interpreted article I, section 19 as
9 prohibiting the complete denial of the right to vote to a group of affected citizens” *Eugster v.*
10 *State*, 171 Wn.2d 839, 845, 259 P.3d 146 (2011).

11 The elections clause of the federal constitution, Article I, § 4, likewise allows state
12 legislatures to regulate state elections for federal offices. It provides that “The Times, Places and
13 Manner of holding Elections for Senators and Representatives, shall be prescribed in each State
14 by the Legislature thereof; but the Congress may at any time by Law make or alter such
15 Regulations, except as to the Places of chusing [sic] Senators.” *Id.* The exercise of powers
16 under the elections clause is fundamentally a “lawmaking” process. *Moore v. Harper*, 143 S. Ct.
17 2065, 2085 (2023). As the Supreme Court recently pointed out: “Elections are complex affairs,
18 demanding rules that dictate everything from the date on which voters will go to the polls to the
19 dimensions and font of individual ballots. Legislatures must ‘provide a complete code for
20 congressional elections,’ including regulations ‘relati[ng] to notices, registration, supervision of
21 voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties
22 of inspectors and canvassers, and making and publication of election returns.’” *Id.* (quotation
23 omitted).

1 The Legislature’s exercise of authority under the federal elections clause is subject to the
2 provisions of the state constitution, including “the ordinary exercise of state judicial review”
3 when a legislative act is unconstitutional. *Id.* at 2081. However, “state courts do not have free
4 rein” and “may not transgress the ordinary bounds of judicial review such that they arrogate to
5 themselves the power vested in state legislatures to regulate federal elections.” *Id.* at 2088-89.

6 2. Legislative Regulation of the Manner of Elections Is Not Subject to Strict
7 Scrutiny.

8 Because both the state and federal constitutions vest prescribing the manner of holding
9 elections in the legislative branch, application of strict scrutiny to laws properly regulating the
10 manner of elections would impermissibly interfere with this legislative prerogative.

11 Regulations related to the proof necessary to register and vote fall within the legislature’s
12 authority under article 4, § 6 and the federal elections clause. For example, in *State ex. rel.*
13 *Carroll, supra*, 113 Wash. at 55, W.J. Brown, a Scottish immigrant, brought a mandamus action
14 against the city comptroller to direct him to allow Brown to register to vote. The comptroller had
15 refused because Brown could not provide the proof of citizenship required by statute, in
16 particular, the naturalization papers of his father. *Id.* The Washington Supreme Court concluded
17 the legislature had not exceeded its powers by enacting a law that required naturalization papers
18 for registration. *Id.* The court explained, “such a law is not for the purpose of adding to or
19 modifying the qualifications of a voter as fixed by the Constitution, but is for the purpose of
20 making regulations and determining the proof which one shall present to establish the fact that he
21 is a citizen and entitled to register and vote.” *Id.* at 57. The court concluded “that which does
22 not destroy or unnecessarily impair the right must be held to be within the constitutional power
23 of the Legislature.” *Id.* (quoting *State ex. rel. Shepard*, 60 Wash. at 372). The law requiring
foreign-born citizens to provide naturalization papers to register and vote dealt “with the

1 question of proof, and not with a question of the right to vote,” and was within the legislature’s
2 authority to enact. *Id.*

3 Plaintiffs do not, and cannot, contend that there is a fundamental right to voting by mail.
4 This was a creation of the Legislature and is not constitutionally required. The state supreme
5 court has previously acknowledged that mail voting can be particularly susceptible to fraud and
6 thus the manner of providing for a secure method of voting by mail is generally a matter of
7 legislative prerogative:

8 If permission to vote as an absentee voter results in large numbers thus voting and
9 thereby enlarges the possibility of fraudulent and illegal voting, the subject is one for
10 legislative action and the matter can easily and speedily be corrected by the Legislature.
The court has nothing to do with such legislative functions and should not legislate
judicially.

11 *State ex rel. Pemberton v. Superior Court of Whatcom Cnty.*, 196 Wash. 468, 479, 83 P.2d 345
12 (1938) (quoting *Sheils v. Flynn*, 300 N.Y.S. 536, 542 (1937)).

13 The signature verification requirement at issue in this case does not destroy or
14 unnecessarily impair the right to vote. It does not change the qualifications to vote, but only
15 provides for the manner of proof of the right to vote. The signature verification requirement
16 controls and regulates the ballot and does not make voting “so inconvenient that it is impossible
17 to exercise.” *State ex rel. Shepard*, 60 Wash. at 372.

18 Plaintiffs’ argument that the signature verification requirement is subject to strict scrutiny
19 under article 1, § 19 of the Washington Constitution lacks any authority in Washington law and
20 would elevate the judicial role beyond that accorded by the state and federal constitutions.
21 Plaintiffs’ reliance on *Madison v. State*, 161 Wn.2d 85, 163 P.3d 757 (2007), is misplaced. In
22 that case, the plaintiffs challenged the constitutionality of the law that required completion of all
23 sentence conditions for a felon’s voting rights to be restored. *Id.* at 87. The Washington

1 Supreme Court upheld the law, holding that it did not violate the privileges and immunities
2 clause of article 1, § 12 or the federal equal protection clause. *Id.* The court did not conduct a
3 separate analysis of the law under article 1, § 19, and did not apply strict scrutiny to the law.

4 In *Madison*, the court cited two cases for the proposition that “restrictions” on the right to
5 vote are generally subject to strict scrutiny under equal protection analysis. The first was
6 *Reynolds v. Sims*, 377 U.S. 533 (1964), a legislative reapportionment case analyzed under the
7 federal equal protection clause. The second was *City of Seattle v. State*, 103 Wn.2d 663, 694
8 P.2d 641 (1985), a case challenging the constitutionality of statutes governing annexation of
9 territory by a city. In that case, the court noted that restrictions on the right to vote on grounds
10 other than age, citizenship or residence are subject to strict scrutiny under the federal equal
11 protection clause. *Id.* at 670. Neither of these cases support applying strict scrutiny to statutes
12 that regulate the manner of voting under article 1, § 19.

13 As such, Washington cases are in accord with the United State Supreme Court that
14 election regulations are generally not subject to strict scrutiny. A law is not subject to strict
15 scrutiny under the federal constitution simply because it imposes some burden on the right to
16 vote. *Burdick v. Takushi*, 504 U.S. 428, 432 (1992). “[A]s a practical matter, there must be a
17 substantial regulation of elections if they are to be fair and honest and if some sort of order,
18 rather than chaos, is to accompany the democratic processes.” *Id.* at 433 (quoting *Storer v.*
19 *Brown*, 415 U.S. 724, 730 (1974)). “[T]o subject every voting regulation to strict scrutiny and to
20 require that the regulation be narrowly tailored to advance a compelling state interest, as
21 petitioner suggests, would tie the hands of States seeking to assure that elections are operated
22 equitably and efficiently.” *Id.* “[W]hen a state election law provision imposes only ‘reasonable,
23 nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, the

1 State's important regulatory interests are generally sufficient to justify' the restrictions.” *Id.*
2 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

3 Lower court decisions from other jurisdictions, based on different statutory schemes and
4 different state constitutional provisions, have no application to this case.

5 3. The Signature Verification Requirement Is a Reasonable Regulation and Proper
6 Control of the Voting Process to Ensure Election Security.

7 Universal mail voting increases access by making voting easier, but also increases the
8 possibility of any voter’s ballot being fraudulently intercepted. The legislature has enacted many
9 safeguards to protect the security of our elections while allowing increased access. Each
10 safeguard serves a different purpose and they operate together as a whole to ensure election
11 security in a universal mail voting system. The signature verification requirement is the only
12 safeguard designed to ensure that the voter that returns a ballot is the registered voter. The
13 signature verification requirement does not “destroy or unnecessarily impair” the right to vote.
14 *State ex. rel. Shepard*, 60 Wash. at 372. Obviously, “[e]very voting rule imposes a burden of
15 some sort.” *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2338 (2021). The
16 signature verification requirement and cure process is workable for the vast majority of
17 Washington voters and has been for many years.

18 If a ballot is intercepted and signed and submitted by someone else, the other safeguards
19 identified by Plaintiffs—a centralized voter registration database, requiring identification for
20 registration, updating voter lists, unique ballot numbers and audits—will not prevent a fraudulently
21 intercepted ballot from being counted. And while ballot tracking is helpful, it not only puts the
22 onus on voters to discover voter fraud but, most importantly, tracking does not prevent a fraudulent
23

1 ballot from being irrevocably counted¹¹ unless the voter detects the fraud before the ballot is
2 processed.

3 Remarkably, in their motion Plaintiffs point to the ballot signature requirement—“[a]ll
4 voters must sign their declaration affirming their eligibility to vote under penalty of perjury”—as
5 an important safeguard. Sub 77, at 25. However, without any enforcement mechanism through
6 signature verification, the signature requirement’s ability to deter or detect fraud is severely
7 hampered.

8 Plaintiffs’ argument that the signature verification requirement does not meaningfully
9 protect against voter fraud defies common sense. By relying only on the number of voter fraud
10 convictions to assert that voter fraud is “rare,” Plaintiffs oversimplify the issue. As the United
11 States Supreme Court has observed, “an examination of the history of election regulation in this
12 country reveals a persistent battle against two evils: voter intimidation and election fraud.”
13 *Burson v. Freeman*, 504 U.S. 191, 206 (1992).

14 Plaintiffs completely ignore the State’s interest in deterring voter fraud. Any election
15 system must protect against fraud, including fraud that occurs on an individual basis and
16 widespread coordinated efforts. It is obvious that the voter signature verification process
17 protects against both individual fraud and widespread coordinated efforts. Significantly, the
18 legislature has exempted voters’ signatures from public disclosure so that bad actors cannot
19 simulate them in perpetrating widescale voter fraud. RCW 29A.04.260(1)(a); 20A.08.710(2)(a).
20 But without the signature verification requirement, there is no way to prevent such widescale
21 efforts, at least until election officials realize they have received an unusual number of duplicate
22

23 ¹¹ Because of the secrecy of the ballot, ballots cannot be matched to return envelopes after
separation. Counties may begin processing ballots, including removal of ballots from envelopes,
as they are received. RCW 29A.40.110(2).

1 voters. By then, however, many fraudulent votes could have been already tabulated, potentially
2 irretrievably tainting the election. The fact that the current system effectively prevents such
3 fraud is not an argument for abandoning the signature verification requirement.

4 By focusing on voter fraud prosecutions, Plaintiffs ignore the interest in *detering* voter
5 fraud. Plaintiffs also ignore the State’s interest in preventing fraudulent votes from being
6 counted, regardless of whether there is a subsequent prosecution. Plaintiffs ignore the obvious
7 reality that not all voter fraud that occurs is investigated or prosecuted. Thus, their argument that
8 the signature verification requirement has “no discernible benefit” because voter fraud
9 prosecutions are “rare” is based on an obvious logical fallacy. The number of voter fraud
10 convictions is not a true measure of voter fraud. There are obvious inherent difficulties in
11 detecting, investigating, prosecuting and convicting persons who commit mail-ballot fraud. Dec.
12 of Case, ¶ 6. Prosecuting attorney offices with large caseloads and budget constraints may not
13 place a priority on prosecuting individual cases of voter fraud, a decision that is entirely
14 consistent with prosecutorial discretion. *Id.*, ¶ 5. As explained by the Washington Supreme
15 Court, prosecutorial discretion is fundamental to the separation of powers and “allows for the
16 consideration of individual facts and circumstances when deciding whether to enforce criminal
17 laws, and permits the prosecuting attorney to seek individualized justice; to manage resource
18 limitations; to prioritize competing investigations and prosecutions; to handle the modern
19 ‘proliferation’ of criminal statutes; and to reflect local values, problems, and priorities.” *State v.*
20 *Rice*, 174 Wn.2d 884, 901–02, 279 P.3d 849 (2012).¹²

23 ¹² For example, for years the practice of the King County Prosecuting Attorney’s Office has been
to send a warning letter in lieu of prosecution for isolated instances of suspected fraudulent
voting. Dec. of Case, ¶ 5.

1 For this reason, the Canvassing Board moves to exclude the opinion of Dr. Herron.
2 Unreliable expert testimony does not assist the trier of fact and is properly excluded under ER
3 702. *Lakey v. Puget Sound Energy*, 176 Wn.2d 909, 921, 296 P.3d 860 (2013). Measuring the
4 efficacy of the signature verification requirement in preventing voter fraud only by the number of
5 successful voter fraud prosecutions is obviously flawed and unreliable. Dr. Herron’s
6 methodology and his conclusion that the signature verification requirement is unnecessary to
7 prevent voter fraud because successful prosecutions for voter fraud are rare will not “assist” this
8 Court, and is thus not admissible pursuant to ER 702.

9 4. If Strict Scrutiny Applied, Summary Judgment For Plaintiffs Would Not Be
10 Warranted.

11 If strict scrutiny applied, the signature verification requirement can be upheld as a matter
12 of law because it is narrowly tailored to serve a compelling state interest. *One America Votes v.*
13 *State*, 23 Wn. App. 2d 951, 987, 518 P.3d 230 (2022). The test is not whether other methods
14 exist to protect a compelling state interest, but whether the interest would be achieved less
15 effectively absent the challenged statute. *Id.*

16 Protecting the integrity and security of elections has long been recognized as a
17 compelling state interest. “A State indisputably has a compelling interest in preserving the
18 integrity of its election process.” *Eu v. San Francisco County Democratic Central Comm.*, 489
19 U.S. 214, 231 (1989). As further described by the Court:

20 Confidence in the integrity of our electoral processes is essential to the
21 functioning of our participatory democracy. Voter fraud drives honest citizens out of the
22 democratic process and breeds distrust of our government. Voters who fear their
23 legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. ‘[T]he
right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s
vote just as effectively as by wholly prohibiting the free exercise of the franchise.’

1 *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555
2 (1964)). Both election security and public confidence present separate compelling state
3 interests. While the interest in public confidence “is closely related to the State’s interest in
4 preventing voter fraud, public confidence in the integrity of the electoral process has independent
5 significance, because it encourages citizen participation in the democratic process.” *Crawford v.*
6 *Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) (upholding photo identification
7 requirement). *See also Burson*, 504 U.S. at 199 (holding “a State has a compelling interest in
8 ensuring that an individual’s right to vote is not undermined by fraud in the election
9 process”). *See also* Dec. of Wise, ¶¶ 25-26.

10 To survive strict scrutiny, the government must “demonstrate that its law is necessary to
11 serve the asserted interest.” *Burson*, 504 U.S. at 200. However, the State need not provide
12 empirical studies conclusively demonstrating how much fraud would occur *without* the signature
13 verification requirement. As explained by the United State Supreme Court in *Burson*,
14 *supra*, “[B]ecause a government has such a compelling interest in securing the right to vote
15 freely and effectively, this Court never has held a State ‘to the burden of demonstrating
16 empirically the objective effects on political stability that [are] produced’ by the voting
17 regulation in question.” *Burson, supra*, 504 U.S. at 208-09 (quoting *Munro v. Socialist Workers*
18 *Party*, 479 U.S. 189, 195 (1986)). Requiring empirical proof of the amount of voter fraud
19 deterred by the signature verification requirement:

20 would necessitate that a State’s political system sustain some level of damage before the
21 legislature could take corrective action. Legislatures, we think, should be permitted to
22 respond to potential deficiencies in the electoral process with foresight rather than
23 reactively, provided that the response is reasonable and does not significantly impinge on
constitutionally protected rights.

Id.

1 *Burson* provides an instructive example of how a voting regulation can survive strict
2 scrutiny. At issue in that case was a Tennessee statute prohibiting solicitation of votes and
3 display of campaign materials within 100 feet of a polling place on election day. 504 U.S. at
4 193-94. The Court applied strict scrutiny. *Id.* at 198. It also upheld the statute as
5 constitutional. *Id.* at 206. The Court upheld the statute despite the fact that it was “difficult to
6 isolate the exact effect of these laws on voter intimidation and election fraud. Voter intimidation
7 and election fraud are successful precisely because they are difficult to detect.” *Id.* at 208. As in
8 *Burson*, the State need not conclusively establish how much voter fraud has been deterred by the
9 long-standing signature verification requirement to pass strict scrutiny. A statute is narrowly
10 tailored as long as the means chosen are not substantially broader than necessary to achieve the
11 state’s interest. *OneAmericaVotes*, 23 Wn. App. 2d at 987. The signature verification
12 requirement serves to prevent fraudulently intercepted ballots. Fraudulently intercepted ballots
13 would not be as effectively deterred without the signature verification requirement.

14 Finally, to the extent that strict scrutiny applies and this Court cannot conclude that it has
15 been met as a matter of law, summary judgment for Plaintiffs is nonetheless inappropriate. If
16 this Court concludes that strict scrutiny requires an empirical examination of the effect of the
17 signature verification requirement on voter fraud, as Plaintiffs allege, genuine issues of material
18 fact preclude summary judgment. The parties have submitted competing declarations from
19 competent experts as to the workability of the signature verification process and its efficacy in
20 preventing voter fraud. *Larson v. Nelson*, 118 Wn. App. 797, 810, 77 P.3d 671 (2003). For
21 example, Brett Bishop, a well-qualified Forensic Document Examiner who has conducted the
22 signature verification training for Washington since 2005, opines that laypeople can be trained to
23 conduct analysis and comparison of signatures and are able to make an accurate determination

1 whether most signatures on ballot declarations contain the same significant writing
2 characteristics. Declaration of Brett Bishop, ¶¶ 24-26. He also opines that the standards set
3 forth in WAC 434-379-020 are based on well-accepted principles of forensic document
4 examination and are workable and reasonable for trained lay persons to apply. *Id.*, ¶ 27. In his
5 opinion, the signature verification process conducted by trained laypeople as administered in
6 Washington is a workable and reasonable way to determine whether a voter's signature on a
7 ballot declaration is the same as any signatures in the voter's registration file. *Id.*

8 In contrast, Plaintiff's expert, Linton Mohammed, opines that "signature matching to
9 verify a voter's identity is fundamentally incompatible with election administration." Dec. of
10 Hyatt, at 9. However, Mr. Mohammed has no experience in election administration and has
11 never observed the signature verification process in Washington. Dec. of Summers, Ex. 10, at
12 49-51. For this reason, the Canvassing Board moves to exclude the portion of Mr. Mohammed's
13 opinion where he concludes that signature verification is "incompatible" with election
14 administration as beyond his expertise. ER 702; *Queen City Farms v. Central Nat. Ins. Of*
15 *Omaha*, 126 Wn.2d 50, 102, 882 P.2d 703 (1994) (expert must stay within his area of expertise).

16 In general, when experts offer competing, apparently competent evidence on a material
17 issue of fact, summary judgment is inappropriate. *Larson*, 118 Wn. App. at 810. If strict
18 scrutiny applies and empirical, expert evidence is necessary to judge whether the signature
19 verification is narrowly tailored to a compelling state interest, summary judgment cannot be
20 granted.

21 **D. Washington's Long-standing Signature Verification Requirement Comports**
22 **with the Privileges and Immunities Clause of Article 1, § 12.**

23 The signature verification requirement on its face applies equally to all voters, and
therefore does not violate the privileges and immunities clause by granting favoritism to a

1 particular class of voters. Article I, section 12 of the Washington Constitution provides that
2 “[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than
3 municipal, privileges or immunities which upon the same terms shall not equally belong to all
4 citizens, or corporations.” The provision was enacted due to distrust towards laws that served
5 special interests, which were rampant during the territorial period. *Martinez-Cuevas v. DeRuyter*
6 *Brothers Dairy, Inc.*, 196 Wn.2d 506, 51, 475 P.3d 164 (2020). The text and aims of the
7 privileges and immunities clause is different from the federal equal protection clause. *Id.* The
8 plaintiff bears the burden of proving a privileges and immunities violation. *Quinn v. State*, 526
9 P.3d 1, 20 (Wash. 2023).

10 The right to vote is a privilege of state citizenship that implicates the privileges and
11 immunities clause. *Madison*, 161 Wn.2d at 95. However, on its face, the signature verification
12 requirement does not deprive anyone of the right to vote. Indeed, the plaintiffs in this case retain
13 their right to vote, and most have successfully voted in multiple elections. Declaration of Jerelyn
14 Hampton, ¶¶ 27-29. The signature verification requirement is one aspect of the process of voting
15 that applies to all voters. There is no fundamental right under the state constitution to a
16 particular process of voting.

17 The signature verification requirement does not implicate the right to vote, but the
18 manner of voting. There is no fundamental constitutional right to vote by mail, or in any a
19 particular manner other than by ballot. Plaintiffs’ challenge to the signature verification
20 requirement does not implicate the privileges and immunities clause because a fundamental right
21 is not implicated.

22 Nor does the signature verification requirement confer any privilege to any class of
23 citizens. As the Washington Supreme Court recently explained in rejecting a challenge to the

1 Washington Voting Rights Act (“WVRA”), “[f]or a violation of article I, section 12 to occur,
2 the law ... must confer a privilege to a class of citizens.” *Portugal v. Franklin Cnty.*, 530 P.3d
3 994, 1011 (Wash. 2023) (quoting *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150
4 Wn.2d 791, 812, 83 P.3d 419 (2004)). The signature verification requirement applies the same
5 standard for ballot processing to all voters.

6 *Madison* is instructive. In that case, the court held that the plaintiffs failed to establish a
7 privileges and immunities clause violation because Washington’s felon disenfranchisement
8 scheme did not involve “a grant of favoritism.” 161 Wn.2d at 96. The disenfranchisement
9 scheme disqualified voters who had committed felonies on equal terms and granted the privilege
10 of restoration of voting rights upon equal terms to all citizens. *Id.* at 97. Because the felon
11 disenfranchisement scheme on its face applied equally to all citizens, it did not constitute a grant
12 of favoritism that violated the privileges and immunities clause. *Id.*

13 Likewise, the signature verification process on its face applies equally to all voters. It
14 does not constitute a grant of favoritism that violates the privileges and immunities clause of
15 article 1, section 12.

16 Moreover, even if it was a grant of favoritism affecting a fundamental right of state
17 citizenship, the signature verification requirement rests on “reasonable grounds.” If a challenged
18 law grants a privilege for purposes of the state constitution, the court analyzes whether there are
19 reasonable grounds for granting that privilege. *Martinez-Cuevas*, 196 Wn.2d at 519. Under the
20 reasonable ground test, the court scrutinizes the legislative distinction to determine whether it in
21 fact serves the legislature’s stated goal. *Schroeder v. Weighall*, 179 Wn.2d 566, 574, 316 P.3d
22 482 (2014). The court looks to the legislative history to determine whether a reasonable ground
23 exists. *Martinez-Cuevas*, 196 Wn.2d at 523-24. The reasonable grounds test is difficult to apply

1 in this case because the challenged law makes no distinctions between classes of voters. Thus,
2 this Court will have difficulty inquiring whether reasonable ground exist “for making a
3 distinction between those persons within and those persons without a specified class” since the
4 requirement applies to all voters. *See Ballot Title for Initiative 333 v. Gorton*, 88 Wn.2d 192,
5 558 P.2d 248 (1977).

6 Nonetheless, the State has not only reasonable grounds but a compelling state interest in
7 preserving the integrity of its electoral process. Some form of signature verification has been a
8 part of the electoral process in Washington since 1905. The signature verification requirement at
9 issue here was enacted in essentially its present form in 1963. Former RCW 29.36.060; Laws of
10 1963, Ex. Sess., Ch. 23, § 5. See *Dec. of Summers*, Ex. 3, at 14. The signature verification
11 requirement is the only safeguard in the system that protects against a fraudulently intercepted
12 ballot being tabulated. It is widely used in other states. It is not onerous. Only a small
13 percentage of voters have their signature challenged, and the majority of them cure their ballots.
14 Every aspect of a voting system must balance ballot access with security. Even if the signature
15 verification requirement were subject to the reasonable grounds test, this Court can easily
16 conclude that the legislature has reasonable grounds for the requirement.

17 Plaintiffs’ claim that requiring a cure process impermissibly infringes on voting rights
18 misapprehends the important duties of citizens in a democracy. It is well-established that the
19 government may require the performance of “civic duties,” including jury service, without pay.
20 *Immediato v. Rye Neck Sch. Dist.*, 73 F.3d 454, 459 (2d Cir. 1996). Some civic duties, like being
21 drafted to serve in the armed forces or testify as a witness, can be onerous. Whether soldier or
22 witness, “[t]he personal sacrifice involved is a part of the necessary contribution of the individual
23 to the welfare of the public.” *Blair v. United States*, 250 U.S. 273, 281 (1919). Freedom has

1 never been free. The personal cost or inconvenience of curing a non-matching signature is a
2 duty of citizenship, not an impermissible burden for the voter.

3 There is no basis for applying strict scrutiny to the signature verification requirement
4 under article 1, § 12. Plaintiffs bring a facial challenge. On its face, the signature verification
5 does not classify voters on the basis of race or any other suspect class.

6 *Portugal v. Franklin County, supra*, 530 P.3d at 1011, is dispositive on this point. In that
7 case, the court held that the WVRA “on its face does not classify voters on the basis of race, nor
8 does it deprive anyone of the fundamental right to vote,” and thus did not implicate article 1, §
9 12. *Id.* The court explained, “[o]n its face, the WVRA does not require race-based favoritism in
10 local electoral systems, nor does it trigger strict scrutiny by granting special privileges, abridging
11 voting rights, or otherwise classifying voters on the basis of race.” *Id.* at 999.

12 **E. Washington’s Long-standing Signature Verification Requirement Comports**
13 **with Substantive Due Process Under Article 1, § 3.**

14 Article I, section 3 of the Washington State Constitution provides, “No person shall be
15 deprived of life, liberty, or property, without due process of law.” It protects against “the
16 arbitrary exercise of the powers of government” and has both procedural and substantive
17 components. *Yim v. City of Seattle*, 194 Wn.2d 682, 688, 451 P.3d 694 (2019). The procedural
18 component provides that “[w]hen a state seeks to deprive a person of a protected interest,” the
19 person must “receive notice of the deprivation and an opportunity to be heard to guard against
20 erroneous deprivation.” *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 216, 143 P.3d 571 (2006).
21 The substantive component of due process “protects against arbitrary and capricious government
22 action even when the decision to take action is pursuant to constitutionally adequate procedures.”
23 *Id.* at 218-19. The state constitution does not provide heightened protection above the federal
constitution in regard to substantive due process. *Yim*, 194 Wn.2d at 692.

1 While state interference with a fundamental right is subject to strict scrutiny, when state
2 action does not interfere with a fundamental right, the proper standard of review is rational basis,
3 which requires only that “the challenged law must be rationally related to a legitimate state
4 interest.” *Amunrud*, 158 Wash.2d at 220. Modern substantive due process analysis requires
5 courts to exercise care in identifying fundamental rights for purposes of substantive due process
6 analysis. *Aji P. by and through Piper v. State*, 16 Wn. App. 2d 177, 198, 480 P.3d 438 (2021).
7 The fundamental right must be narrowly identified before the analysis can proceed. *Raich v.*
8 *Gonzales*, 500 F.3d 850, 864 (9th Cir. 2007) (holding there is no fundamental right to use
9 marijuana). Fundamental rights and liberties that trigger strict scrutiny under substantive due
10 process analysis are those “deeply rooted in this Nation’s history and tradition” and “implicit in
11 the concept of ordered liberty.” *Washington v. Gluckberg*, 521 U.S. 702, 721 (1997).

12 As argued earlier, while the right to vote is fundamental, there is no fundamental right to
13 a particular method of voting, to vote by mail, or to vote without proving eligibility to vote.
14 *Burdick, supra*, 504 U.S. at 433 (explaining that while voting is “fundamental,” the “right to vote
15 in any manner” is not and states may prescribe the manner of elections without being subject to
16 strict scrutiny). The signature verification requirement does not interfere with a fundamental
17 right and is thus subject to rational basis review. *In re J.R.*, 156 Wn. App. 9, 19, 230 P.3d 1087
18 (2010).

19 Plaintiffs must therefore show that the signature verification requirement is “wholly
20 unrelated to the achievement of a legitimate state purpose.” *Id.* Plaintiffs cannot make this
21 showing and do not attempt to. The signature verification requirement is obviously reasonably
22 related to compelling state interests of election security, integrity and voter confidence.¹³

23

¹³ Moreover, if the strict scrutiny applied, that test has been met, as argued *infra*.

1 Plaintiffs attempt to argue that because disparities in rejection rates can be found between
2 age groups and racial groups and among counties, the signature verification requirement is
3 unacceptably “arbitrary.” However, this argument is outside the scope of their facial challenge,
4 and should be disregarded. It is an argument that the requirement is unconstitutional “as
5 applied.”

6 Moreover, Plaintiffs’ reliance on disparities fails for a second reason. Plaintiffs have
7 cited to no authority that holds that a disparate impact alone renders a statute unconstitutional *on*
8 *any basis*. Even in cases where disparate impact can support a statutory cause of action, such as
9 under the Washington Law Against Discrimination (WLAD), a disparate impact claim relying on
10 a statistical disparity fails if the plaintiff cannot establish causation. *Arroyo v. Pacific Maritime*
11 *Association*, 529 P.3d 1, 17 (Wn. App. 2023). In *Arroyo*, the Court of Appeals concluded that
12 “[s]ummary judgment is appropriate when the statistics do not demonstrate causation as required
13 to support a disparate impact analysis.” *Id.* at 18.

14 Plaintiffs do not attempt to prove that disparities are the result of bias or any policy or
15 practice. Plaintiffs’ expert, Dr. Palmer, can only testify as to disparities that he found, and the
16 causation for any disparities was beyond the scope of his report. Dec. of Summers, Ex. 9, at 43-
17 46.

18 **F. Invalidation of the Signature Verification Requirement Invalidates Universal**
19 **Vote by Mail in Washington Because It Has Long Been Integral to Mail Voting**
20 **and Is Not Severable.**

21 Plaintiffs request that this Court declare unconstitutional (and enjoin) the signature
22 verification requirement. They do not request that this Court declare unconstitutional and enjoin
23 the signature requirement, although up to 1% of ballots are also challenged for the lack of *any*
signature. Dec. of Case, ¶ 12; Dec. of Wise, Ex. 1 (showing the rate of challenge for missing

1 signatures has been between .23% and 1.04% in elections between 2018 and 2022). They do not
2 request that this Court declare unconstitutional and enjoin any other part of RCW 29A.40.110 or
3 the universal vote by mail system in Washington.

4 However, if this Court concludes that the signature verification requirement is
5 unconstitutional, this Court must also determine whether it can be severed from the remainder of
6 the statutory scheme. Generally, a statute is not unconstitutional as a whole when one of its
7 provisions is found to be unconstitutional if the statute can serve its purpose independently after
8 the unconstitutional clause is removed. *Mt. Hood Beverage v. Constellation Brands*, 149 Wn.2d
9 98, 118, 63 P.3d 779 (2003). Provisions of a statute are not severable, however, if the
10 constitutional and unconstitutional provisions are so connected that the legislature would not
11 have passed one without the other. *Id.* A provision is not severable if elimination of the invalid
12 part would render the remaining part useless to accomplish the legislative purpose. *League of*
13 *Women Voters of Washington v. State*, 184 Wn.2d 393, 412, 355 P.3d 1131 (2015) (holding that
14 unconstitutional provision of Charter School Act was integral to the act and not severable).

15 Signature verification has been an integral part of absentee voting since 1921, and has
16 been an integral part of universal mail voting since its adoption in 2011. Significantly, after
17 reviewing the audit of rejection rates, the legislature has taken no action to change the
18 requirement. This Court cannot conclude that the legislature would have enacted absentee
19 ballots or universal vote by mail without some method of verifying the voter's identity to protect
20 against fraudulently intercepted ballots. The signature verification requirement cannot be
21 severed from the rest of the universal mail voting system.

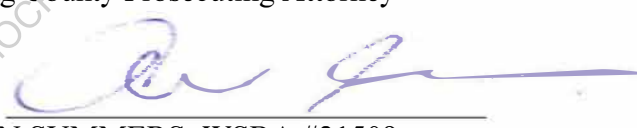
1 **VI. CONCLUSION**

2 This Court should grant the Canvassing Board’s motions to exclude the opinion of Dr.
3 Herron and to exclude Mr. Mohammed’s opinion that signature verification is “fundamentally
4 incompatible with election administration” pursuant to ER 702. Plaintiffs have failed to join
5 indispensable parties. Plaintiffs have also failed to prove beyond a reasonable doubt that the
6 signature verification requirement violates the Washington State Constitution on its face, and as
7 such Canvassing Board’s motion for summary judgment should be granted and Plaintiffs’
8 motion for summary judgment should be denied, and the lawsuit dismissed pursuant to CR 56.

9 *I certify that this memorandum contains 12,772 words pursuant to Court Order Granting*
10 *Briefing Schedule.*

11 DATED this 16th day of August, 2023.

12 LEESA MANION (she/her)
13 King County Prosecuting Attorney

14 By: 
15 ANN SUMMERS, WSBA #21509
16 LINDSEY GRIEVE, WSBA #42951 Senior
17 Deputy Prosecuting Attorneys

18 DAVID J. HACKETT, WSBA #21236
19 Special Deputy Prosecuting Attorney

20 Attorneys for King County Defendants 701
21 5th Avenue, Suite 600
22 Seattle, WA 98104
23 Phone: (206) 477-1120/Fax: (206) 296-
ann.summers@kingcounty.gov
lindsey.grieve@kingcounty.gov
david.hackett@kingcounty.gov

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 16, 2023, I electronically filed the foregoing document
3 with the Clerk of the Court using the King County Superior Court E-Filing System which will
4 send notification of such filing to the following parties:

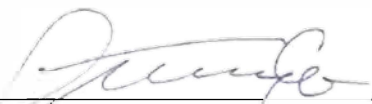
5 Kevin J. Hamilton, WSBA #15648
6 Matthew Gordon, WSBA #41128
7 Heath L. Hyatt, WSBA #54141 s
8 Hannah Parman, WSBA #58897
9 PERKINS COIE LLP
10 1201 Third Avenue, Suite 4900
11 Seattle, WA 98101-3099
12 KHamilton@perkinscoie.com
13 MGordon@perkinscoie.com
14 HHyatt@perkinscoie.com
15 HParman@perkinscoie.com
16 *Attorneys for Plaintiffs*

17 Karl D. Smith, WSBA #41988
18 Tera M. Heintz, WSBA #54921
19 William McGinty, WSBA #41868
20 Susan Park, WSBA #53957
21 OFFICE OF THE ATTORNEY GENERAL
22 1125 Washington Street SE
23 Olympia, WA 98504-0100
Karl.Smith@atg.wa.gov
Tera.Heintz@atg.wa.gov
William.McGinty@atg.wa.gov
susan.park@atg.wa.gov

Attorneys for State Defendant Steve Hobbs

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

20 DATED this 16th day of August, 2023.

21 
22 _____
23 RAFAEL MUNOZ-CINTRON
Paralegal I
King County Prosecuting Attorney's Office

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Mark Larrañaga
Noted for Hearing: September 12, 2023 at 8:30 am
With Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

NO. 22-2-19384-1 SEA

Plaintiffs,

DEFENDANT STEVE HOBBS'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AND CROSS
MOTION FOR SUMMARY
JUDGMENT

v.

STEVE HOBBS, et al.,

Defendants.

RETRIEVEDFROMDEMOCRACYINFO.COM

TABLE OF CONTENTS

1

2

3 I. INTRODUCTION/RELIEF REQUESTED..... 1

4 II. FACTS AND BACKGROUND..... 3

5 A. Washington is a National Leader in Ballot Accessibility 3

6 B. Signature Verification in Washington 4

7 1. The history and practices governing signature verification 4

8 2. Signature verification is necessary to prevent illegitimate ballots from
being counted and influencing an election..... 7

9 3. Effects of signature verification and planned process improvements..... 11

10 C. Procedural History 16

11 III. STATEMENT OF ISSUE..... 17

12 IV. EVIDENCE RELIED UPON..... 17

13 V. LEGAL STANDARD..... 17

14 VI. ARGUMENT 18

15 A. Signature Verification is Consistent With Article I, § 19 of the Washington
Constitution..... 18

16 1. Strict scrutiny does not apply, for good reason 18

17 a. Strict scrutiny is inconsistent with Washington Supreme Court
18 decisions..... 18

19 b. Federal and other state courts reject strict scrutiny of election
20 regulations because it would make election administration impossible
..... 20

21 c. The cases relied on by Plaintiffs undermine their position..... 21

22 2. The appropriate standard is rational basis review, and the signature
23 verification requirement easily satisfies that standard 22

24 a. Signature verification protects election security and integrity 23

25 b. Signature verification advances public confidence in elections 27

26 c. Signature verification protects voters and the efficient administration
of elections 29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

d. The relationship is substantial..... 30

3. In the alternative, article I, section 19 requires, at most, a balancing approach akin to the federal *Anderson-Burdick* framework 30

a. Signature verification involves a low burden 31

b. The State’s interests are exceedingly weighty 32

4. Even if strict scrutiny applied, the signature verification requirement is constitutional 34

B. Signature Verification Comports with Washington’s Privilege or Immunities Clause..... 35

1. Signature verification applies on the same terms to all citizens and thus does not confer any privilege or immunity to any class of citizens 36

2. Even if signature verification confers a privilege, the State has reasonable grounds for the requirement 38

C. Signature Verification Does Not Violate Article I, § 3 of the Washington Constitution..... 38

D. RCW 29A.40.110(3) Does Not Violate RCW 29A.04.206..... 39

E. Signature Verification is Not Severable 39

VII. CONCLUSION 40

1 **TABLE OF AUTHORITIES**

2 **Cases**

3 *All. for Retired Ams. v. Sec’y of State,*
240 A.3d 45 (Me. 2020) 21

4 *Am. Legion Post No. 149 v. Dep’t of Health,*
164 Wn.2d 570, 192 P.3d 306 (2008)..... 36

5 *Anderson v. Celebrezze,*
460 U.S. 780 (1983)..... 31

6 *Ariz. Dem. Party v. Hobbs,*
18 F.4th 1179 (9th Cir. 2021) 23, 30, 31, 32, 33, 38

7 *Ariz. Libertarian Party v. Reagan,*
798 F.3d 723 (9th Cir. 2015) 31

8 *Burdick v. Takushi,*
504 U.S. 428 (1992)..... 20, 21, 31, 33

9 *Burruss v. Bd. of Cnty. Comm’rs of Frederick Cnty.,*
427 Md. 231, 46 A.3d 1182 (2012) 21

10 *Burson v. Freeman,*
504 U.S. 191 (1992)..... 23, 33, 34

11 *Bush v. Gore,*
531 U.S. 98 (2000)..... 39

12 *Carrick v. Locke,*
125 Wn.2d 129, 882 P.2d 173 (1994)..... 20

13 *City of Seattle v. State,*
103 Wn.2d 663, 694 P.2d 641 (1985)..... 22

14 *Crawford v. Marion Cnty. Election Bd.,*
553 U.S. 181 (2008)..... 21, 23, 27, 29, 32

15 *Davis v. Cox,*
183 Wn.2d 269, 351 P.3d 862 (2015)..... 40

16 *Dem. Senatorial Campaign Comm. v. Pate,*
950 N.W.2d 1 (Iowa 2020) 21

17 *Democratic Executive Committee v. Lee,*
915 F.3d 1312 (11th Cir. 2019) 33

18 *Eugster v. State,*
171 Wn.2d 839, 259 P.3d 146 (2011)..... 18, 19, 20, 23

| | | |
|----|--|---------------|
| 1 | <i>Florida Democratic Party v. Detzner</i> , No. 4:16cv607-MW/CAS, 2016 WL 6090943 (N.D. Fla. 2016) | 22, 33 |
| 2 | | |
| 3 | <i>Foster v. Sunnyside Valley Irrigation Dist.</i> , 102 Wn.2d 395, 411, 687 P.2d 841 (1984)..... | 19 |
| 4 | <i>In re Coday</i> , 156 Wn.2d 485, 130 P.3d 809 (2006)..... | 20 |
| 5 | | |
| 6 | <i>Kohlhass v. State</i> , 518 P.3d 1095 (Alaska 2022) | 21 |
| 7 | <i>League of Women Voters of Kansas v. Schwab</i> , 525 P.3d 803 (Kan. Ct. App. March 17, 2023)..... | 22 |
| 8 | | |
| 9 | <i>Madison v. State</i> , 161 Wn.2d 85, 163 P.3d 757 (2007)..... | 22, 36 |
| 10 | <i>Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.</i> , 196 Wn.2d 506, 475 P.3d 164 (2020)..... | 37 |
| 11 | | |
| 12 | <i>Maytown Sand & Gravel, LLC v. Thurston County</i> , 191 Wn.2d 392, 423 P.3d 223 (2018)..... | 40 |
| 13 | <i>Munro v. Socialist Workers Party</i> , 479 U.S. 189 (1986)..... | 29, 31 |
| 14 | | |
| 15 | <i>Philippides v. Bernard</i> , 151 Wn.2d 376, 88 P.3d 939 (2004)..... | 39 |
| 16 | <i>Pilloud v. King Cnty. Republican Party</i> , 189 Wn.2d 599, 404 P.3d 506 (2017)..... | 23, 33, 34 |
| 17 | | |
| 18 | <i>Portugal v. Franklin County</i> , 530 P.3d 994 (Wash. 2023) | 3, 35, 36, 37 |
| 19 | <i>Quinn v. State</i> , 526 P.3d 1 (2023) | 35, 38 |
| 20 | | |
| 21 | <i>Ralph v. City of Wenatchee</i> , 34 Wn.2d 638, 209 P.2d 270 (1949)..... | 37 |
| 22 | <i>Rental Hous. Ass'n v. City of Seattle</i> , 22 Wn. App. 2d 426, 512 P.3d 545 (2022)..... | 38 |
| 23 | | |
| 24 | <i>Richardson v. Tex. Sec'y of State</i> , 978 F.3d 220 (5th Cir. 2020) | 21, 39 |
| 25 | <i>Rousso v. State</i> , 170 Wn.2d 70, 239 P.3d 1084 (2010)..... | 29 |
| 26 | | |

| | | |
|----|--|-------------------|
| 1 | <i>Saucedo v. Gardner</i> , | |
| | 335 F. Supp. 3d 202 (D.N.H. 2018)..... | 33 |
| 2 | | |
| 3 | <i>Schroeder v. Weighall</i> , | |
| | 179 Wn.2d 566, 316 P.3d 482 (2014)..... | 37 |
| 4 | <i>Shelby County v. Holder</i> , | |
| | 570 U.S. 529 (2013)..... | 26 |
| 5 | | |
| 6 | <i>State ex rel. Shepard v. Superior Court of King Cnty.</i> , | |
| | 60 Wash. 370, 111 P. 233 (1910) | 2, 18, 19, 20, 30 |
| 7 | <i>State v. Abrams</i> , | |
| | 163 Wn.2d 277, 178 P.3d 1021 (2008)..... | 40 |
| 8 | | |
| 9 | <i>State v. Brayman</i> , | |
| | 110 Wn.2d 183, 751 P.2d 294 (1988)..... | 17 |
| 10 | <i>State v. Fraser</i> , | |
| | 199 Wn.2d 465, 509 P.3d 282 (2022)..... | 17, 23, 32 |
| 11 | | |
| 12 | <i>State v. W. W. Robinson Co.</i> , | |
| | 84 Wash. 246, 146 P. 628 (1915) | 37 |
| 13 | <i>State v. Wilson</i> , | |
| | 137 Wash. 125, 241 P. 970 (1925) | 19 |
| 14 | | |
| 15 | <i>Timmons v. Twin Cities Area New Party</i> , | |
| | 520 U.S. 351 (1997)..... | 33 |
| 16 | <i>Tunstall ex rel. Tunstall v. Bergeson</i> , | |
| | 141 Wn.2d 201, 5 P.3d 691 (2000)..... | 39 |
| 17 | | |
| 18 | <i>Wash. Bankers Ass'n v. State</i> , | |
| | 198 Wn.2d 418, 495 P.3d 808 (2001)..... | 17 |
| 19 | <i>Wash. State Grange v. Wash. State Repub. Party</i> , | |
| | 552 U.S. 442 (2008)..... | 17 |
| 20 | | |
| 21 | <i>Yim v. City of Seattle</i> , | |
| | 194 Wn.2d 682, 451 P.3d 694 (2019)..... | 39 |
| 22 | <i>Young v. Key Pharms., Inc.</i> , | |
| | 112 Wn.2d 216, 770 P.2d 182 (1989)..... | 17, 18 |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |

Constitutional Provisions

1

2 Const. art. I, § 12..... 36

3 Const. art. II, § 1 (b)..... 5, 19

4 Const. art. II, § 1(a)..... 5, 19

5 Const. art. VI, § 6..... 6

6 Const. art. VI, § 7..... 19, 38

Statutes

7

8 Laws of 1913, Reg. Sess., ch. 138, § 10 5

9 Laws of 1915, ch. 189..... 4

10 Laws of 1915, ch. 189, § 2..... 20

11 Laws of 1921, ch. 142, § 3..... 4

12 Laws of 2005, ch. 2, § 3..... 39

13 Laws of 2011, ch. 10 § 41..... 39

14 Laws of 2011, ch. 10, § 41..... 40

15 Laws of 2011, ch. 10, § 41(3)..... 5

16 Laws of 2023, ch. 363, § 1..... 4

17 RCW 29A.07.170 4

18 RCW 29A.08.123 4

19 RCW 29A.08.140 4

20 RCW 29A.08.310 4

21 RCW 29A.40.091 5

22 RCW 29A.40.110 3, 5, 7, 17, 31

23 RCW 29A.40.110(3)..... 5, 16, 33, 36, 37

24 RCW 29A.40.160 3

25 RCW 29A.60.190 32, 33

26 RCW 29A.75.230 5

| | | |
|----|---|--------|
| 1 | RCW 34.05.570(2)(b)(i) | 16 |
| 2 | <u>Rules</u> | |
| 3 | CR 56(c)..... | 17 |
| 4 | <u>Regulations</u> | |
| 5 | WAC 434-250-080 | 24 |
| 6 | WAC 434-250-120 | 33 |
| 7 | WAC 434-250-120(1)(a) | 29 |
| 8 | WAC 434-250-120(1)(b)..... | 32 |
| 9 | WAC 434-250-120(1)(b)(i) | 37 |
| 10 | WAC 434-261-052(1)(a) | 32 |
| 11 | WAC 434-261-052(2)..... | 32 |
| 12 | WAC 434-261-053(5)(b)..... | 32 |
| 13 | WAC 434-261-053(a)..... | 32 |
| 14 | WAC 434-279-020 | 33 |
| 15 | WAC 434-379-020 | 5, 14 |
| 16 | <u>Other Authorities</u> | |
| 17 | 17 V.S.A. § 2537a(a)..... | 25 |
| 18 | 25 Penn. Stat. § 3150.12..... | 25 |
| 19 | 25 Penn. Stat. § 3150.12b(a)..... | 25 |
| 20 | Comm’n on Federal Election Reform, <i>Building Confidence in U.S. Elections</i> (Sept. 2005), | |
| 21 | https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF | 25, 27 |
| 22 | Cal. Elec. Code § 3019(a)(1) | 25 |
| 23 | Colo. Rev. Stat. § 1-7.5-107.3(1)(a) | 25 |
| 24 | Conn. Stat. § 9-135(a)..... | 25 |
| 25 | Haw. Stat. § 11-106 | 25 |
| 26 | | |

| | | |
|----|---|----|
| 1 | Isaac Chotiner, <i>How Washington Holds Its Elections By Mail</i> , <i>The New Yorker</i> | |
| 2 | (Sept. 8, 2020), | |
| 3 | https://www.newyorker.com/news/q-and-a/how-washington-state-holds-its- | |
| 4 | elections-by-mail | 28 |
| 5 | Kansas Supreme Court Rule 8.03(k)(2)..... | 22 |
| 6 | Melissa Santos, <i>A Q&A with Kim Wyman, departing WA secretary of State</i> , <i>Crosscut</i> | |
| 7 | (Nov. 19, 2021) | |
| 8 | https://crosscut.com/politics/2021/11/qa-kim-wyman-departing-wa-secretary-state | 28 |
| 9 | Nev. Rev. Stat. § 293.269927 | 25 |
| 10 | Or. Rev. Stat. § 254.470(11)..... | 25 |
| 11 | Utah Code § 20A-3a-401 | 25 |
| 12 | <i>Voting Safely in a Pandemic</i> , 116th Congress, Committee on House Administration | |
| 13 | House of Representatives, pp. 57-58 (Aug. 28, 2020), | |
| 14 | https://www.govinfo.gov/content/pkg/CHRG-116hrg42740/pdf/CHRG- | |
| 15 | 116hrg42740.pdf | 28 |

RETRIEVEDFROMDEMOCRACYDOCS.COM

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 **I. INTRODUCTION/RELIEF REQUESTED**

2 Washington is a national leader in ease and accessibility of voting. It was one of the first
3 states to adopt universal vote-by-mail, which reduces barriers to voting and dramatically
4 increases voter turnout, especially among young voters, voters of color, and low-income voters.
5 Universal vote-by-mail increased turnout in Washington by up to 320,000 voters in the last
6 presidential election alone. And signature verification is the linchpin of the vote-by-mail system.
7 Voters conveniently receive ballots at home, have time to research and complete their ballots,
8 are able to authenticate their identity simply by signing their ballots, and can return their ballots
9 in postage pre-paid envelopes. It allows the broadest possible access while ensuring that only
10 registered voters are able to cast their ballots and promoting public confidence that vote-by-mail
11 is safe and secure. The undisputed evidence establishes that signature verification is the best
12 means currently available to secure Washington's elections while maintaining national
13 leadership in ease and accessibility of voting.

14 In a misguided effort to further promote accessibility, Plaintiffs ask this Court to hold
15 that the signature verification statute is *facially* unconstitutional. They do so based on a fatally
16 flawed statistical analysis of the current *application* of signature verification. Plaintiffs'
17 statistical analysis fails to distinguish the signal from the noise, and their own expert admits the
18 resulting observations could be the result of random chance. Correctly controlling for other
19 variables, signature verification does not inherently disparately impact voters on account of race,
20 gender, foreign residence, or county of residence.

21 The Secretary acknowledges that there is important work to do to improve the
22 implementation of signature verification, particularly with respect to young and first-time voters,
23 and the Secretary is doing that work. The Secretary has already initiated rulemaking that would
24 require election officials accept a ballot unless the signatures have multiple, significant, and
25 obvious differences. This change alone will substantially reduce the number of signatures
26 challenged in the first instance. And the new regulations will also significantly expand and

1 simplify the cure process, allowing voters to cure a mismatched signature as easily as by
2 providing a multifactor authentication code sent to the voter by text or email. The undisputed
3 evidence establishes that these procedures substantially mitigate any erroneous rejection of
4 ballots, while continuing to protect the security of Washington’s elections.

5 While the Secretary’s improvements to the signature verification process will make
6 elections more accessible, Plaintiffs’ effort to eliminate signature verification will, if successful,
7 backfire spectacularly. It would leave Washington’s election system unprotected from systemic
8 abuse, including by hostile foreign actors who could print and vote thousands of ballots from
9 infrequent voters without any mechanism to prevent such ballots from being counted. At
10 minimum, election officials would have to make it more difficult to obtain replacement ballots,
11 a convenience used by voters over 650,000 times since 2019. Over 100,000 voters received
12 replacement ballots through the online VoteWA portal in 2020 General Election alone. And
13 striking down signature verification might very well sound the death knell for universal mail-in
14 voting. Since absentee ballots were first allowed in 1915, Washington has *always* required some
15 kind of identity verification. If identity verification were unconstitutional, leaving no mechanism
16 to reject fraudulent ballots, there is good reason to think that the People or the Legislature would
17 roll back vote-by-mail.

18 Fortunately, the Washington Constitution does not compel this choice. Consistent with
19 Washington Supreme Court cases since statehood, the State may adopt reasonable regulations
20 of the manner of casting a ballot, so long as they do not “destroy[.]” the right to vote or make the
21 right to vote “so inconvenient that it is impossible to exercise it.” *See State ex rel. Shepard v.*
22 *Superior Court of King Cnty.*, 60 Wash. 370, 372, 111 P. 233 (1910). Signature verification
23 easily satisfies the requirements of article I, section 19 of the Washington Constitution. Elections
24 remain “free and equal.” The signature verification requirement applies equally to all voters,
25 which is fatal to Plaintiffs’ facial privileges or immunities claim in light of the
26 Washington Supreme Court’s recent decision in *Portugal v. Franklin County*, 530 P.3d 994

1 (Wash. 2023). Plaintiffs’ due process and statutory causes of action are also inconsistent with
2 established law.

3 Under the correct standards of review, and based on unchallenged facts, the statutory
4 signature verification requirement is facially constitutional. Plaintiffs are free to pursue
5 as-applied claims related to the implementation of signature verification to particular voters or
6 in particular counties. But Plaintiffs chose to bring a facial challenge, and they cannot satisfy
7 their heavy burden of establishing that signature verification is unconstitutional in all its
8 applications. This Court should grant summary judgment in favor of Defendants and deny
9 Plaintiffs’ summary judgment motion.

10 If this Court invalidates the signature verification requirement, it must also invalidate the
11 2011 universal vote-by-mail legislation. The amendments to RCW 29A.40.110 are not severable.
12 The Legislature would not have mandated vote-by-mail statewide if doing so would have left a
13 gaping hole in the security of Washington’s elections. This is another reason that Plaintiffs’
14 argument must fail.

15 II. FACTS AND BACKGROUND

16 A. Washington is a National Leader in Ballot Accessibility

17 Washington ranks second in the nation for ease of voting. Holmes Decl. ¶8. This is not
18 an accident. The Secretary of State and other elected officials work diligently to consistently
19 improve Washington’s election laws and processes, making voting more accessible, more
20 secure, and more trusted each year. As part of these improvements, Washington was one of the
21 first states to adopt universal vote-by-mail. Under this system, the State mails every registered
22 voter a ballot well in advance of the election, allowing voters to complete their ballots at home
23 and return them by mail (postage paid) or conveniently located ballot drop boxes. Voters can
24 also choose to vote in person on Election Day if they prefer. RCW 29A.40.160.

25 Universal vote-by-mail increases turnout among all voters by between two and eight
26 percent each election. Stein Decl. Ex. 1 at 8, 32. That represents up to 328,000 additional voters

1 in the last presidential election alone due to universal vote-by-mail. Universal vote-by-mail
2 increases voter turnout most among marginalized communities, including younger voters, voters
3 of color, and low-income voters. *Id.* This makes sense given how accessible and convenient
4 mail-in voting is compared to in-person voting, providing greater notice of an election to voters
5 and reducing barriers to voting, such as lack of transportation or competing demands on a voter’s
6 time. Vote-by-mail also significantly increases voters’ ballot completion rates. *Id.* at 10.

7 Washington’s voter registration laws also make registering to vote easy. Washington
8 permits same-day registration, RCW 29A.08.140, and online voter registration,
9 RCW 29A.08.123. And starting on July 15, 2024, Washington will allow voters to register online
10 with just the last four digits of their social security number (SSN). Laws of 2023, ch. 363, § 1.
11 Washingtonians can also register any time they visit a state office or agency, and as part of the
12 student registration process at state and community colleges, RCW 29A.08.310. Washington
13 also operates a future voter program, where sixteen or seventeen-year-olds can “sign up” and be
14 automatically registered when they become eligible to vote in an election. RCW 29A.07.170.

15 **B. Signature Verification in Washington**

16 **1. The history and practices governing signature verification**

17 Signature verification is the “linchpin” of Washington’s vote-by-mail system, allowing
18 the State to grant the broadest possible access to the ballot while maintaining and assuring the
19 public about the integrity of the election. *See* Holmes Decl. ¶11; *see also* McGinty Decl.,
20 Ex. 1 at 10.

21 The Legislature has relied on signatures since it first authorized absentee voting in 1915.
22 *See* Laws of 1915, ch. 189. Absentee voters had to appear in-person at their home precinct and
23 sign a certificate. *Id.*, § 2. On Election Day, absentee voters presented the signed certificate
24 in-person at another precinct and signed an affidavit. *Id.*, § 6. The Legislature amended this
25 system in 1921 to explicitly require signature comparison to prove identity. Laws of 1921,
26 ch. 142, § 3. When Washington adopted universal vote-by-mail in 2011, the Legislature

1 extended signature comparison to all voters. Laws of 2011, ch. 10, § 41(3). In a related context,
2 Washington uses signature comparison to verify initiative or referendum petitions
3 (RCW 29A.75.230) and has done so since 1913 (Laws of 1913, Reg. Sess., ch. 138, § 10);
4 *see also* Const. art. II, § 1(a), (b) (requiring “valid signatures”).

5 Under current practices, election officials begin processing ballots as soon as they are
6 received. RCW 29A.40.110; Holmes Decl. ¶11. Each ballot packet in Washington consists of
7 three basic elements: the ballot, a security envelope, and an outer envelope. Because of
8 Washington’s protection of ballot secrecy, the ballot and security envelope contain no
9 voter-identifying information. *See id.* Voters place their completed ballot in a security envelope,
10 and the security envelope in an outer envelope. *Id.* Only the outer envelope includes the voter’s
11 name and other identifying information, including a machine-readable barcode. *Id.* The outer
12 envelope also includes a declaration the voter must sign, attesting that the voter is qualified to
13 vote and has not already voted. *Id.*; *see also* RCW 29A.40.091.

14 The signature verification process is largely the same from county to county. Election
15 officials must obtain training on signature verification. RCW 29A.40.110(3); *see also*
16 Holmes Decl. ¶11. Officials compare the declaration signature to the signature(s) available in
17 VoteWA (the statewide voter registration and voter history database) to verify that the ballot was
18 cast by a registered voter and that the voter has not already cast a ballot. RCW 29A.40.110(3);
19 Haugh Decl. ¶4; Comastro Decl. ¶6; Fell Decl. ¶¶7-9; McLaughlin Decl. ¶¶6-10;
20 Holmes Decl. ¶11.

21 Election officials apply statewide signature verification standards promulgated by the
22 Secretary of State. *See* WAC 434-379-020. Election officials can determine that signatures
23 match in as little as three seconds. McGinty Decl., Ex. 1 at 41; *see also* Fell Decl. ¶7. When the
24 signatures match, the ballot is marked “accepted,” and election officials remove the security
25 envelope containing the voted ballot from the outer envelope and add the ballot into the counting
26 stream. *See* Holmes Decl. ¶11; *see also* McLaughlin Decl. ¶8. Once this happens, it is impossible

1 to trace the ballot back to the voter or to remove the ballot from the vote count, because the ballot
2 itself does not contain any voter-identifying information and elections administrators do not
3 know, and cannot keep records of, how each voter voted. Comastro Decl. ¶16; Holmes
4 Decl. ¶11; *see also* Const. art. VI, § 6 (“The legislature shall provide for such method of voting
5 as will secure to every elector *absolute secrecy* in preparing and depositing his ballot.” (emphasis
6 added)).

7 Determining that a voter’s signatures do *not* match is a longer process. When an initial
8 signature reviewer has concerns, the reviewer can perform a closer examination. McGinty Decl.,
9 Ex. 1 at 41; *see also e.g.* Haugh Decl. ¶¶5-7. If the reviewer still cannot confirm a match, the
10 ballot will be “challenged.” Haugh Decl. ¶4; Comastro Decl. ¶6; McLaughlin Decl. ¶¶7-19;
11 Fell Decl. ¶¶9-10. This typically triggers two simultaneous processes. First, the county will mark
12 the ballot for further review by additional signature reviewers. Comastro Decl. ¶6;
13 Haugh Decl. ¶5; McLaughlin Decl. ¶¶7-8; Fell Decl. ¶9. Generally, highly experienced election
14 personnel conduct secondary review and can examine all of the signatures available in VoteWA
15 and also compare the signatures to other signatures of voters in the same household. *E.g.*,
16 Haugh Decl. ¶¶5-7. Only if both initial and subsequent reviewers agree that the signatures do
17 not match will the “challenge” status on the ballot remain. *Id.* Otherwise, the signature and ballot
18 will be accepted. *Id.* Second, VoteWA will automatically queue up a letter for counties to send
19 to the affected voter, notifying them of the signature challenge and instructing on cure processes.
20 *See, e.g.*, McLaughlin Decl. ¶9. The cure form sent by counties includes another voter
21 registration declaration for the voter to sign. Holmes Decl., Ex. 2. If the voter signs and returns
22 this form before the election is certified, county election officials compare the cure form
23 signature(s) with the challenged ballot declaration and, if the signatures match, count the ballot.
24 McLaughlin Decl. ¶9, Haugh Decl. ¶12; Comastro Decl. ¶6; Fell Decl. ¶¶9-11. If the signatures
25 do not match, election officials will not count the ballot. *Id.* In either case, election officials add
26

1 the cure form signatures to the registration file to use as comparisons in future elections. *E.g.*,
2 Holmes Decl. ¶30

3 Because cure forms are mailed before the secondary signature review, challenged ballots
4 can be counted even if voters do not return a cure form. McGinty Decl., Ex. 1 at 39. When a
5 ballot is accepted after secondary review, VoteWA lists the ballot status as changed from
6 “challenged” to “accepted.” *Id.*

7 In most elections, between .23 and .55 percent of submitted ballots are challenged due to
8 signature mismatch. Holmes Decl., Ex. 1. Additional ballots are rejected for being submitted too
9 late or not signed at all. For example, in the 2023 primary election, 1,113,565 ballots were
10 submitted, of which 4,058 (0.36 percent) were challenged due to signature mismatch;
11 15,187 (1.36 percent) were challenged as submitted too late; and 17,021 (1.53 percent) were
12 challenged because they were not signed at all. Holmes Decl., Ex. 1.

13 **2. Signature verification is necessary to prevent illegitimate ballots from being**
14 **counted and influencing an election**

15 Signature verification is the only protection against the possibility that someone else will
16 submit a ballot on behalf of a voter. *See* RCW 29A.40.110; *see also* Holmes Decl. ¶11;
17 McGinty Decl., Ex. 1 at 10. And contrary to Plaintiffs’ statements, trained lay persons *can*
18 reliably identify whether voters’ signatures match or do not match as part of a larger system, in
19 which signatures are reviewed by multiple elections personnel and a cure process is available,
20 allowing voters to authenticate their identity even if their signatures are initially challenged.
21 Songer Decl., Ex. 1 at 36-37.

22 While Washington’s vote-by-mail system reduces barriers to voting and makes voting
23 far more accessible, the system also depends on signature verification to prevent abuses and to
24 assure the public that the system is secure. Stein Decl., Ex. 1 at 7-19. For example, the State
25 mails ballots to voters well in advance of each election. While this gives voters more time to
26 research issues and candidates, make their choices, and return their ballots, it also makes it more

1 likely that a voter will have moved by the time of the election and that new residents or other
2 individuals will gain access to ballots that are not their own. *See* Stein Decl., Ex. 1 at 7-9;
3 McGinty Decl., Ex. 1 at 21.

4 Washington also makes it exceptionally easy for voters to obtain a replacement or
5 reissued ballot, including by downloading their ballot directly from VoteWA. Holmes Decl. ¶6.
6 This also creates significant systemic vulnerability in the absence of signature verification.
7 Voters have obtained over *one million* replacement or reissued ballots in the elections since the
8 August 2019 primary. Holmes Decl., Ex. 1. In the 2020 and 2022 general elections alone, voters
9 requested more than 216,000 and 95,000 replacement ballots, respectively, including over
10 100,000 replacement ballots requested by voters *online* in 2020 alone. Holmes Decl. ¶13; *Id.*,
11 Ex. 1. A voter's name and birthdate is all the information required to get a replacement ballot,
12 and that is publicly available information. McGinty Decl., Ex. 1 at 41, Holmes Decl. ¶6.
13 Signature verification is the only mechanism that prevents such easy access to reissued or
14 replacement ballots from exploitation and abuse. Stein Decl., Ex. 1 at 10-16; Holmes Decl. ¶13;
15 McGinty Decl., Ex. 1 at 48.

16 While voter fraud is rare, the extent of voter fraud cannot be measured exclusively by
17 fraud convictions as Plaintiffs suggest. Voter fraud is hard to detect and prosecute, and it is a
18 nonviolent crime to which many overburdened prosecutors are unwilling to devote resources.
19 Stein Decl., Ex. 1 at 12, 17-19. As such, most voter fraud is not prosecuted. *Id.*;
20 Comastro Decl. ¶¶9-13; *see also* Haugh Decl. ¶10. But this does not mean that voting fraud does
21 not occur. In Clark County, for example, election officials have made special efforts to identify
22 instances where an identifiable third party fraudulently signed on behalf of another voter, even
23 when the cases do not lead to a conviction. Comastro Decl. ¶¶9-13. From February 2022 to
24 February 2023 alone (a time period that did not include a presidential election), Clark County
25 officials caught 153 instances of likely voter fraud. Comastro Decl., Ex. 2. In many of those
26 cases, election officials were able to identify the person who signed the voter's ballot.

1 Clark County addresses this issue by sending a warning letter to the likely culprit who, and in
2 some cases, has admitted to signing another voter's ballot. Comastro Decl. ¶12.

3 Mark Songer, a Forensic Document Examiner, examined these signatures and agreed
4 with the Clark County officials' conclusions in more than 90% of the cases under standards
5 applied by forensic document examiners. Songer Decl., Ex. 1 at 8. These examples of illegitimate
6 voting include a case in which one voter stole the ballot of another voter living in the same
7 apartment complex. Songer Decl., Ex. 1 at 12. While the Clark County Prosecuting Attorney did
8 not prosecute this case, signature verification kept the stolen ballot from being counted. *See*
9 Comastro Decl. ¶9; Songer Decl., Ex. 1 at 12. In this same time period, Clark County officials
10 caught multiple similar cases. Songer Decl., Ex. 1 at 12, 23-24. In each of Washington's five
11 most populous counties, illegitimate ballots are caught in every election. Fell Decl. ¶9; Comastro
12 Decl., Ex. 2; McLaughlin Decl. ¶11; Haugh Decl. ¶7; McGinty Decl., Ex. 2 at 62.

13 Individualized cases of voter fraud are not the only risks created by universal
14 vote-by-mail. Without a mechanism to authenticate voter identity, motivated partisans, paid
15 election consultants, or hostile actors can exploit systemic vulnerabilities to influence the
16 outcome of an election or simply to sow chaos. Stein Decl., Ex. 1 at 13. A recent case in
17 North Carolina provides a disturbing example. There, a Republican Party operative orchestrated
18 a conspiracy to intercept absentee ballots issued to infrequent voters, going so far as to forge
19 signatures on intercepted absentee ballots. *Id.* at 10-11. Election officials only discovered the
20 conspiracy because one participant disclosed the fraud, resulting in election officials in
21 North Carolina overturning the election. *Id.*

22 Foreign governments, such as Russia and China, also routinely seek to influence and
23 destabilize elections in the United States, including in Washington State. Holmes Decl. ¶14-15.
24 Without signature verification, a hostile state actor could download and vote thousands of ballots
25 from infrequent voters, who are unlikely to catch the abuse at all, let alone before the votes are
26 added to the vote counting stream, making it impossible to segregate and remove those invalid

1 votes from the vote count. Without some mechanism of verifying voter identity, it is only a
2 matter of time before hostile state actors or other unscrupulous actors exploit an unprotected
3 election system, causing untold damage to the public’s faith in democracy and in universal
4 vote-by-mail in particular. Stein Decl., Ex. 1 at 13.

5 While there is no perfect method to catch and prevent this kind of abuse, signature
6 verification is the best method currently available in a universal vote-by-mail system.
7 Holmes Decl. ¶24; Stein Decl., Ex. 1 at 19-28; Comastro Decl. ¶17; McLaughlin Decl. ¶12;
8 Haugh Decl. ¶13; Fell Decl. ¶20. Signature verification is the most accessible and least
9 burdensome method for most voters because almost everybody has a signature and can easily
10 sign a document. Stein Decl., Ex. 1 at 19-20. Signature verification also has the benefit of
11 long-standing practice. It has been used for voting purposes in Washington since 1915 and voters
12 generally accept providing a signature as part of the voting process. *Id.* One recent survey in
13 Florida showed that 92 percent of voters believe that signature verification for mail-in ballots
14 was either “just right” or “not strict enough” as a means of deterring fraud. *Id.*

15 And other methods for authenticating voter identity would severely depress voter turnout
16 or cause even greater rates of ballot rejection:

- 17 • **Photo ID:** Washington could require all voters to submit a copy of a photo ID or
18 driver’s license number on the ballot envelope. But not everyone has such ID
19 (particularly marginalized groups), and it would likely deter voters interested in
20 protecting their privacy. And it would not eliminate mistakes or requirements for
21 cure because some voters would likely provide incomplete numbers, blurry
22 photos, or invalid IDs.
- 23 • **Biometric identifiers:** Washington could require all voters to submit biometric
24 identification, such as a fingerprint. But this authentication method poses serious
25 privacy implications and would likely deter many people from voting. Moreover,
26 few voters have access to proper fingerprinting protocols or ink, so this method

1 would not solve the problem of mismatches caused, for example, by smudged or
2 incomplete prints.

- 3 • **Personal tokens:** Washington could use unique identifiers, such as SSNs or a
4 secret PIN, to verify identity. But this would pose even greater barriers because
5 about six percent of the population do not know their own SSN, far in excess of
6 the number of people whose signatures are challenged for mismatch. Requiring
7 SSNs to vote would also likely deter others from voting out of fear their
8 information will be misused or intercepted.
- 9 • **Witness attestations:** Washington could require all voters to supply witness
10 statements verifying identify. But this is much more burdensome than simply
11 signing a ballot and would also be easy to abuse.

12 Stein Decl., Ex. 1 at 19-24.

13 Of all of these imperfect options, signature verification provides the best system available
14 for the greatest access to the franchise while protecting elections and maintaining public
15 confidence in Washington’s electoral processes. Stein Decl., Ex. 1 at 19-20; *see also*
16 Holmes Decl. ¶¶25-26; Haugh Decl. ¶13; Comastro Decl. ¶¶17-24; Fell Decl. ¶20.

17 3. Effects of signature verification and planned process improvements

18 Contrary to Plaintiffs’ assertion, the State disputes virtually all of the evidence cited in
19 their summary judgment motion regarding the alleged effects of signature verification. Plaintiffs’
20 methodology is fundamentally flawed because their expert, Maxwell Palmer, did not control for
21 correlated variables—including age, race, UOCAVA status, county of residence, and voter
22 experience—leading him to make “highly misleading conclusions.” Aravkin Decl., Ex. 1 ¶22.
23 Dr. Palmer admits he did not analyze causality or correlation and could not rule out whether the
24 differential impacts he purportedly observed were due entirely to chance. McGinty Decl.,
25 Ex. 3 at 91, 109, 110, 112. He also made no attempt to analyze whether purported effects applied
26 statewide or were present solely in King County. *Id.* at 77—78, 87-88,; 95;

1 *see also* Aravkin Decl., Ex. 1 ¶31. Further, he relied on numerous incorrect assumptions of fact.
2 For example, he over-counted the number of voters required to cure ballots because he made no
3 effort to distinguish between ballots cured by additional review and ballots cured by voters.
4 McGinty Decl., Ex. 3 at 97-98.

5 Contrary to Dr. Palmer’s conclusions, the State Auditor randomly examined rejected
6 signatures and *agreed*, in over 90 percent of cases, that county election officials rejected ballots
7 for signature mismatch *appropriately*. The State Auditor further determined that there is no
8 indication that county election officials rejected ballots based on bias. While the State Auditor
9 did purport to find disparate impacts, the audit report similarly failed to employ robust statistical
10 methods. The State Auditor considered 65 covariates in its regression model, a very large
11 number. Aravkin Decl., Ex. 1 ¶33, 36. “Models with too many covariates can easily become
12 unstable meaning that (1) results and interpretation can change significantly when particular
13 variables are included and (2) results and interpretation can change significantly when the data
14 set is modified, or when applied to new data.” *Id.* ¶36. The State Auditor’s lead statistician
15 herself expressed these same concerns. *Id.* (“And regression, if you get too many variables in a
16 model, you tend to overpredict and find results that are not necessarily accurate.”). As a result,
17 the State Auditor’s regression analysis cannot be trusted. *Id.*; *see also* McGinty Decl.,
18 Ex. 3 at 123. And, like Dr. Palmer, the State Auditor’s report performed its analysis only on the
19 state as a whole, not at the county level. Aravkin Decl., Ex. 1 ¶34. The State Auditor’s analysis
20 may show correlations present only in King County as statewide issues, when more sophisticated
21 methodologies demonstrate that these effects do not apply statewide. *Id.* While the report’s
22 quantitative methods pointed to areas requiring additional investigation, it did not purport to
23 identify causation. *Id.*

24 The robust regression analysis performed by the State’s expert, Dr. Aleksandr Aravkin,
25 specifically accounted for the methodological flaws of Palmer and the State Auditor and showed
26 very different effects. Dr. Aravkin shows, for example, that Washington’s signature verification

1 procedure does *not* have disproportionate effects on voters of color in all of its applications. In
2 fact, for six of the seven most populous counties in Washington, race has no consistent
3 association whatsoever on ballot rejections due to mismatched signatures. Aravkin Decl.,
4 Ex. 1 ¶¶17, 83. For King County alone, older Asian/Pacific Islander voters appear to have
5 disproportionate signature rejections. *Id.* ¶86. But, importantly, younger Asian/Pacific Islander
6 voters are actually *less likely* than white voters to have their ballots rejected for signature
7 mismatch. *Id.* As discussed below, older voters are generally much less likely to have their
8 ballots rejected for signature mismatch, but this protective effect is not as strong for
9 Asian/Pacific Islander voters in King County. *Id.* Additionally, in King County—and *only* in
10 King County—non-Hispanic Black voters had a greater likelihood of having their signatures
11 rejected in five out of seven elections starting in 2019. Aravkin Dec., Ex. 1 ¶83. But this effect
12 does not appear at all in the rest of the state. *Id.*

13 Also contrary to Plaintiffs’ allegations, a voter’s UOCAVA status is largely irrelevant to
14 the likelihood of having their ballot rejected for mismatched signatures. *Id.* ¶84. In the few
15 instances of statistical significance (the 2020 general election in Pierce and Snohomish
16 Counties), UOCAVA status was associated with a *decreased* likelihood of having a signature
17 rejected.

18 Nor does signature verification materially differ from county to county or election to
19 election, as suggested by Plaintiffs. *Id.* ¶87-90. Comparing each of the seven most populous
20 counties for every election since the 2019 general, the drivers of variance in signature challenges
21 are age and voting history. *Id.* In other words, voters of a similar age and voting history will have
22 similar likelihoods of rejection for signature mismatch, regardless of county or election. *See id.*
23 Because Dr. Palmer did not control for age, he did not recognize that most of the differential
24 county effects he observed were because certain counties have more older, experienced voters
25 and other counties (like King) having more younger, inexperienced voters.

1 While young voters and first-time voters are more likely to have their signatures rejected,
2 the cause is not clear. Aravkin Decl., Ex. 1 ¶¶80-81. It may be due, at least in part, to problems
3 with the signature capturing machines used by state agencies like the Department of Licensing,
4 where many young people register to vote, which do a poor job replicating the conditions of a
5 pen and paper signature. Fell Decl. ¶18. Notably, and as Plaintiffs admit, well over 90 percent
6 of young and first-time voters successfully cast their ballots. Declaration of Heath L. Hyatt in
7 Supp. of Plaintiffs’ Mot. for Summary Judgment, Dkt. No. 78, Ex. C at 9. For voters who do
8 have their ballots rejected for mismatched signatures, as they continue to vote in subsequent
9 elections they are more and more likely to have their ballots accepted. Aravkin Decl., Ex. 1 ¶93.

10 The Secretary of State has already initiated rulemaking aimed directly at reducing
11 erroneous rejections. Those rules are on track to take effect before the 2024 primary election.
12 The draft rules will reduce challenges in the first instance by significantly changing the standard.
13 Instead of requiring “a combination or cluster of shared characteristics” to accept a ballot,
14 WAC 434-379-020, the regulations presume that the signatures match and allow a challenge
15 only if there are “multiple, significant, and obvious differences” between the declaration
16 signature and all signatures in the registration files. Holmes Decl. ¶¶27-32. “This is a significant
17 change from current law and is likely to reduce the number of ballots that are challenged in the
18 first instance.” Stein Decl., Ex. 1 at 37-38.

19 The Secretary’s proposed rules would also make it far easier to cure a ballot. The most
20 significant change will be an option for voters to cure through a form of secondary
21 authentication. Holmes Decl., Ex. 5. This secondary authentication method would allow a voter
22 to verify their identity by (a) providing the last four digits of their SSN or drivers’ license
23 number, (b) providing a copy of any of the documents a voter can use to register to vote; or (c)
24 using a multi-factor authentication code sent to the voter by email or text. *Id.* This would provide
25 voters with additional cure options that are easy and commonly used, particularly by younger
26 voters. If a voter provides supplemental identification, election officials must accept the ballot

1 unless two trained personnel “conclude beyond a reasonable doubt that a person other than the
2 voter signed the ballot declaration.” *Id.* Once implemented, “these mechanisms are likely to
3 substantially mitigate any erroneous rejection of ballots.” Stein Decl., Ex. 1 at 38-39.

4 None of the evidence presented by Plaintiffs has any relevance to this improved signature
5 verification system. Plaintiffs’ handwriting expert, for example, conceded that he did not know
6 what Washington State’s *existing* cure process was or whether it could mitigate potential errors.
7 McGinty Decl., Ex. 5 at 184-185, 188-190, 192. He also conceded that he did not know whether
8 incorporating secondary authentication would reduce potential errors. *Id.* at 189. Dr. Palmer,
9 who Plaintiffs rely on for testimony concerning the alleged disproportionate impact on young
10 voters, voters of color, UOCAVA voters, and others, testified that he did not examine and did
11 not anticipate testifying about whether those disproportionate impacts would persist if the
12 signature verification process were changed. McGinty Decl., Ex. 3 at 83-85, 88-89, 95-100, 106-
13 107, 110-113. Dr. Herron likewise did not analyze Washington’s voting systems or cure
14 processes at all; he simply noted low numbers of voter fraud convictions. McGinty Decl., Ex. 4
15 at 154.

16 While Plaintiffs submit anecdotal evidence from voters, these are not representative
17 viewpoints or evidence of systemic effect. Indeed, a number of voters Plaintiffs identified as
18 potential witnesses *approve* of signature verification even after having their ballots challenged,
19 and have expressed fears that Washington’s election processes will be abused if Washington
20 does not require some form of identity verification. For example, Sarah Pugh, who submitted a
21 declaration in support of Plaintiffs’ summary judgment motion, believes the challenge to her
22 ballot signature was “appropriate” because she had recently changed her signature. Declaration
23 of Sarah Pugh (for Defendant Hobbs) (Pugh Decl.) ¶5. She has even pointed to her ballot
24 challenge “as a sign that the system works” to relatives who do not support vote-by-mail. *Id.*
25 Another voter, Kristina McDaniel, approved of her ballot challenge because she had signed it
26 just hours after surgery with her non-dominant hand. McDaniel Decl. ¶4. Another voter,

1 Beth Quigley, supports signature verification despite having her signature challenged and, along
2 with Ms. McDaniel and Ms. Pugh, has serious concerns about the integrity of Washington’s
3 election system if there were not some mechanism to verify voters’ identities. Quigley Decl.
4 ¶¶2-9; Pugh Decl. ¶8; McDaniel Decl. ¶9.

5 Moreover, the Secretary’s new proposed regulations would alleviate the concerns raised
6 in Plaintiffs’ voter declarations. Notably, *all* of the declarants were sent notifications that their
7 ballots had been challenged due to signature mismatch. Holmes Decl. ¶38. Most of the voters
8 acknowledged receiving notice in various ways, including by email, letter and/or phone call. *See*,
9 *e.g.*, Declaration of William Isenberger II, Dkt. No. 141 ¶6 (multiple calls and an email). Some
10 declarants chose not to cure because the election was not close. *E.g.*, Declaration of Sara Pugh,
11 Dkt. No. 87 ¶4. Under the new system, the cure process would be even easier, involving as little
12 as entering a multifactor authentication code in response to a text or on VoteWA. *See* Holmes
13 Decl., Ex. 4. Plaintiffs submit no evidence that these new regulations would be insufficient to
14 address their concerns.

15 In addition to new regulations, the Secretary of State has contracted with the University
16 of Washington Evans School of Government to study signature verification and recommend
17 improvements. Holmes Decl. ¶¶33-35. The Secretary expects those recommendations in the
18 summer of 2024, which could serve as the basis for additional regulatory changes or legislation
19 to further improve Washington’s election system. *Id.*

20 **C. Procedural History**

21 Plaintiffs bring only a facial challenge to RCW 29A.40.110(3). *See* Pls.’ Mot. Summ. J.,
22 Dkt. No. 77 at 30 n. 6. Importantly, Plaintiffs “challenge only RCW 29A.40.110(3) and do not
23 independently challenge any rules, regulations, policy, or officials acts.” Reply in Supp. of Pls.’
24 Mot. for Leave to Am. Compl. at 3. Plaintiffs made this clear following the Secretary’s motion
25 to change venue to Thurston County, RCW 34.05.570(2)(b)(i), and are stopped from attempting
26

1 to make an as-applied challenge in this litigation. Accordingly, this lawsuit facially challenges
2 only the statutory signature verification requirement and not any particular implementation.

3 III. STATEMENT OF ISSUE

4 Whether Plaintiffs can establish that RCW 29A.40.110's signature verification
5 requirement is facially unconstitutional.

6 IV. EVIDENCE RELIED UPON

7 Defendant Hobbs relies upon the accompanying declarations and exhibits of experts,
8 election officials, voters, and William McGinty in support of this cross-motion.

9 V. LEGAL STANDARD

10 "A legislative act is presumed constitutional, and the statute's challenger has the heavy
11 burden to overcome that presumption." *Wash. Bankers Ass'n v. State*, 198 Wn.2d 418, 427,
12 495 P.3d 808 (2001). When determining constitutionality, "'if a court can reasonably conceive
13 of a state of facts to exist which would justify the legislation, those facts will be presumed to
14 exist and the statute will be presumed to have been passed with reference to those facts.'" *State v. Fraser*, 199 Wn.2d 465, 476, 509 P.3d 282 (2022) (quoting *State v. Brayman*, 110 Wn.2d
15 183, 193, 751 P.2d 294 (1988)). "[W]here scientific opinions conflict on a particular point, the
16 Legislature is free to adopt the opinion it chooses, and the Court will not substitute its judgment
17 for that of the Legislature." *Id.* (quoting *Brayman*, 110 Wn.2d at 193).

18 A law is facially constitutional so long as it has some "plainly legitimate sweep."
19 *Wash. State Grange v. Wash. State Repub. Party*, 552 U.S. 442, 449 (2008). Plaintiffs must
20 establish that there is "no set of circumstances" in which the law can be constitutionally applied,
21 *Fraser*, 199 Wn.2d at 486.

22 Summary judgment is appropriate where "there is no genuine issue as to any material
23 fact" and "the moving party is entitled to a judgment as a matter of law." CR 56(c). Courts
24 consider all facts and reasonable inferences "in the light most favorable to the . . . nonmoving
25 party." *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989). Courts should
26

1 grant summary judgment when a party bearing the burden proof “fails to make a showing
2 sufficient to establish the existence of an element essential to that party’s case.” *Id.*

3 VI. ARGUMENT¹

4 A. Signature Verification is Consistent With Article I, § 19 of the Washington 5 Constitution

6 Under longstanding Washington Supreme Court precedent, regulations of the manner of
7 voting are subject to rational basis review. *See Shepard*, 60 Wash. at 372. Washington courts
8 have never struck down laws regulating *how* elections are conducted. To be sure, laws amounting
9 to “the complete denial of the right to vote to a group of affected citizens” are presumptively
10 unconstitutional and subject to strict scrutiny. *Eugster v. State*, 171 Wn.2d 839, 845, 259 P.3d
11 146 (2011). But the law challenged here does not completely deny the right to vote. Instead, it
12 involves a reasonable means of ensuring that only registered voters cast their ballots. This
13 protects the electoral process, ensures public confidence in election results, protects individual
14 voters, and ensures efficient elections administration. The signature verification requirement is
15 constitutional under any level of scrutiny.

16 1. Strict scrutiny does not apply, for good reason

17 Contrary to Plaintiffs’ suggestion, strict scrutiny does not apply to laws governing the
18 election process, and for good reason. Applying strict scrutiny would be inconsistent with over
19 a century of Washington precedent, federal law, and the law of other states. As courts around
20 the country have recognized, applying strict scrutiny to laws governing the election process
21 would make election administration nearly impossible. And Plaintiffs’ own cited cases
22 undermine their argument for applying strict scrutiny.

23 a. Strict scrutiny is inconsistent with Washington Supreme Court 24 decisions

25 Under article I, section 19, the Washington Supreme Court has consistently distinguished
26 between laws that wholly deny the right to vote and laws that merely regulate the election

¹ Secretary Hobbs joins King County’s motions to exclude the opinion of Dr. Herron and a portion of Dr. Mohammed’s opinion and agrees that Plaintiffs have failed to join indispensable parties.

1 process. “It is not within the power of the Legislature to destroy the franchise, but it may control
2 and regulate the ballot, so long as the right is not destroyed or made so inconvenient that it is
3 impossible to exercise it.” *See Shepard*, 60 Wash. at 372. The Court reiterated this principle in
4 *Eugster*, distinguishing between article I, section 19’s prohibition on the “complete denial of the
5 right to vote to a group of affected citizens” and situations in which no voter is completely “shut
6 out” and “every Washington voter has the opportunity to vote” 171 Wn.2d at 845. Laws
7 involving a “complete denial,” *id.*, are subject to strict scrutiny. *See, e.g. Foster v. Sunnyside*
8 *Valley Irrigation Dist.*, 102 Wn.2d 395, 411, 687 P.2d 841 (1984) (applying strict scrutiny and
9 invalidating statute that denied vote to directly affected individuals). Other laws are not. *See,*
10 *e.g., Eugster*, 171 Wn.2d at 844-46; *Shepard*, 60 Wash. at 372.

11 Laws regulating election processes are subject to more deferential review. *Shepard*,
12 60 Wash. at 373 (“The people have purposely, and we must presume for some reason, left details
13 [of conducting elections] to the Legislature.”). Article I, section 19 “does not mean that elections
14 and voters may not be regulated and properly controlled.” *State v. Wilson*, 137 Wash. 125, 133,
15 241 P. 970 (1925). And the Washington Constitution expressly gives the Legislature authority
16 to “enact a [voter] registration law, and . . . require a compliance with such law before any elector
17 shall be allowed to vote.” Const. art. VI, § 7. Signature verification ensures compliance with
18 voter registration laws and that only registered voters participate in elections. Washington’s
19 Constitution also contemplates validating voters’ signatures, requiring initiative and referenda
20 petitions receive “valid signatures” from registered voters. Const. art. II, § 1(a), (b). This express
21 constitutional delegation of authority to the Legislature and contemplation of validating voter
22 signatures supports a deferential standard of review.

23 Three cases illustrate Washington courts’ rejection of strict scrutiny in this context. In
24 *Eugster*, the Supreme Court rejected an article I, section 19 challenge to unequal apportionment
25 of districts for electing Court of Appeals judges as violating “one person, one vote” principles.
26 Despite implicating the right to vote, the Court did not apply strict scrutiny. 171 Wn.2d at 841-42.

1 Similarly, in *In re Coday*, the Washington Supreme Court summarily rejected multiple article I,
2 section 19 challenges to the recount process in an exceptionally close 2006 election for governor.
3 156 Wn.2d 485, 498-99, 130 P.3d 809 (2006). The Washington Supreme Court again rejected
4 each challenge without applying strict scrutiny. *Id.* And in *Shepard*, the Washington Supreme
5 Court rejected a challenge to a law establishing how candidates appear on the ballot by applying
6 a deferential standard of review. 60 Wash. at 371-72. Each of these cases conflicts with the
7 application of strict scrutiny to every case implicating the right to vote.

8 While there are no directly analogous cases involving article I, section 19 challenges to
9 verification of a voter's identity, the absence of such cases is itself instructive. Washington law
10 has required identity verification to cast an absentee ballot since 1915. *E.g.*, Laws of 1915,
11 ch. 189, § 2; *supra* at § II.B.1. For the past century, there has been no serious challenge to those
12 requirements. "Deeply embedded traditional ways of conducting government cannot supplant
13 the Constitution or legislation, but they give meaning to the words of a text or supply them."
14 *Eugster*, 171 Wn.2d at 847 (quoting *Carrick v. Locke*, 125 Wn.2d 129, 136, 882 P.2d 173
15 (1994)). Just as 40 years of experience counseled against the article I, section 19 challenge in
16 *Eugster*, over 100 years of experience counsels against Plaintiffs' attempt to apply strict scrutiny
17 to all elections regulations.

18 **b. Federal and other state courts reject strict scrutiny of election
19 regulations because it would make election administration impossible**

20 The experience of federal courts and other states further undermines Plaintiffs'
21 contention that strict scrutiny applies to all elections regulations. The United States Supreme
22 Court expressly rejected that argument. *Burdick v. Takushi*, 504 U.S. 428, 432 (1992)
23 ("Petitioner proceeds from the erroneous assumption that a law that imposes any burden upon
24 the right to vote must be subject to strict scrutiny. Our cases do not so hold."). The Court
25 recognized that "[e]lection laws will invariably impose some burden upon individual voters" and
26 that subjecting all voting regulations to strict scrutiny "would tie the hands of States seeking to
assure that elections are operated equitably and efficiently." *Id.* at 433. For example, the time by

1 which voters must return a ballot is a “restriction” on the right to vote. Must the State run the
2 strict scrutiny gauntlet to establish that 8:01pm is not a less restrictive alternative to 8:00pm? Is
3 the limit of two candidates per race on the general election ballot subject to strict scrutiny?
4 Subjecting every election regulation to strict scrutiny is a recipe for electoral disaster. While
5 recognizing that the right to vote is fundamental, federal courts apply a flexible standard that
6 considers the character and magnitude of the burden as well as the relevant state interests. *Id.* at
7 434. Severe burdens are subject to strict scrutiny while lesser burdens are subject to review on a
8 sliding scale of deference, depending on the magnitude of the burden. *Id.* at 434.

9 Notably, courts around the country have declined to apply strict scrutiny in cases like this
10 one, which challenge identity verification measures that provide alternatives and opportunities
11 to cure. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 203 (2008) (applying
12 *Anderson-Burdick* balancing photo identification challenge); *Richardson v. Tex. Sec’y of State*,
13 978 F.3d 220, 236-37 (5th Cir. 2020) (signature verification is not a severe burden requiring
14 strict scrutiny); *Burruss v. Bd. of Cnty. Comm’rs of Frederick Cnty.*, 427 Md. 231, 46 A.3d 1182
15 (2012) (applying rational basis to uphold signature verification requirement as imposing minimal
16 burdens). Every other state with relevant authority has also rejected the categorical application
17 of strict scrutiny to election regulations for similar reasons. *E.g.*, *Kohlhass v. State*, 518 P.3d
18 1095 (Alaska 2022) (rejecting application of strict scrutiny to ranked choice voting); *Dem.*
19 *Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 7 (Iowa 2020) (“[E]lection laws are
20 weighed under a balancing approach.”); *All. for Retired Ams. v. Sec’y of State*, 240 A.3d 45
21 (Me. 2020) (upholding election-day receipt deadline and signature verification).

22 **c. The cases relied on by Plaintiffs undermine their position**

23 In support of their novel categorical rule that all cases implicating the right to vote are
24 subject to strict scrutiny, Plaintiffs rely on four cases. None support Plaintiffs.

25 In *Madison v. State*, 161 Wn.2d 85, 98-106, 163 P.3d 757 (2007), the Supreme Court
26 held a prohibition on voting by felons was *not* subject to strict scrutiny. In dicta, it stated

1 “restrictions on [the right to vote] generally are subject to strict scrutiny,” citing a line of cases
2 involving the complete denial of the right to vote, where strict scrutiny *does* apply. *Id.* (citing
3 *City of Seattle v. State*, 103 Wn.2d 663, 666-67, 672, 694 P.2d 641 (1985)). *City of Seattle*
4 likewise involved a complete denial of the right to vote to a class of voters. There, the challenged
5 legislation allowed property owners to prevent non-owners from voting on annexation, not mere
6 regulation of the *process* of casting a ballot. 103 Wn.2d at 666-67.

7 Plaintiffs’ two remaining cases fare no better. *League of Women Voters of Kansas*,
8 525 P.3d 803, 822 (Kan. Ct. App. March 17, 2023), is not good law. While the Kansas Court of
9 Appeals adopted strict scrutiny, the Kansas Supreme Court promptly granted review, *League of*
10 *Women Voters of Kansas v. Schwab*, No. 125,084, Order (June 23, 2023). The Court of Appeals
11 decision thus “has no force or effect.” Kansas Supreme Court Rule 8.03(k)(2). And *Florida*
12 *Democratic Party v. Detzner* is an unpublished federal district court decision addressing
13 Florida’s failure to provide an opportunity to cure rejected signatures. No. 4:16cv607-MW/CAS,
14 2016 WL 6090943 at *6 (N.D. Fla. 2016). The remedy there was not invalidating signature
15 verification, but simply to require a cure process. *Id.* at *9.

16 * * *

17 This Court should follow the approach taken by the Washington Supreme Court, federal
18 courts, and every state court to address the issue and reject strict scrutiny.

19 **2. The appropriate standard is rational basis review, and the signature**
20 **verification requirement easily satisfies that standard**

21 Because RCW 29A.40.110’s signature verification requirement simply regulates the
22 elections process and does not completely deny any group of affected citizens the right to vote,
23 it is subject to a deferential standard of review. Under the Washington Constitution, the default
24 test for determining constitutionality is whether the law is rationally related to a legitimate
25 governmental interest. *See Fraser*, 199 Wn.2d at 482. Washington appellate courts have never
26 imposed a more demanding standard under article I, section 19 to laws that simply regulate the

1 manner in which voters cast their ballots and do not “shut out” a group of voters.
2 *Eugster*, 171 Wn.2d at 845.

3 The signature verification requirement advances at least four governmental interests: it
4 ensures the integrity of the election system as a whole; it upholds public confidence in elections;
5 it protects the voting rights of individual voters; and it serves the State’s recognized interest in
6 efficient administration of elections. Numerous courts around the country have recognized the
7 validity of these interests. *E.g.*, *Crawford*, 553 U.S. at 197 (plurality opinion) (“[P]ublic
8 confidence in the integrity of the electoral process . . . encourages citizen participation in the
9 democratic process.”); *Burson v. Freeman*, 504 U.S. 191, 198-99 (1992) (compelling interests
10 in “protecting the right of [a state’s] citizens to vote freely for the candidates of their choice” and
11 “protect[ing] the right to vote in an election conducted with integrity and reliability”); *Pilloud v.*
12 *King Cnty. Republican Party*, 189 Wn.2d 599, 604, 404 P.3d 500 (2017) (“compelling interest
13 in preserving the integrity of its election process”); *Ariz. Dem. Party v. Hobbs*, 18 F.4th 1179,
14 1190 (9th Cir. 2021) (“[R]educing administrative burdens on poll workers is an important
15 regulatory interest that may justify imposing a minimal burden on voters.”).

16 **a. Signature verification protects election security and integrity**

17 Signature verification protects the security of the election system. Without a verification
18 process, an ineligible person could cast a voter’s ballot. Similarly, a voter could cast both their
19 own and another voter’s ballot. And without verification, foreign actors could easily cause chaos
20 in Washington elections.

21 A vote-by-mail system makes voting easily accessible but introduces unique challenges.
22 *See* Stein Decl., Ex. 1 at 5. Obtaining another person’s ballot is comparatively easy in universal
23 vote-by-mail states, like Washington, that prioritize accessibility. Automatically mailing ballots
24 to all registered voters creates inherent risks that some ballots will be incorrectly delivered to
25 third parties, like when the voter moves shortly before an election or mail is misdelivered.

1 Comastro Decl. ¶¶18, 23. Ballots can also be stolen from mailboxes, or a voter’s household
2 member can misappropriate a voter’s ballot.

3 Washington also makes it as easy as possible to obtain a replacement ballot. Voters or
4 their family members may obtain replacement ballots “by telephone request, by mail,
5 electronically, or in person.” WAC 434-250-080. In practice, anyone can obtain a replacement
6 ballot on votewa.gov by providing a voter’s name and birthdate, which is public information.
7 Holmes Decl. ¶6. Since 2019, voters have obtained replacement or re-issued ballots over
8 1,000,000 times. *Id.*, Ex. 1. While easy access to replacement ballots reduces burdens on voters,
9 it also creates risks. A third party could misuse the online system and print a replacement ballot
10 for a voter. A hostile foreign government could engage in a coordinated campaign and print
11 replacement ballots for thousands of voters. Stein Decl., Ex. 1 at 10.

12 Currently, the risks associated with universal mail-in voting and easy access to
13 replacement ballots are fully addressed by signature verification. Even if a third party obtains a
14 voter’s ballot, the third party cannot *cast* the voter’s ballot because the signature will not match.
15 In this way, signature verification prevents ineligible persons from voting and prevents eligible
16 voters from casting more than one ballot.

17 Signature verification in vote-by-mail elections is supported by experts. Signature
18 verification “is preferable to other methods of voter identification that are either incompatible
19 with a vote-by-mail system or would otherwise suppress voter turnout.” Stein Decl., Ex. 1 at 3.
20 The Commission of Federal Election Reform singled out signature verification as a successful
21 method of protecting vote-by-mail elections. Comm’n on Federal Election Reform,
22 *Building Confidence in U.S. Elections* at 35 (Sept. 2005), [https://www.eac.gov/sites/default/file](https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF)
23 [s/eac_assets/1/6/Exhibit%20M.PDF](https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF).

24 Signature verification is supported by the judgment and experience of other vote-by-mail
25 states. All states that have fully implemented universal vote-by-mail use signature verification.
26 Cal. Elec. Code § 3019(a)(1); Colo. Rev. Stat. § 1-7.5-107.3(1)(a); Haw. Stat. § 11-106;

1 Nev. Rev. Stat. § 293.269927; Utah Code § 20A-3a-401; Or. Rev. Stat. § 254.470(11); *see also*
2 Stein Decl., Ex. 1 at 17.² Plaintiffs’ reliance on Pennsylvania and Connecticut is unpersuasive.
3 Neither is a universal vote-by-mail state. Connecticut imposes strict limits on voters who may
4 request absentee ballots. Conn. Stat. § 9-135(a). Pennsylvania voters must request an absentee
5 or mail-in ballot and, by default, must make a new request each year. 25 Penn. Stat. § 3150.12.
6 In Pennsylvania, election officials verify the signature on the mail-in ballot application against
7 the applicant’s voter registration card. 25 Penn. Stat. § 3150.12b(a). And neither Pennsylvania
8 nor Connecticut allow voters to easily obtain replacement ballots, a feature used by Washington
9 voters over 200,000 times *in the 2020 General Election alone*. Holmes Decl., Ex. 1. In short,
10 Pennsylvania and Connecticut make it more difficult to vote and therefore have less vulnerability
11 associated with not matching signatures. On the whole, it is more burdensome to vote in states
12 that do not automatically mail ballots to all voters. *See, e.g.*, Stein Decl., Ex. 1 at 35.

13 Concerns about third parties attempting to cast a voter’s ballot are not hypothetical.
14 Through the signature verification process, county election officials in Washington regularly
15 identify individuals attempting to cast another’s ballot. Comastro Decl. ¶¶8, 10, 18;
16 Fell Decl. ¶5; Haugh Decl. ¶¶7-8; McLaughlin Decl. ¶11. From February 2022 to February 2023
17 alone, Clark County officials identified over 150 instances of likely voter fraud. Comastro Decl.,
18 Ex. 2; *see also* Songer Decl., Ex. 1 at 8-33. Signature verification is “the best,” “only,” and
19 “essential” tool for preventing invalid ballots from being counted. Fell Decl. ¶17;
20 Comastro Decl. ¶17; Haugh Decl. ¶¶10, 13; McLaughlin Decl. ¶11; Stein Decl., Ex. 1 at 3-4.

21 Signature verification also *deters* attempted fraud. Eliminating signature verification
22 significantly decreases the likelihood of detecting fraud, removing a big disincentive of
23 committing such crimes. And signature verification also protects against systemic
24 vulnerabilities. The U.S. government designates state electoral systems critical infrastructure
25 because of the enormous damage that would be caused by attacks on our elections, particularly

26 ² Vermont uses universal vote-by-mail only for general elections. 17 V.S.A. § 2537a(a).

1 by foreign governments. Stein Decl., Ex. 1 at 13-14, 27-28. Washington thus works with the
2 Department of Homeland Security to protect its election systems from systemic vulnerabilities,
3 whether or not those vulnerabilities have been successfully exploited in the past. Holmes Decl.
4 ¶15. Washington, for example, has not stopped protecting its elections systems from hackers
5 simply because there has never been a documented instance of a foreign government successfully
6 hacking its election system and changing a vote. Stein Decl., Ex. 1 at 27. The Legislature and
7 the People should not be required to “throw away [their] umbrella in a rainstorm because [they]
8 are not getting wet.” *Shelby County v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J.,
9 dissenting).

10 Plaintiffs’ repeated focus on criminal charges and convictions misses the point. Plfs.’
11 Mot. Summ. J., Dkt. No. 77 at 2, 23-24, 36, 39. Signature verification exists to prevent invalid
12 votes from being counted, not to incarcerate. Plaintiffs’ focus on convictions underestimates the
13 instances of invalid voting, while ignoring its role in protecting against systemic abuse and
14 preserving voter confidence.

15 Plaintiffs also incorrectly argue that there are alternative safeguards. Pls.’ Mot. Summ.
16 J., Dkt. No. 77 at 24-26. While there are safeguards against *other* risks to elections, none are
17 substitutes for signature verification. Stein Decl., Ex. 1 at 34. No amount of voter list
18 maintenance, post-election fraud detection, or post-election audits will prevent invalid ballots
19 from being counted. *Id.* And while “vigilant voters,” *id.* at 25, are a valuable part of the system,
20 they would have to receive and notify election officials immediately to prevent the irreversible
21 introduction of the ballot into the counting stream, *see, e.g.*, McLaughlin Decl. ¶5; Stein Decl.,
22 Ex. 1 at 15. And hostile actors are most likely to target the ballots of infrequent voters to avoid
23 detection. Stein Decl., Ex. 1 at 25. Only signature verification reliably prevents the counting of
24 invalid ballots.

25 As a matter of logic, common sense, and undisputed evidence, signature verification
26 advances the State’s interest protecting the security of elections.

1 **b. Signature verification advances public confidence in elections**

2 Signature verification also protects public confidence in the election system. “Building
3 confidence in U.S. elections is central to our nation’s democracy.” *Comm’n on Federal Election*
4 *Reform* at iv. “The electoral system cannot inspire public confidence if no safeguards exist to
5 deter or detect fraud or to confirm the identity of voters.” *Crawford*, 553 U.S. at 194 (quoting
6 *Comm’n on Federal Election Reform* at 18); Stein Decl., Ex. 1 at 6 (“Mechanisms to protect
7 election integrity and prevent illegitimate votes thus play an essential role in promoting public
8 confidence and trust in the outcome of elections, even where there is not a significant pattern or
9 history of election-related fraud.”).

10 Signature verification is essential to ensuring public confidence in the vote-by-mail
11 system. Public confidence “is particularly important in the current political environment. In
12 recent years, the American political system has been challenged by political actors deliberately
13 calling into question the processes by which elections are conducted, often with no or little basis
14 in fact.” Stein Decl., Ex. 1 at 6. In 2020, following COVID-related changes to voting procedures
15 in a number of States and disinformation campaigns, public confidence in national vote-counting
16 decreased significantly. *Id.* at 29-30. When voters lose confidence in elections, they are less
17 likely to vote and can have “decreased faith in public institutions.” *Id.* at 6-7. The January 6,
18 2021, attempted insurrection illustrates the dangers of low voter confidence.

19 Signature verification is important to ensuring voter confidence. Signature verification
20 allows election officials to assure voters that invalid ballots will be rejected. Election officials
21 have relied on signature verification to counter election misinformation in public statements.
22 *E.g.*, Melissa Santos, *A Q&A with Kim Wyman, departing WA secretary of State*, Crosscut
23 (Nov. 19, 2021) [https://crosscut.com/politics/2021/11/qa-kim-wyman-departing-wa-secretary-](https://crosscut.com/politics/2021/11/qa-kim-wyman-departing-wa-secretary-state)
24 [state](https://crosscut.com/politics/2021/11/qa-kim-wyman-departing-wa-secretary-state) (the more counties highlight signature verification and other security measures, the more
25 they can “inspire[] confidence in those local elections”); *see also* Isaac Chotiner, *How*
26 *Washington Holds Its Elections By Mail*, *The New Yorker* (Sept. 8, 2020),

1 <https://www.newyorker.com/news/q-and-a/how-washington-state-holds-its-elections-by-mail>

2 (Washington has been able to “inspire confidence” through “control measures, like checking
3 every signature on every return envelope”).

4 Election officials have also relied on signature verification when testifying before
5 Congress. Responding to a question about whether vote-by-mail “opens the door to more fraud,”
6 the California Secretary of State invoked “[t]he all-important signature verification.” *Voting*
7 *Safely in a Pandemic*, 116th Congress, Committee on House Administration House of
8 Representatives, pp. 57-58 (Aug. 28, 2020), [https://www.govinfo.gov/content/pkg/CHRG-](https://www.govinfo.gov/content/pkg/CHRG-116hhrg42740/pdf/CHRG-116hhrg42740.pdf)
9 [116hhrg42740/pdf/CHRG-116hhrg42740.pdf](https://www.govinfo.gov/content/pkg/CHRG-116hhrg42740/pdf/CHRG-116hhrg42740.pdf). King County Director of Elections Julie Wise
10 similarly testified to Congress that signature verification “is how you ensure that the voter voted
11 their ballot and no one else did.” *Id.* at 64.

12 Plaintiffs ignore signature verification’s public-confidence benefits. Instead, they rely on
13 declarants’ concerns that their ballots were not accepted. Pls.’ Mot. Summ. J., Dkt. No. 77 at 35-
14 36, 38. But this does not mean the public opposes signature verification or wants to eliminate it
15 entirely. Voters identified as potential witnesses by Plaintiff approve of signature verification as
16 demonstrating that the electoral system is working as it should, despite having their signatures
17 challenged, and have expressed alarm at eliminating all identity-verification mechanisms. *See*
18 Pugh Decl. ¶8; McDaniel Decl. ¶9; Quigley Decl. ¶9.

19 In any event, most of the concerns raised by the Plaintiffs’ declarants will be addressed
20 by the Secretary’s pending regulatory changes, which relax signature verification standards to
21 prevent erroneous challenges and expand opportunities for voters to cure challenges through
22 easy, automated processes. Holmes Decl. ¶¶28-33. Plaintiffs have no evidence that these
23 changes will not resolve their concerns. Plaintiffs at most establish a countervailing policy
24 concern, which is appropriately balanced by the political branches. *Rouso v. State*, 170 Wn.2d
25 70, 92, 239 P.3d 1084 (2010) (“It is the role of the legislature, not the judiciary, to balance public
26 policy interests and enact law.”).

1 For over a century, the Legislature and the People have relied on the public-confidence
2 benefits of identity verification. Plaintiffs’ criticism that there are no recent Washington-specific
3 studies, Pls.’ Mot. Summ. J., Dkt. No. 77 at 35-36, is misplaced. The State “should be permitted
4 to respond to potential deficiencies in the electoral process with foresight rather than reactively”
5 and need not “sustain some level of damage” to acquire relevant data. *Munro v. Socialist Workers*
6 *Party*, 479 U.S. 189, 195 (1986).

7 **c. Signature verification protects voters and the efficient administration**
8 **of elections**

9 Signature verification protects voters’ ability to cast a ballot. Without signature
10 verification, if an invalid ballot is received first, election officials would have no basis to
11 challenge the ballot. A voter’s later-received valid ballot would be challenged as a second ballot,
12 making it difficult or impossible for the actual voter to vote. WAC 434-250-120(1)(a).

13 Signature verification is also easier for voters than any alternative. Stein Decl., Ex. 1
14 at 19-25. If Plaintiffs prevail in this case, the State will be forced to choose between leaving its
15 election system unsecured against attack or adopting *more* burdensome measures. At a
16 minimum, the State would have to limit voters’ ability to obtain replacement ballots. The State
17 may even decide to return to poll-site voting, losing the increased voter turnout universal-mail-in
18 voting has enabled, particularly among marginalized groups and youth voters. *E.g.* Comastro
19 Decl. ¶24; Stein Decl., Ex. 1 at 35. Either way, voters lose.

20 Alternative identification mechanisms are *more* burdensome than signature verification.
21 One of plaintiff’s experts identified fingerprinting or interviewing voters, or even DNA
22 comparisons as potential alternatives. McGinty Decl, Ex. 5 at 168. But these methods are
23 impractical and/or would severely depress voter turnout. Stein Decl., Ex. 1 at 19-25. Requiring
24 photographic identification or witness signatures like other states, *e.g., id.* at 21, 24 n.49, is
25 significantly more burdensome. *Crawford*, 553 U.S. at 197.

1 Washington also has an important interest in reducing administrative electoral burdens.
2 *E.g., Ariz. Dem. Party*, 18 F.4th at 1181. Returning to poll-site voting or adopting alternative to
3 signature verification would be expensive and burdensome for election officials. *See* Holmes
4 Decl. ¶37.

5 Plaintiffs assume that the alternative to signature verification is no identity verification
6 at all. That is unrealistic. Since absentee ballots were first authorized in 1915, Washington law
7 has always required some form of verification. *Supra* at § II.B.1. There is every reason to think
8 the People or the Legislature would require verification and ensure the security of their elections.

9 **d. The relationship is substantial**

10 Signature verification advances the State's interests in clear and rational ways, without
11 destroying the right to vote or making it impossible to exercise. Signature verification therefore
12 satisfies the applicable standard of review. *See Shepard*, 60 Wash. at 372.

13 Plaintiffs do not, and cannot, identify a single case invalidating a Washington law
14 governing the manner of casting a ballot. Undeterred, Plaintiffs present a legal theory as
15 sweeping as it is novel, under which Washington elections have been unconstitutional for over
16 a century. This Court should be skeptical.

17 It is also important that Plaintiffs have chosen to bring a facial challenge. Plaintiffs
18 attempt to build their facial challenge around anecdotal declarations and flawed statistics, but
19 have submitted *no* evidence regarding the Secretary's new proposed regulations, much less
20 negated every conceivable application of the signature verification requirement. Plaintiffs thus
21 cannot meet their burden of proving that signature verification is unconstitutional in all its
22 applications.

23 **3. In the alternative, article I, section 19 requires, at most, a balancing**
24 **approach akin to the federal *Anderson-Burdick* framework**

25 If this Court determines that rational basis review is not the appropriate standard, it
26 should instead adopt a framework that balances the magnitude of the burden with the strength of

1 governmental interest justifying the law. Federal courts use such a standard, known as the
2 *Anderson-Burdick* framework. The signature verification requirement in RCW 29A.40.110 is
3 constitutional under that standard.

4 The *Anderson-Burdick* framework involves a two-step inquiry. At the first step, courts
5 determine the magnitude of the burden. *Burdick*, 504 U.S. at 434; *Anderson v. Celebrezze*, 460
6 U.S. 780, 789 (1983). The burden of establishing a serious restriction on the right to vote is on
7 the party challenging the law. *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 730 (9th Cir.
8 2015). At the second step, courts “identify and evaluate the precise interests put forward by the
9 State as justifications for the burden imposed by its rule,” weighing “the legitimacy and strength
10 of each of those interests *Ariz. Dem. Party*, 18 F.4th at 1187 (quoting *Anderson*, 460 U.S. at
11 789). Courts then “consider the extent to which those interests make it necessary to burden the
12 plaintiffs rights.” *Id.* (quoting *Anderson*, 460 U.S. at 789). Importantly, States may “respond to
13 potential deficiencies in the electoral process with foresight rather than reactively, provided that
14 the response is reasonable and does not significantly impinge on constitutionally protected
15 rights.” *Munro*, 479 U.S. at 195.

16 **a. Signature verification involves a low burden**

17 The burden of a signature verification requirement is low. This is a facial challenge, so
18 the inquiry concerns the irreducible minimum burden of a signature verification requirement.
19 *See Fraser*, 199 Wn.2d at 482. Still, current experience illustrates the minimal burden, and the
20 proposed regulations will reduce that burden further.

21 In Washington, all a voter needs to do to establish their identity is sign a ballot
22 declaration. A voter’s signature does not even have to be their name; it could also be a
23 “distinctive mark or symbol.” WAC 434-250-120(1)(b). And under the new regulations
24 proposed by the Secretary, there is a presumption that the ballot declaration signature is the
25 voter’s signature, and election officials “must accept” the ballot unless “the signature on the
26 ballot envelope has multiple, significant, and obvious discrepancies from all signatures in the

1 voter's registration file." Holmes Decl., Ex. 4 (WAC 434-261-052(1)(a)). If a signature is not
2 accepted following initial review, it must be referred to a different person for a second review."
3 *Id.* (WAC 434-261-052(2)). Under another proposed regulation, accepted ballot declaration
4 signatures will become part of the voter's registration file, which reduce erroneous rejections by
5 showing changes over time. *Id.* ¶39.

6 Washington also has one of the most generous cure processes in the nation. If a voter's
7 ballot is not initially accepted, election officials send the voter a signature update form.
8 Haugh Decl. ¶12. Curing can be as simple as writing one's name, birthdate, and phone number,
9 signing the form, and returning it via pre-paid return envelope or even by email.
10 Holmes Decl. ¶30; Comastro Decl. ¶6; Haugh Decl. ¶12. Voters have up to 20 days after the
11 election to cure their ballot, one of the longest cure periods in the nation. RCW 29A.60.190;
12 Stein Decl., Ex. 1 at 34.

13 The Secretary's proposed regulations will make this process even easier. Counties will
14 be required to provide multiple forms of notice of the signature challenge. Holmes Decl., Ex. 4
15 (WAC 434-261-053(a)). And voters will be allowed to cure a ballot challenge through a fast,
16 automated process that does not rely on their signature. *Id.* (WAC 434-261-053(5)(b)).

17 Under the *Anderson-Burdick* test, providing a signature, or even curing a nonmatching
18 signature, is a very minimal burden. *E.g.*, *Crawford*, 553 U.S. at 202 (concluding, for purposes
19 of facial challenge, that photo ID requirement imposed "only a limited burden" (quoting *Burdick*,
20 504 U.S. at 439)); *Ariz. Dem. Party*, 18 F.4th at 1181 (election day deadline for signing affidavit
21 or curing imposes "minimal burden").

22 **b. The State's interests are exceedingly weighty**

23 Each of the State's interests are sufficiently strong to outweigh the minimal burden of
24 providing a signature. Protecting the integrity and security of elections is a compelling interest.
25 *Burson*, 504 U.S. at 198-99; *Pilloud*, 189 Wn.2d at 604. Voter confidence and protecting the
26 exercise of the right to vote are also important state interests. *Crawford*, 553 U.S. at 197. Even

1 efficient elections administration is sufficient to outweigh a minor burden. *Ariz. Dem. Party*, 18
2 F.4th at 1190. “[E]laborate, empirical verification of the weightiness of the State’s asserted
3 justifications” is not required. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364
4 (1997).

5 * * *

6 Balancing the minimal burden of providing a signature against the State’s weighty
7 interests, signature verification would readily survive review under the *Anderson-Burdick* test.
8 The cases relied on by Plaintiff are distinguishable. Unlike Washington law, *Detzner* involved a
9 statute that provided no opportunity to cure. *Detzner*, 2016 WL 6090943 at *7. *Democratic*
10 *Executive Committee v. Lee*, 915 F.3d 1312 (11th Cir. 2019), involved Florida’s signature
11 verification system that lacked “any standards or formal training requirements for those who
12 assess the signatures” and imposed a deadline to cure the day *before* the election, when counties
13 weren’t required to begin processing ballots until the day *after* the election. *Id.* at 1315. The
14 processes there don’t remotely resemble Washington’s, which imposes statewide standards and
15 training requirements, RCW 29A.40.110(3); WAC 434-250-120; WAC 434-279-020, and
16 provides between 9 and 20 days after the election to cure, RCW 29A.60.190. Finally,
17 *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 209 (D.N.H. 2018), addressed a signature review
18 process that involved no “additional layers of review” and “no procedure by which a voter can
19 contest a...decision that two signatures do not match.” That system bears no resemblance to
20 Washington’s, which has a robust cure process and layers of review.

21 Even if this Court applies the *Anderson-Burdick* balancing test, Defendants are entitled
22 to summary judgment.

1 **4. Even if strict scrutiny applied, the signature verification requirement is**
2 **constitutional**

3 For reasons discussed, strict scrutiny does not apply in this context and, if adopted, will
4 cripple the State’s ability to administer elections. *Supra* § VI.A.1. Even if strict scrutiny did
5 apply, however, signature verification would satisfy it.

6 The State’s interests are compelling. Ensuring the security and integrity of elections,
7 advancing public confidence in elections, and protecting registered voters are each compelling
8 governmental interests. *Burson*, 504 U.S. at 198-99; *Pilloud*, 189 Wn.2d at 604 (“A state has a
9 compelling interest in preserving the integrity of its election process . . .”). Preventing
10 ineligible persons from participating in elections and preventing eligible persons from voting
11 more than once are key goals of an election system. So too is maintaining public confidence in
12 the election system. Stein Decl., Ex. 1 at 4 (preserving public confidence is a “foundational
13 objective[.]” and “first principle[.]”).

14 At least for purposes of this facial challenge, signature verification is narrowly tailored
15 to those governmental interests. Alternative identify verification methods are *more* burdensome.
16 Photo identification, witness attestation, in-person voting, Dr. Mohammed’s proposed
17 fingerprinting or witness interviews, and other biometric identifiers are all substantially *more*
18 burdensome than signature verification and would depress voter turnout. Stein Decl., Ex. 1
19 at 21-24. Neither Plaintiffs nor their experts identify any less restrictive way to reject an
20 invalidly-cast ballot, McGinty Decl., Ex. 4 at 133-140; they just wish the fraud away, Pls.’ Mot.
21 Summ. J., Dkt. No. 77 at 25, 40; (assuming that declaration under penalty of perjury will prevent
22 fraudulent submissions); McGinty Decl., Ex. 4 at 137-138 (implicitly doing the same).

23 Plaintiffs’ suggestion to prosecute more voters would do little—if anything—to *prevent*
24 counting invalid ballots. Plaintiffs fail to indicate how election officials would identify this type
25 of voter fraud without signature verification.
26

1 Unfortunately, some people *do* attempt to submit invalid ballots. Songer Decl., Ex. 1
2 at 8-33; Comastro Decl. ¶8; Fell Decl. ¶15; Haugh Decl. ¶7. This is why election officials
3 around the State describe signature verification as “essential,” “necessary,” “the best available
4 tool,” and “the only tool available to election officials in Washington to prevent this sort of fraud
5 from occurring.” Comastro Decl. ¶¶17, 20; Fell Decl. ¶17; Haugh Decl. ¶10; Holmes Decl.
6 ¶¶11, 25-26.

7 * * *

8 Under any standard, Plaintiffs cannot show that there is “no set of circumstances” in
9 which signature verification can be constitutionally applied. Defendants are entitled to summary
10 judgment.

11 **B. Signature Verification Comports with Washington’s Privilege or Immunities**
12 **Clause**

13 To prevail on their facial article I, section 12 claim, Plaintiffs must establish that the
14 signature verification law *on its face* confers a privilege on a class of citizens, *Portugal*, 530 P.3d
15 at 1011, and, if so, that there is no “reasonable ground” for granting the privilege, *Quinn v. State*,
16 526 P.3d 1, 20 (2023). Plaintiffs cannot satisfy either requirement. On the face of the statute,
17 signature verification applies equally to all Washington voters. Under the Supreme Court’s
18 recent decision in *Portugal* and its decision in *Madison*, that is fatal to Plaintiffs’ claim. Even if
19 Plaintiffs’ arguments *could* implicate article I, section 12 in this facial challenge, those
20 arguments still fail for two reasons. First, Plaintiffs’ misleading statistics do not establish that
21 signature verification creates disparate results based on protected grounds. Second, the State has
22 more than reasonable grounds for enacting this integral feature of Washington’s universal
23 mail-in voting system.

1 **1. Signature verification applies on the same terms to all citizens and thus does**
2 **not confer any privilege or immunity to any class of citizens**

3 Plaintiffs’ facial challenge falters out of the gate because signature verification applies
4 on the same terms to all Washington voters. The privileges or immunities clause proscribes only
5 laws that grant privileges or immunities to a “citizen, class of citizens, or corporation other than
6 municipal, privileges or immunities which upon the same terms *shall not equally belong* to all
7 citizens, or corporations.” Const. art. I, § 12 (emphasis added). The clause prohibits only legal
8 classifications and regulatory exemptions that benefit certain citizens at the expense of others.
9 *Am. Legion Post No. 149 v. Dep’t of Health*, 164 Wn.2d 570, 607, 192 P.3d 306 (2008).

10 The Supreme Court’s decision in *Portugal* is dispositive here. In *Portugal*, the
11 Supreme Court rejected a party’s facial challenge to the Washington Voting Rights Act. While
12 recognizing that heightened scrutiny might apply “in an *as-applied* challenge,” for purposes of
13 the facial challenge, the law “simply does not implicate article I, section 12,” because the statute,
14 “on its face,” did “not confer any privilege to any class of citizens.” *Id.* at 1011. Similarly, in
15 *Madison*, the Supreme Court rejected a challenge to the statutory requirement that felons repay
16 all of their legal financial obligations before regaining the right to vote as granting a privilege to
17 those with financial resources. *Id.* at 97. Because the “same standard is applied evenly to all
18 felons seeking restoration of their voting rights,” the statutory scheme did not violate the
19 privileges or immunities clause, even if such conditions fall harder on felons without financial
20 resources. *Id.*

21 Like the statutes in *Portugal* and *Madison*, the signature verification statute, on its face,
22 creates no classifications of any kind. It applies the same standards on the same terms to all
23 Washington voters.³ RCW 29A.40.110(3). Election officials must “examine . . . [the] signature
24 on the declaration before processing the ballot” and “verify that the voter’s signature on the
25 ballot declaration is the same as the signature of that voter in the registration files of the county.”

26

³ There is one exception, though Plaintiffs sensibly do not challenge it. A voter who “is unable to sign their name” may verify their ballot by witness attestation. WAC 434-250-120(1)(b)(i).

1 RCW 29A.40.110(3). Because there is no classification on the face of the statute, the signature
2 verification law “simply does not implicate article I, section 12.” *Portugal*, 530 P.3d at 1011.

3 The cases Plaintiffs cite are clearly distinguishable. In each, the challenged law facially
4 granted privileges to a particular class of citizens. *Martinez-Cuevas v. DeRuyter Bros. Dairy,*
5 *Inc.*, 196 Wn.2d 506, 511, 475 P.3d 164 (2020) (statute exempted agricultural workers from
6 overtime pay requirements); *Schroeder v. Weighall*, 179 Wn.2d 566, 316 P.3d 482 (2014)
7 (statute conferred immunity only from suits brought by minors); *see also Ralph v. City of*
8 *Wenatchee*, 34 Wn.2d 638, 639, 209 P.2d 270 (1949) (ordinance required license fees only for
9 nonresident photographers); *State v. W. W. Robinson Co.*, 84 Wash. 246, 249, 146 P. 628 (1915)
10 (statute “expressly exempt[ed] cereal and flouring mills” from regulatory requirements).
11 Signature verification is nothing like the laws in these cases. There is no classification on the
12 face of RCW 29A.40.110(3).

13 Plaintiffs’ statistics related to ballot rejection rates do not change this analysis. Because
14 Plaintiffs bring only a facial challenge, those statistics are irrelevant. But even if this Court were
15 to consider such evidence in this facial challenge, Plaintiffs would still fail at the first step. As
16 discussed above, Plaintiffs are simply wrong that Washington’s signature verification law
17 impacts voters differently on the basis of race, county of residence, wealth, physical health, or
18 foreign resident status. *See supra* § II.B.3. There are many counties in which there is no
19 statistically significant difference in rejection rates based on these characteristics, and that is
20 inconsistent with Plaintiffs’ argument that there is “no set of circumstances in which the
21 statute...can be constitutionally applied.” *Portugal*, 530 P.3d at 1006. Further, Plaintiffs submit
22 no evidence that election administrators apply signature verification “on unequal terms” to any
23 class of citizens. *Madison* makes clear that generally applicable laws will not violate the
24 privileges or immunities clause simply because the law’s impacts fall harder on certain classes
25 of citizens. What is more, Plaintiffs have not shown that the Secretary’s new proposed signature
26

1 verification regulations will not redress any possible differential impact. Plaintiffs’ experts
2 concede they did not consider those draft regulations or their impact. *See supra* § II.B.3.

3 **2. Even if signature verification confers a privilege, the State has reasonable**
4 **grounds for the requirement**

5 Plaintiffs’ privileges or immunities claim also fails because the State has reasonable
6 grounds for requiring signature verification. *Quinn*, 526 P.3d at 20. In assessing ‘reasonable
7 grounds’ for a classification, the level of scrutiny will differ “depending on the issues involved.”
8 *Id.* at 21. Reasonable grounds, however, does not require “narrow-tailoring” and instead must
9 simply “further the legislature’s goals.” *Rental Hous. Ass’n v. City of Seattle*, 22 Wn. App. 2d
10 426, 465, 512 P.3d 545 (2022).

11 Because signature verification applies equally to all citizens, this Court should apply the
12 lowest level of scrutiny. The Washington Constitution gives the Legislature discretion in
13 ensuring compliance with voter registration laws, art. VI, § 7, and Supreme Court precedent
14 gives the Legislature discretion in regulating the manner of voting, *supra* § VI.A.2. That
15 discretion also counsels in favor of deferential review. *Quinn*, 526 P.3d at 21. The State’s
16 recognized interests in election security, voter confidence, protecting voters, and efficient
17 election administration all provide more than reasonable grounds for requiring signature
18 verification. *Supra* § VI.A.2.

19 **C. Signature Verification Does Not Violate Article I, § 3 of the Washington**
20 **Constitution**

21 Signature verification is also consistent with the due process clause of the Washington
22 Constitution, article I, § 3. “[A]rticle I, section 3 substantive due process claims are subject to
23 the same standards as federal substantive due process claims.” *Yim v. City of Seattle*, 194 Wn.2d
24 682, 692, 451 P.3d 694 (2019). Under the federal constitution, due process claims in the voting
25 context are generally analyzed under the *Anderson-Burdick* framework. *E.g., Ariz. Dem. Party*,
26 18 F.4th at 1181 (“[T]he *Anderson/Burdick* framework applies equally to [p]laintiffs’ procedural
due process claim.”); *Richardson*, 978 F.3d at 233-34 (“[T]he *Anderson/Burdick* framework

1 provides the appropriate test for the plaintiffs’ due process claims.”). Washington’s use of
2 signature verification readily survives review under the *Anderson/Burdick* framework.
3 *Supra* § VI.A.3. Plaintiffs’ reliance on *Bush v. Gore*, 531 U.S. 98 (2000), is particularly
4 misplaced. There, “[t]he problem inhere[d] in the absence of specific standards to ensure [vote
5 counting’s] equal application.” *Id.* at 106. Washington has detailed statewide signature
6 verification standards. *See generally* Holmes Decl, Ex. 4.

7 **D. RCW 29A.40.110(3) Does Not Violate RCW 29A.04.206**

8 In their Second Amended Complaint, Plaintiffs assert that RCW 29A.40.110(3)’s
9 signature verification requirement violates RCW 29A.04.206. Plntfs’ Sec. Am. Comp., Dkt. No.
10 60 at 39. Notably, Plaintiffs do not advance this argument in their summary judgment motion.
11 Plaintiffs’ argument makes little sense; one state statute cannot “violate” another. Regardless,
12 the statutes are easily harmonized. *See Philippides v. Bernard*, 151 Wn.2d 376, 385, 88 P.3d 939
13 (2004). In extending signature verification to all ballots, the Legislature understood that this
14 reasonable process is entirely consistent with the statutory right to vote. To the extent there is
15 any conflict, the more specific and recent statute extending signature verification, Laws of 2011,
16 ch. 10 § 41, would prevail over the older, more general statute, Laws of 2005, ch. 2, § 3. *Tunstall*
17 *ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691 (2000).

18 **E. Signature Verification is Not Severable**

19 If this Court concludes that signature verification is unconstitutional, the 2011 legislation
20 adopting universal vote-by-mail statewide is invalid. Signature verification is not severable.

21 In the 2011 universal vote-by-mail law, the Legislature carefully balanced the
22 accessibility and security of elections. The key election security measure extended signature
23 verification to nearly *all* ballots. Laws of 2011, ch. 10, § 41.

24 Signature verification is not severable for two reasons. “The constitutional and
25 unconstitutional provisions are so connected . . . that it could not be believed that the legislature
26 would have passed one without the other,” and “[t]he part eliminated is so intimately connected

1 with the balance of the act as to make it useless to accomplish the purposes of the legislature.’”
2 *Davis v. Cox*, 183 Wn.2d 269, 294-95, 351 P.3d 862 (2015) (quoting *State v. Abrams*, 163 Wn.2d
3 277, 285-86, 178 P.3d 1021 (2008)), *abrogated on other grounds by Maytown Sand & Gravel,*
4 *LLC v. Thurston County*, 191 Wn.2d 392, 440 n.15, 423 P.3d 223 (2018). The 2011 legislation
5 does not contain a severability clause, and there is no reason to believe the Legislature would
6 have left a gaping hole in Washington’s electoral system.

7 To be clear, the Secretary strongly supports universal vote-by-mail and is pursuing
8 measures to make it even more convenient. But if Plaintiffs successfully invalidate the only
9 mechanism for ensuring that a received ballot is valid, the 2011 legislation adopting universal
10 vote-by-mail must also be invalidated. This Court should avoid that result by granting summary
11 judgment in favor of Defendants.

12 VII. CONCLUSION

13 For the reasons stated above, the Court should grant summary judgment to Defendants
14 and dismiss Plaintiffs’ complaint with prejudice.

1 DATED this 16th day of August 2023.

2 ROBERT W. FERGUSON
3 Attorney General

4 /s/ Karl D. Smith

5 KARL D. SMITH, WSBA #41988
6 TERA M. HEINTZ, WSBA #54921
7 Deputy Solicitors General
8 WILLIAM MCGINTY, WSBA #41868
9 SUSAN PARK, WSBA #53857
10 Assistant Attorneys General

11 7141 Cleanwater Drive SW
12 PO Box 40111
13 Olympia, WA 98504-0111
14 (360) 709-6470

15 Karl.Smith@atg.wa.gov
16 Tera.Heintz@atg.wa.gov
17 William.McGinty@atg.wa.gov
18 Susan.Park@atg.wa.gov

19 *Counsel for Defendant Steve Hobbs*

20 I certify that this memorandum contains 13,223
21 words, in compliance with this Court's July 11,
22 2023 Order (Dkt. No. 76)

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcinttron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 16th day of August 2023, at Olympia, Washington.

/s/ Karl D. Smith
KARL D. SMITH, WSBA #41988
Deputy Solicitor General

The Honorable Mark Larrañaga
Noted for Hearing: September 12, 2023 at 8:30 am
With Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

NO. 22-2-19384-1 SEA

Plaintiffs,

DECLARATION OF
WILLIAM MCGINTY

v.

STEVE HOBBS, et al.,

Defendants.

I, William McGinty, declare as follows:

1. I am counsel for Secretary of State Steve Hobbs in the above captioned matter. I am over the age of 18 years and am competent to testify to the matters stated below and do so based on my personal knowledge.

2. I was present for the 30(b)(6) deposition of Stuart Holmes testifying on behalf of the Office of the Secretary of State on May 8, 2023. Attached as **Exhibit 1** is a true and correct copy of excerpts from the transcript of that deposition.

3. I was present for the 30(b)(6) deposition of Janice Case on May 11, 2023. Attached as **Exhibit 2** is a true and correct copy of excerpts from the transcript of that deposition.

4. I was present for the deposition of Dr. Maxwell Palmer on June 28, 2023, via Zoom teleconference software. Attached as **Exhibit 3** is a true and correct copy of excerpts from the transcript of that deposition.

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcinttron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 16th day of August 2023 at Olympia, Washington.

/s/ Karl D. Smith
KARL D. SMITH, WSBA #41988
Deputy Solicitor General

Exhibit 1

RETRIEVEDFROMDEMOCRACYDOCKET.COM



COURT REPORTING

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

TRIAL PRESENTATION

MOCK JURY SERVICES

LEGAL TRANSCRIPTION

COPYING AND SCANNING

LANGUAGE INTERPRETERS



NAEGELI
DEPOSITION & TRIAL



(800) 528-3335

NAEGELIUSA.COM

**SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR KING COUNTY**

VET VOICE FOUNDATION, THE WASHINGTON
BUS, EL CENTRO DE LA RAZA, KAELEENE
ESCALANTE MARTINEZ, BETHAN CANTRELL,
GABRIEL BERSON, and MARI MATSUMOTO,



Plaintiffs,

v.

No. 22-2-19384-1 SEA

STEVE HOBBS, in his official capacity
as Washington State Secretary of State,
JULIE WISE, in her official capacity as the
Auditor/Director of Elections in King
County and a King County Canvassing Board
Member, SUSAN SLONECKER, in her official
capacity as a King County Canvassing Board
Member, AND STEPHANIE CIRKOVICH, in her
official capacity as a King County Canvassing
Board Member,

Defendants.

REMOTE DEPOSITION OF

STUART HOLMES 30(B)(6)

**TAKEN ON
MONDAY, MAY 8, 2023
9:06 A.M.**

**STATE LIBRARY BUILDING
6880 CAPITOL BOULEVARD, ROOM 207
TUMWATER, WASHINGTON 98501**

Decl. McGinty

Ex. 1 Page 2

APPEARANCES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Appearing on behalf of the Plaintiffs:

MATTHEW P. GORDON, ESQUIRE

HEATH L. HYATT, ESQUIRE

Perkins Coie, LLP

1201 Third Avenue, Suite 4900

Seattle, Washington 98101

(206) 359-8000

(206) 359-9000 (Fax)

mgordon@perkinscoie.com

hhyatt@perkinscoie.com

Appearing on behalf of Defendant, Steven Hobbs:

WILLIAM MCGINTY, ESQUIRE

KARL SMITH, ESQUIRE

Washington Attorney General's Office

7141 Cleanwater Drive Southwest

Olympia, Washington 98501

(360) 586-7707

(360) 586-6659 (Fax)

william.mcginty@atg.wa.gov

karl.smith@atg.wa.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

Appearing on behalf of Defendant, King County:

DAVID J. HACKETT, ESQUIRE

King County General Counsel

401 Fifth Avenue, Suite 800

Seattle, Washington 98104

(206) 477-9483

david.hackett@kingcounty.gov

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Page

EXAMINATION BY MR. GORDON

7

EXAMINATION BY MR. MCGINTY

233

EXAMINATION BY MR. HACKETT

247

FURTHER EXAMINATION BY MR. GORDON

250

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

| Exhibit | | Page |
|---------|-----------------------------------|------|
| 1 | SUPPLEMENTAL NOTICE OF DEPOSITION | 11 |
| 2 | AUDIT | 40 |
| 3 | EMAIL | 103 |
| 4 | EMAIL | 107 |
| 5 | BALLOT STATUS REPORT | 131 |
| 6 | FIRST INTERROGATORIES | 153 |
| 7 | NATIVE | 167 |
| 8 | EMAIL | 183 |
| 9 | WAC | 224 |
| 10 | FORENSIC DOCUMENT EXAMINER | 227 |

RETRIEVED FROM DEMOCRACYDOCKET.COM

1 **REMOTE DEPOSITION OF**
2 **STUART HOLMES 30 (B) (6)**
3 **TAKEN ON**
4 **MONDAY, MAY 8, 2023**
5 **9:06 A.M.**

6
7 **THE VIDEOGRAPHER:** We are on the record. The time
8 is approximately 9:06 a.m. The date today is Monday, May
9 8th, 2023. This is the beginning of the deposition of Mr.
10 Stuart Holmes. The case caption for today is Vet Voice v.
11 Hobbs.

12 At this time, will counsel please introduce
13 yourselves, state your name and whom you are representing
14 today, as well as your firm, please.

15 **MR. GORDON:** Matt Gordon, Perkins Coie, on behalf
16 of the Plaintiffs.

17 **MR. HYATT:** Heath Hyatt, Perkins Coie, on behalf
18 of the Plaintiffs.

19 **MR. MCGINTY:** William McGinty, the Attorney
20 General's Office, on behalf of Secretary Hobbs.

21 **MR. SMITH:** Karl Smith, Washington State Attorney
22 General's Office, on behalf of Steven Hobbs.

23 **MR. HACKETT:** David Hackett, Special Deputy
24 Prosecutor, representing King County.

25 **THE VIDEOGRAPHER:** At this time, the Court

1 Reporter will swear in the witness.

2 **THE REPORTER:** Mr. Holmes, would you please raise
3 your right hand. Do you solemnly swear or affirm, under
4 penalty of perjury, that you are Stuart Holmes, and the
5 testimony you're about to give will be the truth, the whole
6 truth, and nothing but the truth?

7 **THE DEPONENT:** I do.

8 **THE REPORTER:** Thank you.

9 **THE VIDEOGRAPHER:** Please proceed.

10 **STUART HOLMES**, having been first duly sworn, was examined,
11 and testified as follows:

12 **EXAMINATION**

13 **BY MR. GORDON:**

14 Q. Good morning, Mr. Holmes.

15 A. Good morning.

16 Q. Have you ever been in a deposition before -- had
17 your deposition taken before?

18 A. No.

19 Q. Okay. So I'll go through a few ground rules for
20 you. If you have any questions for me, just let me know.
21 The purpose of today's deposition is to gather information
22 to understand, make sure we're all on the same page about
23 data and -- and understand what the Secretary's position is
24 on things. Do you understand that?

25 A. Yes.

1 correct?

2 A. Yes.

3 Q. And so I'd like to refer to the signature that
4 comes in on the ballot envelope as the ballot declaration
5 signature. Does that make sense to use that term?

6 A. Yes.

7 Q. And then the signatures that are being compared to
8 as the signatures on file or the comparative signatures. Is
9 there another term of art that you use for those?

10 A. There's many ways to reference them, but using
11 them as the reference signature seems fair.

12 Q. Okay. So -- so those we'll call the reference
13 signatures and the ballot declaration signature is the one
14 that comes in on the ballot declaration on the outside of
15 the envelope, okay?

16 A. Yes.

17 Q. Good. And again, if -- if the words aren't making
18 sense or confusing or if I'm using them in a way that
19 doesn't -- doesn't make sense with what happens on the
20 ground, please let me know, okay?

21 A. Okay.

22 Q. The goal here is -- is -- is clarity. I'd like to
23 start then, Mr. Holmes, with asking some questions about the
24 state interest for the signature verification requirement.
25 So what, if any, state interest does the Secretary of State

1 **believe are served by the signature verification**
2 **requirement?**

3 **MR. MCGINTY:** Object to the form. Go ahead.

4 **THE DEPONENT:** So the signature verification
5 process is the keystone in the verification process of
6 processing return ballots. Washington State has been vote
7 by mail statewide since 2011, but has a long history of
8 absentee voting prior to that.

9 The signature verification requirement is the most
10 accessible option. There's no other alternatives that
11 provide the same level of access and security, that balance
12 that we seek to provide to our voters through our admission
13 of the elections division. It doesn't create the barriers
14 that in-person ID requirements would offer, for example.

15 In addition to that, it's applied equally across
16 all returned ballots and offers accessible options like
17 signing with two witnesses, for example.

18 **BY MR. GORDON:**

19 **Q. Okay. So I wrote down a couple things here. I**
20 **think you said it's the keystone in the process of**
21 **processing ballots. It's applied equally across all**
22 **ballots. And I think you said something to the effect that**
23 **there are no other alternatives that provide the same**
24 **balance. Do I have that right?**

25 **A. Yes.**

1 Q. Okay. And just to drill down on this and to be a
2 little more precise, what I'm trying to understand is what
3 particular state interests are served by the signature
4 verification requirement. Can you be a little more precise
5 about any -- if there are any that the Secretary of State
6 believes are served by that?

7 MR. HACKETT: Objection, foundation, relevance,
8 outside CR 26.

9 THE DEPONENT: So -- so with the signature
10 verification requirement, it allows for the voter's right to
11 vote, to be protected by not allowing for another voter to
12 vote and return on your behalf.

13 So if it's found to be not matched, the voter has
14 the opportunity to notify their county auditor that that is
15 not, in fact, them, and seek a replacement ballot, or, you
16 know, identify that they need to update their signature or
17 provide a signature to cure, which is commonly referred to
18 as the process to have their ballot accepted and processed
19 for counting.

20 BY MR. GORDON:

21 Q. Got it. Okay. Any other state interests that the
22 Secretary believes are served by the signature verification
23 requirement?

24 A. No.

25 Q. Okay. So let me ask you about the ones you

1 identified. You said that there is no other alternative
2 that provides the same balance. What is the basis for
3 saying that there is no other alternative?

4 MR. MCGINTY: Object to the form. Go ahead.

5 MR. HACKETT: And counsel, if I can just have
6 a -- like a standing objection that asking the witness what
7 the State's interests are in adopting a particular law is in
8 our view outside CR 26 and not relevant to this --

9 MR. GORDON: Sure.

10 MR. HACKETT: -- proceeding.

11 MR. GORDON: Sure.

12 MR. HACKETT: Okay.

13 THE DEPONENT: Can you repeat the question?

14 Sorry.

15 MR. GORDON: Jen, can you read it back, please?

16 THE REPORTER: Of course. Please stand by.

17 (WHEREUPON, the record was played back.)

18 THE DEPONENT: Can I go? Yeah. So in the pursuit
19 of continuing our mission to provide fair, accurate, and
20 transparent elections, as the Elections Director, I looked
21 at other states. We evaluate data election by election to
22 ensure that we're providing voters with the best elections
23 in the country. And in some of those cases, you're looking
24 at emerging technologies outside of the election space.

25 So as, you know, we review that data, we work with

1 partners such as the State Auditor's office or the
2 University of Washington to pursue answering some of those
3 questions of what those alternatives may be that may be
4 outside of my perspective of the -- the -- what other states
5 are offering.

6 But we also in the State of Washington have the
7 benefit of having a lot of tech companies in -- within our
8 state that our counties and we can collaborate with to see
9 what emerging technologies are available out there.

10 With the COVID pandemic, vote by mail emerged as a
11 more accessible option to many states. And so in those same
12 ways, those states provide us a unique experience of fresh
13 eyes on the issue to identify the best ways to remotely
14 verify the identity of an individual and curing processes
15 thereafter.

16 However, there is no alternative that doesn't
17 increase barriers on -- from the voters' perspective. There
18 may be ways to provide alternatives, but those alternatives
19 further increase barriers that have not available in all
20 communities of our state.

21 **BY MR. GORDON:**

22 **Q. The -- Washington has not tried any of these other**
23 **alternatives that you speak of in the elections; has it?**

24 A. We're -- like I said, we're continuing to evaluate
25 and look forward to further increasing the -- the experience

1 report, is that first-time voters', younger voters', ballots
2 were rejected at a higher rate for signature through the
3 signature verification process; is that correct?

4 A. Yes. To be clear, that was my own analysis.

5 Q. Your own analysis, okay. What did -- can -- can
6 you give me a little more detail about what your analysis
7 showed?

8 A. Right. So the analysis of the rejection rate that
9 I did was -- it was based on age. And a majority of voters
10 that have their ballot rejected had never voted before. And
11 if you look at that breakdown by day that their ballot was
12 received, there is a 80 percent or higher cure rate, which
13 would mean that it was at one point rejected and has been
14 accepted for counting.

15 If the ballot is returned near the beginning of
16 the voting period, and to be clear, that's 18 days prior to
17 the election --

18 Q. Mm-hmm.

19 A. -- but if the ballot is returned, for example, on
20 election day, there's only a 40 percent cure rate, so
21 meaning that it was rejected at that point in time and
22 accepted. So when you compare that to the age in which
23 voters return their ballot, younger voters or first-time
24 voters are more -- much more likely to return their ballot
25 closer to election day, much deeper into the voting period

1 than voters that are older. And so there is -- that's what
2 the evidence shows, right. That's what the data shows.

3 Now, why is that is what we continue to work with
4 our academic experts to continue to study to see if there's
5 opportunities for us to educate voters to return their
6 ballot earlier or be much more aware that even though the
7 results are known after election day, you have that
8 opportunity to have your ballot cast and included in the
9 count even if your -- the people you voted for are winning
10 by a landslide, for example, still, you know, look for,
11 respond to, and make it, from our perspective, much easier
12 for them to respond.

13 **Q. Just a couple follow-up questions on -- on your**
14 **analysis just -- just so I understand. You concluded that**
15 **first-time voters' ballots were rejected for signature**
16 **mismatch at a higher rate and I think also that people who**
17 **return their ballots earlier in the cycle cured at a higher**
18 **rate. Do I have both of those right?**

19 A. Correct.

20 **Q. And when you say rejected, do you mean rejected**
21 **initially or do you mean rejected finally? So -- right,**
22 **because you have some people who are rejected and then cured**
23 **and then some people who are rejected and don't cure. So**
24 **when you use the term rejected there, which were -- which**
25 **were you referring to?**

1 A. So to be clear, with rejected, it just means that
2 at any point in the activity of that ballot it was rejected
3 for signature does not match.

4 **Q. Got it.**

5 A. It may -- a notification may never actually be
6 sent to the voter. It may just go to a second review in
7 which a supervisor or lead in that area of the process would
8 take a second review and accept that signature. It's some
9 -- some question that needs to be evaluated at a secondary
10 level.

11 And so those would be -- those would look in the
12 activity and the data as a cure even though it's -- it
13 wasn't a cure by the voter, if that make sense.

14 **Q. It does. No, and I appreciate that. So let's get**
15 **on the same page with terminology again, just to make sure**
16 **as we're talking further.**

17 So -- and I'm happy to use your terminology here
18 because I want to make sure that when we talk about these
19 data, we're differentiating between rejected at any point in
20 the process, as you just said, rejected and not going -- so
21 make it through I guess whatever stages are internally and
22 so the ballot is actually set aside and then some notice
23 goes out to the voter, rejected, notice goes out to the
24 voter and cured, and then rejected and not cured and not
25 counted.

1 media channels --

2 **Q. Okay.**

3 A. -- where they surveyed the -- the population, and
4 I don't recall the exact results total, but they were, you
5 know, kind of where we would have expected it with the
6 national surveys that I've compared to. But I don't have
7 that off the top of my head.

8 **MR. GORDON:** Fair enough. Let's take a short
9 break though. I just need to get some water.

10 **THE VIDEOGRAPHER:** The time is approximately 10:05
11 a.m. We are off the record.

12 **(WHEREUPON, a recess was taken.)**

13 **THE VIDEOGRAPHER:** The time is approximately 10:19
14 a.m. We are back on the record.

15 **BY MR. GORDON:**

16 **Q. Welcome back, Mr. Holmes. You understand that**
17 **you're still under oath?**

18 A. Yes.

19 **Q. I'd like to go back -- circle back again to the**
20 **state interests question and again to your statement about**
21 **no other alternatives that provide the same balance. When**
22 **you say balance in that answer, what are you talking about,**
23 **balancing what against what?**

24 A. So I think the easiest way to describe it is
25 access and security. So a completely secure system, nobody

1 has access to; a completely accessible system lacks any
2 semblance of security.

3 So trying to balance the ability for us to have
4 fair, transparent, and accurate elections accessibly with,
5 you know, enough security so that voters continue to have
6 confidence in the results and the outcomes.

7 **Q. Has the Secretary of State conducted any analysis**
8 **or study of whether signature verification affects voter**
9 **confidence in elections?**

10 A. No. We haven't done any studies, per se, on that
11 particular topic. However, other groups have certainly
12 taken the efforts to spread inaccurate information about
13 signature verification in Washington State that have
14 resulted in a decreasing confidence in elections
15 administration in our state and in other states related to
16 how signature verification is applied.

17 **Q. What are you referencing?**

18 A. So in -- in -- for example, in the close races
19 that have occurred in Arizona where they also do vote by
20 mail, misinformation has come out of those states and, you
21 know, with vote by mail being sort of considered by the
22 common population as being applied the same in every state
23 regardless of state laws.

24 We've seen where efforts such as armed observers
25 at drop boxes have made their way from other states into

1 **and confidence, correct?**

2 A. Earlier we were speaking to accessibility and
3 security.

4 **Q. Okay. Accessibility and security, the balance of**
5 **accessibility and security. How does the signature**
6 **verification requirement in Washington State fit into**
7 **achieving that balance in the Secretary's view?**

8 A. So earlier I referred to it as the keystone in the
9 verification process. So there's many different
10 verifications that we do prior to a ballot being issued
11 related to the voter registration.

12 But in order to offer the -- the voter that
13 ability to remotely receive their ballot where we can't
14 control for ID in the same way that you can in a poll site
15 the way that Washington State has implemented that is
16 through the signature verification process.

17 **Q. The Secretary is aware that there are states that**
18 **do not use signature verification on their mail ballots?**

19 A. Yes. There are many states that don't have a
20 signature verification requirement, but they are non-
21 permanent absentee voting states.

22 **Q. Sure. But you're aware that there are a number of**
23 **states that don't require signature verification. Somebody**
24 **signs in -- sends in a mail ballot signed, and it's accepted**
25 **without looking to see whether the signature matches.**

1 A. Yes. They -- they offer other verification
2 processes.

3 **Q. Is the Secretary of State aware of any data**
4 **showing a relationship between signature verification and**
5 **incidents of fraud, and in particular, any data showing that**
6 **in states that do not use signature verification, there are**
7 **higher incidences of voter fraud?**

8 A. I don't have any evidence of what other states'
9 fraud rates are. I can tell you what our fraud rates are
10 with other state, but I don't have any -- any data that
11 shows what any other states' prevalence of fraud is.

12 **Q. Okay. So you -- the Secretary of State is not**
13 **aware of any data showing that states that do not deploy**
14 **signature verification have a higher rate of fraud, correct?**

15 **MR. MCGINTY:** Object to form. Go ahead.

16 **THE DEPONENT:** Just thinking through the datasets
17 that I have available. No. We participate in the election
18 registration information center. This is what I was
19 thinking through, is with the ERIC process, or the
20 Electronic Registration Information Center, states can
21 volunteer to compare their list of owners that participated
22 in a federal general election in which a contest appears on
23 -- across all ballots and identify voters that may have
24 voted in both of those states.

25 And so that's really my only opportunity to

1 Q. Yeah.

2 A. -- the mailing list that's sent out isn't just
3 sent. It doesn't go from a list of voters and then ballots
4 are instantaneously put into the mail stream. There's a lot
5 of administrative work that happens.

6 So some of these mailing lists are generated well
7 before they're actually put into the mail, which means that
8 a ballot may actually go out to a voter and be prepared to
9 be mailed and then before it's mailed, actually go into the
10 mail stream, it's just sitting in a prepared ready to go out
11 on the day the auditor designates, and they're eligibility
12 changes.

13 They changed their address or they're no longer an
14 actively registered voter, but that -- that ballot still
15 goes out in the mail. There's no systematic way
16 consistently applied to remove ineligible ballot packets
17 from the mail stream because we can confirm the signatures
18 on the other side.

19 Additionally, the ballots that do get sent out
20 will continue to receive information from, for example, with
21 the ERIC program, prior to the 2022 election, we uploaded
22 our information to ERIC to get additional reports on in-
23 state duplicates, deceased, you know, every little bit of
24 information we could get to identify voters that may no
25 longer be eligible prior to their ballot being returned.

1 The reason for that is that a majority of voters
2 in a election that have a lot of contests are going to come
3 in on the week of election. I think it's about 50 percent
4 are going to come in on the week of the election.

5 **Q. You mean most ballots will be returned by the**
6 **voters during the week of the election?**

7 A. Yeah. About half and half --

8 **Q. Okay.**

9 A. -- I would say. I don't have the measurements in
10 front of me, but that's the general rule of thumb that I use
11 is you're going to get -- whatever you have the Friday
12 before election day, expect that to come back in the next
13 couple days.

14 **Q. Oh, so you're saying in your experience about half**
15 **the ballots come in up to Friday before the election day and**
16 **the other half come in -- so it's really like the last four**
17 **days before election day and then the few days after that**
18 **for the ones that are postmarked before election day?**

19 A. Yeah.

20 **Q. Okay.**

21 A. Everybody is getting the commercials and the TV
22 ads to vote and return their ballot on that Saturday,
23 Sunday, Monday, and then, obviously, Tuesday everything is
24 --

25 **Q. Got it, okay.**

1 no interference or, plainly speaking, criminal activity that
2 can occur with them when they're in the auditor's
3 possession.

4 So that can go from the -- the required
5 reconciliation process, or what we often refer to as
6 balancing, which keeps track of every issuance and the
7 status that it's in, and being open to observation.

8 But I think one of the other areas of the chain of
9 custody that gets a lot of attention is the -- keeping the
10 ballots under seal or tamper evident or -- in addition, they
11 can do video cameras or other wireless -- not wireless,
12 remote observation where people can observe the operation
13 center. So the requirement is that it's under tamper
14 evident seals and logs is one of the primary chains of
15 custody.

16 **Q. What about security features inherent in the**
17 **ballot and the ballot envelope itself. My understanding is,**
18 **for example, that the ballot envelopes have a barcode on**
19 **them; is that accurate?**

20 A. You could attribute -- yes, that is accurate. You
21 could attribute that to security. I wouldn't say that --
22 that myself. It's more of a accountability measure. The
23 barcode is the ballot issuance ID that's unique to that
24 particular issuance.

25 **Q. So each envelope has a unique barcode on it?**

1 A. Yes.

2 **Q. And when that envelope is returned, is the -- that**
3 **barcode is scanned at the county level, correct?**

4 A. Yes.

5 **Q. And what's the purpose of -- from the Secretary of**
6 **State's understanding of having that barcode and scanning**
7 **when it's returned?**

8 A. So it assists with the processing of those
9 received ballots. So when you scan it, what's actually
10 happening at the county level is it's being marked as
11 received. So it's most commonly being entered into a batch,
12 so batch sizes can vary, but it can presume there's a batch
13 of received ballots that they're processing.

14 When they scan it, it's being entered in the
15 system as received and then depending on if they're doing
16 that through a manual verification or it's one at a time or
17 a batch verification where it's multiple on the screen at
18 the same time, they would make a determination of it, if
19 it's accepted or challenged.

20 **Q. Based on the signatures.**

21 A. Based on the signatures.

22 **Q. The barcodes are unique to each ballot envelope.**

23 A. Yes. We -- we consider that a ballot issuance.
24 But yeah, it's -- on the ballot envelope itself there's a
25 ballot issuance barcode.

1 Q. And that's unique to each one, correct?

2 A. Yes.

3 Q. Okay. So if somebody, for example, tried to
4 photocopy and create additional ballot return envelopes to
5 put additional ballots in and then mailed in multiple copies
6 of the same ballot envelope, those would be detected by the
7 scanning process, right?

8 If -- if there was -- if one ballot comes in, the
9 ballot envelope is scanned, now we know that that unique ID
10 associated with that ballot envelope has been returned back
11 to the system. If there was another envelope that came in
12 with that same barcode on it, what would happen?

13 A. So the system technically would say that that is
14 -- that ballot issuance has already been scanned and it
15 would --

16 Q. Okay.

17 A. -- prompt the user for that.

18 Q. And then that -- would that -- would the ballot
19 inside that envelope be counted or not counted?

20 A. Based on that, we wouldn't know what the -- what
21 -- how that would be handled. The reason why I make that
22 statement is because if the issuance has not been accepted
23 for counting, there are instances in which a ballot would be
24 challenged for something, whether it's not the most recent
25 issuance, used some examples earlier of address changes.

1 **rejected ballots.**

2 A. Yes.

3 **Q. Is this specific to signature matching rejections?**
4 **Is that what we're talking about here?**

5 A. Yes. I -- taken outside of the context of the
6 State Auditor's report, it could apply to more things, but
7 this would be in response to the State Auditor's report
8 where they're talking about the rejection rate of
9 signatures.

10 **Q. Okay.**

11 A. And so this is specifically speaking to that.
12 We'd never have zero returned ballots that are not -- we'd
13 never get to zero rejected ballots for signature does not
14 match.

15 **Q. Why -- why not?**

16 A. There is evidence that of voters signing on behalf
17 of another voter, which makes that an incurable ballot,
18 unless the voter contacts us and seeks a replacement ballot
19 or issued a replacement ballot, but that voter may not be
20 eligible. There may be situations in which it's just not
21 curable.

22 **Q. What is that evidence?**

23 A. So the letters sent, and I believe the ones that
24 I've seen are from the Clark County Auditor's Office, but
25 that's not a unique practice to Clark County to send notices

1 to voters that have been identified as potentially signing
2 on behalf of another. And so those show that there's --
3 there's people that are signing on behalf of a voter,
4 whether accidentally or intentionally.

5 **Q. Any other evidence that the Secretary is aware of**
6 **that would support the -- I'm sorry. Let me scratch that.**
7 **Any other evidence that the Secretary is aware of of voters**
8 **signing or individuals signing other people's ballots**
9 **besides the Clark County letters that you mentioned?**

10 A. The State Auditor's report, I think, was
11 enlightening because they agreed with the outcomes that were
12 made by the elections administrators that there was no
13 reference signatures available to them that matched the
14 signature on the ballot return envelope.

15 Now, determining why is what we continue to -- to
16 work with our academic partners to identify is that -- you
17 know, those -- those reasons are yet to be known, and that's
18 what we wish to find out is if it's something that we can do
19 better or something that is potentially criminal that's
20 happening.

21 **Q. Sure, okay. So just to drill down on this, you**
22 **said that we can't get to zero because there's evidence of**
23 **people signing ballots that are not theirs. And I asked you**
24 **what is the evidence, and you mentioned the Clark County**
25 **letters.**

1 A. Yeah.

2 Q. Okay. So the -- if it says rejected on the daily
3 Ballot Status Report, that means it's got to the level where
4 it's gone through county review and they've determined that
5 they're going to hold the ballot and send out a notice.

6 A. I'd say yes, most commonly, yes, but if that
7 county got a lot of ballots received that day, they may not
8 get to their second review by the end of the day or when
9 that snapshot was taken. Sometimes you work after hours and
10 all of that. But at that snapshot it was taken, that ballot
11 was in rejected status.

12 Q. Okay. Got to make sure I understand that. If --
13 if the ballot comes in and it's gone through one level of
14 review and somebody flagged it, but it hasn't yet gone
15 through the second level of review, so it's still kind of in
16 this interim, what is the status of the ballot going to say
17 on the daily Ballot Status Report?

18 A. Rejected.

19 Q. It will say rejected?

20 A. Yes.

21 Q. Okay. And it will say rejected, signature does
22 not match?

23 A. Yes.

24 Q. Okay. So to be clear, rejected on the daily
25 status report could mean either that it was initially

1 flagged at the initial level of review by the county, but
2 hasn't yet made it all the way through county review, or
3 that it has -- has made it all the way through county view
4 -- review and a notification has gone out to the voter?

5 A. Yes.

6 Q. Can you distinguish between the two situations
7 based on the daily Ballot Status Report?

8 A. No.

9 Q. Okay. Does the Secretary of State have any data
10 or any information about how often it occurs that rejected
11 on the daily status report means that it's still in review
12 at the county level?

13 A. No. There's no -- if the verification of the
14 signature is confirmed, there's no change so there's no
15 activity log that it remained in rejected for signature does
16 not match. We'd only be able to see that behavior if it was
17 cured by the second review.

18 Q. Okay. Got it. Thank you. I want to turn to
19 topic five, which asks you about data for primary general
20 elections from 2012 through the present. If you have those
21 numbers off the top of your head, I would gladly take them.
22 I'm guessing you don't.

23 A. I don't.

24 Q. Okay. Here's what I want to do. The point of
25 having this topic today was, again, just to get clarity. I

1 A. Yes. Not in all cases, but I would say that that
2 is a common trend. Yes.

3 **Q. Okay. Does the Secretary agree that signatures**
4 **typically continue to mature through the writer's 20s?**

5 A. Yes. Yeah. We -- we encourage our elected
6 officials -- we have -- we provide training on how they can
7 extract these reports out of the voter registration system
8 of the amount of voters that have signatures that are aged
9 older than certain categories of years, like they can pull a
10 report that's voters that have a signature that is older
11 than five to 10, 11 to 15, 16 to 20, each individually, and
12 automatically queue up reports to be sent to all of those
13 voters that had those sort of aged signatures --

14 **Q. Mm-hmm.**

15 A. -- and -- it's basically a signature update
16 request form that they can easily distribute and process and
17 return.

18 **Q. And that's because as reflected in the last**
19 **sentence above the summary, there's going to be greater**
20 **range of variation if the signatures are not**
21 **contemporaneous, correct?**

22 A. Yes. And one of the other challenges is also the
23 quality of the signature, so technology over time, better
24 scanning capabilities. As I mentioned earlier, with the
25 electronic registration, the access of electronic

1 registration, a lot of those are on a signature pad at the
2 Department of Licensing.

3 Actually, any registration that comes from DOL, of
4 course, or through our online voter registration or the
5 online voter registration application program interface, or
6 API, would have the signature captured from the Department
7 of Licensing, so what appears on your driver's license, and
8 those are on a digital pad. And there is some thought that
9 a handwritten signature on a piece of paper can appear
10 differently than that on a signature pad.

11 So by identifying those voters, you're able to
12 then capture a signature that comes back on a piece of paper
13 form that's paper to paper. You're just adding to your
14 library, like we talked about is good, and getting a more
15 recent version of their signature.

16 **Q. The Secretary is aware of data indicating that**
17 **younger voters, first-time voters, have higher rates of**
18 **rejection for nonmatching signatures, correct?**

19 A. Yes. And to be clear, that's 18 to 25.

20 **Q. Okay. Does the Secretary believe that, at least**
21 **part of, that higher rate of rejection among those younger**
22 **voters is attributable to the fact that for many of them,**
23 **the only reference signature might be one from the**
24 **Department of Licensing which, as you indicated, could**
25 **appear different because it was on a touch pad?**

1 A. Yes. That's not the only factor, but, yeah, it's
2 one -- one of those.

3 A. Okay. When an election official reviews a
4 reference signature, does the election official always know
5 how old that reference signature is?

6 Is there something that says this reference
7 signature is from 1976?

8 A. In the voter registration system, there is a date
9 of the signature that would be attributed to how old it is
10 in the Department of Licensing space. I mean, they're
11 capturing signatures. I think their renewal frequency is
12 five or six years now.

13 **Q. Okay.**

14 A. So it would be capturing signatures through their
15 process, and then we're able to receive them and notate that
16 in the system for administrators to see that. As far as
17 their workflow, that is not something that would be present
18 to them. They would process the application and then in the
19 process of producing this report of, as I was talking about,
20 aged signatures is what I --

21 **Q. Mm-hmm.**

22 A. -- think I used, that would be something tat would
23 be created automatically for them.

24 **Q. Okay. So just so I'm clear, as part of the**
25 **workflow of verifying the signatures, when an election**

1 **official sees reference signatures displayed on his or her**
2 **screen, it does not identify how old that reference**
3 **signature is, correct?**

4 A. I apologize. I'm going to correct that.

5 **Q. Okay.**

6 A. Your question I thought was in reviewing of the
7 reference signature, which is, as I interpret that, it was
8 processing of the registration form, which is where a
9 reference signature would come from.

10 But in the signature verification process when
11 you're comparing the ballot return envelope to the most
12 recent signature, you would not see that. But if you expand
13 and want to review all reference signatures, you would see
14 that.

15 **Q. When you say you would see that, what do you mean?**

16 A. Yeah, I apologize. It's the date -- how old the
17 signature is.

18 **Q. Okay. So I think I've got it now. If an election**
19 **official in undertaking signature verification sees just one**
20 **reference signature on their screen, it does not indicate to**
21 **their election official how old that reference signature is,**
22 **correct?**

23 A. That is correct.

24 **Q. If the election official chooses to expand that to**
25 **see other reference signatures, when the system brings in**

1 the other reference signatures, there will be an indication
2 of how old they are.

3 A. That is correct.

4 Q. If there are other reference signatures available,
5 correct?

6 A. That is also correct.

7 Q. And sometimes there's only one reference signature
8 available.

9 A. That is correct.

10 Q. And that's more common among the younger voters
11 and first-time voters to only have a single reference
12 signature.

13 A. Yeah. Again, I want to go into it's not always
14 younger voters. It's newer voters as well. So a new voter
15 to the state that's just moved here, we would only have one
16 reference signature as well.

17 In that comparison process, one of the tools that
18 we teach our election administrators is there's a button
19 that says request signature update so even if it is a
20 relatively new signature, they are able to request on an
21 individual basis during that verification process a
22 signature update even if they ultimately decide to accept
23 the signature.

24 MR. GORDON: Got it. Let's take a break there.

25 THE DEPONENT: Okay.

1 **Q. Thank you. Are there particular deadlines that**
2 **the Evans School needs to provide producibles to you?**

3 A. Yeah. Those would be outlined in the contract
4 that we're negotiating right now, but off the top of my
5 head, I don't have the specific deliverables that they would
6 be required to produce.

7 **Q. Okay. You said you're negotiating a contract.**
8 **Have you executed a contract yet, or are you still in the**
9 **negotiation phase?**

10 A. So the -- we understand that the funding will be
11 available to the state, the state budget was just passed,
12 and I think it's going through it's final process of
13 adoption. And then when the funding is made available,
14 starting July 1st would be the beginning of the fiscal year,
15 we'll be able to actually start spending down those funds,
16 but contracting can happen prior to that, and we are hopeful
17 to get that completed before the funds are available.

18 **Q. Okay. Earlier you also were testifying regarding**
19 **some of the interests that Washington State has for the**
20 **signature verification requirement, and you used the terms**
21 **election integrity and confidence. So first, what does**
22 **election integrity mean?**

23 A. So the integrity of the processes ensures that
24 people are going to end up trusting the outcome at the end.
25 So if we were to jeopardize the integrity of the process,

1 that would have a impact on the confidence that people take
2 in the results.

3 So even with the current level of integrity, which
4 we currently -- or -- or continuously, I guess, is the right
5 word, trying to improve and -- and assess, there is those
6 that do not believe in -- in the outcome of the elections
7 and have taken very significant action that has put a lot of
8 --

9 You know, for example, the entire elections
10 division now qualifies for the address confidentiality
11 program due to the threats that are made towards election
12 officials because of the lack of confidence in the results,
13 and the former elections director was also subject to some
14 of those threats personally.

15 And so those are, you know, all -- all things that
16 play into how the integrity is perceived by the public and
17 their confidence in the process to participate and trust the
18 results.

19 **Q. You mentioned that your own address confidentially**
20 **program participation is one of the things you're -- you're**
21 **basing some of the risks of election integrity on. Is there**
22 **anything else, any other reason you have to believe that**
23 **election integrity and confidence is at risk right now?**

24 **A.** So one of the -- I mentioned earlier with the
25 ballot harvesting videos, we've had instances in state where

1 armed individuals, oftentimes wearing military gear, would
2 observe drop box locations. I'm aware of at least two; one
3 in Snohomish, one in Chelan County, where they reported to
4 me of individuals monitoring these drop box locations from a
5 distance that they perceived to be fair.

6 But it was an intimidating process for those
7 voters and they reported it to the -- the media outlets, and
8 their local law enforcement in those areas. But it's those
9 types of reactions that, you know, lead me to believe that
10 people are questioning the integrity of the -- the process.

11 And we're able to satisfy some of their concerns
12 by walking them through the signature verification process
13 that prevents ballot harvesting, that prevents somebody from
14 getting 10 ballots printed off online and voting them on
15 behalf of all of us in this room.

16 That's -- we -- we have the ability to offer the
17 access to the system that we can because of that signature
18 verification process. Without that, we would have to
19 respond by removing access to those things because the
20 amount of ballots you receive currently does not matter
21 because we are going to count just one of those.

22 If signature verification was a requirement, the
23 amount of ballots you do receive does matter because only
24 one is coming back, and so we'd have to evaluate your
25 access, which is frightening to me that people would not

1 have the same access they have to participate because we
2 can't safely protect the integrity of the system.

3 Because if we can't, then the confidence goes away
4 and, as you've seen, even with the safest, most secure
5 elections that we have, people respond based on
6 misinformation.

7 **MR. GORDON:** I'm going to object to the answer and
8 move to strike, lack of foundation and nonresponsive to the
9 question.

10 **BY MR. MCGINTY:**

11 **Q. Would you turn to Exhibit 5? This is the Ballot**
12 **Status Reports, as I recall.**

13 A. Yes.

14 **Q. And early on in the deposition there was a series**
15 **of clarification of terms. And one of the terms that was**
16 **clarified was cure. And I think you testified there were**
17 **three ways that someone could have their ballot cured and**
18 **that the only way that -- or the term cure for the purposes**
19 **of this deposition would have meant that the voter returned**
20 **a cure form and that was the basis upon which a previously**
21 **challenged or rejected ballot become acceptable. Do you**
22 **remember all of that?**

23 A. Yes.

24 **Q. And with respect to, particularly, this Exhibit 5,**
25 **there were lots of questions about how we would know when a**

1 **ballot was cured. Do you remember that line of questioning?**

2 A. Yes.

3 **Q. Were you using cure in the way that it had**
4 **previously been agreed upon, or were you using cure in some**
5 **other sense?**

6 A. Can you repeat that again for me?

7 **Q. Sure. Maybe it wasn't clear. There's lots of**
8 **references there. Basically, my question is, as I recall**
9 **your testimony correctly -- or if I recall your testimony**
10 **correctly, you testified that you could see if a ballot was**
11 **cured, it would show up as rejected or challenged, and later**
12 **it would be accepted, and then you would know it was cured**
13 **at some point; is that right?**

14 A. That is correct.

15 **Q. Okay. So what does cure mean as I just used it?**

16 A. So in that -- so if a ballot goes from rejected to
17 accepted, then it has been -- either one of three things
18 have happened; the second review has occurred or the -- the
19 voter has been sent the notification form and responded to
20 that, or the Canvassing Board has accepted that for
21 processing based on, you know, their opportunity to review
22 that. So that's what would happen if a ballot went from
23 rejected to accepted.

24 **Q. Do you have any way to isolate instances based off**
25 **of the information in Vote Law in which a ballot was changed**

1 **from rejected to accepted because a cure form came back?**

2 A. Not -- not for all 39 counties, no. So --

3 **Q. In some of the counties you do?**

4 A. We do. Yeah. So the -- the counties have the
5 ability in the system to -- to issue notifications and mark
6 notifications as received. There's no requirement in state
7 law that they do that within the election management system.

8 But if they do mark it as received and they cure
9 the form on the same day or within a reasonable amount of
10 time, you could identify that the notice was sent, received,
11 and then the cure occurred shortly thereafter of the form
12 being received.

13 **Q. So you can make a reasonable inference that the**
14 **cure caused the change in status.**

15 A. Correct.

16 **Q. Okay. But it's not a requirement that the**
17 **counties make those marks in Vote Law.**

18 A. That is correct. There's smaller counties that
19 may be doing this completely offline on a paper-based system
20 where they just have a stack of 20 forms here and that's
21 their reconciliation of that.

22 **Q. Do you happen to know offhand which counties do**
23 **have the ability to do that?**

24 A. We do have the ability to do that. I do not know
25 offhand though.

1 Q. Okay. Do you have any reason to think that the
2 counties who have the ability to do that are doing so
3 systematically and completely?

4 A. Without studying it, no. I mean, I don't know
5 that without studying it.

6 Q. Earlier you testified that it might take an
7 elections official three seconds to determine whether or not
8 a signature is verifiable or not; is that right?

9 A. That is correct.

10 Q. And what would take three seconds?

11 A. So in -- in that particular instance, the -- the
12 answer I was trying to give was related to the acceptance of
13 a signature. I was relaying that in the election official's
14 mind, they -- if they have a hesitation that they should
15 take the time necessary to review that, and that may require
16 escalation to a second review. And I believe within the
17 signature that is like mine, that is consistently applied,
18 you may be able to do that within three seconds.

19 But if I have a variable signature or it's a
20 illustration, you know, there's some creative things that
21 happen on a ballot return envelope, that it would take you
22 some amount of time to review all the reference signatures,
23 So if there's 10 reference signatures, there's going to be
24 an additional amount of time.

25 So it's really a difficult answer to provide what

1 that would be person to person or situation to situation. I
2 think three seconds would be the happy path scenario where
3 it's a perfect signature compared to a perfect signature.

4 **Q. Just going back to the interests that the State of**
5 **Washington has and the signature verification requirement,**
6 **you testified a lot about that today. Do you recall that**
7 **testimony?**

8 A. Yeah. It was very early, but yes.

9 **Q. In your testimony, did you identify election**
10 **security as some of the interests?**

11 A. Yes, I believe so. I think I used integrity at
12 that point in time. But I think there's that balance of
13 access and security that -- that I referred to, and I think
14 that if I didn't say it, I mean to say that.

15 **Q. And did you identify voter confidence in the**
16 **electoral system as some of those interests?**

17 A. I believe so, yes. I think that it was attributed
18 to, you know, having the integrity involved in the system.
19 I was referring to signature verification as the keystone of
20 that integrity process.

21 And if we were to speak to the voters and give
22 them confidence in the results, speaking to them from the
23 point of signature verification exists to prevent voter
24 fraud, that gave them confidence.

25 **Q. And did you identify --**

1 **MR. GORDON:** I'm sorry, counsel. I didn't hear
2 the last part of what the witness said. Can -- can you just
3 --

4 **THE REPORTER:** Yeah.

5 **MR. GORDON:** -- just the last few words of that
6 sentence?

7 **(WHEREUPON, the record was played back.)**

8 **MR. GORDON:** I want to object and move to strike,
9 foundation.

10 **BY MR. MCGINTY:**

11 **Q. And did you identify the signature verification**
12 **process as more readily making elections accessible when**
13 **compared to other alternatives?**

14 A. Yes. When you compare to providing your driver's
15 license like the State of Georgia does on the outside of the
16 envelope or requiring to -- and this is like many other
17 states do that don't have a signature verification
18 requirement, but offer absentee voting in some way, a
19 signature verification requirement is accessible to all
20 voters. It doesn't require them to come in in person or
21 have an ID. Not all voters have IDs.

22 In Washington State, we don't have as many polling
23 places as other states do, for example, I believe Georgia
24 still has polling places where you would be able to go in in
25 person.

1 In Washington State, with vote by mail, we have
2 voting centers where it's a much more difficult opportunity
3 to people that if they needed to identify themselves or go
4 above and beyond to -- to meet with their election
5 administrators, they have further to go. So it's the most
6 accessible option that's available currently.

7 **Q. And I think you also identified the -- a certain**
8 **protection to have -- prevent someone from stealing someone**
9 **else's ballot to prevent someone being able to cast their**
10 **own ballot; is that right?**

11 A. That is correct.

12 **Q. Now, earlier in your testimony you talked about**
13 **rates of cure for people who submit their ballots early in**
14 **the election return process, or the ballot return process,**
15 **and folks who return their ballots late in the ballot return**
16 **process.**

17 **And I think that your testimony was that folks who**
18 **return their ballots later are less likely to cure it. Did**
19 **I get your testimony correctly?**

20 A. That is correct.

21 **Q. Do you know why that might be?**

22 A. I don't know exactly why that might be. This is
23 information that was provided to the State Auditor's Office
24 and made available to the University of Washington as they
25 continue those -- that investigation of specifically why

1 they're able to provide more detailed information on
2 demographics that aren't immediately available to election
3 administrators.

4 But some of the conclusions that I would draw
5 based on elections information is the closeness of races, so
6 when campaigns have a close race, they do what's called
7 ballot chasing where they'll contact voters to encourage
8 them to cure ballots that are challenged for signature does
9 not match or unsigned or to follow up with those, because
10 after election day, there's no more ballots that are being
11 introduced so they're trying to close the gap with these --
12 these challenged returns.

13 Additionally, once elections are -- election
14 results are known, like I was mentioning earlier,
15 disincentivizes the voter from following up on some of the
16 -- the notice responses that are required. So they -- the
17 result outcomes, maybe they see them in favor or maybe they
18 just see them as well, the results are known, I -- I must
19 not understand this and so they don't follow up and follow
20 up with those processes. They would get a phone call from
21 their county elections officials, but that's not always
22 successful.

23 **Q. And just a minute ago you were talking about**
24 **signature verification being a way to prevent folks from**
25 **printing out ballots online and returning them. Do you**

1 **recall that?**

2 A. Yes.

3 **Q. What is the process for an online replacement**
4 **ballot?**

5 A. So the voter could go to the voter information
6 portal and log in with their first name, last name, and date
7 of birth, and if they're identified as a registered voter,
8 it would carry them forward into the system where they're
9 able to check their ballot status, request a replacement
10 ballot, and, of course, print a blank ballot online, or mark
11 it online and print those choices out.

12 The printed packet would include all of the
13 materials required to return it, with the exception of an
14 envelope, can't print one of those, and either this blank or
15 marked online ballot that they can then fold and put into an
16 envelope and return either in a drop box or throw postage on
17 it and return it by mail.

18 **Q. And the list of registered voters in Washington**
19 **State, is that publicly available?**

20 A. That is.

21 **Q. Does that include name and date of birth?**

22 A. It does.

23 **Q. Does it include everything one would need to print**
24 **an online replacement ballot?**

25 A. Yes.

1 not. Maybe they just fold it up and put it in the ballot
2 drop box. That's not sufficient enough for the election
3 administrator to process that on their side. So there's
4 going to be an administrative step that the election
5 official has to take to put a label that includes that
6 ballot issuance ID that is required for processing.

7 Once that step is done, what they would do is then
8 scan that barcode, either through their mail processing
9 equipment or through the hand scanning barcodes, and mark
10 that ballot as received. If that is the most recent
11 issuance, it can process without any further review.

12 If it is not, it's going to get separated for
13 additional review to confirm that that is that voter's
14 current and eligible ballot style. If that is true, it's
15 going to get processed immediately. If it's not true, it's
16 going to get held for seven days after the election to wait
17 for their eligible ballot style to come in. If that doesn't
18 happen, then they'll duplicate the ballot that they have on
19 hand to the eligible ballot style and count it.

20 **Q. Let me just try and asking a simpler question. If**
21 **-- if -- if I print out a ballot online and I do everything**
22 **properly and it goes in, it's properly communicated to the**
23 **elections office, is that held for seven days after the**
24 **election, or does it counted as soon as the little barcode**
25 **is attached to it?**

1 A. It's going to get processed like everything else.
2 It's treated no differently in -- in the form that it's
3 returned. So if it's -- the voter has done everything right
4 and printed an online replacement ballot and returned it,
5 the election officials are going to process it just like a
6 normal ballot packet or a traditional ballot packet,
7 complete the signature verification, and count it.

8 **Q. Okay. Let's -- let's assume that happens early in**
9 **the voting period. It's processed. It goes through.**

10 A. Yes.

11 **Q. It's counted. If the -- if the preprinted ballot**
12 **comes in later, what happens to that ballot, the one that --**
13 **that was sent by mail, the official ballot?**

14 A. Sure. So in this situation, we're talking about
15 that the online ballot has been accepted and counted, and a
16 second ballot is returned by that voter? So they -- once
17 you've had one ballot accepted, no other ballots can go into
18 acceptance status. So that would get outstacked by the
19 county elections staff and presented to the Canvassing Board
20 for rejection.

21 **Q. Apart from signature verification, what ensures**
22 **that the printed ballot is the actual ballot of the voter?**

23 A. None.

24 **MR. HACKETT:** That's it.

25 **MR. GORDON:** I have a couple follow-up questions

CERTIFICATE

I, the undersigned, Timothy Duval, am a videographer on behalf of NAEGELI Deposition & Trial. I do hereby certify that I have accurately made the video recording of the deposition of Stuart Holmes 30(b)(6), in the above captioned matter on the 8th day of May, 2023 taken at the location of State Library Building, 6880 Capitol Boulevard, Room 207 Tumwater, WA. 98501.

No alterations, additions, or deletions were made thereto.

I further certify that I am not related to any of these parties in the matter and I have no financial interest in the outcome of this matter.



A handwritten signature in cursive script, appearing to read "Timothy Duval", is written over a horizontal line.


Timothy Duval

CERTIFICATE

I, Jennifer Kallmeyer, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 24th day of May, 2023.


Jennifer Kallmeyer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CORRECTION SHEET

Deposition of: Stuart Holmes 30(b)(6) Date: 05/08/23

Regarding: Vet Voice et al vs. Hobbs et al.

Reporter: Kallmeyer/Snow

Please make all corrections, changes or clarifications to your testimony on this sheet, showing page and line number. If there are no changes, write "none" across the page. Sign this sheet on the line provided.

| Page | Line | Reason for Change |
|------|------|---|
| 10 | 1 | "Since 2021" should be "since August 2020" |
| 30 | 8 | "stat" should be "state" |
| 46 | 3 | The acronym is "Survey of the Performance of American Elections (SPAЕ)" |
| 49 | 3 | "2002 Mules" should be "2000 Mules" |
| 53 | 21 | "owners" should be "voters" |
| 92 | 23 | "plain" should be "fine" |
| 109 | 5-6 | After investigation, I can confirm that Dave Elliot was the only speaker at this meeting from OSOS. |
| 181 | 25 | "question" should be "questioned" |
| 182 | 4 | "question" should be "questioned" |
| 183 | 3 | "questions" should be "questioned" |
| 208 | 3-7 | These are questions from counsel, not my testimony. |

Signature _____

Stuart Holmes

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DECLARATION

Deposition of: Stuart Holmes 30(b)(6) Date: 05/08/23

Regarding: Vet Voice et al vs. Hobbs et al.

Reporter: Kallmeyer/Snow

I declare under penalty of perjury the following to be true:

I have read my deposition and the same is true and accurate save and except for any corrections as made by me on the Correction Page herein.

Signed at _____, _____
on the _____ day of _____, 2023.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Signature _____

Stuart Holmes

Exhibit 2

RETRIEVEDFROMDEMOCRACYDOCKET.COM



COURT REPORTING

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

TRIAL PRESENTATION

MOCK JURY SERVICES

LEGAL TRANSCRIPTION

COPYING AND SCANNING

LANGUAGE INTERPRETERS



NAEGELI
DEPOSITION & TRIAL



(800) 528-3335

NAEGELIUSA.COM

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY**

VET VOICE FOUNDATION, THE WASHINGTON
BUS, EL CENTRO DE LA RAZA, KAELEENE
ESCALANTE MARTINEZ, BETHAN CANTRELL,
GABRIEL BERSON, and MARI MATSUMOTO,



Plaintiffs,

v.

Case No. 22-2-19384-1 SEA

STEVE HOBBS, in his official capacity
as Washington State Secretary of State,
JULIE WISE, in her official capacity as
the Auditor/Director of Elections in King
County and a King County Canvassing Board
Member, SUSAN SLONECKER, in her official
capacity as a King County Canvassing Board
Member, and STEPHANIE CIRKOVICH, in her
official capacity as a King County Canvassing
Board Member,

Defendants.

30 (B) (6) VIDEOTAPED DEPOSITION OF

JANICE CASE

**TAKEN ON
THURSDAY, MAY 11, 2023
9:05 A.M.**

**PERKINS COIE, LLP
1201 THIRD AVENUE, SUITE 4900
SEATTLE, WASHINGTON 98101**

Decl. McGinty

Ex. 2 Page 54

APPEARANCES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Appearing on behalf of the Plaintiffs:

HEATH L. HYATT, ESQUIRE

MATTHEW P. GORDON, ESQUIRE

Perkins Coie, LLP

1201 3rd Avenue, Suite 4900

Seattle, WA 98101

(206) 359-8000

(206) 359-9000 (Fax)

hhyatt@perkinscoie.com

mgordon@perkinscoie.com

Appearing on behalf of Defendants Julie Wise, Susan

Slonecker, and Stephanie Cirkovich:

DAVID J. HACKETT, ESQUIRE

King County General Counsel

401 5th Avenue, Suite 800

Seattle, WA 98104

(206) 477-9483

david.hackett@kingcounty.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED

Appearing on behalf of Defendant Steve Hobbs:

WILLIAM MCGINTY, ESQUIRE

Washington Attorney General's Office

7141 Cleanwater Drive SW

Olympia, WA 98501

(360) 586-7707

(360) 664-4170 (Fax)

william.mcginty@atg.wa.gov

Also Present:

Elva Gonzalez, Paralegal, Perkins Coie, LLP

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Page

EXAMINATION BY MR. HYATT

7

EXAMINATION BY MR. HACKETT

110

EXAMINATION BY MR. MCGINTY

113

FURTHER EXAMINATION BY MR. HYATT

115

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

| Exhibit | | Page |
|---------|-----------------|------|
| 12 | Supplemental | 16 |
| 13 | Answers | 54 |
| 14 | Distribution | 75 |
| 15 | Init. Challenge | 84 |
| 16 | Sig. Challenge | 85 |
| 17 | Audit | 89 |
| 18 | Excerpt | 93 |
| 19 | Verify | 103 |

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1 **30 (B) (6) VIDEOTAPED DEPOSITION OF**

2 **JANICE CASE**

3 **TAKEN ON**

4 **THURSDAY, MAY 11, 2023**

5 **9:05 A.M.**

6

7 **THE VIDEOGRAPHER:** We are on the record. The time
8 is approximately 9:05 a.m., and the date today is Thursday,
9 May 11th, 2023. This is the beginning of the deposition of
10 Janice Case. The case caption is Vet Voice v. Hobbs.

11 Will counsel please introduce yourselves, state
12 your name, your firm, and who you're representing today,
13 please.

14 **MR. HYATT:** Heath Hyatt, Perkins Coie, on behalf
15 of the Plaintiffs.

16 **MR. GORDON:** Matthew Gordon, Perkins Coie, on
17 behalf of the Plaintiffs.

18 **MR. HACKETT:** David Hackett, King County, on
19 behalf of the three members of the King County Canvassing
20 Board.

21 **MR. MCGINTY:** William McGinty, the Attorney
22 General's Office, on behalf of Secretary of State Steve
23 Hobbs.

24 **THE VIDEOGRAPHER:** At this point the court
25 reporter will swear in the witness.

1 **THE REPORTER:** Please raise your right hand.

2 Do you affirm under penalty of perjury that you
3 are Janice Case and the testimony you are about to give will
4 be the truth, the whole truth, and nothing but the truth?

5 **THE DEPONENT:** I do.

6 **THE REPORTER:** Thank you.

7 **THE VIDEOGRAPHER:** Please proceed.

8 **JANICE CASE**, having been first duly sworn, was examined, and
9 testified as follows:

10 **EXAMINATION**

11 **BY MR. HYATT:**

12 **Q.** Good morning, Ms. Case. Thanks for being here.
13 We really appreciate it. I know that you have a busy
14 schedule, and this is a busy time for election officials,
15 and -- and we appreciate your time this morning.

16 Have -- have you ever been deposed before?

17 A. No.

18 **Q.** Before we get into the questioning, I -- I want to
19 go over a few ground rules for depositions.

20 The -- the first, of course, is that your
21 testimony is under oath, so it's incredibly important that
22 you tell the truth and answer any question that you have
23 with the truth.

24 Now, of course, today is a -- a -- a little bit
25 different because you're here on behalf of King County

1 **MR. HYATT:** Fair enough.

2 **MR. HACKETT:** And number two, an email is not a
3 request for production. Request for productions have to be
4 called request for productions in the pleading.

5 **MR. HYATT:** That -- that's right, and that's what
6 the email was referring to. So I'd be happy to resend that.
7 We can talk about that more offline. Thank you. And I
8 appreciate you looking into whether the information that Ms.
9 Case has discussed will be a part of that supplemental
10 document production.

11 **BY MR. HYATT:**

12 **Q. Ms. Case, you said that you were familiar with**
13 **this list, correct?**

14 **A.** I had reviewed this list. I don't know what you
15 mean by familiar.

16 **Q. Okay. Well, let -- let me ask another question.**
17 **Does King County Elections refer every rejected ballot for**
18 **non-matching signature to prosecutors?**

19 **A.** They do not.

20 **Q. Why not?**

21 **A.** Do not have an answer for that.

22 **Q. Why don't you have an answer for that? Let me**
23 **rephrase. If there are cases of non-matching signatures**
24 **that are rejected because signatures do not match, why are**
25 **those cases referred to prosecutors and not others?**

1 A. In most cases that we refer to the Prosecuting
2 Attorney's Office, it's obviously a different signature than
3 the signature on the voter's record. There are also
4 instances I had mentioned earlier where that voter had also
5 contacted us stating that they were not the ones that had
6 signed it.

7 There are instances of deceased voter's ballots
8 coming back with signature issues on them as well. Those
9 are the ones that are referred to the Prosecuting Attorney's
10 Office.

11 **Q. What do you mean by obviously different?**

12 A. If the ballot envelope says James Dierst and the
13 signature on it says Janice Case.

14 **Q. And from King County Elections' perspective,**
15 **that's a case of potential fraud?**

16 A. Potentially.

17 **Q. Okay. And so is that a case where King County**
18 **Elections will -- will refer the case to prosecutors?**

19 A. Yes.

20 **Q. Okay. Will King County Elections refer a case to**
21 **prosecutors where Janice Carrey lives in the same household**
22 **as James Dierst?**

23 A. Not usually. It depends on research. There have
24 been times where someone in the household grabs the wrong
25 envelope and it's a -- we call it a cross-signature, so both

1 of those voters returned the wrong envelope, but their
2 ballots were in those envelopes. And that's a pretty clear
3 case of, you know, Jane and John signed each other's
4 envelopes.

5 **Q. And is that considered a non-matching signature,**
6 **or is that coded something differently by King County**
7 **Elections?**

8 A. If we can identify the voter in the household that
9 they haven't already returned their ballot and you can
10 clearly tell that it's Jane's signature on it, that ballot
11 will be processed. The envelope will be -- there's a
12 process in place to update the envelope to be an envelope
13 for Jane so that it can continue through the process.

14 **Q. Okay. So in that situation of when nobody counted**
15 **it, it wouldn't be regarded as a non-matching signature.**

16 A. Correct.

17 **Q. Okay. It --**

18 A. And --

19 **Q. Sorry. Go ahead.**

20 A. I also just want to clarify that also in that
21 instance, if John had not returned his ballot, we would also
22 issue another ballot for that voter so that they could
23 return it in the correct envelope. Sometimes they both do
24 come in at the same time. Sometimes they do not.

25 **Q. Okay. I just want to drill down -- down then on**

1 obviously different, because -- and -- and maybe I'm just
2 misunderstanding this, because it sounds like, you know,
3 even if it is obviously different, it may not be counted as
4 a non-matching signature. It could be regarded as something
5 else, correct?

6 A. I'm sorry. Can you repeat that?

7 Q. Yeah. So even if a signature on a ballot
8 declaration is not -- is -- is obviously different from
9 what's on the voter file, that's not always a case that's
10 referred to prosecutors, right?

11 A. Correct.

12 Q. In fact, that's not always even considered a non-
13 matching signature, right?

14 A. In some cases, yes.

15 Q. Okay. So then with that in mind, you know, can
16 you describe for me what you mean by obviously different
17 within the case -- or within the context of a non-matching
18 signature that would be referred to prosecutors?

19 A. So a case with a non-matching signature that would
20 be referred to prosecutors, an example that I had already
21 mentioned is an instance in non-matching signature. The
22 voter has been provided with a challenge notification, and
23 they notify our office that they are not the person who
24 signed that ballot. Then that ballot would be referred to
25 the Prosecuting Attorney's Office.

1 Q. -- standalone policy? Okay.

2 A. Yes.

3 Q. And you're not aware of any person on this list
4 who was convicted of voter fraud, correct?

5 A. That would be a question for the Prosecuting
6 Attorney's Office.

7 Q. But you're not aware of anyone on this list that
8 has been convicted for voter fraud, correct?

9 A. Correct.

10 Q. And you don't know how the King County Canvassing
11 Board put this list together, right?

12 A. I do not.

13 Q. Is it King County Elections' belief that the
14 thousands of voters who have their ballots rejected for non-
15 matching signatures, but did not end up on this list were
16 not fraudulently cast ballots?

17 A. I cannot be certain of that.

18 Q. Does King County Elections conduct research into
19 every ballot that is challenged for a non-matching
20 signature?

21 A. Every ballot that is challenged for a non-matching
22 signature goes through -- first, the signature verifier
23 takes a look at it, and if they believe it's a non-matching
24 signature, they mark it as review, and then the envelope
25 review team will take another look at that signature, and

1 they will do additional research which includes looking at
2 all the signatures on that voter's voter registration
3 record, as voters can have many signatures on their voter
4 registration record.

5 And they will also look at signatures in that
6 household as well to see if it's potentially somebody else
7 in that household that mistakenly utilized the wrong
8 envelope, or other research.

9 If, after that level of research, they still
10 believe it's a non-matching signature, then it will be
11 challenged.

12 **MR. HYATT:** Ms. Case, I'd like to switch gears for
13 a minute if we can and talk about some data.

14 Mark this as Exhibit 14, please.

15 **(WHEREUPON, Exhibit 14 was marked for**
16 **identification.)**

17 **BY MR. HYATT:**

18 **Q. Are you familiar with this document?**

19 A. Yes.

20 **Q. What is this document?**

21 A. This is the distribution of ours with signatures
22 challenged and cured from the November 2023 general
23 election.

24 **Q. Okay. And it says in the title there, 11-23-2020**
25 **cert. Does cert mean certification?**

CERTIFICATE

I, the undersigned, Timothy Duval, am a videographer on behalf of NAEGELI Deposition & Trial. I do hereby certify that I have accurately made the video recording of the deposition of Janice Case, in the above captioned matter on the 11th day of May, 2023 taken at the location of Perkins Coie LLP 1201 3rd Ave, Ste 4900 Seattle, WA 98101.

No alterations, additions, or deletions were made thereto.

I further certify that I am not related to any of these parties in the matter and I have no financial interest in the outcome of this matter.



A handwritten signature in cursive script, appearing to read "Timothy Duval", is written over a horizontal line.

Timothy Duval

CERTIFICATE

I, Errin Kent, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 30th day of May, 2023.

A handwritten signature in black ink, appearing to read "Errin Kent", is written over a horizontal line.

Errin Kent

RETRIEVED FROM DEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Exhibit 3

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

For Plaintiffs (via Zoom) :

Heath L. Hyatt
Perkins Coie, LLP
1201 Third Avenue
Suite 4900
Seattle, Washington 98101
206.359.8000
hhyatt@perkinscoie.com

For Defendant Steve Hobbs (via Zoom) :

William McGinty
Susan Park
Attorney General of Washington
7141 Cleanwater Drive SW
Olympia, Washington 98504
360.709.6470
william.mcginty@atg.wa.gov
susan.park@atg.wa.gov

For Defendant King County (via Zoom) :

Ann M. Summers
Lindsey Grieve
King County Prosecutor's Office
701 Fifth Avenue
Suite 600
Seattle, Washington 98104
206.477.1909
ann.summers@kingcounty.gov
lindsey.grieve@kingcounty.gov

**Also present: John Collins
Diane Hoosier**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXAMINATION INDEX

| EXAMINATION BY: | PAGE NO. |
|------------------------|-----------------|
| Mr. McGinty | 4 |
| Ms. Summers | 103 |

EXHIBIT INDEX

| EXHIBIT NO. | DESCRIPTION | PAGE NO. |
|--------------------|---|-----------------|
| Exhibit No. 1 | 11-page curriculum vitae | 124 |
| Exhibit No. 2 | 28-page Expert Report of Maxwell Palmer | 124 |
| Exhibit No. 3 | 8-page Supplemental Expert Report of Maxwell Palmer | 124 |
| Exhibit No. 4 | 3-page Second Supplemental Expert Report of Maxwell Palmer | 124 |
| Exhibit No. 5 | 69-page Performance Audit | 124 |
| Exhibit No. 6 | 6-page RAND Corporation article titled When Race/Ethnicity Data Are Lacking | 124 |



1 A Yes. Yes, you could do that.

2 Q Okay. Because this doesn't include rejection for any
3 other reason. That's just not here?

4 A That's correct.

5 Q Now, did you consider or conduct any analysis about
6 whether or not there was a relationship between the
7 race of the voter and the rate by which their ballots
8 were cured for a mismatch?

9 A No.

10 Q Okay. Now, did you perform any analysis to determine
11 whether these differences in relative rejection rates
12 between these racial groups for each election could be
13 due to chance?

14 A So I did some, you know, simple regressions to check
15 for this, and I found all of these differences to be
16 significant by race. But I presented it this way
17 because I think it's a much simpler and easier way to
18 understand these differences.

19 Q What regressions did you do give?

20 A I have to go back and double-check. I remember
21 looking at this in a variety of ways, none of which
22 changed my conclusions.

23 Q Do you anticipate testifying at trial in this matter
24 about any of the regression analyses that you
25 performed?



1 A At this point, no.

2 Q Okay. When you say they are statistically
3 significant, what does that mean?

4 A That means that P-value was less than .05. That is
5 the probability of observing a statistic as large as
6 calculated here. It's relatively unlikely due to
7 chance.

8 Q And what independent variables did you include in
9 those regression analyses?

10 A I would have to go back and look. I think just the
11 test for differences by race, we would just include
12 the status of the ballot and the estimated racial
13 probabilities from the BISG analysis.

14 Q Okay. So it was basically just race and then the
15 ballot outcome?

16 A I believe so, but I would have to go back and look.

17 Q Okay. Did you perform any kind of analysis to see if
18 the race of the voter had a causal relationship with
19 the outcome of the -- with whether or not their
20 signature -- excuse me. Let me ask that question
21 again.

22 Did you perform any analysis to determine if
23 there was a causal relationship between the race of
24 the voter and whether their ballot was rejected for
25 signature mismatch?

Page 37



1 A No.

2 Q Okay. And did you examine whether these same voters
3 in these same racial groups, whether there was any --
4 whether there was any association between whether
5 their ballots were rejected for reasons other than
6 signature mismatch?

7 A No. I only did non-matching signatures.

8 Q Now, what's the relationship between this table on
9 Page 7 with the graph on Page 6?

10 A Everything in 6 is included on 7. This is a graph of
11 the Relative Rejection Rate column from the table on
12 Page 7.

13 Q Okay. Let's go to your supplemental report. This
14 will be the third exhibit I would like to have
15 introduced here. It's a file called
16 PalmerSuppReport.pdf.

17 Do you have that in front of you?

18 A I do.

19 Q Okay. Taking a particular look at the same kind of
20 demographic analysis you did on Pages 2 through 4, how
21 does what you did in your supplemental report compare
22 with what you did in your first report?

23 A This is the exact same analysis but just for the
24 subset of voters in King County.

25 Q All right. And the table on Page 4 here, what's the

Page 38



1 Relative Rejection Rate here?

2 A Within King County.

3 Q I see.

4 So this is the average rejection rate just in
5 King County that's being used to peg this relative
6 rejection rate from?

7 A Yes.

8 Q So if I wanted to compare rejection rates between
9 the -- your King County analysis versus your statewide
10 analysis, what's the best way to do that?

11 A You could calculate it from these tables. I also have
12 a section of my initial report that compares rejection
13 rates across counties, but I don't believe I have all
14 of the numbers for every county there.

15 Q Well, I guess my question is, if I wanted to see if
16 more, for example, black voters have their signatures
17 rejected for signature mismatch in King County
18 specifically or statewide, what's the best way to do
19 that?

20 A On a percentage basis, you would compare the Rejection
21 Rate column between the two reports.

22 Q Okay. And you didn't perform this style of analysis
23 for any county other than King County; right?

24 A That's right.

25 Q Okay. Is it possible that if we looked at counties

Page 39



1 other than King County, they wouldn't necessarily show
2 this same kind of disparity?

3 MR. HYATT: Object to form.

4 THE WITNESS: I don't know.

5 Q (By Mr. McGinty) Okay. Because you haven't done that
6 analysis?

7 A That's right.

8 Q Okay. And King County is a -- that's the largest
9 county in the state; right?

10 A I believe so.

11 Q So is it possible that if these sorts of disparities
12 exist only in King County, then that could appear to
13 be a statewide issue?

14 MR. HYATT: Object to form.

15 THE WITNESS: I don't know.

16 Q (By Mr. McGinty) Okay. Because you haven't done that
17 analysis?

18 A That's right.

19 Q Okay. And do you anticipate testifying at trial in
20 this matter about whether or not these same
21 disparities exist in counties other than King County?

22 A At this point, no.

23 Q Okay. Did you consider whether factors other than
24 race -- correlated with race could have caused these
25 kinds of disparities?



1 A No.

2 Q Do you remember what the P-values on those two
3 variables were?

4 A No. And it wouldn't have been two variables. It
5 would have been a separate variable for each racial
6 group, and then either age as a continuous variable or
7 age groups, depending on how you measure the age.

8 Q You don't remember how you set that up?

9 A I believe I did it both ways, but I would have to go
10 and double-check.

11 Q Okay. And did you include any variable to account for
12 the county in which the voter was voting?

13 A I would have to go back and double-check.

14 Q Okay. Did you include any variable to account for the
15 voting history of the voter?

16 A No.

17 Q Do you anticipate testifying at trial in this matter
18 about the results of any regression analysis on the
19 effects of race and age on the rejection of a ballot
20 for signature mismatch?

21 MR. HYATT: Object to form.

22 Dr. Palmer, you can talk about what's in your
23 report. But, you know, anything beyond that that's
24 not in your report, please refrain from talking about
25 it.

Page 44



1 THE WITNESS: That's beyond the
2 scope of my report.

3 Q (By Mr. McGinty) My question was, do you anticipate
4 testifying at trial about it?

5 A At this point, no.

6 Q Okay. So let's back up a little bit. Let's go back
7 to just the age analysis because Table 4 is obviously
8 race and age. Let's back up just so that we're
9 talking about age.

10 So as I understand it, this is shown on your
11 report starting on Page 8.

12 A Yes.

13 Q So can you walk me through the analysis you did to
14 come up with the results shown on Page 8 and the table
15 on Page 9?

16 MR. HYATT: Will, if you don't mind,
17 we've been going for a little over an hour. I think
18 if you're changing gears from race to age and you're
19 going to spend a while on age, can we take a quick
20 break to use the bathroom, get some water, or do you
21 anticipate this only being a few minutes?

22 MR. MCGINTY: We'll spend some time
23 here. This is a good time for a break.

24 MR. HYATT: Is that okay with you,
25 Max?

Page 45



1 THE WITNESS: That's fine.

2 MR. HYATT: Ten minutes? Does that
3 work?

4 MR. MCGINTY: Ten works for me.

5 (Recess from 11:39 a.m. to
6 11:49 a.m.)

7 MR. MCGINTY: Back on the record.

8 Q (By Mr. McGinty) So, Dr. Palmer, you understand
9 you're still under oath?

10 A Yes.

11 Q Did you have any conversations about this case during
12 the break?

13 A I spoke with Mr. Hyatt.

14 Q Okay. So I know I said I was going to go on to age,
15 but just a few more questions about race.

16 So taking a look at the analysis in your report,
17 I'm talking about the first report you did, from
18 Pages 4 through 7, I asked you if you did any analysis
19 or considered whether or not this disparity between
20 the racial categories and rejection for signature
21 mismatch could be due to chance.

22 I now want to ask you whether or not the analysis
23 you present in your report says anything about whether
24 these results could be due to chance.

25 A I say in Paragraph 18 that "I found significant

Page 46



1 than they are for white voters, I think that's
2 substantively significant. That has a meaningful
3 important difference.

4 Q Okay. So you basically mean a big difference?

5 A Yes.

6 Q Okay. And you get a big difference just by looking at
7 the values in the table?

8 A Yes. I think about what these results -- what these
9 numbers mean in context.

10 Q Okay. Can something be a big difference and
11 nonetheless be due to chance?

12 A Potentially.

13 Q Okay. So my question was, based off of the results in
14 your report, based on the analysis that's presented in
15 your report, could the differences between rejection
16 rates for signature mismatch between the racial groups
17 that you present in Table 2 be due to chance? That
18 was my question.

19 MR. HYATT: Object to form.

20 Q (By Mr. McGinty) So as I understand it, your answer
21 is it's not because they are significant differences.

22 Do I understand that right?

23 MR. HYATT: Object to form.

24 THE WITNESS: I think -- I think
25 this is confusing because what I am doing is a

Page 49



1 calculation. I am calculating these differences. I
2 am not saying anything about why these differences
3 exist. I am saying that they do exist. And you're
4 asking me questions about the cause of the
5 differences.

6 Q (By Mr. McGinty) Okay. That's very helpful. Thank
7 you.

8 So your opinion is just difference exists.

9 You are not opining one way or the other about
10 why those differences exist?

11 A That's correct.

12 Q Okay. So then following up on that, if the way the
13 counties conducted signature verification, if that
14 were to change, could the results that you present in
15 Table 2, could those change?

16 MR. HYATT: Object to form. Outside
17 the scope of his report. Speculation.

18 THE WITNESS: That's beyond the
19 scope of my report.

20 Q (By Mr. McGinty) Okay. So you don't have an opinion
21 about that?

22 A That's beyond the scope of my report.

23 Q Do you anticipate testifying at trial that these
24 differences would persist, despite how signature
25 verification is conducted in Washington?



1 A At this time, no.

2 Q Okay. If the training by which counties are told
3 about the standards for verifying signatures, if that
4 training were to change, could the results in Table 2
5 change?

6 MR. HYATT: Object to form. Outside
7 the scope and speculation.

8 THE WITNESS: That's beyond the
9 scope of my report.

10 Q (By Mr. McGinty) Okay. So you do not anticipate
11 testifying at trial about how these differences would
12 persist despite how the training for signature
13 verification was conducted?

14 A At this time, no.

15 Q If it became easier via whatever mechanism for voters
16 to cure signature mismatch issues, could the
17 differences that you present in Table 2 of your report
18 change?

19 MR. HYATT: Object. Beyond the
20 scope and speculation.

21 THE WITNESS: That's beyond the
22 scope of my report.

23 Q (By Mr. McGinty) So you don't anticipate testifying
24 at trial that despite whatever cure mechanisms
25 Washington State might change, that the differences in

Page 51



1 Table 2 would persist?

2 A At this time, no.

3 Q Okay. Now I think we can move on to age.

4 All right. So starting about Paragraph 8 of your
5 report -- not Paragraph 8. I'm sorry. Page 8 of your
6 report to Page 9, could you walk me through the
7 analysis you did to come up with these results?

8 A This analysis is very different to the prior one, with
9 the exception that I don't need to estimate age. It's
10 available directly on the voter file in the form of
11 the voter's date of birth.

12 Q Okay. So let's start here.

13 Why did you choose these particular age
14 categories?

15 A You know, individual ages, there are just sort of too
16 much noise to show them effectively. And so I chose
17 things roughly by decade that I thought made sense,
18 with the exception of highlighting voters 18 to 21 and
19 sort of off in a category that shows the youngest and
20 newest voters.

21 Q So other than the presence of age as a direct
22 statistic from the data files you had available to
23 you, were there any other differences in the way you
24 conducted this analysis compared with the racial
25 categories we were just talking about?

Page 52



1 Q And just to be clear, the average rate that we're
2 talking about is the average for that election?

3 A Yes.

4 Q And in that case, did you have to throw out any voters
5 like you did for the racial one?

6 A I believe I used the same set of voters that I used
7 for the racial one. So anybody that I already
8 included would have been included. That's still
9 99-plus percent of the voters in the election.

10 Q Okay. And why did you do it that way?

11 A I believe I just made one sort of final data set for
12 an analysis that had both the race and age variables
13 together.

14 Q Is there a method or logic or reason for that, or is
15 that just convenience?

16 A Efficiency.

17 Q Okay. Just so you didn't have to have two massive
18 data sets of voters to run your analysis on?

19 A Yes.

20 Q And so similar to the last analysis you did, is it
21 right that you're presenting differences here? You're
22 not trying to account for the reasons for the
23 differences?

24 A I am not doing anything causal here. I am just
25 measuring the differences as they exist.

Page 54



1 Q Okay. Is there anything in this analysis to say
2 whether or not these differences could be due to
3 chance or not?

4 A No.

5 Q Okay. You did the same analysis for King County, and
6 we can go to your supplemental report. And this is on
7 Pages 5 and 6 of your supplemental report.

8 Is there any difference in how you did this in
9 King County versus statewide?

10 A No.

11 Q And similarly, again, the relative rejection rate on
12 Table 3, Page 6 of your supplemental report, that is
13 pegged to the average rejection rate in King County?

14 A Yes.

15 Q For that particular election?

16 A Yes.

17 Q Okay. And you didn't look at the rejection rates by
18 age for any other county other than King; correct?

19 A Yes.

20 Q And so could it be the case that no other county in
21 Washington has the same kind of rejection rate
22 differences by age?

23 A I don't know.

24 Q Okay. And, again, King County, biggest county in
25 Washington; right?



1 A Yes.

2 Q So if these differences existed in King County and
3 only in King County, could that appear like it was a
4 statewide issue?

5 MR. HYATT: Object to form.

6 THE WITNESS: I think that's
7 unlikely, but not something -- but that's beyond the
8 scope of my report.

9 Q (By Mr. McGinty) So you don't have an opinion about
10 that one way or the other?

11 A That's right.

12 Q Okay. And you don't anticipate at trial in this
13 matter, saying that these kinds of differences by age
14 existed in any county other than King County?

15 A At this time, no.

16 Q Okay. So if the way that signature verification were
17 conducted in Washington State were to change, could
18 these results change, the differences in age?

19 MR. HYATT: Object to form. Scope
20 and speculation.

21 THE WITNESS: That's beyond the
22 scope of my report.

23 Q (By Mr. McGinty) So you don't anticipate testifying
24 at trial that despite any changes in the way that
25 signature verification happens in Washington, that

Page 56



1 these differences in rejection rates by age would
2 nonetheless persist?

3 A At this time, no.

4 Q Okay. And if it became easier for voters to cure
5 their signatures for signature mismatch, could these
6 results change?

7 MR. HYATT: Object to form. Outside
8 the scope and speculation.

9 THE WITNESS: That's beyond the
10 scope of my report.

11 Q (By Mr. McGinty) So you don't anticipate testifying
12 at trial in this matter that in spite of any changes
13 to the cure mechanisms that may be made in Washington
14 State signature verification process, that these
15 differences in rejection rates by age will nonetheless
16 persist?

17 A At this time, no.

18 Q Okay. So let's talk about the effects of race and age
19 considered together. And this is in your report,
20 Page 10.

21 Can you walk me through how these results were
22 come up with?

23 A The same process as before, except instead of grouping
24 by race or grouping by age, I grouped by both before
25 calculating the estimated number of voters in each

Page 57



1 category. And then here I'm just presenting the
2 relative rejection rates because I couldn't fit
3 everything into one table otherwise.

4 Q And so how were these relative rejection rates
5 derived?

6 A Relative to the average rejection rate for each
7 election. So it's the same baseline as -- you know,
8 in the prior analyses for each of the four elections.

9 Q Okay. So can you tell me a little bit more about --
10 I'm not sure that I could -- maybe you can tell me
11 that I can.

12 If I wanted to derive, basically, the same table
13 from the information in the first two sections of your
14 report, could I do that, and how would I do it?

15 A No, you couldn't directly do it. But all of the data
16 and the code I used to produce it, I provided with my
17 report.

18 Q Oh, okay.

19 And so why did you choose the age categories that
20 you chose here?

21 A I think mostly for simplicity. And I think that the
22 number of rejections in the higher age categories is
23 relatively small. And so I think it was a little bit
24 clearer to combine some of those categories together.

25 Q Does the analysis that you present here, is this

Page 58



1 similar to the analysis that you did earlier where
2 you're just comparing the differences?

3 A Yes. I'm measuring -- I am measuring what these
4 rejection rates are for each group, or estimating what
5 the rejection rates are.

6 Q So there's no analysis here about why this might be?

7 A No.

8 Q And there's no analysis here about whether or not
9 these results could be due to chance?

10 A No.

11 Q I'm curious about why you chose to represent the
12 relative rejection rates here as relative to the
13 rejection rate of the election as a whole instead of
14 relative to the rejection rate for that particular age
15 category.

16 Can you talk about that choice?

17 A Yes. If I did it within the age category, then I can
18 make comparisons within race across -- I can make
19 comparisons within an age category across race, but
20 not within race across age because those would all be
21 relative to different things.

22 So by making it all relative to a single number,
23 it makes it easier to understand. And you can take
24 any two of these numbers and look at their relative
25 value to each other.

Page 59



1 Q Okay. I think I understand that answer.

2 Did you conduct any analysis to determine which
3 was the more important factor, race or age?

4 MR. HYATT: Object to form.

5 Dr. Palmer, if you understand the question, you
6 can answer it.

7 MR. MCGINTY: I'll rephrase.

8 Q (By Mr. McGinty) Is there anything in this analysis
9 that tells us which is the more important factor, race
10 or age?

11 A The question implies causality again, that one or the
12 other could be causing the rejections. I'm not
13 looking at causality. I'm measuring rejection rates.

14 Q Okay. Because correlation also can have a larger or
15 smaller impact too; right?

16 A It can have a larger or smaller association. But
17 impact implies causation.

18 Q Thank you for that. Thank you for that clarification.

19 Correlation can have a smaller or larger
20 association.

21 And you're not analyzing correlation here either,
22 are you?

23 A No, I'm not calculating correlation.

24 What I am showing is that the effects persist
25 across age categories and across racial categories.

Page 60



1 That is among every racial category, younger people
2 tend to get rejected at higher rates than older
3 people. And within each age category, people of color
4 tend to get rejected at higher rates than white
5 people.

6 Q So moving on to the analysis you did along the same
7 lines for King County, and this appears in your
8 supplemental report on Page 7.

9 So, again, the analysis you did in King County is
10 basically the same as you did for the state as a
11 whole, just within King County; correct?

12 A Yes.

13 Q And the relative rejection rates that these are pegged
14 to in this Table 4 on Page 7 of the supplemental
15 report, that's the relative rejection rate -- or
16 excuse me. The average rejection rate for King
17 County?

18 A For each election, yes.

19 Q For each election. Thank you so much.

20 If I wanted to compare the Table 4 in your first
21 report to Table 4 in your supplemental report, how
22 would I do that?

23 A It's challenging to directly make that comparison.

24 Q When you say "it's challenging," what do you mean?

25 A You can't just do it directly from this table. You

Page 61



1 have to go back to the data to calculate as a
2 rejection rate if you wanted to make that comparison.

3 Q Okay. And you didn't do this analysis for any county
4 other than King?

5 A That's right.

6 I would say there is some comparisons you can
7 make. For example, in Paragraph 22 of my first
8 report, you know, I calculate -- say that a black
9 voter, age 18 to 21 was 18 times more likely to have a
10 ballot rejected for non-matching signature than a
11 white voter over 40.

12 You view that same comparison with this table in
13 the supplemental report where I find that 17.5 times
14 the higher likelihood -- I said you could compare
15 relative likelihoods across the two tables that way.

16 Q I see.

17 So you can compare the relative effect on the
18 statewide basis to the relative effect in King County.

19 Is that your testimony?

20 A I would call it likelihood and not effect.

21 Q Oh, okay.

22 The relative likelihood -- you can compare those,
23 but it's challenging, as I understand it, to take a
24 look at Table 4 of your first report and Table 4 of
25 your supplemental report and get a sense of the

Page 62



1 absolute difference between the two?

2 A Yes.

3 Q Okay. And so, again, you didn't do this analysis for
4 any other county other than King; is that right?

5 A That's right.

6 Q Okay. Could it be the case that King County and only
7 King County has these kinds of differences?

8 A That's beyond the scope of my report.

9 Q Okay. So you don't have an opinion about that one way
10 or the other?

11 A Not at this time.

12 Q And you don't anticipate testifying at trial that any
13 county other than King has these kinds of differences
14 and rejection rates by race and age?

15 A Not at this time.

16 Q Okay. And if the way that signature verification were
17 done in Washington changed, could these results
18 change?

19 A That's beyond the scope of my report.

20 Q Okay. Do you anticipate testifying at trial that
21 regardless of how signature verification could change
22 in Washington State, that these differences would
23 nonetheless persist?

24 A Not at this time.

25 Q I want to ask you about your analysis of cured

Page 63



1 And then I used that to estimate the cure rate in each
2 election.

3 Q Why is it an estimation of the cure rates?

4 A To calculate the cure rate, I could say.

5 Q Okay. Do you know what it means for a ballot to have
6 a status of rejected for signature mismatch in the
7 ballot status?

8 A My understanding is it means that that ballot was
9 submitted and had been rejected for a non-matching
10 signature and would need to be -- yes.

11 Q Would need to be what?

12 A I'll leave it there.

13 Q Okay. Do you know what it means for a ballot to be
14 accepted after it was previously set as a status of
15 rejected?

16 A My interpretation of that would be that that ballot
17 was cured.

18 Q Okay. What does "cured" mean?

19 A Cured means that the ballot was ultimately counted.
20 And my understanding is that there's a process by
21 which a voter with a rejected ballot for non-matching
22 signature is able to resolve that issue and have their
23 ballot counted.

24 Q Do you know whether every time that a ballot is cured,
25 that that is due to some action initiated by the

Page 65



1 voter?

2 A That is my understanding, but I don't know all of the
3 procedures involved.

4 Q Okay. But you just relied on the status and the
5 ballot status report to make that determination?

6 A Yes. At the time of this report, that was my
7 understanding. And that was the best data available.

8 Q Has that understanding changed?

9 A Other data has since been provided to me by counsel
10 that I have not yet had the opportunity to analyze
11 that shows more of a breakdown of the path each ballot
12 takes through the submission to rejection of approval
13 process.

14 Q What do you mean by that?

15 A There's a file -- I don't know the name of it -- that
16 was provided to me by counsel after I completed this
17 report that seems to be -- that might have more detail
18 about each ballot status, when it was initially
19 rejected and then when it might have been cured or
20 accepted or its status changed. It seems to record
21 any change to a ballot status.

22 Q Have you ever received any information that a ballot
23 status can be changed from rejected to accepted
24 without any action by the voter?

25 A I don't believe so.

Page 66



1 also trying to understand the magnitude of signature
2 rejections. So we only see so far in this report, and
3 I've been looking at the final ballot status reports,
4 the ultimate number of rejections. But that tells us
5 how many voters had their signature questioned at some
6 point in the process.

7 Q (By Mr. McGinty) Do you know whether or not every
8 time a ballot is set -- a status is rejected in the
9 ballot status report, the voter is notified of that
10 fact?

11 A I don't know.

12 Q Okay. And do you know how many of the times that a
13 ballot is cured, that cure is due to action that the
14 voter took?

15 A I don't know.

16 Q Did you examine the cure rates for other deficiencies
17 in a ballot, such as missing signature?

18 A No. I only looked at non-matching signatures.

19 Q And did you look at any of the characteristics of the
20 voters who had their ballots cured versus not?

21 A No.

22 Q If it became hard -- oh, go ahead.

23 A I'm sorry. Yes. In the following section when I'm
24 looking at the relationship for ballots rejected, I do
25 look at age and race of voters as part of that

Page 68



1 analysis.

2 Q Oh, does that tell us what the age and race of voters
3 are who have their ballots cured?

4 A No.

5 Q So that just tells us -- so that's part of your
6 analysis about whether rejection or curing has an
7 impact on future voting?

8 A Yes.

9 Q Okay. So you did look at the characteristics of
10 voters who had their ballots cured vis-a-vis their
11 future voting behavior?

12 A I included that as a control variable in -- or
13 regression on top of that on Paragraph 27.

14 Q Okay. We'll get to that in a minute. I'm not
15 entirely sure I understand your answer, but we should
16 talk about that in that section.

17 So with respect to cure -- the curing analysis
18 you did, though, do you have -- did you do any
19 analysis or do you present anything in your report
20 about the characteristics of voters who have ballots
21 cured?

22 A No.

23 Q Okay. If it became harder for whatever reason for
24 local elections officials to reject a signature, could
25 these results change?

Page 69



1 A That's beyond the scope of my report.

2 Q Okay. And so you don't anticipate testifying at trial
3 about whether or not these results would persist,
4 despite any changes in how signature verification is
5 done in Washington?

6 A Not at this time.

7 Q Okay. Now let's get to relationship of future
8 behavior.

9 So this appears on Page 12 and 13 of your report.
10 Can you tell me what you did here?

11 A There is interesting research in political science
12 about the cost of voting and how that affects the
13 likelihood that somebody votes as well as their
14 likelihood of voting again in the future.

15 For example, there's papers on the length of
16 waiting in line, and that waiting in a longer line
17 might make you less likely to vote again in the
18 future. And so I was interested in if the experience
19 of having to cure a ballot, which is an impediment to
20 voting and might take some time by the voter, if that
21 can have any association with their future voting
22 behavior.

23 Q Okay. And how did you figure -- how did you answer
24 that question?

25 A So I constructed a data set looking at both the 2020

Page 70



1 a subset. So we're only looking at people who voted
2 in 2020 and then who were still eligible in 2022.

3 Q Okay. That makes sense.

4 Now, for age, did you set that up as a
5 categorical variable or a continuous one?

6 A I believe continuous, but I would have to go and
7 double-check.

8 Q Okay. Now, did you get a full result for that
9 logistic regression?

10 A Can you explain what that means?

11 Q Sure.

12 I mean coefficient on each variable, P-values on
13 each variable, standard variation on each variable.

14 Did you get those?

15 A Yes.

16 Q Okay. Is that -- where is that in your report?

17 A I didn't present that. It's a big and confusing table
18 to explain and interpret, and the coefficients that
19 come out of a logistic regression are hard to
20 interpret on their own.

21 So I reported that they were simply significant
22 in Paragraph 28. And then I calculated the marginal
23 effect of the variable that I was interested in, that
24 is the marginal effect of having a ballot rejected or
25 having to cure a ballot, those values in Paragraph 28.

Page 74



1 Q Okay. Did you rely on the full results of your
2 logistic regression to come up with the conclusions in
3 your report?

4 A Yes.

5 MR. MCGINTY: Heath, I don't know
6 that that has been provided to us in discovery.

7 MR. HYATT: So, Will, why don't you
8 send me an email about that and we can ask it. If you
9 want to ask the witness some more questions about it,
10 you're more than welcome to do that. But otherwise,
11 why don't you shoot me an email and we'll go from
12 there.

13 MR. MCGINTY: Okay.

14 Q (By Mr. McGinty) Do you know what the coefficients
15 were for the other variables?

16 A No.

17 Q Okay. You don't.

18 Do you know if --

19 A To clarify, the code to do this analysis was provided
20 in my replication code. So the results could be
21 generated again and included with the data and code I
22 provided.

23 Q Okay. Do you recall whether or not the coefficient
24 for ballots being rejected for any reason other than
25 signature mismatch was smaller or larger than the one

Page 75



1 for signature mismatch?

2 A No. I only calculated these probabilities for the
3 variables as addressed there.

4 Q Okay. Do you recall whether or not the coefficient
5 for the various racial categories was smaller or
6 larger than the one for signature mismatch?

7 A I don't recall. The choice of including race and age
8 was because we would expect, independent of any
9 relationship with ballot and status, with ballots
10 being cured or rejected, that turnout in 2022 would be
11 different than in 2020.

12 In particular, we would expect, based on what I
13 know as a political scientist, that the voters in a
14 midterm election will be older and that there will
15 be -- a higher share of them will be white in a
16 midterm election than a presidential election. So
17 that's why I accounted for that.

18 Q Are there other characteristics that voters might have
19 that would potentially be associated with whether or
20 not they vote in a presidential year but not a
21 non-presidential year?

22 A Yes.

23 Q But you only included race and age?

24 A That's the variable I had available to me from the
25 voter file.



1 Q Did you include anything regarding the history of the
2 voter's voting status?

3 A No.

4 Q Did you include the county in which the voter voted?

5 A I don't remember.

6 Q Well, I thought you only included race and age?

7 A I believe that's right, but I would have to
8 double-check that I didn't include county as well.

9 Q Okay. Did you try to determine whether or not there
10 were competitive elections on the ballot?

11 A No.

12 Q Could any of those variables that you didn't include
13 be correlated with or associated with a voter's
14 likelihood of having their ballot rejected for
15 signature mismatch?

16 MR. HYATT: Object to form.

17 THE WITNESS: I'm sorry. Can you
18 repeat that, please?

19 Q (By Mr. McGinty) Sure. Yeah.

20 The question is whether or not any of the
21 variables that you didn't include could be correlated
22 with or associated with whether or not a voter's
23 ballot was rejected for signature mismatch?

24 MR. HYATT: Same objection.

25 THE WITNESS: Some of the variables

Page 77



1 you mentioned, it's possible. Others, like
2 competitive elections being on a ballot two years
3 later would seem unlikely.

4 Q (By Mr. McGinty) Okay. Now, one thing I was curious
5 about -- so you write, "The average voter who cured a
6 ballot for non-matching signature in 2020 was 7
7 percentage points less likely to vote in the 2022
8 general election than the average voter with an
9 accepted ballot."

10 Do you see that?

11 A Yes.

12 Q Now, I'm just curious what that means. I don't know
13 what it means to be 7 percentage points less likely to
14 vote.

15 A So, for example, if the average voter with an accepted
16 ballot had a 50 percent probability of voting in 2022,
17 then the average voter who cured a ballot would be 43
18 percentage points of voting behavior. It's a
19 difference in the zero to 100 percent scale rather
20 than, you know, a percentage of another number.

21 Q Okay. Got it.

22 And that's related to the coefficients that you
23 generated for those particular variables?

24 A The coefficients then get calculated to determine
25 marginal probabilities. That is the probability that

Page 78



1 A I'm sorry. Can you repeat that again?

2 Q Yeah. Sure.

3 Basically I'm interested in comparing the
4 difference between voters who voted in the 2022 versus
5 2020 elections and differences in the rejection rate
6 for signature mismatch between young voters and old
7 voters and which difference is bigger?

8 A I haven't done that.

9 Q Okay. And so you haven't -- you wouldn't have done
10 the same thing, the same kind of structural kind of
11 question with respect to the white and non-white
12 voters?

13 A Right. You're asking for two different kinds of
14 comparisons. So everything in an election comparing
15 rejection rates by age or by race in an election and
16 you're asking for a cross-election comparison, and I
17 haven't done them.

18 Q Okay. Now, speaking about the relationship that you
19 found in your regression analysis about the
20 relationship between rejecting or curing a ballot to
21 voting in future elections. So talking about that,
22 the analysis you did on Page 12 and 13 of your report,
23 could those results change if the way that signature
24 verification in Washington changed?

25 A That's beyond the scope of my report.

Page 84



1 Q So you do not anticipate testifying at trial right now
2 that this kind of relationship is going to hold
3 steady, no matter what kind of changes in signature
4 verification are made in the future?

5 A Not at this time.

6 MR. MCGINTY: Okay. So I'm going to
7 shift gears to the county variance.

8 We've been going for about an hour, I think. We
9 could take another quick break. I know it's also
10 lunchtime here on the West Coast.

11 Maybe we should go of the record and talk about
12 this.

13 (Recess from 12:45 p.m. to
14 1:16 p.m.)

15 MR. MCGINTY: Back on the record.

16 Q (By Mr. McGinty) So, Dr. Palmer, you understand
17 you're still under oath?

18 A Yes.

19 Q Thank you.

20 Did you talk with anybody about this case during
21 the break?

22 A Mr. Hyatt.

23 Q Anybody else?

24 A No.

25 Q Okay. So let's talk about the part of your report

Page 85



1 that deals in variation and rejection rates by county,
2 starting on Page 13.

3 You can let me know when you're there.

4 A Yes.

5 Q Okay. Can you just walk me through the analysis you
6 did and what this shows?

7 A One question I was exploring is if there's variation
8 in rejection rates by county.

9 And so using the general election reconciliation
10 reports I had available, which go from 2018 to 2022, I
11 just looked at the relative frequency of ballot
12 rejection for non-matching signatures.

13 Q And you only looked at the general elections; is that
14 right?

15 A I believe that is correct.

16 Q Was there a reason in particular you confined yourself
17 to the general elections?

18 A I don't recall.

19 Q And this is a comparison of rejection rates; right?
20 That's what we're looking at?

21 A Yes.

22 Q And so similar to some of the other analyses in this
23 report, this doesn't speak to why these rejection
24 rates might be dissimilar; is that true?

25 A That's correct. I'm just measuring the rates and not

Page 86



1 saying anything causal.

2 Q And so this analysis also doesn't say whether or not
3 these rejection -- these variants in rejection rates
4 could be due to chance?

5 A I'm not saying anything about what caused these rates.

6 Q Or even whether they have a cause?

7 A I'm just measuring the rates.

8 Q Okay. And this analysis doesn't say whether or not a
9 voter with a similar demographic profile would have a
10 similar experience in voting in each of the 39
11 counties?

12 A That's beyond the scope of this analysis.

13 Q Okay. So this analysis doesn't speak to that?

14 A No.

15 Q Okay. Do you anticipate testifying at trial, that a
16 voter with a particular demographic profile would have
17 a different voting experience, depending upon which
18 county they voted?

19 A That's beyond the scope of my report. I'm not at this
20 time planning to testify at trial on that.

21 Q Okay. And some counties have younger voters; right?

22 MR. HYATT: Object.

23 THE WITNESS: I don't know.

24 Q (By Mr. McGinty) Okay. You didn't take a look at --

25 MR. HYATT: Just for the record,

Page 87



1 that's object to form. Thank you.

2 Q (By Mr. McGinty) You didn't take a look at the
3 demographic profiles of the counties in conducting
4 this analysis?

5 A No.

6 Q Now, one of your findings is that rejection rates
7 varied within counties across election years; right?

8 A Yes.

9 Q And the folks who submit ballots change election from
10 election; right?

11 A Yes.

12 Q Did you -- this analysis doesn't tell us whether or
13 not a voter with a particular demographic profile
14 would have a similar voting experience election year
15 to election year, does it?

16 A No.

17 Q And this analysis doesn't tell us whether or not the
18 results that you found about variance between election
19 years could be due to chance?

20 A That's right.

21 Q If the way the counties conducted signature
22 verification were to change, could this variance
23 change?

24 A That's beyond the scope of this report.

25 Q Okay. And you don't anticipate testifying at trial

Page 88



1 that regardless of changes in the signature
2 verification process in Washington, that these
3 variances will remain consistent or similar?

4 A Not at this time.

5 Q Okay. Let's go ahead and go to your third
6 supplemental report.

7 MR. HYATT: Will, you mean the
8 second?

9 MR. MCGINTY: I do mean the second.
10 The third report, the second supplemental. I get
11 confused with numbers sometimes.

12 And I think this is the fourth exhibit I would
13 want to be admitted. This is Palmer second supp
14 report dot PDF.

15 Q (By Mr. McGinty) Do you have that up in front of you,
16 Dr. Palmer?

17 A Yes.

18 Q Okay. Could you walk me through the analysis you did
19 with respect to this second supplemental report?

20 A This is just a simple tabulation based on the
21 reconciliation reports of the rates at which UOCAVA
22 and non-UOCAVA voters had ballots rejected for
23 non-matching signatures from 2018 through 2022.

24 Q And were there any voters who dropped off of this
25 report, similar to the one for the racial demographic

Page 89



1 analysis?

2 A No. This is just using the reconciliation reports
3 directly.

4 Q Okay. And you did go to the general and the primaries
5 from 2018 to 2022 here.

6 Is there a reason that you included the primaries
7 on this analysis?

8 A No. I think I probably meant to include the primaries
9 on the county analysis as well.

10 Q Okay. You had a lot of things to do and just kind of
11 dropped off of the radar?

12 A I believe so.

13 Q Okay. And so similar here, this is a comparison of
14 rejection rates and relative rejection rates; right?

15 A Yes.

16 Q And this analysis doesn't tell us why the rejection
17 rates are different?

18 A That's correct.

19 Q And this analysis doesn't tell us whether or not these
20 rejection rates could be due to chance?

21 A That's correct.

22 Q Okay. And so if the way the counties were to conduct
23 signature verification would change, could these
24 differences in the relative rejection rates change?

25 A That's beyond the scope of my report.

Page 90



1 Q Okay. And you don't anticipate testifying at trial
2 that regardless of any changes in the signature
3 verification process in Washington, that these
4 relative rejection rates, the differences between them
5 would stay the same or similar?

6 A Not at this time.

7 Q I have some questions now, kind of globally about that
8 the analysis you did about the different between
9 rejection rates for signature mismatch and the voters
10 who experienced those differences.

11 Do any of your analyses tell us whether or not
12 voting history has any effect on the rejection rate
13 for signature mismatch?

14 MR. HYATT: Object to form.

15 THE WITNESS: My analyses don't look
16 at voter history, whether there's an association or an
17 effect.

18 Q (By Mr. McGinty) Okay. So you didn't look at that.

19 You have no opinion about that?

20 A Not at this time.

21 Q And you don't anticipate testifying at trial about any
22 relationship between voting history and rejection rate
23 for signature mismatch?

24 A Not at this time.

25 Q Okay. Do any of your analyses tell us about



1 whether -- how early or late a voter votes has any
2 relationship with their rejection rate for signature
3 mismatch?

4 A No.

5 Q Okay. Do any of your analyses tell us whether how
6 early or late a voter votes has any effect or
7 relationship with the rate that a voter cures their
8 signature?

9 A No.

10 Q Do any of your analyses tell us about any relationship
11 between the closeness of an election and the rate that
12 ballots are rejected for signature mismatch?

13 A No.

14 Q Do any of your analyses tell us about whether there is
15 a relationship between the closeness of an election
16 and the rate that ballots that are initially rejected
17 for a signature mismatch are cured?

18 A No.

19 Sorry. Can you just specify, what do you mean by
20 "closeness of the collection"?

21 Q Oh, sure. Yeah.

22 By "closeness of an election," I mean how close
23 the votes are between a yes or no on, like, an
24 initiative, ballot or initiative measure, or which
25 candidate is going to win. So how many votes separate

Page 92



1 the winning measure or candidate from the losing one.

2 A Okay. Thank you.

3 My answers remain no for the last two questions,
4 but I don't understand how something determined after
5 ballots are counted could have a relationship with how
6 they are administered beforehand.

7 Q Well, didn't you also testify previously that you
8 yourself were involved in a measure where you were
9 counting voter turnout to see who was coming to vote
10 for your school measure?

11 A Right. But we didn't know who -- we didn't know what
12 the results were until after.

13 You're saying an anticipated close election?

14 Q Potentially.

15 A All right.

16 Q Are you familiar -- do you know that -- or have you
17 ever been told, have you come up with any information
18 that a signature can be cured, even after initial
19 results of an election are known?

20 A I did not know the case for Washington. But your
21 question makes more sense with that context. Thank
22 you.

23 Q And none of your analyses tell us whether or not the
24 presence of a recount on a race or a ballot issue has
25 any effect on the rejection rate for a signature

Page 93



1 mismatch?

2 MR. HYATT: Object to form.

3 THE WITNESS: No.

4 Q (By Mr. McGinty) And you didn't analyze or come up
5 with any opinion regarding whether or not rejection
6 rates for signature mismatch has ever had an effect on
7 the outcome of an election, did you?

8 A No.

9 Q And you don't anticipate testifying at trial that
10 there's ever been an election that came out
11 differently because some ballots were rejected for
12 signature mismatch?

13 A Not at this time.

14 Q None of your analyses tell us about whether or not
15 rejection for signature mismatch has an effect on
16 voter confidence, do they?

17 A I'm sorry. Can you repeat the question?

18 Q Sure.

19 Do any of your analyses tell us whether or not
20 rejection for signature mismatch, the rates at which
21 that happens, has an effect on voter confidence?

22 A And what does voter confidence mean?

23 Q The presence of a voter's confidence in the outcome of
24 an election.

25 A The outcome of the election, no.

Page 94



1 Q And none of your analyses tell us whether or not the
2 size of a voter's household has any effect on the rate
3 that a voter's ballot is rejected for signature
4 mismatch, does it?

5 A No.

6 Q And none of your analyses tell us about whether or not
7 the size of a voter's household had any effect on the
8 rate that a voter cures their signature, does it?

9 A No.

10 Q None of your analyses tell us whether or not the
11 experience level of the elections officials who are
12 evaluating signatures has any effect on the rates of
13 ballot rejection for signature mismatch?

14 A No.

15 Q And you didn't consider whether or not a mail-in
16 voting system like Washington's, with a signature
17 verification process ultimately leads to more or less
18 votes being accepted and counted as compared to a
19 traditional polling place voting system, did you?

20 A That's beyond the scope of this report.

21 Q Do you anticipate testifying at trial about whether or
22 not a mail-in vote system like Washington's with
23 signature verification ultimately leads to more or
24 less votes being accepted and counted than a
25 traditional polling place system?



1 A Not at this time.

2 Q You didn't analyze whether or not a traditional
3 polling place voting system results in greater or
4 lesser disproportionate effects on turnout on
5 non-white voters, did you?

6 A Can you repeat that, please?

7 Q Sure.

8 You didn't analyze or come up with any opinions
9 about whether a traditional polling place voting
10 system results in greater or lesser disproportionate
11 effects on the turnout of non-white voters, did you?

12 A No.

13 Q And you don't anticipate testifying at trial that a
14 traditional polling place system would have a smaller
15 effect on the turnout of non-white voters than a
16 polling place -- or than an election system like
17 Washington's?

18 A Not at this time.

19 Q And you also didn't consider whether or not a
20 traditional polling place voting system results in
21 greater or lesser disproportionate effects on the
22 turnout of young voters, did you?

23 A No.

24 Q And you don't anticipate testifying at trial that a
25 traditional polling place system would result in

Page 96



1 greater ballots being -- greater number of ballots
2 being accepted and counted by young voters than
3 Washington's system signature verification?

4 A Not at this time.

5 Q Did you consider or analyze whether or not a
6 traditional polling place voting system results in
7 greater or lesser variation between the counties in
8 county-level voting turnout, did you?

9 A No.

10 Q And you don't anticipate testifying at trial that a
11 traditional polling place voting system would result
12 in a lesser degree of county-by-county turnout than
13 Washington's vote by mail system with signature
14 verification?

15 A No.

16 Q And you didn't consider or analyze whether any
17 different method of voter verification, such as ID
18 requirements or something along those lines would lead
19 to more or less votes being counted, did you?

20 A No.

21 Q And you don't anticipate testifying at trial about an
22 alternative voting -- or, excuse me, about an
23 alternative voting verification method, do you?

24 A No.

25 Q You didn't consider whether or not an alternative

Page 97



1 voter verification method would result in greater or
2 lesser effects on non-white voters?

3 A No.

4 Q And you don't anticipate testifying at trial about
5 that?

6 A No.

7 Q And you didn't consider whether an alternative
8 verification method would result in greater or lesser
9 effects on young voters?

10 A No.

11 Q And you don't anticipate testifying at trial about
12 that?

13 A No.

14 Q And you didn't analyze whether or not an alternative
15 verification method for voter verification would
16 result in greater or lesser variance in turnout at the
17 county level, did you?

18 A No.

19 Q And you don't anticipate testifying about that?

20 A No.

21 Q You didn't analyze whether or not an alternative
22 verification method, aside from signature
23 verification, would result in greater or lesser
24 effects on UOCAVA voters?

25 A No.



1 Q And you don't anticipate testifying about that?

2 A No.

3 Q Okay. Just a few more questions, and I'm going to be
4 done.

5 In a few different places in your report, you
6 reference the Washington State auditor's report.

7 Do you recall that?

8 A Yes.

9 Q Did you rely on the auditor's report in coming up with
10 your opinions in this case?

11 A I didn't rely on it for my opinions. I used it to
12 learn about what the state auditor did and to get
13 context, as I was preparing this report. And at
14 times, I compared my results to those found from a
15 relatively similar approach or similar analysis in
16 that report.

17 Q Okay. Do you anticipate testifying at trial in this
18 matter about the results of the auditor's report?

19 A Beyond the degree to which I mention it in my report,
20 I don't believe so.

21 Q Okay. Did you conduct any analysis of the auditor's
22 report to determine whether or not it was reliable?

23 A No. I think the numbers, you know, where they
24 reference things that I also had available looked in
25 line by doing any sort of replication of their

Page 99



1 regression model is making?

2 MR. HYATT: Object to form.

3 THE WITNESS: Having these variables
4 allows for there to be different base rates.
5 Essentially a different fixed effect for every county
6 in their rejection rates.

7 Q (By Mr. McGinty) So wouldn't that assume that the
8 effect of the remaining variables in the regression
9 model has a standard application or a uniform effect
10 across the rest of the state?

11 MR. HYATT: Object to form.

12 Asking the witness to testify about the auditor's
13 report.

14 THE WITNESS: Can you repeat the
15 question, please?

16 Q (By Mr. McGinty) Sure.

17 The question is, wouldn't having one variable for
18 each of the 39 counties, and that being the way that
19 the county is being controlled for in the regression
20 model, doesn't that assume that the remaining
21 variables in the regression model have a uniform
22 effect across the state?

23 MR. HYATT: Object to form.

24 Mr. Palmer is not offering an opinion on how the
25 auditor conducted its report.

Page 102



1 THE WITNESS: That's beyond the
2 scope of my report.

3 Q (By Mr. McGinty) Okay. So you don't have any opinion
4 one way or the other about whether or not this
5 regression model imposes any unsupportable assumptions
6 about the role of calculable variance?

7 A I don't think I'm understanding your question that you
8 initially asked compared to what you just stated.

9 Q Okay. Let me ask it this way: Do you have an opinion
10 about whether or not the regression model that the
11 State auditor used, imposes any unsupportable
12 assumptions about the role of county-level variance?

13 A I would need to go through this model in more detail
14 to form an opinion. At this time, I don't have an
15 opinion on that.

16 Q Okay. And you don't -- I think you testified earlier,
17 you don't anticipate testifying at trial about the
18 reliability of the auditor's report?

19 A No.

20 MR. MCGINTY: Okay. I don't have
21 any further questions.

22
23 EXAMINATION

24 BY MS. SUMMERS:

25 Q Dr. Palmer, my name is Ann Summers. I represent Julie

Page 103



C E R T I F I C A T E

I, MICHELLE D. ELAM, Certified Court Reporter in the State of Washington, residing in Mayer, Arizona, reported;

That the foregoing deposition of MAXWELL PALMER, PH.D., was taken before me and completed on June 28, 2023, and thereafter was transcribed under my direction; that the deposition is a full, true and complete transcript of the testimony of said witness, including all questions, answers, objections, motions and exceptions;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved the right of signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the said deposition and promptly delivering the same to Attorney William McGinty.

IN WITNESS WHEREOF, I have hereunto set my signature on the 3rd day of July, 2023.



Michelle D. Elam, RPR, CCR
Certified Court Reporter 3335



Exhibit 4

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

For the Plaintiffs:

Heath L. Hyatt
Kevin Hamilton
Perkins Coie
1201 3rd Avenue
Suite 4900
Seattle, Washington 98101
206.359.8000
hhyatt@perkinscoie.com

For Defendant Steve Hobbs:

Susan E. Park
William McGinty
Washington State Office of the
Attorney General
800 5th Avenue
Suite 2000
Seattle, Washington 98104
206.233.7808
susan.park@atg.wa.gov

For Defendant King County:

Ann M. Summers
King County Prosecutor's Office
701 Fifth Avenue
Suite 600
Seattle, Washington 98104
206.477.1909
ann.summers@kingcounty.gov

Also present: Diane Hoosier
Victoria Johnson
Sofia Ellington

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXAMINATION INDEX

| EXAMINATION BY: | PAGE NO. |
|------------------------|-----------------|
| Ms. Park | 5 |
| Ms. Summers | 84 |

EXHIBIT INDEX

| NO. | DESCRIPTION | PAGE NO. |
|------------|---|-----------------|
| Ex. No. A | 67-page expert report of Dr. Michael Herron | 7 |
| Ex. No. B | 28-page final judgment dismissing election contest with prejudice and confirming certification of election of Christine Gregoire; Borders v. King County, Washington State Democratic Central Committee | 33 |
| Ex. No. D | 35-page plaintiffs' first interrogatories and requests for production to defendant Steve Hobbs and Defendant Hobbs' answers and objections thereto | 45 |
| Ex. No. E | 6-page King5 news article | 46 |
| Ex. No. F | 23-page Mail-In Absentee Ballot Anomalies in North Carolina's 9th Congressional District by Michael C. Herron | 50 |
| Ex. No. G | 26-page information, State of WA v. Brewer | 51 |
| Ex. No. H | 31-page information, State of WA v. Armatis | 54 |
| Ex. No. I | 29-page information, State of WA v. Hobbs | 55 |
| Ex. No. J | 1-page email string dated November 29, 2022 | 55 |



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX (CONTINUING)

| NO. | DESCRIPTION | PAGE NO. |
|-----------|---|----------|
| Ex. No. K | 1-page document; HOBBS-009137 | 56 |
| Ex. No. L | 2-page email string; HOBBS-008959-60 | 56 |
| Ex. No. M | 21-page "Convenience Voting" | 67 |
| Ex. No. N | 8-page Minor postal delays could disenfranchise thousands of Florida vote-by-mail voters | 70 |
| Ex. No. O | 7-page Rejected mail ballots pile up in Florida | 76 |
| Ex. No. P | 12-page Postal delivery disruptions and the fragility of voting by mail: Lessons from Maine | 77 |
| Ex. No. Q | 52-page Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus | 82 |



1 BE IT REMEMBERED that on Thursday,
2 July 13, 2023, at 10:02 a.m. Pacific Standard Time,
3 before ANDREA L. CLEVINGER, CCR, RPR, appeared MICHAEL
4 HERRON, PH.D., the witness herein;

5 WHEREUPON, the following proceedings
6 were had, to wit:

7

8

<<<<<< >>>>>>

9

10 MICHAEL HERRON, PH.D., having been first duly sworn
11 by the Certified Court
12 Reporter, deposed and
13 testified as follows:

14

15

EXAMINATION

16

BY MS. PARK:

17 Q

So, Dr. Herron, I represent Steve Hobbs in this case.

18

And before we dive in, I'm going to go through a couple
19 ground rules with you.

20

Have you had your deposition taken before?

21 A

Yes.

22 Q

And approximately how many times?

23 A

I would estimate around 20.

24 Q

And we're here today so that I have an opportunity to ask
25 you questions about the testimony that you're expected to

Page 5



1 of what is or is not appropriate for Washington. I would
2 say, as a trivial matter, when I engage with other
3 scholars of election administration, I would say that
4 I've never met anyone, including myself, who would
5 suggest that jurisdictions should have no safeguards.

6 But I would also like to emphasize that what
7 Washington should or should not do is not -- offering
8 opinions of what Washington should or should not do is
9 not part of my expertise in this litigation.

10 Q And, Dr. Herron, do you believe that some form of
11 election safeguards at the ballot casting stage are
12 needed for jurisdictions that use mail-in voting?

13 MR. HYATT: Object to the form.

14 Q (By Ms. Park) Dr. Herron, you can answer.

15 A Ma'am, I'm very concerned about speculating on what is --
16 what you're using -- what is needed because every
17 government policy in the area of elections -- I shouldn't
18 say "every," but the ones I'm thinking about have costs
19 and benefits.

20 And what -- I'll leave it at that -- have costs and
21 benefits, and how one weighs these benefits would, I
22 think, inform one's judgment about what is needed.

23 And in this case, I was not asked to weigh any costs
24 or benefits -- any costs or benefits of particular
25 policies, so I'm hesitant to speculate on what is or is

Page 19



1 not needed.

2 Q Dr. Herron, I'm going to slightly rephrase.

3 Do you believe some form of election safeguards at
4 the ballot casting stage are a good measure for
5 jurisdictions that use mail-in voting?

6 MR. HYATT: Object to the form.

7 Go ahead, Dr. Herron.

8 A I would say, ma'am, it depends on what the definition of
9 a good measure is. As I stated earlier, any policy in
10 this area has costs and benefits, and whether a
11 particular policy is good, as I think you're using this
12 term, depends on a comparison of costs and benefits.

13 And I don't think I could make a simple
14 characterization that any particular policy is inherently
15 good or inherently not good.

16 Q (By Mr. Hyatt) Dr. Herron, in vote-by-mail
17 jurisdictions, do you believe that some method of
18 verifying voter identity is a good measure?

19 A Ma'am, I apologize about being repetitive, but you're
20 asking me to talk about some measure, and I'm not sure
21 what measure you have in mind.

22 And I would also like to emphasize that any measure,
23 what I was earlier calling a policy, has costs and
24 benefits, and weighing costs and benefits, in my opinion,
25 would inform someone or a government agency or judicial

Page 20



1 (Recess from 10:34 a.m. to
2 10:43 a.m.)

3 EXAMINATION (Continuing)

4 BY MS. PARK:

5 Q Dr. Herron, what was some possible ways to identify voter
6 identity?

7 A I would say that the set of procedures that could be used
8 to verify voters' identity is beyond the scope of my
9 report. I would say that some of them are listed,
10 however, in Paragraph 130 that you earlier had me read.

11 Q Dr. Herron, what is your opinion on fingerprinting as a
12 possible way to verify voter identity?

13 MR. HYATT: Object to the form.
14 That's beyond the scope of Dr. Herron's report.

15 MS. PARK: Are you instructing your
16 client -- not your client, but are you instructing
17 Dr. Herron not to answer?

18 MR. HYATT: I'm lodging an objection.

19 But, Dr. Herron, you're more than welcome to respond
20 within the scope of your report.

21 A My report doesn't engage the subject of fingerprinting,
22 and it's -- fingerprinting is beyond the scope of
23 anything I wrote in this litigation.

24 Q (By Ms. Park) Dr. Herron, do you agree that signature
25 verification in mail-in voting jurisdictions boosts voter

Page 22



1 confidence?

2 MR. HYATT: Object to the form.

3 Beyond the scope of his report.

4 Q (By Ms. Park) Again, Dr. Herron, you can answer.

5 A My report doesn't engage the subject of voter confidence
6 and what measures may or may not increase it.

7 Q Dr. Herron, please turn back to Paragraph 130 of your
8 report.

9 Do you have that in front of you?

10 A Yes.

11 Q And what are the methods that you list in Paragraph 130?

12 A Do you mean the safeguards, just so I'm clear here?

13 Q Yes. The methods of verifying the identity of the person
14 who cast the ballot.

15 MR. HYATT: Object to the form as
16 misstating Paragraph 130.

17 But go ahead, Dr. Herron.

18 A Paragraph 130 refers to safeguards. What I called these
19 safeguards -- well, I'll just read the sentence again.

20 Quote, Moreover, Washington elections have many
21 safeguards to prevent ineligible voters from voting and
22 unlawful votes from being counted, end quote.

23 So I would say the role of those safeguards that I
24 list -- I'll list them in a second -- have that feature.
25 The safeguards include voter registration system, which

Page 23



1 includes the procedures that Washington, any other state,
2 but Washington uses and the associated penalties for
3 violating procedures, voter list maintenance procedures,
4 procedures for specifying submitted mail ballots, and
5 audits, all of those were listed in Paragraph 130.

6 MS. PARK: Ms. Clevenger, I would like
7 to actually strike my earlier question, please.

8 Q (By Ms. Park) So, Dr. Herron, referring back to
9 Paragraph 130, the safeguards that you list there include
10 the State's voter registration system and its penalties
11 for providing false information in the process of
12 registering to vote, procedures designed to maintain the
13 State's list of registered voters, and, in particular, to
14 remove or cancel the voter registrations of deceased,
15 moved, or other ineligible voters, procedures specifying
16 how submitted mail ballots are handled, which includes
17 ballot tracking via barcodes and audits that must be
18 conducted prior to election certification.

19 Those safeguards that you list, do any of those
20 methods verify the identity of the person who cast the
21 ballot? Yes or no?

22 A I don't think this is a simple yes or no question, and
23 the set of safeguards together function to ensure that
24 only -- well, function to ensure that the people who
25 receive ballots are who they said they are. That's a



1 virtue of the registration system and its penalties for
2 providing false information.

3 Then these individuals have barcoded envelopes that
4 are connected with the individuals, and those are tracked
5 when they are received, and that allows a -- an elections
6 official, upon receipt of a ballot, to scan the barcode
7 to know the registered voter to whom that's associated.

8 Q So, Dr. Herron, the safeguards that you listed in
9 Paragraph 130 of your expert report do not verify the
10 identity of the person who cast the ballot; correct?

11 A No. I didn't say that. I think I said the opposite.

12 Q So the safeguards that you list in Paragraph 130, do they
13 verify the identity of the person who cast the ballot?

14 A Just to be clear here, when you say verify the identity
15 of the person who cast the ballot, what does that mean?

16 Q It means exactly that, verifying the identity of the
17 person who cast the ballot.

18 A So I offered you a hypothetical. An individual
19 registered voter receives a ballot in the mail, submits
20 it. The barcode is unique to this voter. The elections
21 official receives it and, therefore, knows who submitted
22 it.

23 Q So, Dr. Herron, if someone other than the registered
24 voter were to cast the ballot, how would that be caught
25 by any of the safeguards that you listed in



1 Paragraph 130?

2 MR. HYATT: Object to the form.

3 Go ahead, Dr. Herron.

4 A So what hypothetical are you offering? I just want to
5 make sure I understand it.

6 MS. PARK: Ms. Clevenger, can you
7 please repeat the question.

8 (Question on Page 25, Lines 22
9 through 25, and Page 26,
10 Line 1, read by the reporter.)

11 MR. HYATT: Same objection.

12 Go ahead, Dr. Herron.

13 A I think, to help me answer this question, can you be more
14 precise about the hypothetical of -- that you're
15 offering? I'm having -- I can think of many, many
16 scenarios, and I'm not sure which -- which one you have
17 in mind.

18 Q (By Ms. Park) So you can just answer the question on
19 whatever scenario it is that you have in your mind, and
20 we can start there.

21 A I'd rather not speculate that way. I'm trying to answer
22 your question, so can -- if you can give me the scenario
23 you have in mind about -- that would help me answer your
24 question.

25 Q Dr. Herron, the scenario is very simple, and let me

Page 26



1 repeat it. If someone other than the registered voter
2 were to cast the ballot, how would that be caught by any
3 of the safeguards that you have listed out in
4 Paragraph 130?

5 A The reason I'm struggling with this question -- or I
6 should say a reason I'm struggling with this question is
7 because some of the safeguards in Washington involve
8 penalties, so the person whom you are hypothetically
9 describing is exposing him or herself to imprisonment and
10 fines.

11 The willingness of people to do that is, of course,
12 beyond the scope of my report. I think what you're
13 asking me is -- let me say that another way.

14 What you're asking me, in my opinion, is, what set
15 of procedures and penalties together prevent or catch, to
16 use your word, people who behave in the unlawful way that
17 you're describing?

18 And I should say that I'm using the term "unlawful"
19 not in a legal sense. It just sounds to me like what
20 you're describing as unlawful, but, of course, I'm taking
21 that -- I don't take a position on that.

22 And without a more specific example, I'm not sure
23 how to answer whether this set of procedure -- how this
24 set of procedures would work in this scenario.

25 Q Dr. Herron, the safeguards that you listed in



1 Paragraph 130, how would that catch somebody, for
2 example, who lives in a four-bedroom apartment and casts
3 the ballot of everybody who lives there?

4 MR. HYATT: Object to the form.
5 Beyond the scope of his report.

6 Go ahead, Dr. Herron.

7 A I would say I'm not familiar with that hypothetical of
8 someone voting a lot of ballots in a -- I believe you
9 said four -- I don't recall how many floors the apartment
10 building had. I don't know this hypothetical, and it --
11 and those --

12 Q (By Ms. Park) Dr. Herron, I'm going to -- I'm trying to
13 work with you here. I can have the court reporter read
14 back your previous answer, and you had specifically asked
15 me to specify with a more specific hypothetical, which is
16 what I'm doing.

17 So I am trying to work with you and help you along,
18 but instead you are now dodging the question. So,
19 please, I can either go back to the more general question
20 or I can stick with this hypothetical.

21 What would you like to do?

22 MR. HYATT: Counsel, I object to your
23 claims that Dr. Herron is objecting -- is dodging the
24 question. You know, I -- please refrain from making
25 accusations like that to Dr. Herron.



1 But, please, go ahead.

2 Q (By Mr. Hyatt) I'll repeat my question.

3 What would you like to do? Would you like to go
4 back to the earlier more general question or would you
5 like to answer this specific hypothetical, which is what
6 you had asked me to provide you?

7 A I'm happy -- I don't believe that I asked for a
8 hypothetical. What I said, when you mentioned that one,
9 is that I'm not familiar with it, and I haven't seen any
10 evidence of that particular hypothetical, which makes it
11 hard for me to speculate about what it might entail.

12 What I mentioned here in Paragraph 130 -- and I
13 should also point out that the verb I used in the third
14 sentence was "include." So I don't want to suggest that
15 the safeguards I listed in 130 are a comprehensive list
16 of all safeguards in Washington. They are simply the
17 ones that I listed there.

18 How all of the safeguards, including potential
19 penalties, deter people or an individual from the
20 behavior that you're describing, that -- that's beyond my
21 expertise, and it's certainly beyond what I engaged in
22 this report.

23 Q So, Dr. Herron, I'm going to put this more simply.

24 The safeguards that you list in Paragraph 130 are
25 related to safeguards at the registration stage; correct?

Page 29



1 A No. I wouldn't say so, ma'am. I wouldn't say so,
2 Counsel.

3 Q What would you say then?

4 A That that's not true.

5 Q Because?

6 A Because the last two lines don't have to do with
7 registration. I apologize. The last two lines of
8 Paragraph 130.

9 Q Dr. Herron, do you agree that signature verification in
10 mail-in voting jurisdictions boosts voter confidence?

11 MR. HYATT: Object to the form.

12 Beyond the scope of his report.

13 But go ahead, Dr. Herron.

14 A I believe you asked me that before, and I don't want to
15 contradict what I said earlier. I know you asked me
16 something about voter confidence, and perhaps it was a
17 slightly different example. I apologize for not
18 remembering.

19 But what I believe I said in response to that
20 earlier question is that I don't have any opinions to
21 offer in this case on what does or does not boost voter
22 confidence, and I don't talk about voter confidence at
23 all in my -- in my report here.

24 Q (By Ms. Park) Dr. Herron, do you anticipate testifying
25 at trial in this matter, that signature verification is,

Page 30



1 on balance, harmful for Washington State's democracy?

2 A I would answer that by saying that, in Paragraph 1 of my
3 report, I described what I was asked to do in this case.
4 I listed four points.

5 I obviously can't anticipate what counsel may ask me
6 to study in the next several months before any potential
7 trial. My opinions in this case are what is in my
8 report.

9 I don't talk in my report about harms to democracy.
10 That's beyond my scope. I mean, it's beyond the scope of
11 this report.

12 Q So you have no opinion on that question?

13 MR. HATT: Object to the form as
14 beyond the scope of his report.

15 But go ahead, Dr. Herron.

16 A It's not that I have no opinion on this question. It's
17 that the question asks me about testifying about I
18 believe the term you used was harms to democracy or
19 harmful to democracy -- I don't remember the exact
20 phrasing; apologies -- and my response was that my report
21 doesn't engage what is or is not harmful.

22 And it's my role in this case and honestly, as my
23 role as a scholar or election administration, that's not
24 the sort of issue that I engage.

25 I -- in this report I describe data. I describe

Page 31



1 of absentee ballots were fraudulently submitted?

2 MR. HYATT: Object to the form.

3 Go ahead, Dr. Herron. You can answer whether you're
4 aware.

5 A Just to be clear, I don't think I've ever seen this
6 document, and this case -- I don't know this case. So
7 I'm not aware of anything about it, unless I were to read
8 it.

9 Q (By Ms. Park) And, Dr. Herron, did Kevin Hamilton tell
10 you about those particular instances of fraud?

11 MR. HYATT: Object to the form.

12 Dr. Herron, please don't reveal any confidential
13 communications that are attorney-client privilege or work
14 product communications.

15 But you can answer whether you've spoken with
16 Mr. Herron -- or excuse me -- with Mr. Hamilton about
17 this case.

18 I believe your answer was no, but feel free to
19 correct the record if I'm wrong about that.

20 A I have no recollection of discussing this case with
21 anyone. In fact, I don't have any recollection of
22 knowing about this case. Obviously it could be that I'm
23 forgetting, but this doesn't ring a bell at all. So
24 since I don't remember the case, I -- I don't remember
25 talking about it with anyone.

Page 35



1 Q And --

2 A I apologize. I don't think I've ever seen this. I hope
3 not. I certainly have no recollection.

4 Q So, Dr. Herron, this order that is shown in Exhibit B,
5 that is not something you reviewed and considered in
6 drafting your report for this case; correct?

7 A I believe you're asking me, did I rely on this case in
8 drafting my report? No, I did not.

9 Q Dr. Herron, historically, in the period from the founding
10 of the United States through the present, what challenges
11 to election integrity have states faced?

12 MR. HYATT: Object to the form.
13 Beyond the scope of Dr. Herron's report.

14 Dr. Herron, to the extent you can answer that
15 question, go ahead, but it's beyond the scope of your
16 report.

17 A I don't really know how to start talking about that since
18 you're asking me about several hundred years' worth of
19 history. I'm not a historian, and I don't want to
20 suggest that I am.

21 I -- I'm confident that some historians would point
22 out that, prior to emancipation, elections faced
23 integrity issues because certain residents weren't
24 allowed to vote.

25 I don't know if you want to talk -- if you're trying

Page 36



1 A "It is my understanding that the documents in
2 Hobbs-0003795-0006235 were produced by officials in Clark
3 County. Notwithstanding empty files, e.g.,
4 Hobbs-0003795.PDF, they include, one, copies of letters
5 sent by Clark County officials to voters warning the
6 latter about Washington's mail ballot submission
7 requirements, e.g., Hobbs-0004902.PDF; two, lists of
8 individual voters and assertions about improper signing
9 of ballot return envelopes or other irregularities, e.g.,
10 Hobbs-0005057.PDF; and, three, memoranda, e.g.,
11 Hobbs-0005064.PDF."

12 Q So, Dr. Herron, the methodology that you used would
13 exclude from what you consider to be voter fraud
14 instances like those in Clark County that did not result
15 in a conviction or a guilty plea; correct?

16 THE WITNESS: Just so I can get the
17 first half of the question right, Ms. Clevenger, could
18 you please reread that one. Thank you.

19 (Question on Page 42, Lines 12
20 through 15, read by the
21 reporter.)

22 A I'm not sure I would use the word "exclude," but for the
23 purposes of this litigation, I defined an instance of
24 voter fraud, when I was counting those instances in
25 Washington, as one that led to a guilty plea in a



1 judicial process or a conviction in a judicial process.

2 And to the best of my knowledge, as I wrote in
3 Paragraph 96, the instances described in Paragraph 95 did
4 not lead to any convictions of voter fraud or guilty
5 pleas to voter fraud. So, therefore, I would not count
6 them as confirmed instances of voter fraud.

7 MS. PARK: Andrea, I would like to
8 call for a ten-minute break at this time, please.

9 (Recess from 11:27 a.m. to
10 11:47 a.m.)

11 EXAMINATION (Continuing)

12 BY MS. PARK:

13 Q So, Dr. Herron, essentially, under your methodology, only
14 a criminal conviction or a guilty plea represents voter
15 fraud; correct?

16 MR. HYATT: Object to the form.

17 A I'm not sure I'd use the word "represents," but I would
18 say that, for the purposes of this case, I define voter
19 fraud -- a confirmed instance is one in which there was a
20 guilty plea or a conviction in a judicial process.

21 Q (By Ms. Park) And, Dr. Herron, under your methodology,
22 do charges that do not lead to convictions count as voter
23 fraud?

24 A No.

25 Q And under your methodology, attempted voter fraud that

Page 43



1 did not result in a conviction does not qualify as voter
2 fraud; correct?

3 MR. HYATT: Object to the form.

4 Go ahead, Dr. Herron.

5 A Right. I believe you said, if there's no conviction,
6 so -- and no guilty plea, so then that would be -- I
7 wouldn't count that as a confirmed instance, yeah.

8 Q (By Ms. Park) Your methodology does not look for any
9 instances that are not criminal charges -- strike that,
10 please.

11 You did not look for instances of fraud where
12 prosecutors declined to bring a case; correct?

13 MR. HYATT: Object to the form.

14 A I looked broadly for examples or instances that led to
15 convictions and convictions or guilty pleas. So if I ran
16 across an instance like the one you described, I would
17 read it, but I wouldn't count it.

18 I wouldn't say I wouldn't look for it. I was saying
19 I looked broadly, and I counted what I found as -- what I
20 found to be convictions or guilty pleas.

21 Q (By Ms. Park) So in instances where prosecutors declined
22 to bring a case, you did not include that as fraud;
23 correct?

24 MR. HYATT: Object to the form.

25 Go ahead, Dr. Herron.



1 A Right. I would not count that as a -- as a confirmed
2 instance of voter fraud if there were -- if no charges
3 were brought. That's correct.

4 Q (By Ms. Park) Dr. Herron, do you know what prosecutorial
5 discretion is?

6 A Well, I'm not a lawyer. I have a general sense of what
7 that means. So I -- I would say yes, but I wouldn't want
8 to suggest I have a legal understanding.

9 Q And you have reviewed the Secretary of State's
10 interrogatory responses; correct?

11 A I have read the Secretary of State's. I think there are
12 several.

13 Q Dr. Herron, please pull up Exhibit D.

14 MS. PARK: And while you're doing
15 that, Andrea, I would like to have this marked as Exhibit
16 No. D, please.

17 (Exhibit No. D marked for
18 identification.)

19 A Thank you. I have D up on my screen, Page 1 of 35.

20 Q (By Ms. Park) I would like to turn to Page 11 of that
21 document, so Page 11 of the document which is also
22 Page 11 of the PDF.

23 A I'm there. Thanks.

24 Q Do you see the answer to Interrogatory No. 4?

25 A I do. I think the -- I know this document. It -- the

Page 45



1 answer goes beyond Page 11, so I would say, if I'm
2 looking right at 11, I see it, but it extends a few more
3 pages, I believe.

4 Q And if you look on Page 12 of that document, you see a
5 reference to a KING 5 news article; correct?

6 A Yes, I do. It's Line 4 on Page 12. I see it.

7 Q And at this time I would like you to pull up Exhibit E.

8 MS. PARK: And, Andrea, could you
9 please mark that as Exhibit E, please.

10 (Exhibit No. E marked for
11 identification.)

12 Q (By Ms. Park) And, Dr. Herron, did you review this
13 KING 5 article, which is Exhibit E here, before drafting
14 your expert report in this case?

15 A Yes, I did.

16 Q And in this KING 5 article, I am going to go to Page 3 of
17 the PDF. And there, then King County Prosecutor Dan
18 Satterberg is quoted as saying, "In my office, I've got
19 235 murder cases to get to a jury. Do I want to charge
20 somebody for voting for their dead spouse and put that
21 right alongside those other cases and try to get it into
22 court," Satterberg asked.

23 Dr. Herron, is that something you reviewed before
24 drafting your expert report in this case?

25 A Yes. I -- I've read that sentence. It's at the bottom

Page 46



1 of Page -- excuse me -- bottom of Page 3, yep.

2 Q And, Dr. Herron, how did that affect your opinion?

3 A How did the KING 5 article affect my opinion, do you
4 mean? I'm sorry. Just want to make sure I know what you
5 mean by "that" in this case.

6 Q Yes.

7 A Well, I used a KING 5 article in my report. I could look
8 for the section. I don't recall what it is, but I read
9 through this document and I counted the number of
10 incidents that were referred to.

11 There are some subtleties. This article talks about
12 cases that are referred, some that were dismissed, and I
13 believe it was 39 -- I'd like to go to my -- if we talk
14 about specific numbers, I'd rather go to my report, but I
15 counted the cases here, the minimum number, which I
16 couldn't tell if they related to signature verification,
17 and I assumed that they all were, conservatively, and
18 that informed my calculations in my report.

19 Q And, Dr. Herron, specifically the quote from then
20 Prosecutor Dan Satterberg, how did that quote affect your
21 opinion, if at all?

22 A I would say it -- I read it. My report isn't about
23 murder cases, so didn't really -- I didn't incorporate it
24 explicitly. I was counting cases of or instances of
25 proceedings involving voter fraud, so I'm not -- I hope

Page 47



1 this answers -- I mean, I read it.

2 Q And, Dr. Herron, do you think your methodology for
3 counting what qualifies as voter fraud is likely to
4 accurately count all instances of voter fraud in
5 Washington in light of that quote?

6 MR. HYATT: Object to the form.

7 Go ahead, Dr. Herron.

8 A Well, for me, it -- as I talked about in my report, an
9 instance of voter fraud or confirmed voter fraud is one
10 in which there is a conviction in the judicial process or
11 guilty plea.

12 Again, in a judicial process. So I think my method
13 will count those. That method is grounded in the
14 literature. I've written, and other scholars have as
15 well, about allegations of voter fraud. These papers are
16 in my vita, and some of them are discussed in my report.

17 What these papers show is that there's lots of
18 allegations, and scholars like myself have studied them.
19 They often find that the allegations don't stand up, and
20 that is what motivated my focusing on confirmed instances
21 of voter fraud where a confirmed means convictions or
22 guilty pleas.

23 Q And, Dr. Herron, on that same Page 3 of Exhibit E, where
24 the article says that Satterberg said he made the
25 decision in 2007 to switch to warning letters instead of

Page 48



1 Q And, Dr. Herron, does that include assessing whether any
2 given procedure is likely to meet the objective of
3 securing an election?

4 MR. HYATT: Object to the form.
5 Beyond the scope.

6 But go ahead, Dr. Herron. You can answer.

7 A No. I -- I would say the answer to that is no. I was
8 trying to characterize -- in fact, I would say I did
9 characterize some of the safeguards that characterize --
10 that -- that Washington uses in its electoral
11 environment, and -- yeah. I'll end the sentence with
12 that.

13 Q (By Ms. Park) And, Dr. Herron, earlier I asked you
14 whether you thought it was a good idea to require some
15 means of verifying voter identity.

16 Do you recall that line of questioning?

17 A I believe, yes.

18 Q So now I'm going to ask something slightly different.

19 Is a means to verify the identity of a voter who
20 casts a mail-in ballot integral to the procedures that a
21 state uses to secure its elections?

22 MR. HYATT: Object to the form. And
23 beyond the scope of Dr. Herron's report.

24 But, Dr. Herron, you may answer to the extent that
25 you can.

Page 60



1 THE WITNESS: Just because it was a
2 long question, Ms. Clevenger, could you please reread it.
3 (Question on Page 60, Lines 19
4 through 21, read by the
5 reporter.)

6 MR. HYATT: Same objection.
7 Go ahead, Dr. Herron.

8 A That's beyond the scope of my report. To assess whether
9 any particular feature is integral, I think one would
10 have to have a way of thinking about how the security of
11 an election would vary in the presence or absence of that
12 one procedure.

13 And that particular question about any of the
14 procedures that Washington or other states use is not
15 something I studied in this report.

16 So I think that what is integral, that -- I can't
17 answer that, given the research I did. It's beyond my
18 scope.

19 Q (By Ms. Park) And, Dr. Herron, did you consider whether
20 Washington has a means of verifying that the voter to
21 whom the ballot was issued was the person who cast the
22 ballot, in assessing the election environment in
23 Washington?

24 MR. HYATT: Object to the form.
25 Beyond the scope of Dr. Herron's report.



1 mind. Just to give one example, I didn't study the
2 machines that Washington uses for accessible voting.
3 That would be part of its electoral environment. That
4 was -- that was beyond the scope of my report.

5 Q (By Ms. Summers) Okay. So were you asked to assess the
6 accessibility of voting in Washington?

7 A Excuse me. I'm not sure I understand the question. The
8 accessibility?

9 Q Well, would you agree that accessibility and security are
10 two different aspects of election systems?

11 A Yes. I would tend to agree with that. There's overlap,
12 but I would tend to agree.

13 Q And your report says you were asked to focus on security;
14 correct?

15 A Yes. I was, in fact, asked to focus, when I think about
16 the election environment, on the aspects of that
17 environment that Washington uses to secure its elections.

18 Q So in preparing your report, were you assessing the
19 accessibility of voting in Washington?

20 A I don't -- no, I don't believe so.

21 Q Okay. Would you agree that any voting system has to
22 balance accessibility and security?

23 MR. HYATT: Object to the form.

24 Beyond the scope of Dr. Herron's opinions.

25 But, Dr. Herron, you can answer.



1 A I would say that those sorts of balancing questions are
2 beyond the scope of my report. I understand that courts
3 think about these balancing issues, but as an expert
4 witness in this case, I was not asked to, and it's
5 generally not my role, as a scholar of election
6 administration, to think about balancing, even though I
7 know others do.

8 Q (By Ms. Summers) Okay. So is it fair to say that's
9 beyond the scope of your expertise?

10 MR. HYATT: Objection. That's
11 misstating his testimony.

12 But, Dr. Herron, you can answer. Go ahead.

13 A I would say it's beyond the scope of this report.

14 Q (By Ms. Summers) All right. I want to understand what
15 you mean.

16 Are you saying that it's beyond the scope of your
17 proposed testimony?

18 A What I'm saying is, it's beyond the scope of my report.
19 It's -- I cannot -- I believe that the date that was put
20 in the chat about a potential trial is in November. I
21 believe it was the 20th.

22 And I don't know. I can't predict what Counsel
23 might ask me to study between now and then, so what I can
24 only tell you -- what I can tell you is that it is beyond
25 the scope of my report.



1 data.

2 On the other hand, potentially the greater
3 differences in data because the time might be different.
4 That -- that means there is tension between how many
5 elections I would want to use.

6 In addition, my report -- the subject of my report
7 is, among other things, voter fraud. And in the United
8 States, one thing that I have learned is that -- this is
9 obvious -- is that the focus in voter fraud changed
10 dramatically in 2016 in this country.

11 And so I did not want to write a report that was
12 entirely in the period in which allegations of voter
13 fraud were being made regularly, and so I chose to extend
14 the time period one presidential election cycle, and that
15 brought me to 2012.

16 Q Based on your assessment of the election environment, how
17 would an election worker determine whether a non-matching
18 signature on a ballot return envelope was a result of
19 fraud or mistake or sloppiness?

20 MR. HYATT: Object to the form.
21 Beyond the scope of Dr. Herron's report.

22 But go ahead, Dr. Herron.

23 A I would say that the obligations of and the duties of
24 elections officials are beyond the scope of my report,
25 and consistent with my definition, the only -- the only

Page 98



1 institution that can determine if something is fraudulent
2 is a judicial institution.

3 And so this is why I defined confirmed voter fraud
4 as -- an incident of confirmed voter fraud is one for
5 which there was either a conviction in a judicial process
6 or a guilty plea in a judicial process.

7 Q (By Ms. Summers) I'd like to turn your attention to
8 Paragraph 121 on Page 40 of your report.

9 A I'm there.

10 Q You opine that, quote, The total number of confirmed
11 voter fraud instances in Washington discovered solely by
12 the state signature verification requirement could be
13 zero.

14 I want to ask you a couple questions about that
15 opinion.

16 First of all, is "instances" -- is that a term that
17 is interchangeable with "cases"?

18 A That -- I'm -- the word "case," I think, has a legal
19 definition perhaps. If I -- I'll answer this question
20 with an example.

21 If, hypothetically, there were a case -- a single
22 case that involved two voters, I would call that two
23 instances because, again, I'm using the word "instance"
24 as an example of a voter.

25 Whether the legal system treats multiple instances

Page 99



1 jurisdiction every eligible voter is mailed a ballot,
2 that makes it possible for every eligible voter to vote
3 by mail.

4 Washington mails every eligible voter a ballot. So
5 by that definition, this maximizes the ability of
6 eligible Washingtonians to take advantage of the ease of
7 voting that voting by mail fosters.

8 Q (By Ms. Summers) After reading that paragraph, do you
9 still believe that whether universal mail-in voting
10 increases the rate of participation in an election is
11 beyond the scope of your report?

12 A Yes.

13 Q And why is that?

14 A Because turnout effects are beyond the scope of my
15 report. Here I'm talking about ease of voting and the
16 paragraph that you had me read a sentence.

17 The beginning of Paragraph 29 talks about what's
18 called the cost of voting, which is a term from the
19 literature in the election administration. And that
20 refers to not necessarily a financial cost, but the
21 difficulty or the ease of the action of voting.

22 And what I'm saying here is that, if you mail --
23 excuse me. If a jurisdiction mails a ballot to every
24 eligible voter, that makes it possible for every eligible
25 voter to vote by mail.

Page 105



1 difficult for voters could, on one hand, hypothetically
2 decrease fraud rates, again, putting in -- I want to be
3 clear here. There's no evidence of that in the case of
4 Washington -- but hypothetically it could. On the other
5 hand, it could also make voting for eligible people more
6 difficult.

7 So I would say I would answer that question then, in
8 one hand, referring to data; on the other hand, referring
9 to the trade-off in cost and benefits that I just
10 described.

11 Q Is it your opinion that Washington signature verification
12 requirement does not deter voter fraud?

13 MR. HYATT: Object to the form.
14 Beyond the scope of his report.

15 Go ahead, Dr. Herron.

16 A I'm not taking any position on what is or is not being
17 deterred. I'm reporting what the data suggests.

18 Q (By Ms. Summers) Okay. And it is not your opinion, if I
19 understand your testimony, that any safeguards to deter
20 voter fraud are unnecessary; correct?

21 A I think that elections should be safe and that they
22 should have safeguards. If that wasn't clear before, let
23 me say so now. I completely believe that. The question
24 is balancing cost and benefits.

25 Q You cited to the cost of voting index developed by Scott

Page 113



C E R T I F I C A T E

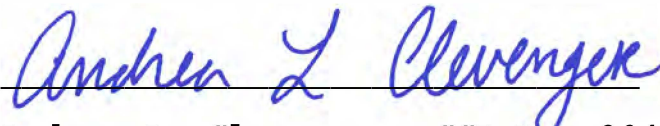
I, ANDREA L. CLEVINGER, a Certified Stenographic Court Reporter in and for the State of Washington, residing at Olympia, authorized to administer oaths and affirmations pursuant to RCW 5.28.010, do hereby certify;

That the foregoing proceedings were taken stenographically before me and thereafter reduced to a typed format under my direction; that the transcript is a full, true and complete transcript of said proceedings consisting of Pages 1 through 121;

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of July, 2023.



Andrea L. Clevenger, CCR No. 3041

(Certified Stenographic Court Reporter)



Exhibit 5

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF WASHINGTON

KING COUNTY SUPERIOR COURT

VET VOICE FOUNDATION, et al.,)
 Plaintiffs,)
 vs.) NO. 22-2-19384-1 SEA
 STEVE HOBBS, et al.,)
 Defendants.)

**CERTIFIED
TRANSCRIPT**

DEPOSITION UPON ORAL EXAMINATION OF
 DR. LINTON A. MOHAMMED
 June 29, 2023

Via Zoom Videoconference
Pages 1 through 106

Taken Before:

Rebecca S. Lindauer, RPR, CCR
 Registered Professional Reporter
 of
 Capitol Pacific Reporting, Inc.
 2401 Bristol Court SW, Suite C-103, Olympia, WA 98502
 Tel (360) 352-2054 Fax (360) 705-6539 Toll Free (800) 407-0148

| | | |
|----------------|----------------|----------------|
| Tacoma, WA | Seattle, WA | Aberdeen, WA |
| (253) 564-8494 | (206) 622-9919 | (360) 532-7445 |

| | |
|----------------|----------------|
| Chehalis | Bremerton |
| (800) 407-0148 | (800) 407-0148 |

www.capitolpacificreporting.com
admin@capitolpacificreporting.com



APPEARANCES (Via Zoom Videoconference):

FOR THE PLAINTIFFS:

MR. HEATH L. HYATT
PERKINS COIE
1201 3rd Avenue
Suite 4900
Seattle, WA 98101
(206) 359-8000
hhyatt@perkinscoie.com

**FOR THE DEFENDANT
HOBBS:**

MS. TERA M. HEINTZ
MR. WILLIAM MCGINTY
ASSISTANT ATTORNEYS GENERAL
7141 Cleanwater Drive SW
P.O. Box 40111
Olympia, WA 98504-0111
(360) 709-6470
tera.heintz@atg.wa.gov
william.mcginty@atg.wa.gov

**FOR THE DEFENDANT
KING COUNTY:**

MS. ANN M. SUMMERS
KING COUNTY PROSECUTOR'S OFFICE
701 Fifth Avenue
Suite 600
Seattle, WA 98104
(206) 477-1909
ann.summers@kingcounty.gov

ALSO PRESENT:

MS. REBECCA DAVILA-SIMMONS
MR. JOHN COLLINS
MS. ELEANOR EAGAN
MS. SOFIA ELLINGTON



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

| EXAMINATION | PAGE |
|-------------|------|
| MS. HEINTZ | 4 |
| MS. SUMMER | 93 |

EXHIBITS

| EXHIBIT | DESCRIPTION | PAGE |
|---------|--|------|
| A | Expert report by Dr. Mohammed; 21 pgs. | 5 |
| B | PowerPoint presentation by Mr. Bishop and Mr. Szymanski; 89 pgs. | 8 |
| C | Signature verification examinations, Bates Nos. 0002664-0002669; 6 pgs. | 8 |
| D | Signature verification examination, Bates Nos. 142226.1-142226.6; 6 pgs. | 8 |
| E | Frequently asked questions; 18 pgs. | 9 |
| F | Kam study; 5 pgs. | 48 |
| G | Declaration of Dr. Mohammed in Florida Democratic Party v. Detzner case; 41 pgs. | 70 |
| H | Declaration in Saucedo v. Garner; 32 pgs. | 77 |
| I | Declaration in Frederick v. Lawson case; 41 pgs. | 82 |
| J | Declaration in Self-Advocacy Solutions North Dakota v. Jaeger; 25 pgs. | 87 |



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

| EXHIBIT | DESCRIPTION | PAGE |
|----------------|---|-------------|
| K | Declaration in Richardson v. Hancock; 57 pgs. | 88 |
| L | Declaration in League of Women Voters of Arkansas v. Thurston; 34 pgs. | 89 |

RETRIEVEDFROMDEMOCRACYDOCKET.COM



1 BE IT REMEMBERED that on Thursday, June 29, 2023,
2 at 10:05 a.m., via Zoom videoconference, before REBECCA S.
3 LINDAUER, Washington State Certified Court Reporter,
4 residing at Lacey, authorized to administer oaths and
5 affirmations pursuant to RCW 5.28.101.

6 WHEREUPON, the following proceedings were had, to
7 wit:

8
9 DR. LINTON A. MOHAMMED, having been first duly sworn,
10 testified as follows:

11 EXAMINATION

12 BY MS. HEINTZ:

13 Q Good morning. Tera Heintz appearing on behalf of the
14 Secretary of State, and with me are Will McGinty, Rebecca
15 Davila-Simmons, John Collins, Eleanor Eagan, and Sofia
16 Ellington observing. Thank you --

17 A Good morning.

18 Q Thank you for being here, Mr. Mohammed -- or, Dr. Mohammed.

19 A That's okay.

20 Q Do you have a document that's been -- that would have been
21 premarked Exhibit A, and it's your expert report in this
22 case?

23 A It's supposed to be in the files that was sent to me as
24 exhibits?

25 Q Yes. They would have been files sent to you this morning.

Page 5



1 State rejects ballots due to failure to validate a voter's
2 signature?

3 A No.

4 Q Do you know the rate at which Washington counties reject
5 ballots due to failure to validate a voter's signature?

6 A No.

7 Q Do you know how Washington State's rejection of ballots due
8 to signature verification issues compares to other states'
9 rejection rates?

10 A No.

11 Q Have you done an analysis of any other method of validating
12 a voter's identity for election-related purposes?

13 MR. HYATT: Object to the form.

14 A No.

15 Q (By Ms. Heintz) Have you ever compared the burdens of other
16 methods for validating a voter's identity with the burdens
17 of validating a voter's signature?

18 MR. HYATT: Object to the form.

19 A I'm not sure I understand the question, Counsel. If you
20 want to rephrase.

21 Q (By Ms. Heintz) Have you ever compared the burdens of other
22 methods of validating a voter's identity with the burdens of
23 validating a voter's signature?

24 MR. HYATT: Same objection.

25 A I don't know what the other methods for validating identity

Page 20



1 would be. If you give me some examples, I can give you my
2 opinion on it.

3 Q (By Ms. Heintz) Are you aware of any other methods for
4 validating a voter's identity?

5 A There's fingerprints, yeah, to interview the voter, phone
6 call maybe, or in-person interview. Apart from that, I
7 don't think they will go as far as DNA, but certainly
8 fingerprints might be the closest --

9 Q Okay.

10 A -- to signatures.

11 Q Have you ever evaluated the burdens of fingerprinting voters
12 as a method of voter identification versus validating the
13 signature?

14 A Again, that's outside my expertise.

15 Q And you're not aware of any other method for validating a
16 voter's identity for election-related purposes --

17 MR. HYATT: Object to the form.

18 Q (By Ms. Heintz) -- other than what you just stated?

19 MR. HYATT: Object to the form.

20 A No.

21 Q (By Ms. Heintz) Do you have an understanding of any
22 secondary review -- strike that.

23 All right. You worked for nearly 14 years as a
24 forensic document examiner and senior document examiner for
25 the San Diego Sheriff's Department. Correct?

Page 21



1 B-r-y-a-n, Found, F-o-u-n-d; and Doug, D-o-u-g, Rogers. And
2 I don't recall the exact title of the paper, something
3 like -- I don't recall exact title.

4 Q Do you recall generally what the title is?

5 A It was like -- it was about authentication of signatures. I
6 can look it up for you, if you like.

7 Q That's okay.

8 A You can Google it, yeah, yeah. It would have been done in
9 about 2001 or 2002.

10 Q Great.

11 A Yes.

12 Q And just to let you know, Dr. Mohammed, at any point if you
13 would like to take a break, just let me know.

14 A Of course.

15 Q All right. If you could turn back to your written report,
16 on page 1, the second paragraph.

17 A I'm sorry. Which page?

18 Q Page 1.

19 A Page 1.

20 Q On the second paragraph you write that, "It is my
21 professional opinion that signature matching to verify a
22 voter's identity is fundamentally incompatible with election
23 administration." Do you see that?

24 A Yes.

25 Q Have you ever worked for an election administrator?

Page 29



1 A No.

2 Q Have you ever worked as an election administrator?

3 A No.

4 Q Have you ever worked in a county auditor's office?

5 A No.

6 Q Have you ever worked in a secretary of state's office?

7 A No.

8 Q Have you ever published any articles about election
9 administration?

10 A No.

11 Q Have you ever provided training to election administrators
12 on validating voter signatures?

13 A I was asked last month to provide training to Colorado, but
14 I said no.

15 Q You were asked last month to provide training to Colorado
16 about what?

17 A Yes, Colorado election officials.

18 Q And what were you asked to do for that training?

19 A Very similar to what the Washington State Patrol examiners
20 gave to the officials in Washington, Washington State.

21 Q So a training on how to validate signatures?

22 A Yes.

23 Q Have you ever represented yourself in a professional context
24 as an election administration expert?

25 A No.



1 Q Have you ever consulted with election administrators on
2 validating voter signatures?

3 A No.

4 Q Have you ever supervised or worked with lay persons in
5 validating signatures?

6 A No.

7 Q Have you ever trained lay persons on validating signatures?

8 A No.

9 Q Have you ever conducted a study about lay persons validating
10 signatures?

11 A No.

12 Q Have you ever offered an opinion in any other case that
13 using signature matching to verify a voter's identity is
14 fundamentally incompatible with election administration?

15 MR. HYATT: Object to the form.

16 A I may not have stated it exactly the same way, but I believe
17 it is a process that has a huge potential for error.

18 Q (By Ms. Heintz) I'll ask again. Have you ever offered an
19 opinion in any other case that using signature matching to
20 verify a voter's identity is fundamentally incompatible with
21 election administration?

22 A Not exactly in those words, no.

23 Q What criterion do you use to determine whether a method of
24 voter identity verification is fundamentally compatible with
25 election administration?



1 A Well, in my view, the election administration, they would
2 want to make sure that all legitimate votes are counted.
3 And in my view, the process of signature verification as
4 used in Washington State may tend to -- or has a huge
5 potential of disenfranchising voters by rejecting signatures
6 that are valid.

7 Q And so when you say that your understanding is that election
8 administrators would want to count all legitimate votes, is
9 it your understanding that any method of voter identity
10 verification that has errors is fundamentally incompatible
11 with election administration?

12 MR. HYATT: Object to the form; misstating his
13 testimony; also beyond the scope of his report and his
14 expertise. We're talking about signature verification.

15 MS. HEINTZ: Sorry. I think I might have said
16 electronic signature verification. I can restate.

17 Q (By Ms. Heintz) When you say that election
18 administrators -- your understanding is that election
19 administrators would want to count all legitimate votes. Is
20 it your understanding that any voter identification method
21 that has errors is fundamentally incompatible with election
22 administration?

23 MR. HYATT: Same objections with the addition of
24 speculation.

25 A It would depend on the other methods that are proposed,

Page 32



1 which the only thing I can think of are fingerprints as a
2 matter of physical evidence. But if it has a potential for
3 a huge error rate, if there's a method where a legitimate
4 voter is disenfranchised, I would say that process should
5 not be used.

6 Q (By Ms. Heintz) So do you think fingerprinting voters as a
7 method of voter identity verification is compatible with
8 election administration?

9 MR. HYATT: Object to the form.

10 A The difficulty with signature examination is the signatures
11 vary. You never sign exactly the same way twice.
12 Fingerprints generally do not vary, and they can be examined
13 electronically, run through what's called an AFIS system,
14 A-F-I-S. That has a pretty high accuracy rate.

15 A signature, on the other hand, the way that it's being
16 done for elections, there's no way for the election official
17 to determine the voter's range of variation. So if
18 something looks dissimilar, they may reject it, but it's
19 just simply because the writer has a wide range of
20 variation. So I don't think in this case any method that
21 has an error rate that can disenfranchise legal voters I
22 would say should not be used.

23 Q (By Ms. Heintz) And I will go back to that question again.

24 A Okay.

25 Q In your view, is fingerprinting voters as a method of voter



1 identification fundamentally compatible with election
2 administration?

3 MR. HYATT: Object to the form.

4 A I think there would be less likelihood of errors than using
5 signature verification.

6 Q (By Ms. Heintz) So do you view that as fundamentally
7 compatible with election administration?

8 A That's the --

9 MR. HYATT: Object to form.

10 A Again, that would be up to the election administrators to
11 determine. That's outside my range of expertise.

12 Q (By Ms. Heintz) In assessing whether a method of voter
13 identity verification is compatible with election
14 administration, do you think it's relevant to consider the
15 burdens on the voter of that method?

16 A Again, Counsel, I think that's outside my range of
17 expertise. That's more for someone with expertise in
18 administering voting.

19 Q Well, you provided an opinion that using signature matching
20 is fundamentally incompatible with election administration.
21 So I'm asking when you make that determination, do you think
22 that it's relevant the burdens on the voter of a particular
23 method of voter identification? If you don't know, that's
24 fine.

25 A I'm not sure what you mean by the burden is on the voter, if

Page 34



1 you can clarify that or maybe rephrase.

2 Q What's your understanding of burdens on the voter?

3 A That the voter has to prove that the signature is theirs.

4 Q And so do you think fingerprinting voters would be
5 burdensome on voters?

6 MR. HYATT: Object to the form.

7 A What I'm saying, with fingerprinting, we have a lower error
8 rate than signatures, but that's up to the voters and up to
9 the administrators to determine.

10 Q (By Ms. Heintz) Do you think that fingerprinting voters
11 would be burdensome?

12 MR. HYATT: Object to the form.

13 A I don't think so. It may be socially unacceptable because
14 there's stigma associated with being fingerprinted, but it's
15 very certain, a fingerprint, to make an ink print.

16 Q (By Ms. Heintz) In determining whether a method of voter
17 identity verification is compatible with election
18 administration, do you consider the impact of using a
19 particular method on voter participation?

20 A No.

21 Q Do you think that's relevant?

22 MR. HYATT: Object to the form.

23 A Not to my opinion.

24 Q (By Ms. Heintz) Do you consider the state's interest in
25 preserving voter confidence is an important factor in

1 determining whether a method of voter identity verification
2 is compatible with election administration?

3 A I think it would be. I'm not sure how much confidence the
4 voters would have in signature verification.

5 Q But you think that preserving that interest in voter
6 confidence is an important factor in determining whether a
7 method of identity verification is important or a method of
8 identification is compatible with election administration?

9 MR. HYATT: Object to the form.

10 A Certainly as a voter that would be important to me.

11 Q (By Ms. Heintz) In determining whether a method of voter
12 identity verification is compatible with election
13 administration, do you consider it important to balance a
14 state's interest in providing ballot access and preserving
15 election security?

16 A I think it is. It would be.

17 Q You've mentioned fingerprinting as a compatible method of
18 identity verification. Do you know of any other method
19 of --

20 MR. HYATT: Object -- sorry, Tera. Go ahead. I
21 didn't mean to cut you off.

22 MS. HEINTZ: No. That's okay.

23 Q (By Ms. Heintz) It's my understanding that you had
24 previously testified that fingerprinting as a method of
25 identity verification is compatible with election

Page 36



1 administration. Is that right?

2 A As I said --

3 MR. HYATT: Object to the form.

4 Feel free to correct that testimony as needed, but I'll
5 object to the form.

6 A Yeah. I think I think I said fingerprinting may have a
7 lower error rate than signature verification.

8 Q (By Ms. Heintz) And did you say you didn't know whether it
9 was fundamentally compatible?

10 MR. HYATT: Object to the form; beyond the scope
11 of his report and his testimony.

12 MS. HEINTZ: I'm just asking for clarification.

13 Q (By Ms. Heintz) Did you say you didn't know whether it was
14 fundamentally compatible with election administration?

15 A It would have to be tested. I don't know. I don't think
16 it's ever been done.

17 Q Okay. Do you consider any method of identity verification
18 as fundamentally compatible with election administration?

19 MR. HYATT: Object to the form; beyond the scope
20 of his testimony.

21 A Yeah. I don't know the answer to that, Counsel.

22 Q (By Ms. Heintz) Okay. When you are evaluating whether a
23 method of voter identity verification is compatible or
24 incompatible with election administration, what factors are
25 you considering?



1 A I'm looking at the possibility of the error rate, of
2 disenfranchising legitimate voters. Based on my experience
3 with examining signatures, it's my opinion that the methods
4 being used for verification of signatures in the electoral
5 process in Washington State has a huge potential for error.

6 Q So you consider the error rate. Is there any other factor
7 that you think is relevant to this analysis?

8 A In my expertise, that would be the main factor because if
9 the election officials get the answer wrong, then it could
10 mean that the voter's vote is rejected without -- even
11 without their knowing or knowing in time for a cure.

12 Q So you agree that there's an error rate, even when a
13 forensic document examiner examines signatures. Correct?

14 A Yes. That error rate, reported error rate, is examining
15 with a number of specimen signatures. No forensic document
16 examiner will examine a signature, one questioned with one
17 known. The only time we would do that is if both of them
18 are exactly alike, then we know that one of them are the
19 product of cut and paste.

20 Q Understood. But do you agree that even when forensic
21 document examiners examine signatures for authenticity,
22 there is an error rate. Correct?

23 A Yes. Yes, that's correct.

24 Q Yet you testify in criminal cases --

25 A Yes.

1 Q -- about authenticity of signature. Correct?

2 A Yes.

3 Q You testify in cases where the defendant's freedom is on the
4 line?

5 A Yes. Which I remind you, Counsel, my evidence is only a
6 small part of the case. I'm not making decisions as to
7 whether the person should be convicted or not convicted.

8 Q What's the error rate for forensic document examiners in
9 authenticating signatures?

10 A According to the Kam study, the 2001 study, it's about
11 7 percent.

12 Q 7 percent.

13 A Yeah.

14 Q And do you view 7 percent error rate fundamentally
15 compatible with the criminal justice system?

16 A It depends on the -- again, on the signature. I think it's
17 too high, and we've been working to get that lower down.
18 Peer review has shown to get the error rate down to zero.

19 Q And do you think that a 7 percent error rate would be
20 fundamentally compatible with an election administration
21 system?

22 A I don't think so because out of every 1,000 -- every 100
23 voters, several would be disenfranchised.

24 Q So document examiners can testify in criminal cases with a
25 7 percent error rate, but they should not examine voter

Page 39



1 signatures with a similar rate of error. Correct?

2 A Again, with the voting system where you're comparing one to
3 one -- which you can't. If you do it, the error rate is
4 going to be much higher, I mean, probably certainly double
5 digits, I would think. As I testified in the criminal case,
6 I have to be very, very certain before I give an opinion.
7 Sometimes I will give an opinion of probable, and I would
8 tell the prosecutor -- I would say, "Don't call me because
9 I'm not certain."

10 Q Have you ever compared -- well, strike that.

11 Do you know what Washington's error rate is in
12 rejecting signatures?

13 A No.

14 Q Do you have any idea of what Washington's error rate is in
15 rejecting signatures?

16 A I don't recall offhand, no.

17 Q Do you know whether Washington's error rate in rejecting
18 signatures is less than 7 percent?

19 A I don't know.

20 Q Have you ever compared the impact of signature
21 verification -- strike that.

22 So when you say that signature matching to verify voter
23 identity is fundamentally incompatible with election
24 administration, what's your understanding of the purpose
25 sought to be achieved in verifying voter identity?

Page 40



1 A Well, you want to make sure that the voter is who they say
2 they are, that they are a U.S. citizen, that they have the
3 right to vote, and they vote early and once and often.

4 Q Do you assume that one purpose of using signature matching
5 in election administration is to detect simulated
6 signatures?

7 A I think that would be one part of it. If they're trying to
8 determine whether it's the same writer or not, then it's
9 either a genuine signature, a disguised signature, or a
10 simulated signature.

11 Q If an election administrator is not trying to detect
12 simulated or disguised signatures, does that impact your
13 analysis at all?

14 A Well, then I don't know what they're trying to detect. I'm
15 sorry. What would be the purpose of them comparing the
16 signatures?

17 Q What if the purpose is to detect obvious forgeries or
18 obvious differences? Does that involve the signature?
19 Sorry. Strike that.

20 If the election administrator's sole purpose is to
21 detect obvious fraud, does that impact your opinion at all?

22 A No, because you cannot determine that based on one specimen
23 signature.

24 Q What is the basis of your assumption that election
25 administrators have only one specimen signature?



1 A Again, based on the training materials that I saw, they may
2 have access to other signatures in the voter registration
3 file, for example, but certainly there will be very
4 limited -- it will be a very limited amount of comparison
5 signatures or sample signatures.

6 Q What's your basis for saying there's certainly a limited
7 number? How do you know they don't have eight to ten
8 signatures to compare?

9 A If they do, I would be very surprised and also be surprised
10 if those signatures are contemporaneous within a year or two
11 of the questioned ballot signature.

12 Q Is it your testimony that it is impossible to detect
13 obviously fraudulent signatures unless you have
14 contemporaneous signatures and eight to ten of them?

15 A It certainly --

16 MR. HYATT: Object to the form.

17 Hang on, Dr. Mohammed. Hang on.

18 Object to form; misstates his testimony; misstates his
19 report and conclusions as well.

20 Go ahead, Dr. Mohammed.

21 A Yeah. As I said earlier, Counsel, it's much more difficult
22 to eliminate a writer, to say someone did not write
23 something that would identify the writer. To eliminate a
24 writer, you need to have many specimen signatures. You need
25 to make sure that any differences you see there are

Page 42



1 reasonable explanations for them before you could say
2 someone did not write something. So if they look obviously
3 different, that may be due to several reasons.

4 Q (By Ms. Heintz) In your opinion, is a method of voter
5 identity verification that's more accurate than signature
6 verification compatible with election administration, even
7 if it decreases voter turnout?

8 MR. HYATT: Object to form; beyond the scope of
9 his report.

10 A It's also beyond the scope of my expertise. That's for
11 election officials to decide, not me.

12 Q (By Ms. Heintz) Do you consider that a relevant factor in
13 determining whether signature matching is compatible or
14 incompatible with election administration?

15 MR. HYATT: Object to the form.

16 I find that question confusing, but, Dr. Mohammed, if
17 you can answer, go ahead.

18 A What I can say, Counsel, is that based on my understanding
19 of the process used in Washington for signature
20 verification, it is not a reliable process, and it's likely
21 to produce errors, which will disenfranchise voters.
22 Whether that's incompatible with the election
23 administrators, it's for them to decide. My opinion is that
24 it's a bad idea.

25 Q (By Ms. Heintz) Okay. So are you -- you offered an opinion

Page 43



1 Q You state, "In my opinion, verifying a voter's identity
2 through signature matching is likely to result in many
3 erroneously rejected ballots." Do you see that?

4 A Yes.

5 Q Do you mean signature matching alone is likely to result in
6 many erroneously rejected ballots?

7 A That's my only frame of reference to this is the signature
8 matching. What else goes on, I don't know.

9 Q Okay. And you're not opining that signature matching that
10 includes reliance on some form of secondary authentication
11 is fundamentally incompatible with election administration.
12 Correct?

13 A Now, what I'm saying is the verification process used now,
14 at least on the first line verification, is rife -- it has
15 the potential of being rife with error.

16 Q Well, you don't know whether Washington is using a secondary
17 form of authentication, do you?

18 A No. That's what I'm saying. I'm saying for the first line
19 authentication, the first election officials who do the
20 matching, that's who I'm talking about. I don't know
21 whether there's a -- there may be a cure process. I don't
22 know.

23 Q Okay. And you're not opining that that cure process --
24 strike that.

25 You don't know what the cure process is in Washington.

Page 45



1 Correct?

2 A That's correct.

3 Q And you don't know any changes that Washington State may be
4 making to the cure process. Correct?

5 A No.

6 Q And so you are not opining that that cure process is
7 fundamentally incompatible with election administration.
8 Correct?

9 A No. My opinion is basically on the signature matching,
10 which I think is incompatible with the aims of the
11 administration -- aims of the administration.

12 Q And you're not opining that the signature -- strike that.

13 You're not opining that the cure process cannot
14 mitigate any error rate in the signature matching process.
15 Correct?

16 A I'm not sure what the cure process is or if it's going to be
17 updated; so I can't give an answer to that.

18 Q Okay. And so all of the errors or the likelihood of errors
19 in signature matching, it's possible that that can be
20 mitigated entirely through a cure process. Correct?

21 MR. HYATT: Object to the form; speculation.

22 A Again, Counsel, without knowing the cure process, I can't
23 give an opinion on that. Again, it's beyond my expertise.

24 Q (By Ms. Heintz) What do you mean by many, quote, many
25 erroneously rejected ballots?



1 A Well, as you pointed out, let's say a document examiner is
2 given an appropriate amount of samples, of time, equipment,
3 lighting to examine the signatures and have a 7 percent
4 error rate. Even if document examiners are the first line
5 verifiers for the signatures, they would have a much higher
6 error rate. You're talking about maybe even 15 percent.
7 That's out of every 100 voters 15 signatures are being
8 rejected. That's, in my mind, that's very high.

9 Q Is it your opinion that you when you say "many," it's more
10 than 15 percent?

11 MR. HYATT: Object to the form; misstates the
12 testimony.

13 A In my view, anything more than zero is many because you're
14 disenfranchising a voter. But to get back to your original
15 question, the document examiners have 7 percent error rate
16 with electoral -- if they participate in the reviews for the
17 voter signatures is going to have much higher error rate.
18 We've shown that lay persons have, like, a 29 percent error
19 rate given the right conditions and right samples. So they
20 could go way into the 30, 40 percent. So I think that's
21 very, very high and not compatible with what the
22 administrators want.

23 Q (By Ms. Heintz) And if I understand correctly, your view is
24 that any error rate over zero would be many errors.
25 Correct?



1 A Yes.

2 Q Can you turn to the document that's been marked as
3 Exhibit F. Just let me know when you have that in front of
4 you. Do you have it?

5 A I have it now, yes.

6 Q Okay. Great. And you referenced a 2001 study in your
7 report. Is this Exhibit F the 2001 study you've referenced?

8 A Yes. This is what we call the Kam study.

9 Q And you've referenced this study multiple times in your
10 report, but you didn't name the study. Why is that?

11 A It's just what we document examiners call it just for ease
12 of reference.

13 Q Why is it that you did not name the study, but you named all
14 the other references that you relied on?

15 A This was not cited in the report?

16 Q You referenced it as the 2001 study but you don't say -- you
17 don't name the study.

18 A I'm just referring to a hard copy of my report here,
19 Counsel. I don't -- that's my bad. I should have
20 referenced it.

21 Q Okay. This study compares error rates of lay persons and
22 forensic document examiners in authenticating genuine
23 signatures and detecting simulated signatures. Correct?

24 A Yes.

25 Q What's a simulated signature?



1 even with more samples, I don't think that the error rate
2 will go down because they don't have enough training and
3 experience to determine what is a variation and what is a
4 difference. A variation means one writer. A difference
5 means two writers.

6 Q (By Ms. Heintz) Going back to the 2001 study, the lay
7 examiners in that study cannot rely on secondary forms of
8 authentication in determining the authenticity of a
9 signature. Correct?

10 A Yes.

11 Q The lay examiners could not rely on picture identification
12 as a secondary means of authentication. Correct?

13 A Yes.

14 Q The lay examiners in that 2001 study could not rely on the
15 last four digits of a social security number as a form of
16 secondary authentication. Correct?

17 A Yes.

18 Q The lay examiners in that study could not rely on the last
19 four digits of a driver's license as a secondary form of
20 authentication. Correct?

21 A Yes.

22 Q The lay examiners could not rely on a multifactor
23 authentication code as a form of secondary authentication.
24 Correct?

25 A Yes.



1 Q If lay examiners could rely on a secondary means of
2 authentication to determine the validity of a signature,
3 would you expect that that would impact the rate of Type II
4 errors?

5 MR. HYATT: Object to the form.

6 A I don't know. It would have to be tested, but I would
7 presume it would make a difference.

8 Q (By Ms. Heintz) Are you aware of any study demonstrating
9 the error rates of lay persons in authenticating signatures
10 where they're instructed to start with an assumption that a
11 signature is valid?

12 A No.

13 Q Are you aware of any study demonstrating the error rates of
14 lay persons in authenticating signatures where they are
15 instructed to reject signatures only if there were multiple
16 significant, obvious differences?

17 A No.

18 Q Are you aware of any study demonstrating the error rates of
19 lay persons in authenticating signatures where their
20 conclusions were independently reviewed by another person?

21 A Are these lay persons?

22 Q Yes.

23 A No.

24 Q Are you aware of any study demonstrating the error rates of
25 lay persons in authenticating signatures where they received

Page 57



1 training on authenticating signatures?

2 A No.

3 Q Are you aware of any study demonstrating the error rates of
4 lay persons in authenticating signatures where they could
5 rely on secondary forms of authentication?

6 A No.

7 Q So you talk about variations in signatures in your expert
8 report. Can you explain what you mean by the term
9 variations.

10 A Well, this will be a long answer, but this is the key to
11 signature verification. First of all, there's a difference
12 between handwriting and signatures. Handwriting is designed
13 for communication. Signatures are designed for
14 identification. So when you learn to write, a motor program
15 is developed in your head. I'm not sure -- Counsel, did you
16 learn to drive with a stick shift car, a manual
17 transmission?

18 Q I know how to.

19 A Okay. Excellent. When you learned, you have to manipulate
20 the accelerator, the brake, the clutch, and the gear lever.
21 At the beginning, you're very shaky. You've got jerkiness.
22 As you practice driving, that process becomes automatic to
23 you because there's a motor program developed in your brain
24 to execute that process. It's very, very similar for
25 signatures. Signatures, in fact, are an overlearned motor

Page 58



1 A As I said, this is a subjective determination. It depends
2 on how big the dissimilarities are. If it gets, you know,
3 too much, it's a very wide range of variation, but generally
4 most people will have a moderate range, especially in 2023.

5 Q Okay. So generally most people do have an approximate
6 number. More than 70 percent is going to have a moderate
7 range of variation?

8 A No, I don't think --

9 MR. HYATT: Hang on, Dr. Mohammed.

10 Object to the form.

11 A I don't think it's ever been tested, but these are great
12 ideas for a research project.

13 Q (By Ms. Heintz) Now, you state that, "Nonforensic document
14 examiners typically fail to account for different signature
15 styles and features leading to erroneous rejections."

16 Correct?

17 A Yes.

18 Q Could this source of error be mitigated by use of a
19 secondary authentication method?

20 MR. HYATT: Object to the form; speculation; and
21 beyond the scope of his testimony.

22 A I don't know.

23 Q (By Ms. Heintz) Now, in your expert report on pages 17 to
24 18, if you turn to that.

25 A I have it.



1 higher for forensic document examiners. I've said it
2 before. It's certainly something that I wouldn't do.

3 Q (By Ms. Heintz) Do you have any basis to opine that the
4 difficulty in authenticating signatures of young persons
5 cannot be mitigated by using a secondary authentication
6 system?

7 A No. Again, that's outside my scope of expertise.

8 Q Are you aware of alternative methods available under
9 Washington law for individuals with disabilities to have
10 their signatures validated?

11 A No.

12 Q Are you aware of any specific rate of rejection for
13 individuals with disabilities in Washington State?

14 A No.

15 Q Dr. Linton, how much have you been paid for the opinions
16 that you have proffered in this case?

17 A I haven't been paid for my opinions. I'm paid for my time.
18 Let me just pull up my billing here.

19 MR. HYATT: Dr. Mohammed, just if you know.
20 Please don't reference anything else --

21 THE WITNESS: Okay.

22 MR. HYATT: -- unless Counsel has a document in
23 front of you.

24 A Yeah. It's between \$2,000 and \$5,000. I'm not sure of the
25 exact time.

Page 67

C E R T I F I C A T E

I, REBECCA S. LINDAUER, a Certified Court Reporter in and for the State of Washington, residing at Lacey, do hereby certify:

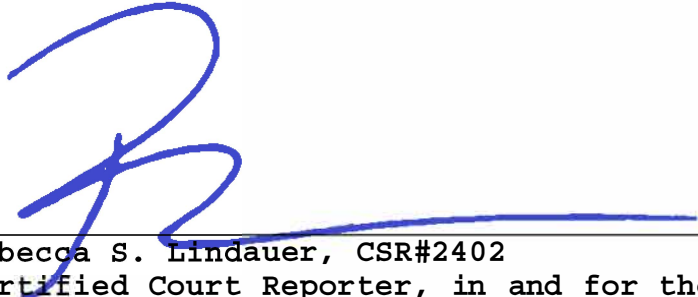
That the foregoing deposition of DR. LINTON A. MOHAMMED was taken before me and completed on the 29th day of June 2023, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true, and complete transcript of the testimony of said witness;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved signature;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the deposition of DR. LINTON A. MOHAMMED and promptly mailing the same to MS. TERA HEINTZ.

IN WITNESS HEREOF, I have hereunto set my hand this 3rd day of July 2023.


Rebecca S. Lindauer, CSR#2402
Certified Court Reporter, in and for the
State of Washington, residing at Lacey.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Mark Larrañaga
Noted for Hearing: September 12, 2023 at 8:30 am
With Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

Plaintiffs,

v.

STEVE HOBBS, et al.,

Defendants.

NO. 22-2-19384-1 SEA

DECLARATION OF
STUART HOLMES

I, STUART HOLMES, declare as follows:

1. I am the Director of Elections for the Secretary of State of the state of Washington. I have held this position for over two years. Prior to holding this position, I was the Deputy Director of Elections, and prior to that a Voter Registration Information Systems Manager. I have worked in elections administration in the Office of the Secretary of State since 2014. And I have worked in elections administration in the state of Washington generally since 2005. I am over the age of 18 years and am competent to testify to the matters stated below and do so based on my personal knowledge.

2. In my current role, my duties include, among other things, overseeing the elections systems in the state of Washington. I am responsible for making sure that, on a statewide basis, elections in Washington are conducted fairly, that voters have access to the means of exercising their right to vote, and that Washington’s elections are conducted with a

1 high degree of integrity and security. I also lead the Secretary of State's supervision of election
2 administration by counties. Some of my duties include ensuring that the State's and counties'
3 administration of elections comply with state and federal election laws. As part of these duties,
4 I keep abreast of legal requirements and participate in national conferences on election
5 administration. I also generally keep abreast of other states' election administration practices and
6 developments, particularly as it relates to vote by mail. In my role as election director, I also
7 oversee all aspects of the Secretary of State's role as Chief Election Officer, including working
8 with counties on election administration, creating and implementing standards and trainings
9 governing elections, and interacting with the public to addresses voters' questions and concerns
10 and promote voter confidence.

11 3. The goals of preserving election security and maintaining broad access to the
12 ballot can sometimes be in tension with one another. An election system with perfect
13 accessibility will not necessarily be secure. And an election system with perfect security will not
14 necessarily be accessible. The people, through their elected officials or by initiative, must
15 balance these goals to meet all of the objectives of an election system. Elections officials then
16 implement those policy decisions. Washington has balanced these objectives by: 1) making it
17 very easy to get and submit a ballot; and 2) verifying that a registered voter submitted the ballot,
18 using the signature verification process.

19 4. Washington has a number of procedures in place to make voting accessible. Most
20 important, Washington is a universal vote by mail jurisdiction. This means that a ballot is mailed
21 to every registered voter, every election. Under state law, ballots must be mailed to voters with
22 mailing addresses in the United States at least eighteen days before any primary or election. For
23 voters living overseas, ballots have to be mailed at least 30 days before any primary or election
24 not involving a federal office, and at least 45 days before any election involving a federal office.
25 Voters then have until election day to return their ballots through a variety of mechanisms,
26 including at a ballot drop box, by pre-paid return mail, or in-person at a voting center. Voters

1 also have the option to vote in-person at a voting center. A voter's ballot is timely if it is returned
2 to a ballot drop box by 8:00pm on election day, the voter is in line for a ballot drop box or a
3 voting center by 8:00pm on election day, or the voter's ballot is postmarked by election day.
4 Notably, a ballot does not have to be received by election day in order to count. Washington's
5 approach is different from many other states, some of which restrict access to voting by mail and
6 require that most voters wishing to obtain a ballot appear in person and, all too often, wait in
7 long lines. Many states also require that absentee ballots be received by election day.

8 5. Though counties and the Secretary of State diligently keep the voter registration
9 database up to date, some of Washington's 3,866,015 voters invariably move between the time
10 that ballot mailings are finalized and when ballots are delivered. Significant processing and
11 administrative work must be completed to print, address, and mail ballots.

12 6. To ensure broad ballot access, Washington also makes it very easy to get a
13 replacement ballot. Voters can get replacement ballots from their local elections offices or log
14 in to votewa.gov by entering their first name, last name, and date of birth. Doing so will enable
15 the voter to request that a replacement ballot be mailed to them or to print an online replacement
16 ballot along with a ballot return packet. The first names, last names, and dates of birth of
17 registered voters are public information that is available through the registered voter database.
18 The Office of the Secretary of State provides the registered voter database upon request to any
19 interested party, and does so often. Making it as easy as possible to obtain a replacement ballot
20 ensures that voters who have misplaced or have not received their ballot can still vote. But it also
21 creates security vulnerabilities because ostensibly anyone can obtain a re-issued ballot on behalf
22 of any voter. A significant number of voters in Washington do not have a driver's license, permit,
23 or state identification card number. As a result, these voters would not be able to access
24 replacement ballots online if those numbers were required.

25 7. Washington also makes it very easy to return a ballot. Counties must have at least
26 one drop box for every 15,000 registered voters and at least one ballot drop box in each city,

1 town, and census-designated place. Counties must also provide a ballot drop box for every
2 federally recognized Indian Tribe with a reservation in the county, at the request of the tribe. In
3 addition, ballot envelopes have prepaid postage, allowing voters to return ballots through USPS
4 for free. Washington also has no laws against so-called “ballot harvesting,” or collection of
5 ballots for return by third parties. Other states have recently limited voters’ ability to return
6 ballots to drop boxes, including by making it more difficult for third parties to return ballots on
7 behalf of voters.

8 8. Because it is so easy to get and submit a ballot in Washington, the 2022 Cost of
9 Voting Index ranked Washington second in the nation for voting accessibility. The Cost of
10 Voting Index, or COVI, is an index that allows easy comparison of election related laws and
11 policies across states with a particular focus on how difficult it is to vote in any given state. The
12 COVI, which debuted in 2020, is used by elections officials across the country as a measure of
13 how well their systems meet the objective of voting accessibility. The only state ranked higher
14 than Washington was Oregon, which is another universal vote by mail state, and another state
15 that uses signature verification. The COVI’s findings and methodology were published in the
16 Election Law Journal, and are available online at the COVI’s website:
17 <https://costofvotingindex.com>.

18 9. Other sources verify Washington’s national excellence in facilitating exercise of
19 the franchise. The Elections Performance Index, maintained by the Massachusetts Institute of
20 Technology, shows that for the 2020 general election Washington’s turnout rate is 75.71 percent,
21 fifth in the nation. It also ranks highly in terms of percentage of eligible voters who are registered
22 to vote (89.39%) and very low in terms of percentage of voters who have had their registrations
23 rejected (0.11%). Overall, according to the Elections Performance Index, Washington ranks
24 twelfth in the nation for the effectiveness of its elections administration. The Elections
25 Performance Index can be found online at its website: <https://elections.mit.edu/#/data/map>.

1 10. Washington also has a score of 62 out of 65 according to the Vote at Home
2 Institute’s ranking methodology. This puts Washington in a three-way tie for second in the nation
3 along with the District of Columbia and Nevada. The Vote at Home Institute’s national rankings
4 can be found on its website at <https://voteathome.org/matrix/>. The Movement Advancement
5 Project, ranks Washington number one nationally on a metric designed to test how accessible a
6 state’s voting system is to voters. Washington received a score of 31 out of 33.5 possible points
7 according to the organization’s methodology. The Movement Advancement Project’s national
8 rankings can be found on its website at <https://www.mapresearch.org>.

9 11. The linchpin that enables Washington to make it so easy to get and submit ballots
10 is the signature verification process. In Washington, ballots are submitted inside two envelopes.
11 The voter places the ballot in a security envelope and places the security envelope inside a return
12 envelope. The return envelope contains a declaration that the voter must sign, as well as other
13 information that reveals the voter’s identity such as the voter’s address and a machine-readable
14 barcode unique to each voter. Elections officials do not open the return envelope unless the
15 signature on the ballot declaration matches the signature of the registered voter in the voter
16 registration files. In Washington, counties begin verifying signatures as soon as ballots are
17 returned, and once the signature is verified, the ballot is separated from the envelope. If it is later
18 discovered that the ballot was fraudulent, there is no way to identify or prevent the ballot from
19 being counted. This is necessary to guarantee the secrecy of the ballot. All elections officials
20 assigned to verify that signatures match must receive training on the signature verification
21 standards enacted by the Secretary of State.

22 12. In every election, out of all ballots returned, or “submitted,” some ballots are
23 rejected. Ballots can be rejected because there was no signature at all, because the ballot was
24 submitted too late, or because the signature on the voter declaration did not match the signature
25 or signatures in the registration files. Also in every election, some number of replacement and
26 re-issued ballots are delivered to voters. A “replacement” ballot means that the voter got another

1 of the same ballot type with the same races and ballot measures on it. A “re-issued” ballot means
2 that the voter got a different type of ballot, with a different set of races and/or ballot measures.
3 A “re-issued” ballot might be issued if the voter moved, for example, and was now registered in
4 a different precinct with a different set of races and issues to vote on. This can happen when, for
5 example, the voter updates their driver’s license address online and re-registers to vote. If they
6 do so while an election is pending, then a re-issued ballot will automatically be issued to them.
7 The numbers of ballots, submitted, rejected, replaced, and re-issued are tracked in the VoteWA
8 system, Washington’s centralized voter registration and voting history database. I am familiar
9 with the VoteWA system, helped to design and implement it, and use it in my day to day business
10 as Director of Elections. Attached to this declaration as **Exhibit 1** is a table comprised of data
11 extracted from the VoteWA system showing, for each election since the August 6, 2019 primary:

- 12 a. The date of the election;
- 13 b. The election type;
- 14 c. The year of the election;
- 15 d. The total number of ballots submitted;
- 16 e. The total number of ballots accepted (i.e., not rejected);
- 17 f. The total number of ballots rejected (for all reasons);
- 18 g. The total number of ballots rejected for missing signatures;
- 19 h. The total number of ballots rejected because they were too late;
- 20 i. The total number of ballots rejected because the signature on the voter
21 declaration did not match the signature or signatures in that voter’s
22 registration file;
- 23 j. The number of replacement ballots issued; and
- 24 k. The number of re-issued ballots

25 13. The number of replacement ballots issued in 2020 was exceptional due to
26 implementation of the REAL ID Act, which had unanticipated business flow impacts, in

1 particular there was a 33 percent increase in voter registrations made at the Department of
2 Licensing, triggering a number of automatic re-issued ballots. Additionally, the November 2020
3 election took place in the early months of the COVID-19 pandemic, which inspired a record
4 number of voters (over 100,000) to issue themselves replacement ballots via the online VoteWA
5 portal.

6 14. Because Washington verifies ballots using signature comparison, elections are
7 secure even if we receive multiple ballots purporting to be from the same voter. Elections are
8 secure even though a ballot could be intercepted at the mailbox or in a shared residence. Elections
9 are secure even though ballots may be mailed to voters' past addresses. And elections are secure
10 even though anyone with access to the voter registration database could order a replacement
11 ballot on behalf of the voter. Using signature verification we verify that the person submitting
12 the ballot is eligible to vote and has not already voted.

13 15. Election security and integrity have taken on increased importance in recent
14 years. Elections in Washington can be enormously consequential with big impacts on the state,
15 on the United States, and potentially the world. It is thus no surprise that election infrastructure
16 has been deemed critical infrastructure by the federal government. The Secretary of State's
17 Office works with the Department of Homeland Security to protect its elections and to anticipate
18 and protect against risks to its election infrastructure. Risks to election security originate not only
19 from individual acts of illegitimate votes, but also from domestic and international conspiracies
20 to influence our elections via nefarious means. Russia's influence of the 2016 presidential
21 election is well known, as are its efforts to hack into states' voting systems. In November of
22 2020, the United States Senate Select Committee on Intelligence issued a report, available to the
23 public in redacted form, that included the following finding: "The Russian government directed
24 extensive activity, beginning in at least 2014 and carrying into at least 2017, against U.S. election
25 infrastructure at the state and local level." The report is available online at
26

1 <https://www.intelligence.senate.gov/publications/report-select-committee-intelligence-united->
2 [states-senate-russian-active-measures.](https://www.intelligence.senate.gov/publications/report-select-committee-intelligence-united-states-senate-russian-active-measures)

3 16. It is also widely understood by elections officials across the country that other
4 international threats exist, including those originating in China, and that elections officials
5 should secure their systems against them. The National Counterintelligence and Security Center
6 has a brochure on the topic briefly summarizing the nature of the threat, which is available online
7 at https://www.dni.gov/files/ODNI/documents/DNI_NCSC_Elections_Brochure_Final.pdf.
8 Because such hostile actors seek to exploit vulnerabilities in states' election systems, it is
9 important to recognize systemic vulnerabilities even when there has been no prior history of
10 attack or abuse. State and federal governments thus devote substantial resources to protecting
11 the election system from hacking, recognizing that it is only a matter of time for hostile actors
12 to attack any election system left unprotected. As part of these efforts to protect election security,
13 the Secretary of State's office takes numerous measures, including maintaining servers separate
14 from other executive agencies, investing in cyber security, and protecting security information
15 from public disclosure.

16 17. Election integrity is also essential at the local level. Candidates or partisans may
17 seek an unfair advantage in an election contest. Especially in a close race or where a relatively
18 small number of people vote for a candidate or ballot measure (e.g., the mayor of a small town)
19 election fraud can more easily make a difference and may be attractive to the unscrupulous. A
20 recent case from Bladen County North Carolina, widely known among elections officials around
21 the country, illustrates this point. There, a Republican Party operative illegally intercepted
22 absentee ballots, fraudulently filled them out and signed them, and cast them, influencing a race
23 for U.S. Congress. Later investigations revealed that such abuses had been ongoing for some
24 time in the area.

25 18. In our own state, the 2004 governor's race between candidates Christine Gregoire
26 and Dino Rossi illustrate the importance of election security. After the initial tabulation of the

1 ballots, only 261 votes separated the candidates, with Mr. Rossi in the lead. This triggered a
2 mandatory recount under state law, which was done by machine and, once it was completed,
3 showed that 42 votes separated the two candidates, again with Mr. Rossi in the lead. After a hand
4 recount, Ms. Gregoire took the lead by 129 votes. This was the closest race for governor in the
5 history of the United States, triggered extensive litigation, and was enormously controversial.

6 19. An election contest was filed in Chelan County Superior Court. While the
7 superior court ultimately dismissed the election contest, the court noted a number of irregularities
8 that occurred in the 2004 election, and ultimately concluded that 1,678 illegal ballots were cast
9 and counted. A true and correct copy of the final judgment entered in that case is attached to this
10 declaration as **Exhibit 2**. The 2004 race for governor illustrates the importance of preserving
11 election integrity. Due to the closeness of the election and the court's conclusion that
12 1,678 illegal ballots were counted, confidence that the outcome of the 2004 governor's race was
13 correct was very low, especially among Republicans and others who voted for Mr. Rossi. The
14 number of illegal ballots counted was obviously sufficient to have possibly made a difference in
15 the outcome of the election. But, because it was impossible to trace the ballot that was counted
16 to the voter who cast it (due to the secrecy of the ballot), it was impossible to say whether the
17 bulk of those 1,678 ballots even had a vote for governor on them and, if so, which candidate the
18 vote was for. For this reason, the election contest was dismissed and the election of Ms. Gregoire
19 was confirmed by the court. The court also concluded that a number of absentee ballots (which
20 in 2004 were very similar to the treatment of all ballots today) which apparently exceeded the
21 number of absentee voters who were given credit for voting were not illegally cast. The Court
22 made this conclusion, in part, because "[v]ery little, if any, evidence has been provided to create
23 an inference that absentee ballots were tabulated without signature verification."

24 20. Voter confidence in election integrity is a critical consideration elections officials
25 must take into account in encouraging public participation in elections. It is widely understood
26 among election administrators that decreased public confidence in elections suppresses voter

1 turnout. Voters are simply less likely to participate in elections when they believe that the
2 election is not fair or secure.

3 21. The 2020 presidential race and its aftermath has brought the importance of voter
4 confidence into particular focus, underscoring how election safeguards are not only important to
5 actually safeguard the integrity of elections, but also to reassure the public that the election is
6 fair and secure. Following that election, conspiracy theories that elections are “rigged” have
7 become increasingly popular. The 2022 film “2000 Mules” and other media available on the
8 Internet and via social media make unsubstantiated claims of widespread voter fraud, claiming
9 that the election was stolen from Donald Trump. Mr. Trump has himself popularized these
10 theories, and large numbers of voters do not believe that President Biden’s election was
11 legitimate. The Office of the Secretary of State routinely receives messages from voters who
12 believe in these types of theories and believe that Washington’s elections are a sham. True and
13 correct copies of some of these communications are attached to this declaration as **Exhibit 3**.
14 These messages increased exponentially after the 2020 election. It is important to be able to
15 explain to voters that Washington has meaningful safeguards that prevent fraudulent ballots from
16 being counted and deter individuals from attempting to submit fraudulent ballots in the first
17 place. While not every voter can be convinced, many voters have expressed that they were glad
18 to learn of these safeguards. It is also important to be able to point to such protections to help
19 dispel conspiracy theories with the general public.

20 22. The 2020 governor’s race also illustrates the importance of an election system
21 that ensures voter confidence. As in a number of other states, after the 2020 election and then
22 President’s challenge to the results of that election, a number of unsuccessful candidates
23 challenged the results of their elections based on allegations of widespread fraud. In Washington,
24 the campaign for gubernatorial candidate Loren Culp challenged the results of the governor’s
25 race based on allegations of voter fraud, even though he lost the race by more than 500,000 votes.
26 Mr. Culp publicized his accusations broadly and many of his supporters contacted the Secretary

1 of State's Office raising their concerns about widespread fraud. The frontline defense of our
2 office in these kinds of cases is that widespread fraud cannot occur with mail-in voting in
3 Washington State because each voter's signature for each ballot is checked to verify that the
4 ballot was cast by the registered voter.

5 23. These sorts of unsupported voter fraud claims are corrosive to the election
6 systems that I have spent my career building, and I need tools to combat them. Especially in
7 Washington's vote by mail system, where it is easy to obtain a ballot—even on behalf of
8 somebody else—a tool that I need to promote voter confidence is the ability to show only ballots
9 cast by registered voters are counted and that nobody gets to vote more than once. In our current
10 system, the only tool that gives such assurances is signature verification. Without this
11 mechanism, I could no longer explain to voters how we are so confident that elections in
12 Washington State are fair, safe and secure.

13 24. That is not to say that I believe signature verification is perfect. We are always
14 looking for ways to improve all aspects of election administration, including signature
15 verification. Development of VoteWA was itself a significant improvement on that front because
16 it systemized signature verification statewide, streamlining the process for comparing ballot
17 signature checks, providing a central mechanism for voters to check on the status of their ballots,
18 track counties' acceptance and rejections of ballots and the basis for such decisions, and
19 automate the process for notifying voters about any challenges to their ballot signature and the
20 process to cure such challenges. VoteWA now provides a platform for further improving the
21 signature verification process.

22 25. While systems can always be improved, for a universal vote by mail system that
23 prioritizes accessibility, I am aware of no better or more accessible method to verify that only
24 registered voters vote and only vote once. Almost everybody has a signature. For purposes of
25 voting, a voter's signature is the voter's name (in cursive, handwriting, and in any language) or
26 even a distinctive mark or symbol. As a result, it is a very low barrier means of identity

1 verification. Any other method of identity verification would rely on documents, tools, or
2 technologies that would discourage voters from voting.

3 26. I have read the expert report of Dr. Robert Stein, developed for the Secretary of
4 State in this case, including where Dr. Stein discusses ID requirements, fingerprints, and
5 multi-factor authentication as possible alternatives to signature verification. I agree with
6 Dr. Stein's discussion of alternatives to signature verification as theoretical possibilities. The
7 usage of fingerprints for identity verification in a voting system, even if technologically feasible
8 (which I doubt), would be wholly inappropriate from a privacy and voter engagement point of
9 view. Photo ID requirements and similar sorts of identity verification through documentation
10 would also be problematic, as not all voters have such IDs, or they may be expired. Voter ID
11 requirements tend to fall heaviest on marginalized groups. Multi-factor authentication methods,
12 which may work well as supplementary or a secondary form of verification, depend on access
13 to technology that not all voters have. Each of these alternatives would impose greater barriers
14 to voters than simply providing a signature. Given the public policy goal of keeping barriers low
15 and protecting election security, signature verification is the best solution of which I am aware.

16 27. Our office continues to improve the implementation of signature verification in
17 counties across the State, with the goal of ensuring that all valid ballots are accepted and all
18 invalid ballots are rejected. Our office is pursuing those improvements in two ways. In the short
19 term, our office has proposed new regulations governing the signature verification process. In
20 the longer term, our office has partnered with the University of Washington Evans School of
21 Public Policy and Governance to study the signature verification process and recommend further
22 improvements.

23 28. First, the Office of the Secretary of State has begun rulemaking to change the way
24 that signature verification and the cure process is implemented in Washington. A true and correct
25 copy of the rules that the Secretary of State has proposed is attached to this declaration as
26 **Exhibit 4**. The Secretary of State is actively pursuing rulemaking under the Washington

1 Administrative Procedure Act. On July 31, 2023, our office submitted the proposed rules to the
2 Washington Office of the Code Reviser, and the rules are currently on track to be in place by the
3 August 2024 primary.

4 29. The rules would accomplish a number of changes. They would require counties
5 to presume that signatures match, and only reject a voter declaration signature when it “differs
6 in multiple, significant, and obvious respects from all signatures in the voter’s registration file.”
7 This is a different standard from the one used currently, which requires a combination or cluster
8 of shared characteristics in order to verify a ballot declaration signature.

9 30. The proposed rules also significantly expand the opportunities to cure a challenge
10 to a ballot when a declaration signature does not match the signature in the registration files.
11 Currently, when local elections officials initially reject a signature, a letter is sent to inform the
12 voter of the mismatch. Along with the letter is a cure form and signature update form so elections
13 officials have more samples of the voter’s signature to use as a basis of comparison. If the
14 signature on the cure form matches the signature on the ballot declaration the voter submitted,
15 the ballot will be counted. If not, the signature on the cure form is still added to the registration
16 file, but the ballot may be ultimately rejected. A voter has until the day before the election is
17 certified to send in the cure form. Attached to this declaration as **Exhibit 5** is a true and correct
18 copy of the standard signature update form that is used to cure ballot declaration signatures.

19 31. The proposed rules would significantly expand the opportunities to cure any
20 ballot challenge, providing voters an opportunity to provide supplemental information, outside
21 a signature, to verify their identity. This could include a picture of any ID that a voter can use to
22 register to vote, the last four digits of their social security number, drivers’ license number or
23 Tribal ID number, or a multifactor authentication code. The process for providing this secondary
24 form of authentication would be automated through VoteWA, so that voters would be given
25 multiple different ways to cure any challenges their ballots. For more technologically savvy
26 voters like many young voters, the process for curing the ballot would be similar to well-

1 established mechanisms for verifying identity. Whenever a signature is challenged, a voter could
2 “cure” the challenge through an automated process by either entering information such as the
3 last four digits of the social security number or drivers’ license number into VoteWA, or in
4 response to an automated message, or by completing multi-factor authentication through the
5 telephone number or email address in the voter’s file. This process would be fast, automatic, and
6 easy, and would not require any interface with election personnel unless desired by the voter.
7 Less technologically savvy voters would have alternative mechanisms for verifying their identity
8 by telephone call, text, or in person. If the voter used any of these supplemental forms of identity
9 verification, then the signature would be accepted unless local elections officials determined that
10 there is clear, objective evidence that a person other than the voter signed the ballot declaration.

11 32. In my opinion, these proposed rules will make it easier for voters to exercise their
12 franchise while still protecting the integrity, security, and voter confidence objectives of election
13 system design. These reforms will make it easier for young people to cure their ballots. By
14 permitting cure procedures through methods that are familiar to young people such as text
15 messages or online multifactor authentication, I am confident that the rejection rate for young
16 voters for signature mismatch will be reduced.

17 33. The regulations will also require that all election personnel who participate in
18 signature verification obtain training on these improved standards for identifying signature
19 matches and mismatches. As part of these regulatory changes, the Secretary of State will update
20 its training program to emphasize how each ballot signature should start with a presumption of
21 validity and to emphasize the ways in which voters’ signatures can naturally vary, especially for
22 younger voters and voters with less English language proficiency. Together with the changed
23 standards for accepting signatures, and the expanded cure opportunities, I believe these
24 regulatory changes will significantly reduce the number of voters’ signatures that are challenged
25 in the first instance and increase the number of challenged ballots that are cured and counted.
26 While Washington’s voter participation rates are already some of the highest in the nation, in

1 my opinion, these new processes will put Washington at the cutting edge of the country in ballot
2 acceptance rates, while still protecting critical election infrastructure from individualized and
3 systemic abuse.

4 34. The second thing that the Office of the Secretary of State is doing to improve
5 signature verification (and to reduce mistaken signature challenges) is partnering with the
6 University of Washington Evans School of Government to develop a study and
7 recommendations to improve the process. This initiative was started after the Washington State
8 Auditor issued its report titled “Evaluating Washington’s Ballot Rejection Rates” on
9 February 1, 2022.

10 35. The Auditor’s Report made a number of conclusions about ballot rejection and
11 signature verification, but was unable to identify causes or potential solutions to the issues it
12 identified. To follow up on these concerns, the Office of the Secretary of State contracted with
13 the Evans School of Public Policy and Governance to identify likely causes and potential
14 solutions. We expect that this work will be completed sometime in early to mid-2024. With those
15 recommendations in hand, the Office of the Secretary of State may adopt further administrative
16 rule changes to implement the recommendations or may, depending on the particular
17 recommendations, request that the Legislature adopt legislation.

18 36. One area that I hope to investigate with the Evans School and regarding which I
19 hope to receive recommendations is with respect to serving voters of limited English proficiency.
20 One of the conclusions of the Washington State Auditor was that the signature verification
21 process disproportionately impacted voters of color. I have read the expert report of
22 Dr. Aleksandr Aravkin, and I understand and agree with his conclusions regarding the
23 deficiencies in the study design of State Auditor’s regression model. Nonetheless, Dr. Aravkin
24 concludes that voters of Asian/Pacific Islander heritage are more likely to have their ballots
25 rejected for signature mismatch in King County specifically. Further, Dr. Aravkin’s additional
26 work disentangling the effects of age and Asian/Pacific Islander status shows that this finding is

1 exclusive to older voters with Asian/Pacific Islander heritage. Younger Asian/Pacific Islander
2 voters are less likely to have their ballots challenged for signature mismatch than White voters.
3 It is possible that the new standards and expanded cure processes that the Secretary of State's
4 Office is in the process of implementing could redress this issue. But to the extent any difference
5 persists, addressing this issue will require learning more about whether this differential in
6 acceptance rates is the result of factors such as English language proficiency. I am committed to
7 an evidence-based approach to investigating these issues and developing solutions that ensure
8 the ballot is accessible to all Washington voters.

9 37. Returning to predominantly in-person voting would be very expensive. In order
10 to obtain the space and staffing required, counties would have to spend considerably more money
11 than is spent on signature verification. Counties would be required to purchase voting equipment
12 to be available for voting at each polling place. To support that polling place equipment, the
13 necessary infrastructure to support an electronic poll book or other system to ensure that only
14 registered eligible voters are issued ballots. Considerable development would be required for a
15 voting registration and election management system to establish a secure, accessible, and stable
16 poll book system. County Auditor staff would be required to maintain, test, deliver, setup, secure,
17 train, and collect the equipment for all polling locations. When the equipment is not in use, the
18 equipment would need a secure warehouse to maintain and prepare the equipment. Rental or
19 other agreements would be negotiated within the county to secure polling places that are secure,
20 ADA compliant, and appropriately located. Communication would also be required so that
21 voters know and understand the change in voting methods, where their polling place is, the hours
22 of its operation, and dates it is open for voting. Communication would also be required to explain
23 the delay in election results on Election Night as teams of two county election staff secure,
24 transport, and deliver to a central count center in the county for polling place ballots to be
25 tabulated. County Auditors will also need to be prepared with contingency plans to have alternate
26 polling locations or other continuation of operation plans if a location or infrastructure becomes

1 unavailable for any reason. These are merely some of the logistical issues that would have to be
2 addressed, and do not include all of the training, chain of custody, observation, and other hurdles
3 that would be required by a change to a polling place voting system.

4 38. I understand that a number of voters have submitted declarations in support of
5 the Plaintiffs' motion for summary judgment, claiming that their ballots were rejected in various
6 elections due to signature mismatch when they voted their ballots and signed their declarations
7 themselves. For each of these voters who have submitted declarations, I pulled their voting
8 history from the VoteWA database. A true and correct copy of each voter's voting history is
9 attached to this declaration as **Exhibit 6**. The voting history shows that for each voter whose
10 ballot was rejected for signature mismatch, a notice was sent informing them of the rejection and
11 an opportunity to cure. I do not know why some voters declare that they never received this
12 notice, but the information in VoteWA, which is relied upon by every county in the state to
13 administer elections in Washington, shows that the notice was in fact mailed to them. The history
14 also shows that for four voters, their ballots were in fact accepted where the voters declare that
15 their ballots were rejected. Each of these voters voted in the 2022 general election and their
16 ballots were accepted in that election: Edie Crawford, Suzanne Spooner, and Megan Dascher
17 Watkins. Additionally, Rebecca Mayer's ballot was accepted in the 2020 general election where
18 she declares it was rejected. I do not know why these voters believe that their ballots were
19 rejected, but the information in VoteWA shows that each of these ballots was at some point
20 challenged for the reason "Signature Does Not Match" but ultimately accepted by elections
21 officials and counted in the election.

22 39. The Office of the Secretary of State will soon be issuing a regulatory amendment
23 under which a verified ballot declaration signature will become part of the voter registration file
24 and will be used as an additional comparison signature for future elections. This rule is intended
25 to allow election officials to recognize changes in voter signatures over time and avoid erroneous
26

1 ballot rejections. Our office has started the rulemaking process by issuing a preproposal
2 statement of inquiry, and I expect this rule to be finalized before the 2024 primary election.

3 I declare that the foregoing is true and correct to the best of my knowledge, and I do so
4 under the penalty of perjury of the laws of the state of Washington.

5 DATED this 16th day of August 2023.

6 /s/ Stuart Holmes
7 Stuart Holmes
8 Director of Elections
9 Washington State Office of the Secretary of State
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcinttron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 16th day of August 2023, at Olympia, Washington.

/s/ Karl D. Smith
KARL D. SMITH, WSBA #41988
Deputy Solicitor General

Exhibit 5

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Signature Update Form

! The signature on your ballot envelope doesn't match the signature in your voter registration file.

Instructions

Fill out the form using a black or blue pen.

Select one of the options below to return the completed form.

How to return this form:

Option 1: By email, fax, or mail

Fill out and send this form to your county elections department.

Option 2: In person

Visit your county elections department and fill out a new voter registration form.

For your vote to count, return this form to your county elections department no later than:

- 9 days after a February or April Election;
- 13 days after a Primary; or,
- 20 days after a General Election.

Addresses are on the back of this form.

Voter Information *(please print clearly)*

Last name _____ First _____ Middle _____

Date of birth _____ Phone number _____

Voter registration number (if known) _____

Ballot Declaration

I do solemnly swear or affirm under penalty of perjury that I am:

- A United States citizen;
- A Washington state resident that meets the requirements for voting mandated by state law;
- At least 18 years old on election day, or 17 years old at the primary and 18 years old by the day of the November general election;
- Voting only once in this election and not voting in any other United States jurisdiction;
- Not serving a sentence of total confinement under the jurisdiction of the Department of Corrections for a Washington felony conviction or currently incarcerated for a federal or out-of-state felony conviction;
- Not disqualified from voting due to a court order; and
- Aware it is illegal to forge a signature or cast another person's ballot and that attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Registration Declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, and I am at least sixteen years old. I am not disqualified from voting due to a court order, and I am not currently serving a sentence of total confinement under the jurisdiction of the department of corrections for a Washington felony conviction, and I am not currently incarcerated for a federal or out-of-state felony conviction.

Sign and Date

Power of Attorney is not acceptable.

Signature of voter

Date

Optional: If you cannot sign

Make a mark above in the presence of 2 witnesses. The witnesses should then sign below.

Signature of witness 1 _____ Date _____

Signature of witness 2 _____ Date _____

Washington State County Elections Departments

Fill and return this form to your county elections department.

Adams County

210 W Broadway, Ste. 200
Ritzville, WA 99169
P (509) 659-3249
F (509) 659-3254
elections@co.adams.wa.us

Asotin County

PO Box 129
Asotin, WA 99402
P (509) 243-2084
F (509) 243-2087
dmckay@co.asotin.wa.us

Benton County

PO Box 1000
Richland, WA 99352
P (509) 736-3085
F (509) 786-5482
elections@co.benton.wa.us

Chelan County

350 Orondo Ave., Ste. 306
Wenatchee, WA 98801
P (509) 667-6808
F (509) 667-6818
elections@co.chelan.wa.us

Clallam County

223 E 4th St., Ste. 1
Port Angeles, WA 98362
P (360) 417-2221
F (360) 417-2312
elections@clallamcountwa.gov

Clark County

PO Box 8815
Vancouver, WA
98666-8815
P (564) 397-2345
F (564) 397-2394
elections@clark.wa.gov

Columbia County

341 E Main St., Ste. 3
Dayton, WA 99328
P (509) 382-4541
F (509) 382-4830
elections@co.columbia.wa.us

Cowlitz County

207 4th Ave. N, Rm. 205
Kelso, WA 98626-4124
P (360) 577-3005
F (360) 442-7879
elections@cowlitzwa.gov

Douglas County

PO Box 853
Waterville, WA 98858
P (509) 888-6402
F (509) 745-8931
elections@co.douglas.wa.us

Ferry County

350 E Delaware Ave., Ste. 2
Republic, WA 99166
P (509) 775-5225 ext. 1139
F (509) 775-5208
delections@co.ferry.wa.us

Franklin County

PO Box 1451
Pasco, WA 99301
P (509) 545-3538
F (509) 543-2995
elections@franklincountywa.gov

Garfield County

PO Box 278
Pomeroy, WA 99347-0278
P (509) 843-1411
F (509) 843-3941
mlueck@co.garfield.wa.us

Grant County

PO Box 37
Ephrata, WA 98823
P (509) 754-2011 ext. 2704
elections@grantcountywa.gov

Grays Harbor County

100 W Broadway, Ste. 2
Montesano, WA 98563
P (360) 249-4232
F (360) 249-3330
elections@graysharbor.us

Island County

PO Box 1410
Coupeville, WA 98239
P (360) 678-8290
F (360) 678-2326
elections@islandcountywa.gov

Jefferson County

PO Box 563
Port Townsend, WA
98368-0563
P (360) 385-9119
F (360) 385-9228
elections@co.jefferson.wa.us

King County

919 SW Grady Way
Renton, WA 98057
P (206) 296-8683
F (206) 296-0108
elections@kingcounty.gov

Kitsap County

619 Division St., MS 31
Port Orchard, WA 98366
P (360) 337-7128
F (360) 337-5769
auditor@co.kitsap.wa.us

Kittitas County

205 W. 5th Ave., Ste. 105
Ellensburg, WA 98926
P (509) 962-7503
F (509) 962-7687
elections@co.kittitas.wa.us

Klickitat County

205 S Columbus, Room 203
Goldendale, WA 98620
P (509) 773-4001
F (509) 773-4244
voting@klickitatcounty.org

Lewis County

PO Box 29
Chehalis, WA 98532-0029
P (360) 740-1278
F (360) 740-1421
elections@lewiscountywa.gov

Lincoln County

PO Box 28
Davenport, WA
99122-0028
P (509) 725-4971
F (509) 725-0820
elections@co.lincoln.wa.us

Mason County

PO Box 400
Shelton, WA 98584
P (360) 427-9670 ext. 470
F (360) 427-7768
elections@masoncountywa.gov

Okanogan County

PO Box 1010
Okanogan, WA 98840-1010
P (509) 422-7240
F (509) 422-7163
elections@co.okanogan.wa.us

Pacific County

PO Box 97
South Bend, WA
98586-0097
P (360) 875-9317
F (360) 875-9333
elections@co.pacific.wa.us

Pend Oreille County

PO Box 5015
Newport, WA 99156
P (509) 447-6472
F (509) 447-2475
elections@pendoreille.org

Pierce County

2501 S 35th St., Ste. C
Tacoma, WA 98409
P (253) 798-8683
F (253) 798-2761
elections@piercecounywa.gov

San Juan County

PO Box 638
Friday Harbor, WA
98250-0638
P (360) 378-3357
F (360) 378-8856
elections@sanjuanco.com

Skagit County

PO Box 1306
Mount Vernon, WA
98273-1306
P (360) 416-1702
F (360) 416-1699
selections@co.skagit.wa.us

Skamania County

Elections Department
PO Box 790
Stevenson, WA 98648-0790
P (509) 427-3730
F (509) 427-3740
elections@co.skamania.wa.us

Snohomish County

3000 Rockefeller Ave.
MS 505
Everett, WA 98201-4060
P (425) 388-3444
F (425) 259-2777
elections@snoco.org

Spokane County

1033 W Gardner Ave.
Spokane, WA 99260
P (509) 477-2320
F (509) 477-6607
elections@spokanecounty.org

Stevens County

215 S Oak St., Rm. 106
Colville, WA 99114-2836
P (509) 684-7514
F (509) 684-7568
elections@stevenscountywa.gov

Thurston County

2000 Lakeridge Dr. SW
Olympia, WA 98502-6090
P (360) 786-5408
F (360) 786-5223
elections@co.thurston.wa.us

Wahkiakum County

PO Box 543
Cathlamet, WA 98612
P (360) 795-3219
F (360) 795-0824
elections@co.wahkiakum.wa.us

Walla Walla County

PO Box 1856
Walla Walla, WA 99362
P (509) 524-2530
F (509) 524-2552
elections@co.walla-walla.wa.us

Whatcom County

PO Box 369
Bellingham, WA
98227-0369
P (360) 778-5102
F (360) 778-5101
elections@co.whatcom.wa.us

Whitman County

PO Box 191
Colfax, WA 99111
P (509) 397-5284
F (509) 397-5281
elections@co.whitman.wa.us

Yakima County

PO Box 12570
Yakima, WA 98909-2570
P (509) 574-1340
F (509) 574-1341
iVote@co.yakima.wa.us

The Honorable Mark Larrañaga
Noted for Hearing: September 12, 2023 at 8:30 am
With Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

NO. 22-2-19384-1 SEA

Plaintiffs,

DECLARATION OF
MARK SONGER

v.

STEVE HOBBS, et al.,

Defendants.

I, Mark Songer, declare as follows:

1. I am over the age of 18 years and am competent to testify to the matters stated below and do so based on my personal knowledge.

2. **Exhibit 1** is a true and accurate copy of my expert report in the above-captioned matter and contains the opinions that I expect to testify to in the above-captioned matter.

I declare that the foregoing is true and correct to the best of my knowledge, and I do so under the penalty of perjury of the laws of the state of Washington.

DATED this 7th day of August 2023.

/s/ Mark Songer

Mark Songer, MSFS

Forensic Document Examiner/Robson Forensic

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcinttron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 16th day of August 2023 at Olympia, Washington.

/s/ Karl D. Smith
KARL D. SMITH, WSBA #41988
Deputy Solicitor General

Exhibit 1

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Technical Report
of the
Vet Voice Foundation Document Examination
Vet Voice Foundation, et al.
v.
Steve Hobbs, et al.,
Respondent
(King County Superior Court No. 22-2-19384-1 SEA)

RFI #23WA0029

Prepared by:

Mark Songer, MSFS
Forensic Document Examiner

July 27, 2023

A. INTRODUCTION

Plaintiffs filed a lawsuit against Washington's Secretary of State Steve Hobbs and King County canvassing board members, alleging the State of Washington's signature verification requirement violates the Washington Constitution.

The purpose of my investigation was to 1) review registration and declaration signatures from Clark County (February 2022-February 2023), which had previously been identified by Clark County officials as fraudulently signed and determine whether those signatures were likely signed by someone other than the voter, 2) determine if election officials, in their capacity as signature verifiers, reliably serve a role in detecting potential fraud within a larger system of checks and balances and 3) review Dr. Mohammed's expert report and assess the merit of his opinions.

My investigation into this matter and the preparation of this report was performed at the request of Washington State's Attorney General's Office.

B. QUALIFICATIONS

I graduated with a Bachelor of Science in Criminal Justice from Excelsior College in 1993, and a Master of Science in Forensic Science in 1993 from National University, in which graduate level course work in forensic document examinations was successfully completed with instruction by a forensic document examiner, certified by the American Board of Forensic Document Examiners (ABFDE).

I have been conducting forensic document examinations for over 26 years. I am routinely retained as a subject matter expert to establish the authenticity of documents. Initially, I received my first year of documented training/employment with the private questioned documents laboratory, Harris and Rile, located in Los Angeles, California, which included technical visits to multiple Federal and State laboratories. I further advanced in my second year of training as a Forensic Document Analyst (GS-1397 series)¹ employed with the Federal Bureau of Investigation's Laboratory Division, located at the time in Washington D.C., until transitioning as a Special Agent (GS-1811 series). As part of my current examination, I rely on my knowledge, training, experience, extensive library of scientific literature, the published standards developed by professionals in the Forensic Document Examination discipline and guidelines published by the National Institute of Science and Technology's (NIST)², Organization of Scientific Area Sub-Committee in Forensic Document Examinations (OSAC)³, and the Scientific Working

¹ United States Office of Personnel Management Handbook of Occupational Groups and Families, page 97, December 2018.

² The National Institute of Standards and Technology (NIST) establishes information technology-related frameworks and standards.

³ Organization of Scientific Area Sub-Committee in Forensic Document Examinations OSAC strengthens the nation's use of forensic science by facilitating the development and promoting the use of high-quality, technically sound standards.

Group for Forensic Document Examination (SWGDOC),⁴ which includes *Standard for Scope of Work of Forensic Document Examiners* and *Standard Terminology for Expressing Conclusions of Forensic Document Examiners*. These standards have been thoroughly studied through extensive scientific research and validated through peer review and publication.

My curriculum vitae outlining my complete education, experience and training is attached separately as Appendix A.

C. METHODOLOGY

The approach taken for the analysis of this investigation is based on reliable scientific reasoning and applying the examination method of analysis, comparison, evaluation, followed by verification (ACE-V).⁵ It is a scientific approach for forensic identification that assists the forensic document examiner in determining whether two documents came from the same source. The ACE-V methodology as applied to questioned document analysis is used by the FBI, U.S. Secret Service, and other forensic laboratories.,. This methodology of document examination involves a four-stage process which is outlined below.

Analysis: The examination begins with the analysis of the items submitted for comparison to determine whether the document(s) are suitable for comparison, which includes determining whether the documents are original or copies. The examination continues with analyzing the writing characteristics contained in both questioned and known writings to include, but not limited to, size and proportion, skill, slope, spacing, and style.

Comparison: The second stage consists of a side-by-side comparison of the items. The characteristics exhibited within the questioned document(s), and also any comparison document(s), to determine the similarities, differences, and limitations, if present.

Evaluation: The third stage is the formulation of a conclusion based on the significance and combination of the characteristics observed during the comparison and any limitations present.

Verification: The final stage of the examination process is verification. At this stage, another qualified document examiner reviews the results of the initial examiner using the same methodology described above. This process is performed to ensure the following:

- That appropriate examinations of the questioned documents have been conducted.
- The examiner's conclusions are accurate and consistent with the assigned scope of work.
- The examiner's conclusions are accurate and consistent within the limits and standards of the discipline.
- There is supporting data to support the examiner's findings.

⁴ The Scientific Working Group for Forensic Document Examination (SWGDOC) establishes procedures for use by forensic document examiners.

⁵ Reznicek, M., Ruth, R. M., Schilens, D.W., "ACE-V and the Scientific Method", *Journal of Forensic Identification*, 88/60 (1) 2010.

It should be noted that the ACE methodology as applied to election officials is further discussed in this report.

The results of the final Verification were conducted by Forensic Document Examiner Greg Dalzell, found in Appendix B of this report.

My analysis was conducted visually using an Eschenbach LED hand magnifier.

My opinions are offered within a reasonable degree of scientific certainty relying on forensic document examination industry principles and practices. My opinions are subject to change if additional information becomes available.

Terms of Compensation

The professional service fee Robson Forensic, Inc. charges for all tasks that I have undertaken in this case is currently \$625 per hour. My compensation is not contingent on my opinion or the outcome of this case.

Testimony as an Expert

A document listing each of the occasions on which I have given expert testimony in the past four (4) years is attached as Appendix C to this expert report.

Exhibits

I may use the following materials as exhibits to illustrate testimony: All references and documents cited in this report or listed as Materials Available for Review.

D. MATERIALS AVAILABLE FOR REVIEW

1. (Q1c (1-360)) Copies of three-hundred and sixty (360) February 2022-2023 Clark County individual registration and declaration signatures.
2. (K1c) Copy of Stuart Holmes deposition transcripts.
3. (K2c) Copy of Janice Case deposition transcripts.
4. (K3c) Copy of Jerelyn Hampton deposition transcripts.
5. (K4c) Copy of Dr. Linton Mohammed's expert report.
6. (K5c) Copy of Dr. Linton Mohammed's Deposition Transcripts.
7. (K6c) Copy of Washington State Patrol Signature Verification Training Outline.
8. (K7c) Copies of Washington State Administrative Codes pertaining to election procedures.

E. ANALYSIS

As applied to forensic examinations, the fundamental principle of handwriting identification is based on the premise that no two writings are ever exactly alike. Handwriting is a result of a complex behavioral pattern, resulting from the activation of various regions in the human brain concerning functions such as linguistics, motor function, and motor and visual feedback. Through practice and repetition, writers interject their own individual characteristics into their writings, which become a pattern of habitual formations that are repeated from one writing to the next. This is known as the "principle of individuality," and it forms the basis for handwriting analysis.

To perform my analysis, I was provided with 360 individual voter registration and ballot declaration signatures. It should be noted that the Washington State Attorney General's Office provided these samples to me blindly, meaning that I was unaware of whether each signature I reviewed was a match or mismatch or whether the ballot declaration signatures had been challenged by election officials. Later, I learned that these signatures were chosen because election officials in Clark County had determined that one of the voters, whose signatures I was sent, signed a ballot on behalf of another voter in the sample set for one election from the February 2022 to February 2023 time period. I was unaware which voters were identified by the Clark County officials as having signed fraudulently on behalf of another. Consequently, approximately half of the signatures I reviewed were not contested in any election, e.g., where "voter A" was alleged to have fraudulently signed "voter B's" ballot. I reviewed ballot declaration signatures purporting to belong to both "A" and "B". Additionally, I was sent comparator signatures for multiple elections, not only the election in which the Clark County elections officials determined a fraudulently signed ballot declaration was submitted. Also, I understand I was sent the same information that would have been available to Clark County election officials. Consequently, I reviewed multiple ballot declaration signatures for voters who voted in multiple elections (again, without knowing whether those signatures were challenged or believed to be fraudulent).

All signatures were inter-compared with prior known ballot and other signatures (such as Department of Licensing signatures) belonging to each voter in order to establish the writers' range of natural writing variation. Because people are not machines, they cannot exactly replicate their own writing every time they write. In this case, due to the unavailability of additional specimen signatures, establishing range of writing variation was significantly limited, which is further addressed in my report.

Under Washington law, all personnel assigned to verify signatures must receive training on statewide standards for signature verification⁶. State law requires that signature verification personnel verify that the voter's signature on the ballot declaration is the same as the signature of that voter in the county's voter registration files. Furthermore, Washington law also describes some of the writing characteristics that signature verification personnel use when verifying signatures⁷.

⁶ RCW 29A.40.110(3). Processing incoming ballots.

⁷ WAC 434-379-020 (2-4). Signature verification standard.

Per Washington State Patrol's Signature Verification guideline (K5), pertaining to the ACE methodology, *"A layperson can examine signatures and often determine whether they are genuine or non-genuine"*. My interpretation of this statement, as applied to election officials conducting signature comparisons, is whether two signatures are a match or mismatch. Properly trained election officials are certainly capable of looking at two sets of writings to determine whether those writings show obvious, correlating relationships (or not) with one another. In other words, recognizing basic writing patterns that are similar or not. Election officials are not performing a forensic analysis which, by definition, would be applying ACE methods and procedures in definitively resolving signature authenticity in a court of law. Election officials instead serve as gate keepers to aid in the prevention of fraud.

On July 6, 2023, I spoke with Washington State Election Director Stuart Holmes, regarding how the signature verification process is conducted and the approach that is taken when a signature is challenged.⁸ I understand Holmes was influential in developing the Vote WA Election Management System, which is used today, and contains all Washington State voter information, and also tracks and reports each ballot's status during the process. Holmes indicated that once a ballot declaration is received, it is batched and placed into a sorting machine. The sorting machine creates a scanned image of the ballot declaration and includes the voter's signature (which is clipped for verification purposes) and applies an individual barcode for tracking and identification purposes. Batches may include individuals serving in the military or individuals who live out of state. Voter signature images are kept in a centralized system unique to each voter in which election officials are able to compare a voter's current ballot declaration signature with other previous signatures contained within the voter's file.

Signature verification is the process of comparing the signature on a voter's ballot declaration with the voter's signature(s) in the voter registration database.

The first reviewer compares the signature and, if they match, accepts the ballot. If the first reviewer concludes that the signatures do not match, a second reviewer generally reviews the signatures and either accepts the ballot (if the second reviewer determines that they match) or challenges the ballot declaration signature. Signature verification personnel also have the ability to review information pertaining to the voter's household and compare individual household members' signatures to the signature ballot being screened. If two household members inadvertently signed one another's envelope, but each returned only a single ballot, the ballots are accepted.

If the signature is challenged, a notice to the voter is triggered and a cure form is mailed to the voter along with a follow-up call notifying the voter of any deadlines and that a cure form has been mailed to them. A voter can "cure" a ballot declaration signature challenge by completing a signature update form. Depending on individual county procedures, once the cure form is received, it goes back to another election official who reviews and compares the updated cured signature. If the signature is again challenged based on a mismatch, it is referred to the county's Canvassing Review Board (CRB) for final

⁸ If a signature is identified as a mismatch, the signature is considered "challenged" and a cure is initiated. If the signature is not cured, it goes to the CRB for final determination as to accept or reject the signature.

determination. Holmes emphasized that the benefit of the doubt is given to the voter in allowing the voter's signature to be accepted rather than rejected.

Obvious reasons for an election official to refer a ballot to the curing process would include (1) missing signatures, (2) gross structural differences in signatures (e.g., a cursive writing versus hand printing), (3) signatures of entirely different names that were not a simple mix-up of ballot envelopes among individuals in the same household, and (4) strong indications that another household member signed on behalf of the voter. Recognition of such deficiencies by election officials is performed at a fundamental level that does not (and does not need to) involve the breadth and depth of forensic handwriting comparison examinations, such as which performed by fully trained forensic document examiners to conclusively identify authorship or forgery in a court of law.

Case Samples

As part of my analysis, I was provided with copies of 360 Clark County 2022-2023 Individual Mail-in-Ballots, labeled as Q1c in this report. As described above, these ballot signatures were provided to me not knowing whether any signature was accepted or rejected by elections officials. Applying the ACE methodology to all signatures I examined, I was in 92% agreement with election officials' conclusions that each signature either matched or constituted a mismatch based on obvious deficiencies listed below and detailed in **Figures 1-28**. Furthermore, I often independently identified the individual whom the Clark County elections officials identified as having likely attempted to vote illegitimately. While I had all of the same information as the Clark County elections officials, it was not available to me in as convenient a format. In particular, while I had available all of the addresses of the voters whose signatures I examined, I was unable to easily search for the writings of voters living in the same household. I conducted my review via physical paper, and without the aid of computerized search technology. Given this limitation, it is not surprising that I did not independently identify the voter likely to have committed fraud in each instance. But it is strong evidence of fraud in those cases where I did so.

The following case samples extracted from the ballots in which I reviewed, are presented to illustrate the types of "common sense" signature mismatches that are often encountered by election officials in the course of their duties.

Patti Duda

One ballot signature that I reviewed was purportedly a signature by Patti Duda, voter ID # 12811964. That ballot signature appeared below.



P. Duda Signature 1 (Purportedly signed by Patti Duda).

I compared this signature to six other signatures on file for Patti Duda, as depicted in **Figure 1**.

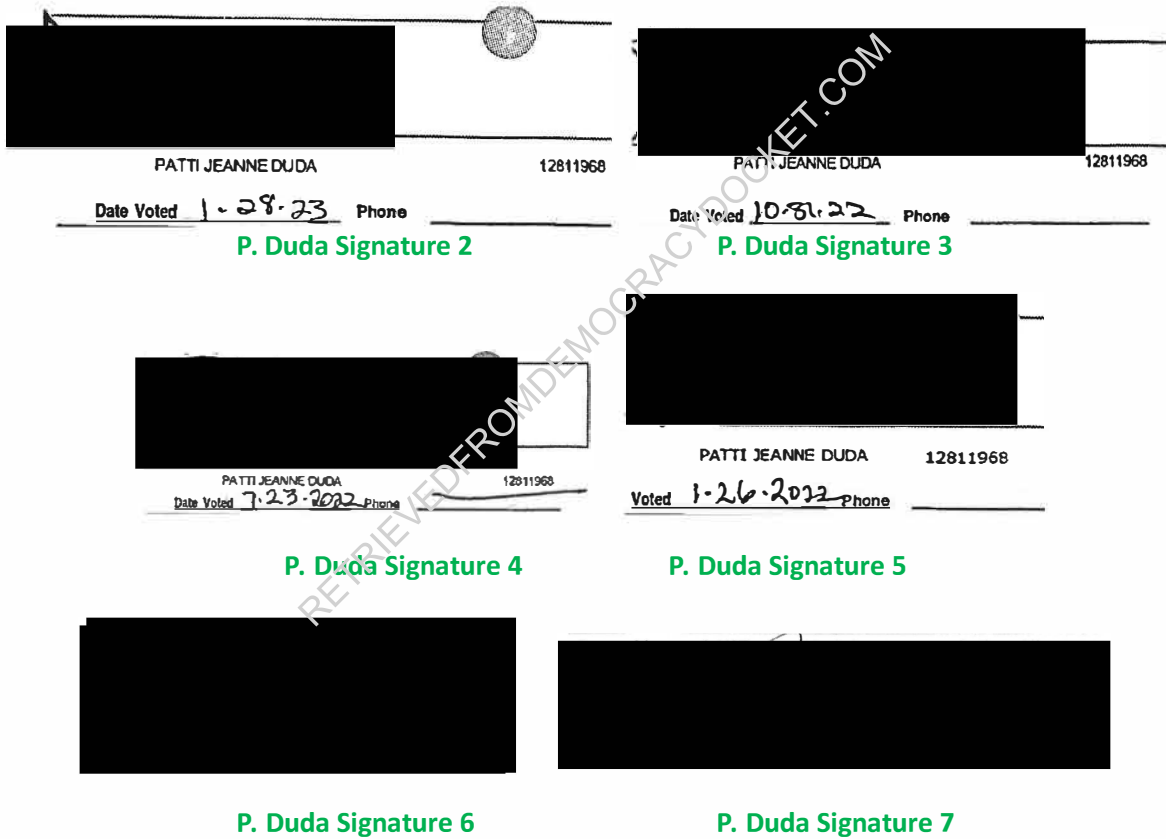


Fig. 1

I observed that the style of writing in Patti Duda's purported ballot signature (*P. Duda Signature 1*) was obviously inconsistent in terms of letterform, slant, and skill level, in comparison with other Duda signatures, (*P. Duda Signatures 2-7*), which constitutes a mismatch.

I also compared the ballot signatures on file for Frank Duda, voter ID# 12811964, and found them to be pictorially consistent with one another, and therefore constitute a signature match as seen in **Figure 2**.

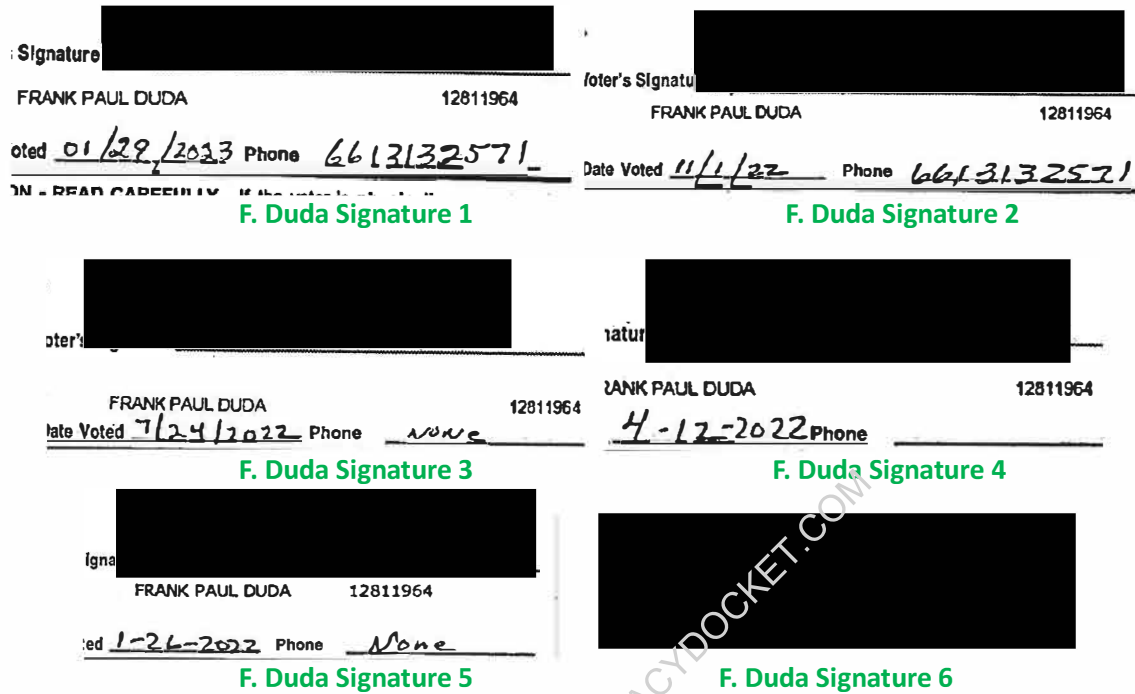
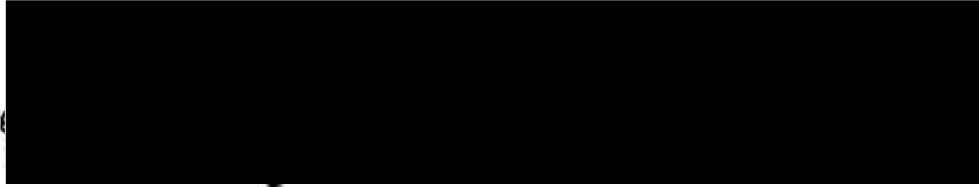


Figure 2

I then compared Patti Duda's purported ballot declaration signature, to the signatures for Frank Duda (*F. Duda Signatures 1, 2, 4, and 5*), as both voters are registered at the same household address. I observed that the purported ballot declaration for Patti Duda was stylistically more alike when comparing with Frank Duda's signatures than with the other signatures on file for Patti Duda. I later learned that Clark County election officials had determined that Frank Duda likely signed for Patti Duda in the April 2022 election. That conclusion is consistent with my independent observations, as depicted in **Figure 3** with arrows.



P. Duda Signature 1 (Purportedly signed by Patti Duda).



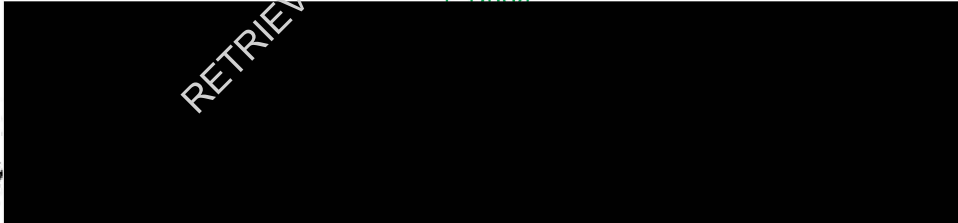
F. Duda Signature 1



F. Duda Signature 2



F. Duda



F. Duda Signature 5

Fig. 3

Jonathan Edward Gaskill

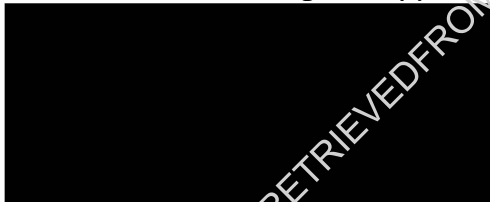
I also reviewed a signature, purportedly to be from Jonathan Edward Gaskill, voter ID# 970564, and compared it with the signatures on file with Clark County (*J. Gaskill Signatures 2-4*). Unlike the signatures on file, the ballot declaration signature of Jonathan Edward Gaskill (*J. Gaskill Signature 1*), was written with the incorrect name and therefore constitutes a signature mismatch as seen in **Figure 4** circled. I later learned that Clark County election officials determined that William Thompson (*W. Thompson Signatures 1-3*), voter ID# 2243274, signed Jonathan Edward Gaskill's ballot as depicted in **Figure 5**. That conclusion is consistent with my independent observations. It was also noted that both Gaskill and Thompson live in the same apartment complex.

Ballot signature for Jonathan Edward Gaskill

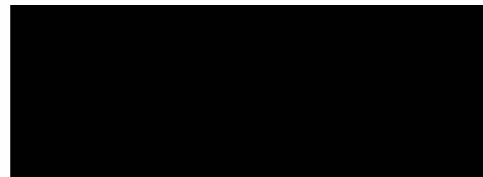


J. Gaskill Signature 1 (Purportedly signed by Edward Gaskill).

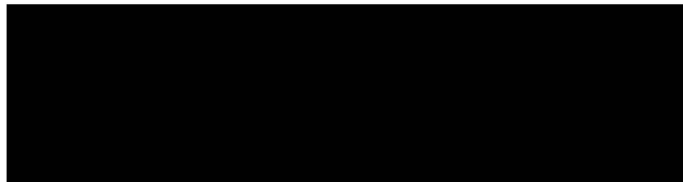
Ballot Signature(s) Submitted for Jonathan Edward Gaskill



J. Gaskill Signature 2

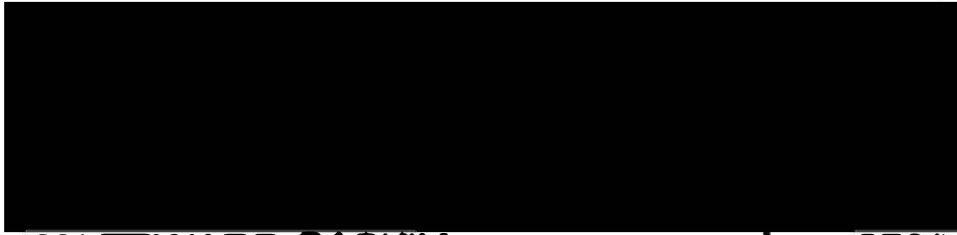


J. Gaskill Signature 3



J. Gaskill Signature 4

Fig. 4



AN EDWARD GASKILL

970564

J. Gaskill Signature 1

Ballot Signatures Submitted for William Thompson



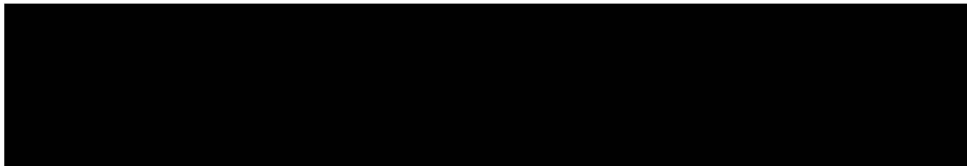
M RAY THOMPSON

7211

W. Thompson Signature 1



M RAY THOMPSON



er's Signature

W. Thompson Signature 3

Fig. 5

Deborah Bogstad

I reviewed two different purported ballot declaration signatures of Deborah Bogstad (*D. Bogstad Signatures 1-2*), voter ID# 2301200, depicted in **Figure 6**.



D. Bogstad Signature 1

D. Bogstad Signature 2

Fig. 6

I then compared those signatures with two signatures on file (*Signatures 3 and 4*). Signature 4 was just an "X", depicted in **Figure 7**.



D. Bogstad Signature 3

D. Bogstad Signature 4

Fig. 7

I determined that the purported ballot declaration signature of Deborah Bogstad (*D. Bogstad Signatures 1 and 2*) appeared stylistically inconsistent with *D. Bogstad Signatures 3 and 4*, and therefore constitutes a signature mismatch. I then compared the purported ballot declaration signatures of Deborah Bogstad, (*D. Bogstad Signatures 1-2*), with the signatures of household member Jerry Bogstad (*J. Bogstad Signatures 1-5*), voter ID# 2301187, who is also registered to vote at the same address, as depicted in **Figure 8** with circles.



D. Bogstad Signature 1

D. Bogstad Signature 2

(Purportedly signed by Deborah Bogstad).

Ballot Signature(s) Submitted for Jerry Bogstad

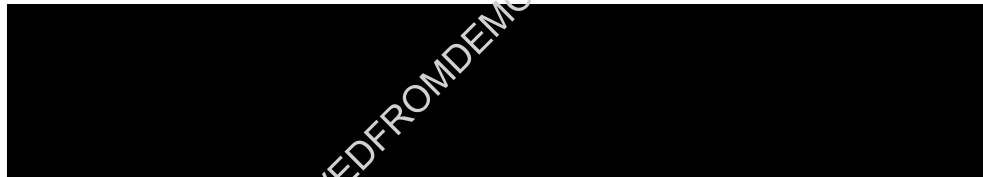


J. Bogstad Signature 1



J. Bogstad Signature 2

J. Bogstad Signature 3

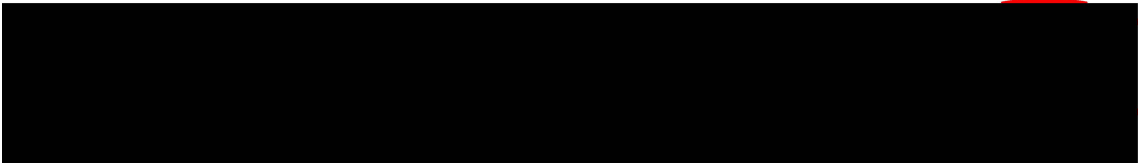


J. Bogstad Signature 4

J. Bogstad Signature 5

Fig. 8

In comparing the ballot signatures belonging to Jerry Bogstad (*J. Bogstad Signatures 1-5*), I noticed his style of writing to be more alike with the writing style of the purported ballot declaration signatures of Deborah Bogstad. I later learned that Clark County election officials determined that Jerry Bogstad likely fraudulently signed Deborah Bogstad's ballot in the August 2022 election. That conclusion is consistent with my independent observations.

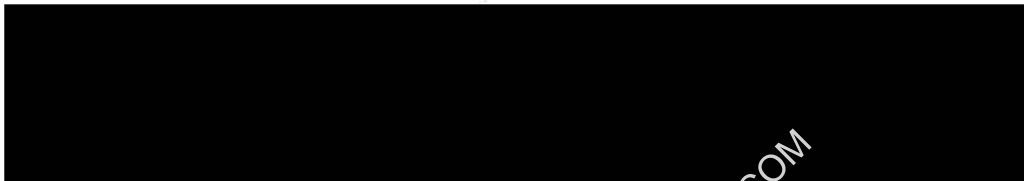


R. Dickey Signature 1

R. Dickey Signature 2

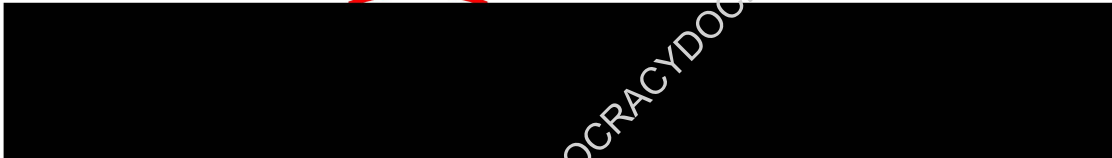
(Purportedly signed by Richard Dickey).

Ballot Signature(s) Submitted for Carol Dickey



C. Dickey Signature 1

C. Dickey Signature 2



C. Dickey Signature 3

C. Dickey Signature 4



C. Dickey Signature 5

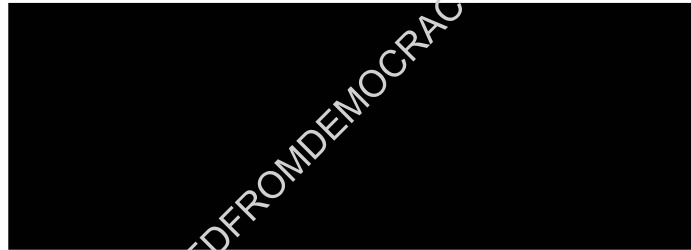
Fig. 11

I later learned that Clark County election officials determined that Carol Dickey likely fraudulently signed on behalf of Richard Dickey in the August 2022 election. That rejection is consistent with my independent observations.

Shaun Smith

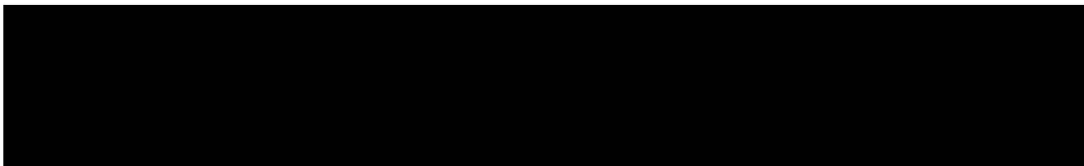
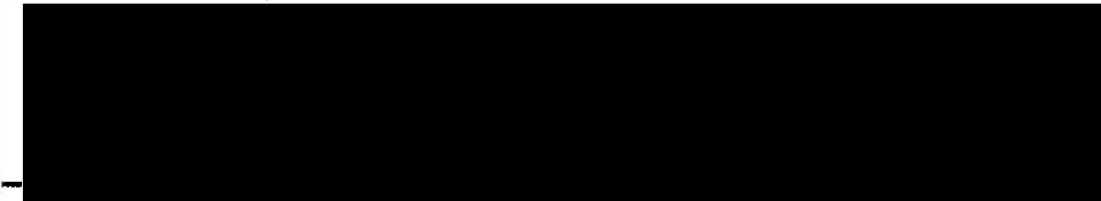
The purported ballot declaration signature of Shaun Smith (*S. Smith Signature 1*), voter ID# 2407585, is spelled out and not comparable with the initial only signatures appearing in *Signatures 2-4*, and therefore constitutes a signature mismatch as seen in **Figure 13**. I later learned that election officials had challenged and rejected the ballot declaration signature (*S. Smith Signature 1*) that purports to be from Shaun Smith. That rejection is consistent with my independent observations. I later learned that Clark County election officials determined that Debra Smith, voter ID# 2417392, who lives in the same household as Shaun Smith, likely fraudulently signed on behalf of Shaun. I did not determine in my independent review prior to learning the conclusions of the Clark County elections officials that this was likely, but nor did I conclude that it was unlikely. In my review prior to learning the determinations of Clark County elections officials, I did not compare the writings of Shaun Smith to those of Debra Smith, in part because I made no systematic effort to compare the writings of voters living at the same address. Upon further review, and after knowing the conclusion of the Clark County elections officials, I compared the Debra Smith writings (*D. Smith Signatures 1-3*) and concur with Clark County election officials that her style of writing is more alike when comparing with the purported signature of Shaun Smith (*Signature 1*), as depicted in **Figure 14** with arrows.

Ballot signatures for Shaun Michael Smith



S. Smith Signature 1

(Purportedly signed by Shaun Smith).



S. Smith Signature 4

S. Smith Signature 4

Fig. 13



S. Smith Signature 1

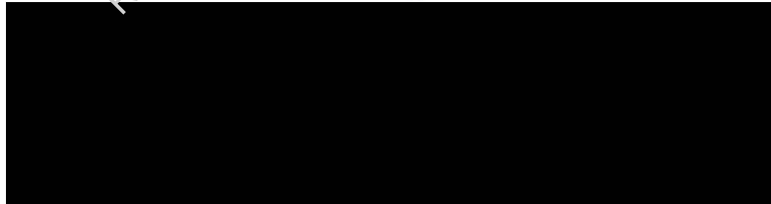
Ballot Signature(s) Submitted for Debra Smith



D. Smith Signature 1



D. Smith Signature 2



D. Smith Signature 3

Fig. 14

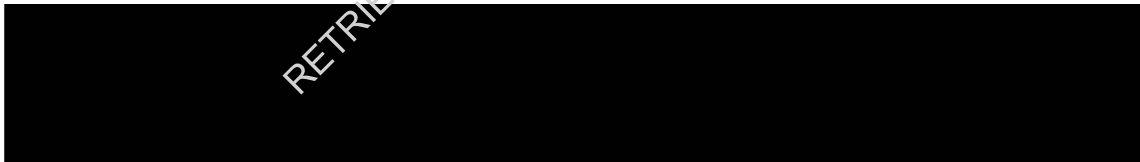
Lorna Piano Clobes

The purported ballot declaration signature of Lorna Piano Clobes (*L. Clobes Signature 1*), voter ID# 2430743, is stylistically inconsistent with the Lorna Clobes signatures on file with Clark County (*L. Clobes Signatures 2-4*), and therefore constitutes a signature mismatch as seen in **Figure 15**. I later learned that election officials had challenged and rejected the ballot declaration signature that purports to be from Lorna Piano Clobes. That rejection is consistent with my independent observations. I also learned that Clark County election officials determined that Daniel Clobes, voter ID# 9073691, who lives in the same household as Lorna Clobes, likely fraudulently signed her ballot declaration. I did not determine in my independent review prior to learning the conclusions of the Clark County elections officials that this was likely, but nor did I conclude that it was unlikely. In my review prior to learning the determinations of Clark County elections officials, I did not compare the writings of Lorna Piano Clobes to those of Daniel Clobes, in part because I made no systematic effort to compare the writings of voters living at the same address. Upon further review, and after knowing the conclusion of the Clark County elections officials, I compared the Daniel Clobes writings (*D. Clobes Signatures 1-8*) and concur with Clark County election officials that his style of writing is more alike when comparing with the purported signature of Lorna Clobes (*Signature 1*), as depicted in **Figure 16**.

Ballot signatures for Lorna Piano Clobes

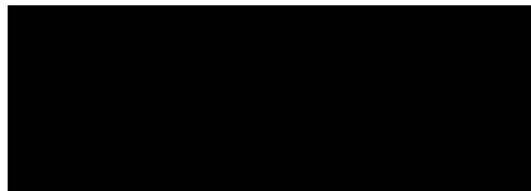


L. Clobes Signature 1 (Purportedly signed Lorna Clobes).



L. Clobes Signature 2

L. Clobes Signature 3



L. Clobes Signature 4

Fig. 15



L. Clobes Signature 1



D. Clobes Signature 1

D. Clobes Signature 2



D. Clobes Signature 3

D. Clobes Signature 4



D. Clobes Signature 5

D. Clobes Signature 6



D. Clobes Signature 7

D. Clobes Signature 8

Fig. 16

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Tiffany Geraldine Walker

The purported ballot declaration signature of Tiffany Geraldine Walker (*T. Geraldine Signature 1*), voter ID# 8814080, was written with the incorrect name, and therefore constitutes a signature mismatch as seen in **Figure 17** circled. I later learned that Clark County election officials determined that David W. Peace likely fraudulently signed on behalf of Tiffany Geraldine Walker. That conclusion is consistent with my independent observations.

Ballot signatures for Tiffany Geraldine Walker



TIFFANY GERALDINE WALKER

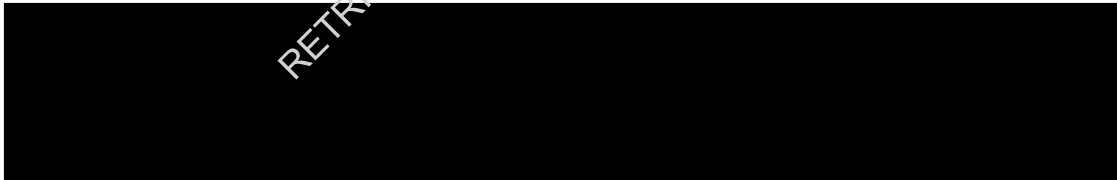
T. Walker Signature1 (Purportedly signed Tiffany Walker).



T. Walker Signature 2



T. Walker Signature 3



T. Walker Signature 4

T. Walker Signature 5



T. Walker Signature 5

Fig. 17

Kael Coquet

The purported ballot declaration signature of Kael Coquet (*K. Coquet Signature 1*), voter ID# 9908221, was written with the incorrect name, and therefore constitutes a signature mismatch as seen in **Figure 18** circled. I later learned that Clark County election officials determined that Mary Ann Raymond (*M. Raymond Signatures 1-7*) likely fraudulently signed on behalf of Kael Coquet, depicted in **Figure 19**. That conclusion is consistent with my independent observations.

Ballot signatures for Kael Joseph Coquet

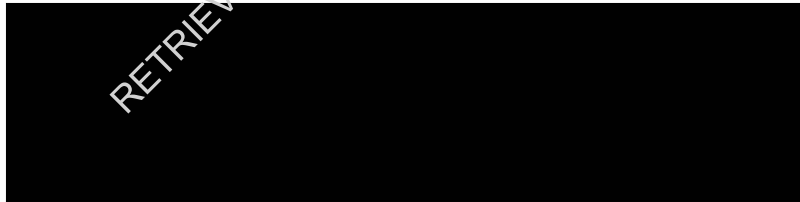


K. Coquet Signature 1 (Purportedly signed by Kael Coquet)



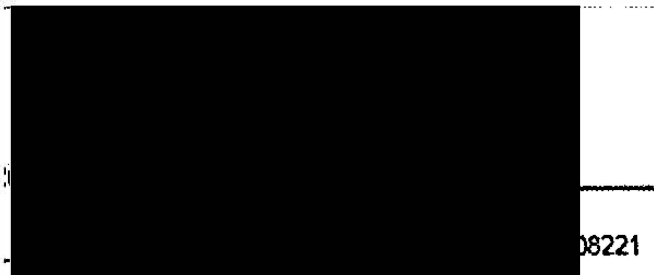
K. Coquet Signature 2

K. Coquet Signature 3



K. Coquet Signature 4

Fig. 18



K. Coquet Signature 1 1 (Purportedly signed by Kael Coquet)

Ballot Signature(s) Submitted for Mary Ann Raymond

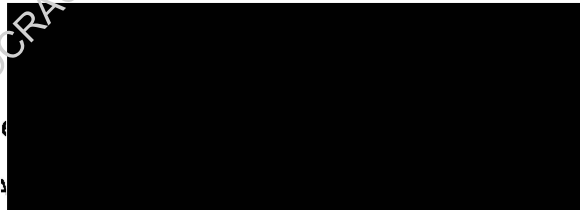


M. Raymond Signature 1

M. Raymond Signature 2



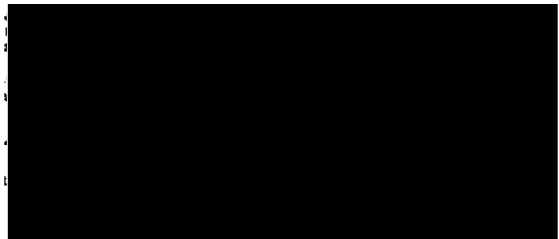
M. Raymond Signature 3



M. Raymond Signature 4



M. Raymond Signature 5



M. Raymond Signature 7

Fig. 19

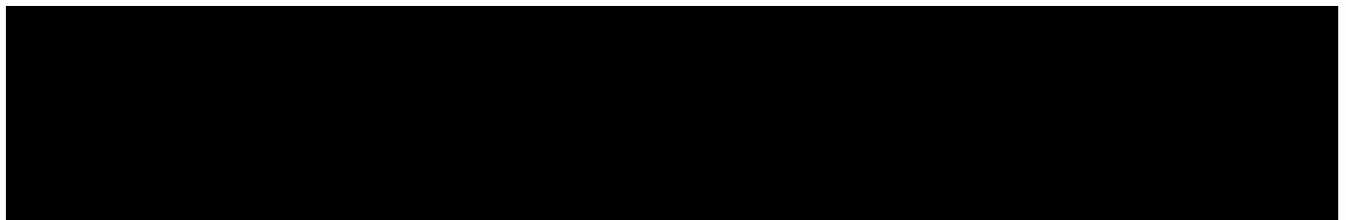
Robert Williams

The purported ballot declaration signature of Robert Williams (*R. Williams Signature 1*), voter ID# 11228163, is stylistically different in comparison with the *R. Williams Signature 2*, and therefore constitutes a signature mismatch as seen in **Figure 20**. Portions of the *R. Williams Signature 1* are handprinted unlike the *R. Williams Signature 2*, which is all handwritten. I later learned that election officials had challenged and rejected the ballot declaration signature that purported to be from Robert Williams. That rejection is consistent with my independent observations. I also learned that Clark County elections officials determined that Amber Williams, voter ID# 11132757, who lives in the same household as Robert Williams, likely fraudulently signed on behalf of Robert. I did not determine in my independent review prior to learning the conclusions of the Clark County elections officials that this was likely, but nor did I conclude that it was unlikely. In my review prior to learning the determinations of Clark County elections officials, I did not compare the writings of Robert Williams to those of Amber Williams, in part because I made no systematic effort to compare the writings of voters living at the same address. Upon further review, and after knowing the conclusion of the Clark County elections officials, I compared the Robert Williams signature (*R. Williams Signature 1*) and concur with Clark County election officials that the style of writing is more alike when compared with the Amber Williams signatures (*A. Williams Signature 1-2*), as depicted in **Figure 21**.

Ballot signatures for Robert Ed Williams Jr.

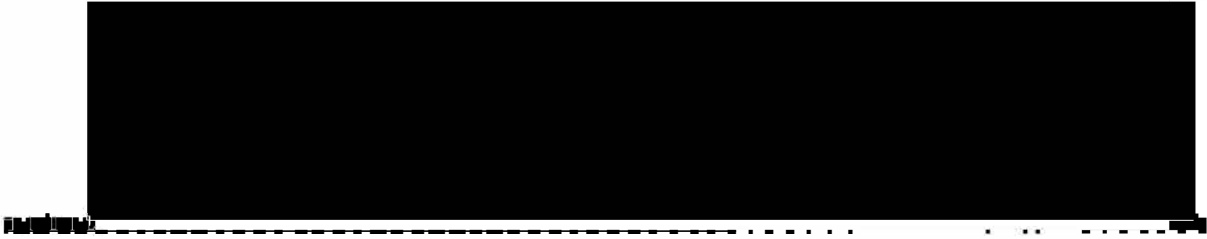


R. Williams Signature 1 (Purportedly signed by Robert Williams)



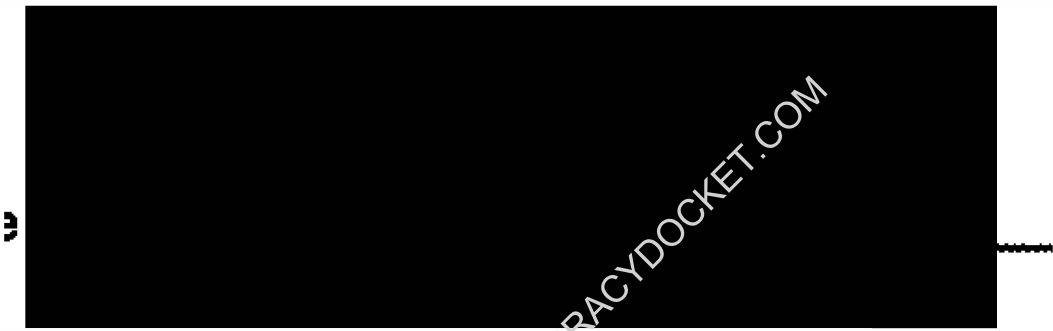
R. Williams Signature 2

Fig. 20

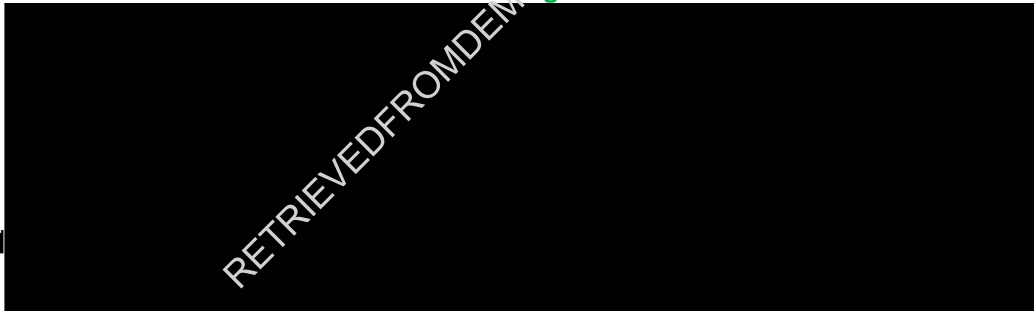


R. Williams Signature 1 (Purportedly signed by Robert Williams)

Ballot Signature(s) Submitted for Jonathan Amber Williams



A. Williams Signature 1



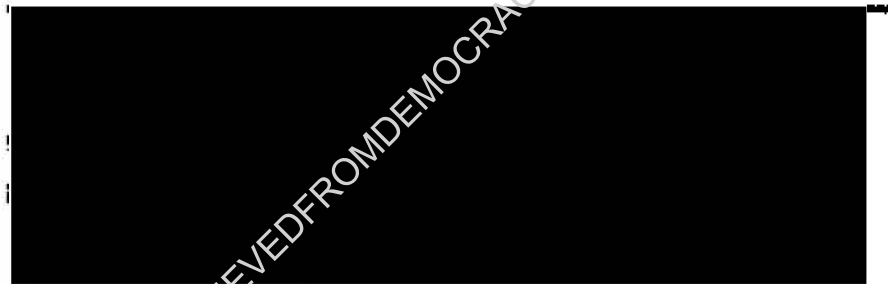
A. Williams Signature 2

Fig. 21

Robert Nishino

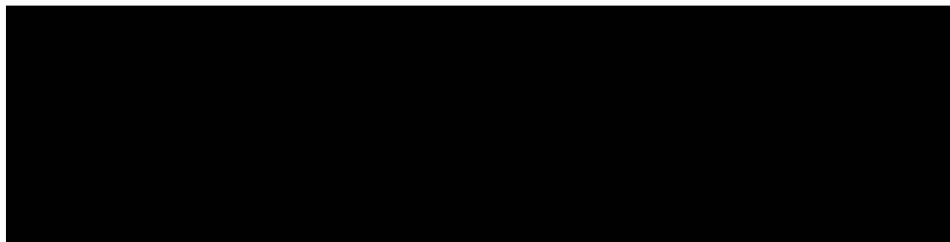
The ballot signature of Robert Nishino (*R. Nishino Signature 1*), voter ID# 12572958, is stylistically different in comparison with the signature on file with Clark County (*R. Nishino Signature 2*), and therefore constitutes a signature mismatch as seen in **Figure 22**. I later learned that election officials had challenged and rejected the ballot declaration signature that purports to be from Robert Nishino. That rejection is consistent with my independent observations. I also learned that Clark County elections officials determined that Amber Nishino, voter ID# 10509347, who lives in the same household as Robert Williams, likely fraudulently signed on behalf of Robert. I did not determine in my independent review prior to learning the conclusions of the Clark County elections officials that this was likely, but nor did I conclude that it was unlikely. In my review prior to learning the determinations of Clark County elections officials, I did not compare the writings of Robert Nishino to those of Amber Nishino, in part because I made no systematic effort to compare the writings of voters living at the same address. Upon further review, and after knowing the conclusion of the Clark County elections officials, I compared the Robert Nishino signature (*R. Nishino Signature 2*) and concur with Clark County election officials that the style of writing is more alike when compared with the Amber Nishino signatures (*A. Nishino Signature 1-3*), as depicted in **Figure 23**.

Ballot signatures for Robert Arthur Nishino



Voter's Signature

R. Nishino Signature 1 (Purportedly signed by Arthur Nishino).



R. Nishino Signature 2

Fig. 22



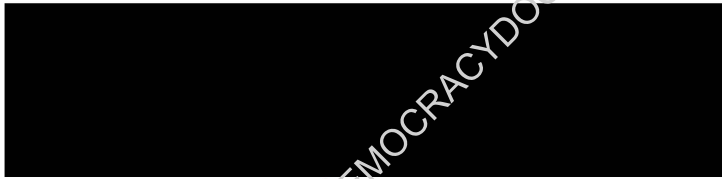
Voter's Signature

R. Nishino Signature 1 (Purportedly signed by Arthur Nishino).

Ballot Signature(s) Submitted for Amber Williams



A. Nishino Signature 1



A. Nishino Signature 2



A. Nishino Signature 3

Fig. 23

Artur Mishuk

The purported ballot declaration signature of Artur Mishuk (*A. Minshuku Signature 1*), voter ID# 12854075, is handwritten, and therefore not comparable with the initials appearing in the signatures on file with Clark County (*A. Mishuk Signatures 2-3*) and constitutes a signature mismatch as seen in **Figure 24**. I later learned that election officials had challenged and rejected the ballot declaration signature that purports to be from Artur Mishuk. That rejection is consistent with my independent observations. I also learned that Clark County elections officials determined that Natalya Mishuk, voter ID# 4168012, likely fraudulently signed on behalf of Artur in the November 2022 election. I did not determine in my independent review prior to learning the conclusions of the Clark County elections officials that this was likely, but nor did I conclude that it was unlikely. In my review prior to learning the determinations of Clark County elections officials, I did not compare the writings of Artur Mishuk to those of Natalya Mishuk, in part because I made no systematic effort to compare the writings of voters living at the same address. Upon further review, and after knowing the conclusion of the Clark County elections officials, I compared the Artur Mishuk signature (*A. Mishuk Signature 1*) and concur with Clark County election officials that the style of writing is more alike when compared with the Natalya Mishuk signatures (*N. Mishuk Signatures 1-2*), as depicted in **Figure 25**.

Ballot signatures for Artur Alexander Mishuk

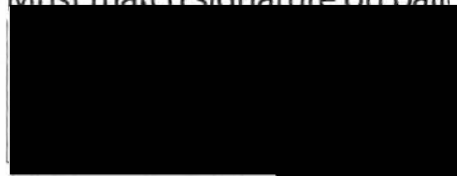


A. Mishuk Signature 1 (Purportedly signed by Artur Mishuk).



A. Mishuk Signature 2

Must match signature on ball



signature of voter /

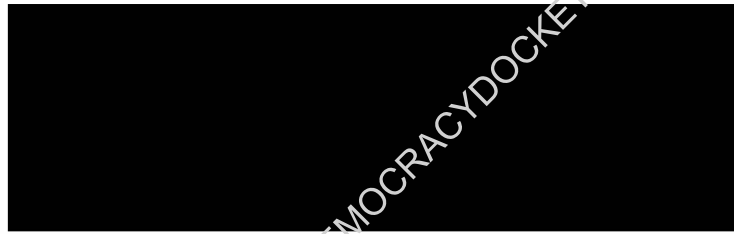
A. Mishuk Signature 3

Fig. 24



A. Mishuk Signature 1

Ballot Signature(s) Submitted for Natalya Mishuk



N. Mishuk Signature 2

Fig. 25

RETRIEVED FROM DEMOCRACYDOCKET.COM

Anthony Smith

I reviewed the purported ballot declaration signature of Anthony Smith (*A. Smith Signature 1*), voter ID# 11062177, depicted in **Figure 26**.



A. Smith Signature 1 (Purportedly signed by Anthony Smith).

Fig. 26

I then compared the Anthony Smith Signature (*A. Smith Signature 1*) with the Anthony Smith voter signatures on file with Clark County (*A. Smith Signatures 2-5*), depicted in **Figure 27**.



Fig. 27

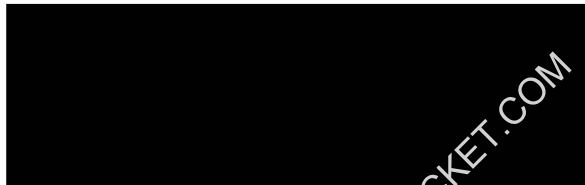
My review found the purported ballot declaration signature (*A. Smith Signature 1*) to be stylistically inconsistent with the signatures on file (*A. Smith Signature 2-5*), and I therefore concluded that the signatures constitute a signature mismatch. I then compared the purported ballot declaration signature of Anthony Smith with signatures on file belonging to Hailey Smith (*H. Smith Signatures 1-4*), voter ID# 11064201, who resides in the same household as Anthony Smith. I noticed her style of writing to be more

alike, with the writing style of the purported Anthony Smith ballot declaration signature (*A. Smith Signature 1*), depicted in **Figure 28**.

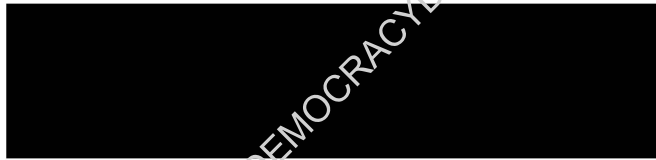


A. Smith Signature 1

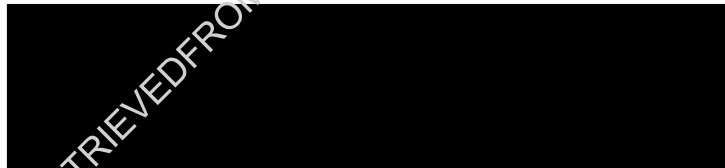
Ballot Signature(s) Submitted for Hailey Smith



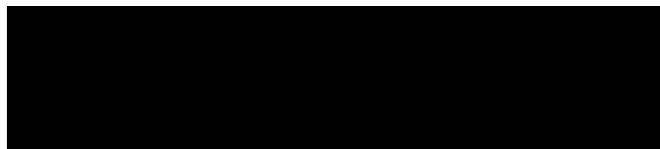
H. Smith Signature 1



H. Smith Signature 2



H. Smith Signature 3



H. Smith Signature 4

Fig. 28

I later learned that Clark County elections officials determined that Hailey Smith likely fraudulently signed Anthony Smith's signature in the August 2022 election. This conclusion is consistent with my independent observations.

F. REBUTTAL OF DR. LINTON MOHAMMED'S REPORT

Comparing a professional forensic document examiner (FDE) to election officials acting in their capacity as signature verifiers, is like comparing apples to oranges. In reading Dr. Mohammed's report and deposition transcripts, I do not disagree with his position that the forensic approach a professional FDE undertakes in comparison to an election official is completely different, not only in methodology application, but also in intended purpose. An FDE aids the trier of fact in court cases by testifying as expert witnesses and to present scientific findings in court. Signature verifiers in an election, in contrast, act as part of a system with multiple checks in place to guard against improperly submitted ballots. In Dr. Mohammed's report, he conflates forensic signature comparison examinations with a front-line screening process that is part of a system that incorporates safeguards beyond the screening phase. Such safeguards include processes to cure any challenges to ballots. This backstop is put in place to account for the lower level of expertise on non-FDE ballot verifiers. In their screening capacity, election officials are not charged with performing forensic-level examinations of signatures. Rather, election officials review ballots and determine whether specific legislated conditions have been met to warrant referring a ballot to the curing process. Election officials are taught to recognize deficiencies that have been specified by governmental regulation specifically outlined in the WAC codes. Election officials are bound by these regulations and are authorized only to refer ballots for curing. Front line election officials do not have authority to permanently reject ballots from being counted. Furthermore, regulations specify that the system was designed to facilitate signature acceptance, conflicting with Dr. Mohammed's statement that ballots that should have been accepted will be rejected at higher rates under the existing system.⁹

Dr. Mohammed approaches Washington's signature verification process the way he would approach a full forensic investigation, but with unrealistic expectations about error rates that could not even be achieved by a forensic document examiner testifying in a criminal case under the highest standard of proof. Dr. Mohammed testified that any process of verifying voter identity with any error rate is incompatible with election administration.¹⁰ But even setting aside his concession that he does not have expertise in election administration (Mohammed Depo. at 34:12-18), even trained forensic document analysts cannot meet this unrealistic standard. Dr. Mohammed acknowledges that in the same study he relies upon, forensic document examiners had an error rate of 7% (Mohammed Depo. at 39:8-1). He claims that such an error rate is acceptable in a criminal case where a defendant's freedom is on the line, but that elections must somehow achieve impossible levels of accuracy. This unrealistic expectation underscores his lack of understanding of the goals and limits of election administration. Emphasizing this point, the only alternative mechanisms for verifying voter identity he proposed would be collecting and comparing voter fingerprints, or to conduct individualized interviews of voters (Mohammed Depo. at 21:3-14). He concedes he did not consider the impact of any alternative mechanisms of identity verification on voter participation or election security (Mohammed Depo. at 35:16-20; 94:8-15).

⁹ Dr. Linton Mohammed deposition dated June 29, 2023.

¹⁰ Dr. Mohammed deposition Mohammed Depo. at 33:6-23; 47:23-48:1; 87:12-17; 93:25-94:1.

Furthermore, It would not be practical nor within the regulations for the State of Washington to use the same approach as an FDE. While Dr. Mohammed is correct in his statements regarding the fundamentals of conducting forensic signature comparisons, it is irrelevant to the task of verifying ballots in an election. Additionally, no system is 100% reliable, even with FDEs. However, the current system has mechanisms and protocols in place, in order to minimize potential errors, previously addressed in my interview with Washington State Election Director Stuart Holmes.

In reviewing Dr. Mohammed's report, dated April 21, 2023, he points out the following opinions below:

Opinion (Page 1): "Signature matching is fundamentally incompatible with election administration and will inevitably result in the mistaken rejection of voter's ballots based on erroneous determinations that ballot signatures are not genuine".

Response: There are no studies to support this proposition. Studies of whether Washington election officials have higher rates of errors has never been conducted or measured, even if compared with FDEs.

In Dr. Mohammed's deposition and report, he refers to the Kam study,¹¹ an evidence-based research study conducted to determine if professionally trained forensic document examiners possess writer-identification skills absent in the general population. The study illustrated that the layperson "*erroneously matched many documents that were created by different writers, mismatching almost six times as many unknown documents to database documents as the professionals did (38.3% vs. 6.5% of the documents)*". While the study itself was a monumental moment in demonstrating that FDEs possess this skill set over nonprofessionals, its comparison to the issue in this case is misused. Dr. Mohammed uses this study to illustrate that election officials should not be verifying signatures due to potential error rates. But the circumstances of the test are markedly different in numerous ways. In Kam, the "nonprofessionals" were not provided training on signature verification or provided any criteria for determining authenticity of handwriting (Mohammed Depo. 51:12-17). In Washington, such training is required for officials conducting signature verification. The training that election officials receive establishes a baseline of which writing characteristics they should evaluate when reviewing signatures for match or mismatch. Secondly, the Kam study focuses on multiple pages of handwriting as opposed to signatures. Each nonprofessional was provided a first package of six original handwritten documents and a second package of 24 original handwritten documents for comparison purposes. In contrast, elections officials only compare signatures, and the quantity of comparators varies from voter to voter. Additionally, participants in the Kam study were instructed not to make any presumptions and, in fact, had monetary incentives to correctly identify matches or non-matches (Mohammed Depo. at 51:18-21). In contrast, I understand that signature verifiers in Washington elections are generally instructed to, and soon will be required to, presume that a signature is valid and only reject a signature when there is evidence sufficient to overcome this presumption. If the participants of the Kam study were given a presumption along these lines, I would expect the results would have been markedly different. Dr. Mohammed concedes as much. When asked in his deposition how to explain that Washington State did not reject 26% of voters' ballots consistent with the results of the Kam study, he conceded that he could not explain this difference and that it could

¹¹ Kam, M., Fielding, G., & Conn, R. (1997). Writer identification by professional document examiners. *Journal of Forensic Sciences*, 42(5).

be due to the presumption of validity utilized by election administration officials (Mohammed Depo. at 56:16-57:1).

The Kam study also did not have a mechanism of peer review or incorporate a cure process in which authenticity could be validated through additional mechanisms beyond signature verification (Mohammed Depo. at 53:23-54:5; 56:6-25). Dr. Mohammed conceded that he did not know what Washington State's cure process was or whether it could mitigate any and all potential errors that may occur in connection with signature verification (Mohammed Depo. at 45:25-46:23). He also conceded that he did not know whether incorporating a mechanism for secondary authentication, such as the use of drivers' license numbers, social security numbers, or multi-factor authentication, would reduce potential error rates (Mohammed Depo. at 57:1-6). Although the Kam study establishes reliable data, its application, in this case, as to the error rate of elections officials, is misplaced and speculative, as no data currently exists to show otherwise. A better related study would include testing the capabilities and proficiency of election officials using the same conditions, training, and presumptions they are expected to rely on.

Further, the results of the Kam study are demonstratively false when applied to Washington's signature verification process. Dr. Kam determined that Type II errors were made by laypersons at a rate of about 26%, in other words, about 26% of the time, writing that was actually authentic was declared inauthentic by laypersons. But, in the 2022 November election, less than 1% of ballots were rejected because of mismatched signatures.¹² Even if every single one of the rejected ballots for signature does not match in the November 2022 election was rejected erroneously (which my analysis of signatures from Clark County shows was not the case), election officials in Washington still would not come anywhere close to the 26% error rate that Dr. Kam found. In fact, Dr. Kam found that FDEs make Type II errors 7% of the time. This would mean that Election officials in Washington, even if every rejected ballot was rejected erroneously, would make fewer Type II errors than FDEs. This conclusively shows that Dr. Kam's study has no application to signature verification in Washington elections.

Election Officials are tasked with deciding if a signature is a match or a mismatch, meeting a minimal threshold of agreement with a known signature based on corresponding handwriting patterns, forms and structures. They are not required to meet Scientific Working Group of Forensic Documents Examiners SWGDOC and ANSI/ASB requirements for forensic document examination because their role does not rise to the level of forensic document examinations, and because safeguards are mandated in the system to address signatures rejected in error (i.e., curing process). Unlike an examination conducted by an FDE, no opinion is issued. The Scientific Working Group for Forensic Document Examination (SWGDOC) *Standard Terminology for Expressing Conclusions of Forensic Document Examiners* is not used, *ANSI/ASB Standard O11, First Edition, 2022, Scope of Expertise in Forensic Document Examinations* is not used, *ANSI/ASB STANDARD O70, Standard for Examination of Handwritten Items* is not used, which is why the evaluation portion of ACE is not applicable to the election officials scope of work.

In his deposition, Dr. Mohammed discusses the types of cases he has examined that are analogous to those processed by election officials. He provides an example of an examination in which the wording of the dictated specimens is completely different and not of the same textual content. (See Dr. Mohammed's

¹² <https://www.sos.wa.gov/elections/data-research/2022-general-election>

June 29, 2023, deposition, page 25 lines 18 through 25 and page 26 lines 1 through 9.) Dr. Mohammed states that such handwriting comparisons are “nonstarters” and would quickly lead to an inconclusive result which I would agree. Such “nonstarters” would include, for example, the voter declaration signed by William Thompson on Jonathan Gaskill’s ballot or the cursive signature of “Anthony Smith” where his comparator signature consisted of a printed “Tony Smith.” These kinds of “nonstarter” examinations are substantially similar to all of the examples described earlier in my report. As these examples illustrate, recognizing “nonstarter” conditions is a large part of what election officials are seeing and observing, which does not require the expertise of a board-certified forensic document examiner, but merely relying upon a “common sense” approach as outlined in their training and experience. Furthermore, the cure process also minimizes the number of nonstarters, due to mechanisms and protocols that are in place.

(Page left intentionally blank)

RETRIEVEDFROMDEMOCRACYDOCKET.COM

G. FINDINGS

Within the bounds of reasonable scientific certainty, and subject to change if additional information becomes available, it is my professional opinion that:

1. In analyzing and comparing Clark County's registration and ballot declaration signatures, labeled as Q1c, I found multiple instances of potential fraud (i.e., a third party, such as a household member, signed a voter's ballot declaration in an attempt to cast an illegitimate ballot).
2. In analyzing and comparing signatures involved in an instance in which Clark County election officials determined that a likely instance of fraud occurred, labeled as Q1c, I was in 92% agreement with Clark County election officials in determining whether a signature should have been accepted or rejected. In many instances, I independently identified the individual whom Clark County elections officials concluded likely perpetrated voting fraud. This is strong evidence that ballots are submitted fraudulently on occasion.
3. County election officials in their capacity as outlined by Washington statutes and regulations, are capable of determining whether ballot declaration signatures are a match or mismatched, based on obvious writing pattern discrepancies. While election officials may not have the training or time to conduct the definitive analysis of a forensic document examiner, election officials can identify obvious discrepancies between signatures that indicate that a third party has signed the ballot signature. It is my understanding that Washington Election officials operate under an initial presumption that a ballot signature is valid absent evidence to the contrary. Combined with a presumption of validity and opportunity for voters to cure challenged signatures, a well-constructed and implemented signature verification process can, in general, reliably prevent the introduction of fraudulent ballots without rejecting genuine ballots.
4. In my discussions with the State of Washington, I understand the Secretary of State is in the process of developing regulations to further strengthen the signature verification process and, overall, design a system that serves a purpose in detecting fraud without rejecting genuine ballots. The regulations will include the following provisions:
 - Signatures are presumed valid all through the process.
 - Signatures cannot be rejected unless multiple, significant, and obvious differences are observed.
 - Voters may cure signature challenges through secondary identity verification, such as multi-factor authentication or photo identification.
 - Ballots must be challenged if there is clear evidence, beyond the signature itself, that a ballot declaration is fraudulent.
5. By implementing the above measures with the current system in place, I agree that any error rate that currently exists within the elections process, will only decrease. It is my professional opinion that trained lay individuals can reliably assess whether there are multiple, significant, and obvious

differences in ballot signatures versus voter registration signatures, particularly given the broad opportunities for voters to cure any challenged signature.

6. Dr. Mohammed's opinions fail to establish that election officials unsatisfactorily perform their role with respect to screening ballots based on signatures. Although significant effort was put forth describing differences between "laypersons" and "forensic document examiners", Dr. Mohammed's report does not provide compelling justification for the position that only board-certified forensic document examiners can fulfill the duties of trained election officials in screening ballots. Dr. Mohammed did not reference a single study in support of his position that election officials are unacceptably deficient in their role involving signature matching. A lack of objective support renders Dr. Mohammed's position wholly subjective and speculative. Accordingly, the position Dr. Mohammed takes, that only forensic document examiners possess the requisite skills to fulfill the signature matching requirements of the Washington State ballot processing system, is without merit



Mark Songer, MSFS

Forensic Document Examiner

RETRIEVEDFROMDEMOCRACYDOCKET.COM

The Honorable Mark Larrañaga
Noted for Hearing: September 12, 2023 at 8:30 am
With Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

NO. 22-2-19384-1 SEA

Plaintiffs,

DECLARATION OF DR. ROBERT
STEIN

v.

STEVE HOBBS, et al.,

Defendants.

I, Dr. Robert Stein, declare as follows:

1. I am over the age of 18 years and am competent to testify to the matters stated below and do so based on my personal knowledge.

2. **Exhibit 1** is a true and accurate copy of my expert report in the above-captioned matter and contains the opinions that I expect to testify to in the above-captioned matter.

I declare that the foregoing is true and correct to the best of my knowledge, and I do so under the penalty of perjury of the laws of the state of Washington.

DATED this 7th day of August 2023.

/s/ Dr. Robert Stein

Dr. Robert Stein, PhD

Lena Gohlman Fox Professor of Political
Science/Rice University

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcinttron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 16th day of August 2023 at Olympia, Washington.

/s/ Karl D. Smith
KARL D. SMITH, WSBA #41988
Deputy Solicitor General

Exhibit 1

RETRIEVEDFROMDEMOCRACYDOCKET.COM

EXPERT REPORT OF ROBERT STEIN
SUBMITTED ON BEHALF OF DEFENDANT STEVE HOBBS
Vet Voice Foundation, et al.,
vs.
Steve Hobbs, et al.,
No. 22-2-19384-1 SEA

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Robert Stein, PhD, Lena Gohlman Fox Professor of Political Science
Rice University
July 31, 2023

I. INTRODUCTION

A. Background and Qualification

I am an expert on voting and elections. I am the Lena Gohlman Fox Professor of Political Science at Rice University. My research focuses on voting behavior and election administration. My work includes collaborations with several states and local governments in designing and implementing voting systems. I have provided expert testimony in a number of voting rights cases, including *Mark Wandering Medicine et al. v. Linda McCulloch et al.*, No. CV 12-135-BLG-DWM, 2014 WL 12588302 (D. Mont. Mar. 26, 2014), *Martin Cowen et al. v. Brian P. Kemp*, No. 1:17-CV-04660-LMM, 2018 WL 8141305 (N.D. Ga. Jan. 25, 2018), and *Donald J. Trump et al. v. Kathy Boockvar et al.*, 141 S.Ct. 1044, 208 L. Ed. 2d 517 (2021). A current version of my Curriculum Vitae is appended to this report.

B. Scope of Work

Defendant Steve Hobbs, in his official capacity as Washington State Secretary of State, has retained me to provide an analysis of Washington State (“Washington”)’s implementation of signature verification in Washington’s vote-by-mail system.

C. Methods

In this report, I relied on my professional expertise, peer reviewed journal articles, books, public documents and the Washington State Auditor’s analysis of the 2020 election (“Auditor’s Report”).

II. EXECUTIVE SUMMARY

In this report, I have drawn the following conclusions:

(1) In a fully vote-by-mail system, such as Washington’s, it is essential to have a means of verifying voter identity and to prevent registered voters from voting more than once to achieve many important democratically aligned goals. Voter signature verification is a reasonable means of accomplishing these goals in a vote-by-mail system and is preferable to other methods of voter identification that are either incompatible with a vote-by-mail system or would otherwise suppress voter turnout.

(2) Washington's particular implementation of signature verification is a reasonable means of effecting the goals of a successful vote-by-mail system.

(3) Even assuming that Washington's implementation of signature verification impacts certain categories of voters, those effects can be corrected at the county level or via statewide changes that do not entirely jettison signature verification as a means of verifying voter identity.

(4) Removal of Washington's signature verification requirement would leave the State without a meaningful mechanism for verifying the validity of cast ballots or to prevent illegitimate votes or systemic manipulation of Washington elections. The substitution of alternative means of voter verification including requiring valid identification at in-person-only elections would harm voters' access to the ballot, decrease voter turnout in the state, decrease ballot completion, and significantly increase the cost of conducting elections.

III. THE "FIRST PRINCIPLES" OF ANY VOTING SYSTEM

Elections and their administration are foundational to the health and sustainability of democracies. Certain foundational objectives, which I refer to as "first principles," are important to achieve for any voting system that seeks legitimate, democratic elections. These first principles are organized around the idea that elections are intended to decide matters of public importance according to the majority (or sometimes super-majority) preference of eligible voters, and to preserve public confidence in the integrity and accuracy of election results.

To these ends, legitimate voting systems should be designed to achieve a number of goals, some of which are in tension. First, every individual who is eligible to vote should be able to easily cast a ballot. Because the goal of an election is to accurately and demonstrably determine the preference of eligible voters, if the barriers to voting are too high, some voters will be unable (or unwilling) to participate in elections. If barriers to participation are high enough that a significant number of voters cannot or do not participate, this could result in election outcomes that would not occur absent such barriers. Barriers to voting that disproportionately impact voters with similar preferences are especially problematic because dissuading likeminded voters from participating in

an election creates a greater risk of election results that do not accurately represent the true preference of a majority of voters.

Second, and as a corollary to the previous point, ineligible voters who attempt to cast a ballot, or eligible voters who attempt to vote more than once, should be stopped, as should anyone attempting to vote in another person's name. Electoral systems must also be protected against targeted attacks not just by individual voters, but potential disruptive factions, such as hostile state actors. Again, because the goal of an election is to accurately and demonstrably determine the preference of eligible voters, each time an ineligible person votes, or an eligible voter votes more than once, it dilutes the preferences of legitimate voters, makes it more likely that illegitimate election results will occur, and can damage public faith in the integrity of the process. Successful efforts by hostile agents to impersonate or manipulate the votes of eligible voters could also skew results and compromise public confidence in election processes and democracy at large.

Vote-by-mail systems create unique vulnerabilities in which a voter's ballot can be intercepted at the mailbox or a shared living space. If a person intercepts the registered voter's ballot, and uses that ballot to vote illegitimately, they not only add an illegitimate vote into the election, but also subtract a legitimate vote. This amplifies the delegitimizing effects of ineligible or double voting.

It is thus important to recognize that the goals of broad ballot access and preserving election security can be in tension, and that legislatures and election administrators must make choices between protecting against illegitimate votes, which may have the unintended effect of reducing the number of legitimate votes, versus reducing protections as a means of facilitating more legitimate votes, which may have the unintended effect of increasing the number of illegitimate votes. A variety of mechanisms, all contested and controversial, have been proposed and utilized at various times and in various jurisdictions in an effort to balance these concerns. This report discusses some of the possible mechanisms to balance these important concerns in vote-by-mail jurisdictions. But any particular choice will have trade-offs and likely provoke controversy. It is thus especially important that any chosen mechanism is available for public inspection and

scrutiny. Elections should not only accurately determine the preference of eligible voters, but also demonstrably do so. Everyone who is impacted by an election, whether an eligible voter or not, has an interest in validating that the exercise of state power is legitimized by a genuinely democratic process. This is only possible if the public has access to and can verify that election workers are administering the mechanisms for vote verification openly and consistently.

Finally, elections administrators must be cognizant of voter psychology in striking the appropriate balance between the sometimes competing objectives of protecting the legitimacy of elections while also bolstering voter confidence and concomitant participation in elections. Research shows that voters who prefer a losing candidate are more likely to believe that an election was illegitimate in some way.¹ If enough voters believe this, even in spite of convincing evidence to the contrary, trust in democratic institutions may falter and civil unrest may result. This is not to say that elections administrators must be held captive by irrational beliefs, but elections must be structured to account for the human tendency to disbelieve facts they wish were not true. Mechanisms to protect election integrity and prevent illegitimate votes thus play an essential role in promoting public confidence and trust in the outcome of elections, even where there is not a significant pattern or history of election-related fraud.

This is particularly important in the current political environment. In recent years, the American political system has been challenged by political actors deliberately calling into question the processes by which elections are conducted, often with no or little basis in fact. Despite the falsifiability of these claims, they have gained a significant number of adherents, which undermines the voting system in two significant ways. First, voters who do not believe elections

¹ Levy, Morris. 2020. "Winning Cures Everything? Beliefs about Voter Fraud, Voter Confidence, and the 2016 Election." *Electoral Studies*, April, 102156. <https://doi.org/10.1016/j.electstud.2020.102156>.

Sances, Michael W., and Charles Stewart. 2015. "Partisanship and Confidence in the Vote Count: Evidence from U.S. National Elections since 2000." *Electoral Studies* 40 (December): 176–88.

<https://doi.org/10.1016/j.electstud.2015.08.004>

Sinclair, Betsy, Steven S. Smith, and Patrick D. Tucker. 2018. "'It's Largely a Rigged System': Voter Confidence and the Winner Effect in 2016." *Political Research Quarterly* 71 (4): 854–68.

<https://www.jstor.org/stable/26600633>.

are conducted fairly are less likely to vote.² Therefore, a belief that elections are illegitimate can have a similar effect as a barrier to voting itself, resulting in election results that may not occur if more voters believed in the fairness of the election. Second, the outcome of an election might not be respected by a significant proportion of the populace. This can result in decreased faith in public institutions and a possible breakdown in social order generally. It is thus important that the means used to verify election integrity is understood and trusted by the voting population despite other potential drawbacks.

IV. THE STRENGTHS AND WEAKNESSES OF A VOTE-BY-MAIL SYSTEM

In recent decades, jurisdictions have been experimenting with and implementing universal “vote-by-mail” systems. This type of system is an outgrowth of earlier absentee voting systems where voters could elect to receive a ballot by mail before Election Day and then submit that ballot to election officials either in person, through the mail, or by depositing it in a special ballot drop box. These systems typically existed alongside more traditional polling-place voting, where voters go to a designated location, receive their ballot, and vote the ballot in person. A universal vote-by-mail system is different from traditional absentee voting because all registered voters are mailed a ballot to their registration address.

In the United States, Washington is one of eight jurisdictions utilizing universal vote by mail.³ Other jurisdictions permit “no-excuse” absentee voting, where an absentee ballot must be requested, but is available to all registered voters upon request—either on an election-by-election

² Fraga, Bernard L., Zachary Peskowitz, James Szewczyk. (2021) “New Georgia runoffs data finds that more Black voters than usual came out. Trump voters stayed home.” Washington Post, Monkey Cage Blog. Jan 29.

Birch, Sarah. 2010. “Perceptions of Electoral Fairness and Voter Turnout,” *Comparative Political Studies* 43(12):1601-1622.

Anderson, C. J., Blais, A., Bowler, S., Donovan, T., & Listhaug, O. (2005). *Losers’ consent: Elections and democratic legitimacy*. Oxford, UK: Oxford University Press.

Alvarez, R. Michael, Thad E. Hall and Morgan H. Llewellyn. 2008. “Are American Confident their Ballots are Counted?” *Journal of Politics* 70(3):754-766.

Alvarez, R. Michael, Jian Cao and Yimeng Li. 2021. “Voting Experiences, Perceptions of Fraud and Voter Confidence,” *Social Science Quarterly* 120(4): 1225-1238.

³ National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots>

or permanent basis. There are 34 no-excuse absentee ballot jurisdictions.⁴ Still other jurisdictions permit absentee voting only when the voter has a recognized excuse for being unable to vote in-person, such as an illness or being an active duty service member stationed overseas, or is over the age of 65. The remaining eight states fall into this category.⁵

Universal vote-by-mail systems have been shown to advance many of the first principles of voting systems identified above. Voter turnout in universal vote-by-mail jurisdictions is higher than in jurisdictions with other modes of voting, and research shows that it promotes equity in the composition of the electorate.⁶ Bonica et al find that the positive turnout effects associated with vote by mail elections “... are significantly larger among lower-propensity voting groups, such as young people, blue-collar workers, voters with less educational attainment, and voters of color (Bonica et al 2021: 1).” By mailing a ballot to all registered voters in advance of the election, universal vote-by-mail jurisdictions significantly reduce barriers to voting.⁷ For example, research indicates that household ownership of an automobile, controlling for other voter characteristics such as neighborhood-income level, race, and age, is positively correlated with election participation.⁸ By reducing the need to travel to and from a polling place, vote-by-mail systems make it easier for poorer people to vote.

Another prominent benefit to vote-by-mail systems is the increased rate of ballot completion.⁹ Ballot completion is a challenge when several positions and issues are at issue during a particular election cycle. In such cases, a ballot will have multiple choices for voters. Voters do

⁴ National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots>.

⁵ National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots>.

⁶ Thompson, Daniel, Jennifer A. Wu, Jesse Yoder and Andrew B. Hall. 2020. “Universal vote-by-mail has no impact on partisan turnout or vote share,” *PNAS* 117(25):14052-14056.

Bonica, Adam, Jacob M. Grumbach, Charlotte Hill and Hakeem Jefferson. 2021. “All-Mail voting in Colorado increases turnout and reduces turnout inequality,” *Electoral Studies* 72: <https://doi.org/10.1016/j.electstud.2021.102363>.

⁷ Barber, Michael and John B. Holbein. 2020. “The Participatory and partisan impacts of mandatory vote-by-mail.” *Science Advances* 6:1-7.

⁸ deBenedictis-Kessner, Justin and Maxwell Palmer. 2021. “Driving Turnout: The Effect of Car Ownership on Electoral Participation.” *Political Science Research and Methods*, <https://doi.org/10.1017/psrm.2021.67>.

⁹ Menger, Andrew, Robert M. Stein and Greg Vonnahme. 2018. “Reducing the Undervote with Vote by Mail,” *American Politics Research* 46(6):1039-1064.

not always make each and every available choice, and ballots that are only partially completed are often tallied by election officials.¹⁰ An especially long ballot, such as may occur in a general election in a state like Washington, which may have several initiative matters, referenda, and local tax matters,¹¹ can present barriers to ballot completion at odds with the first goal of elections administration mentioned above: to making voting easy to accurately determine the preferences of registered voters.

This barrier to voting is especially pronounced for in-person voting, where a voter must visit a polling place and fill out their ballot at that polling place.¹² Poll-site voting is simply harder than mail-in voting. It adds barriers to participation, including limiting voter notice of upcoming elections, limiting the time available for voters to participate (sometimes a single day between certain hours of operation), imposing costs on the voter in terms of convenience and time spent waiting to vote, extending the time needed to vote due to limited equipment or personnel, and creating challenges to work around unexpected events, like bad weather, bad traffic, malfunctioning equipment, child care needs, work responsibilities, or simple fatigue.¹³ It also presents barriers to completing the ballot. Unless the voter has exhaustively researched each and every issue on the ballot before entering the voting booth, the voter may be surprised by some of the issues on which they can vote. Voters may also feel pressure to finish quickly because there is often a line of people waiting to enter the voting booth, and the longer the voter takes to vote, the

¹⁰ Wattenberg, Martin P, Ian McAllister and Anthony Salvanto. 2000. "How Voting is Like Taking An SAT Test: An Analysis of American Voter Rolloff." *American Politics Quarterly* 28(2):234-250.

¹¹ See, e.g., November 3, 2020 King County Sample Ballot, <https://kingcounty.gov/~media/depts/elections/elections/2020/11/sample-ballot.ashx?la=en> (last accessed May 16, 2023) (containing 1 referendum, 4 advisory votes, 7 county charter amendments, 1 county proposition, 2 federal elections, 9 state executive elections, 2 state legislative elections, and 8 judicial elections); see also Washington Secretary of State, Voters' Pamphlet, November 2020, Seattle Area, <https://www.sos.wa.gov/assets/elections/voters-guide/2020/--ed05king-seattlearea.pdf> (providing information on one statewide referendum, four advisory votes, one state constitutional amendment, three federal elections, nine statewide executive elections, 17 state legislative elections, and eight judicial elections, comprising 87 pages total).

¹² Pettigrew, Stephen. 2021. "The downstream consequences of long waits: How lines at the precinct depress future turnout," *Electoral Studies* 71(1): <https://doi.org/10.1016/j.electstud.2020.102188>

¹³ Kimball, David, Martha Kropf and Lindsay Battles. 2006. "Helping American Vote? Election Administration, Partisanship, and Provisional Voting in the 2004 Election," *Election Law Journal* 5:447-461; Stein, Robert M. et al 2019, "Waiting to Vote in the 2016 Presidential Election: Evidence from a Multi-County Study," *Political Research Quarterly* 73:439-453.

longer the line is held up. Accordingly, ballot incompleteness rates for in-person voting is comparatively high.¹⁴ It is common for voters to select choices only on issues or races that they already know about, and to avoid making choices on comparatively obscure races, or issues about which they are less informed.¹⁵

In contrast, vote-by-mail provides greater access and flexibility to voters both in terms of voting in general, and in terms of ballot completion. Every voter is notified of an election with the delivery of their ballot, and there is no inconvenience of learning about and traveling to a specific polling location during set days and hours, or of waiting in line. Voters are less likely to be derailed from voting by unexpected challenges or life events. Also, when voters receive their ballot weeks before the return deadline, as in universal vote-by-mail jurisdictions or in certain absentee-voting jurisdictions, the voter is relieved of the time-pressure associated with polling place voting.¹⁶ The voter has greater opportunity to review the ballot, identify races and issues of which the voter is already aware, and also take note of races and issues new to the voter. The voter can research races and issues at their leisure and make fully informed choices as to each race and issue on the ballot. Research shows that ballot completion averages 92% when voters vote by mail, considerably higher than ballot completion rates with in-person voting.¹⁷

Vote-by-mail systems, however, also present unique vulnerabilities. While rare, voter fraud does occur, necessitating safeguards to protect the voting system. Actually determining the rate of voter fraud is difficult because it is often difficult to detect. Nevertheless, a recent high profile case of voter fraud in North Carolina illustrates how mail ballot fraud can be committed, detected and deterred. In September 2022, four people pleaded guilty to misdemeanors for their roles in

¹⁴ Wattenberg, Martin P, Ian McAllister and Anthony Salvanto. 2000. "How Voting is Like Taking An SAT Test: An Analysis of American Voter Rolloff." *American Politics Quarterly* 28(2):234-250.

¹⁵ Anderson, David. 2010. "The Down-Ballot-Problem: Concurrent Elections and Cognitive Limitations on Voting Behavior." Prepared for Presentation at the 2010 American Political Science Association Meeting, Washington, D.C. September 2010.

Grant, Darren. 2017. "The ballot order effect is huge: Evidence from Texas." *Public Choice* 172:421-442.

¹⁶ Stein, Robert M. et al. 2019. "Waiting to Vote in the 2016 Presidential Election: Evidence from a Multi-county Study." *Political Research Quarterly*. <https://doi.org/10.1177/1065912919832374>

¹⁷ Menger, Andrew, Robert M. Stein and Greg Vonnahme. 2018. "Reducing the Undervote with Vote by Mail," *American Politics Research* 46(6):1039-1064.

absentee ballot fraud in rural North Carolina during the 2016 and 2018 elections. Their convictions stemmed from an investigation that resulted in a do-over congressional election. The voter fraud was orchestrated by Leslie McCrae Dowless Jr., a longtime political operative in rural Bladen County, North Carolina. Dowless worked in the 2018 congressional race for then-Republican candidate Mark Harris, who appeared to have received the most votes in the general election for the 9th District seat in south-central North Carolina. But allegations against Dowless surfaced, and testimony and other information, including testimony from Republican candidate Mark Harris' son, revealed at a State Board of Elections hearing that Dowless had been running an illegal "ballot harvesting" operation for the 2018 general election in Bladen County. According to testimony, Dowless and his helpers gathered up hundreds of absentee ballots from voters by offering to deposit the ballots in the mail. Some of the workers said they were directed to collect blank or incomplete ballots, forge signatures on the ballots, and even fill in votes for local candidates. It is generally against the law in North Carolina for anyone other than the voter or a family member to handle someone's completed ballot. The election board voted unanimously to order a new 9th Congressional District election. No charges were filed against Harris, who didn't run in the subsequent election won in September 2019 by Republican Dan Bishop. The state investigation also led to charges of similar absentee ballot activities in Bladen for the 2016 general election and 2018 primary. Dowless pleaded not guilty to charges of voter fraud, but died in April 2022 before his scheduled September 2022 trial.¹⁸

As another example, the Office of the Secretary of State has provided me with copies of a spreadsheet and letters prepared by the Clark County Elections Office, showing instances in which the Clark County Elections Office determined, through use of signature verification procedures, that illegitimate ballots were likely returned to the office. In Washington, ballots can be cast by individuals who are not the voter, for example, whenever residents move before ballots are mailed

¹⁸ <https://www.nbcnews.com/politics/elections/four-people-plead-guilty-north-carolina-ballot-probe-2016-2018-election-rcna49534>

Herron, Michael. 2019. "Mail-in Absentee Ballot Anomalies in North Carolina's 9th Congressional District," *Election Law Journal* 18: <https://doi.org/10.1089/elj.2019.0544>

to their new registration address, by members of the voter's household, or by individuals who obtain a replacement ballot online. In these cases, a ballot may be delivered to a third party for whom it is not intended, who may vote such ballot and return it (whether intentionally submitting an illegitimate ballot or not). In other instances, a household member may cast a ballot for another member of their household, or on behalf of someone who died after being mailed a ballot but before casting that ballot themselves.

There are several lessons to be gleaned from the North Carolina case and other instances of potential fraud. First, the cases illustrate the inherent difficulties in detecting, prosecuting, and convicting persons who commit mail-ballot fraud, even when there are relatively flagrant violations at scales large enough to impact an election. Without the cooperation of those who commit the fraud or those who have personal knowledge of the fraud, prosecutors are often blind to the act, or lack evidence needed to even investigate the scent of voter fraud. Given the difficulty in detecting fraud, it comes as no surprise that prosecutors rarely seek to prosecute voter fraud. As a prominent researcher explains:

Successful prosecution of these cases usually requires the cooperation and testimony of the voters whose ballots were corrupted. This requirement presents several difficulties. One problem is that the voters themselves may be technically guilty of participating in the scheme. However, because these voters can often be considered victims, federal prosecutors usually consider declining to prosecute them in exchange for truthful cooperation against organizers of such schemes.¹⁹

Second, as the Clark County examples shows, there may be many cases of illegitimate voting by household members that are not likely to be prosecuted as voter fraud, but that present evidence of illegitimate voting.

And third, the fact that confirmed vote-by-mail fraud is uncommon does not mean that protections against fraud are unnecessary. The low rates of known voter fraud could just as well indicate that state and federal protections against voter fraud, including signature verification, are working. Knowing there are safeguards against fraudulent voting, would-be perpetrators of

¹⁹ Donsanto, Craig. 2008. "Corruption of the Election Process Under U.S. Federal Law," in Michael Alvarez, Thad E. Hall and Susan D. Hyde, eds *Election Fraud: Detecting and Deterring Election Manipulation*. Brookings Institution p. 24.

election fraud may be deterred from attempting to steal votes. And even with low instances of confirmed fraud, these protections provide the only mechanism available for assuring the public that each election is secure and uncompromised. For example, if an individual were to intercept and steal a voter's ballot and cast a vote, such fraud would be detected in Washington's current system only through signature verification; there is no other system in place that would prevent it.²⁰

The need for such protections is particularly important because of Washington's broad focus on making voting as easy as possible, and for making ballots as readily available as possible. For example, in Washington, not only are voters mailed their ballots, but voters can also easily obtain replacement ballots by printing such ballots online through VoteWA.gov.²¹ This practice makes it easier for voters to vote if their ballots are lost in the mail, destroyed, or otherwise become unavailable, but it also introduces a significant risk that someone else can vote the ballot if there is no mechanism in place to ensure the replacement ballot is voted only by the registered voter. Without some check in the system, this ready availability of replacement ballots creates potential systemic vulnerabilities. For example, proponents of a particular candidate or issue could organize a conspiracy of requesting replacement ballots online of voters who they intend to impersonate. They could do so from a central location, without ever having to expose themselves to the risk of being caught physically stealing ballots from mailboxes. And if they did so quickly, shortly after ballots were mailed and before the intended voters submitted their ballots, there would be no way for voters to prevent or withdraw these illegitimate ballots from election count (as explained below), while legitimate voters would be deprived of the opportunity to participate in the election. This vulnerability could also be exploited by hostile foreign actors who have every incentive to sow chaos and face very little risk of criminal liability. In Washington's current system, broad access to the ballot and replacement ballots does not result in a systematic risk of voter fraud

²⁰ See Bates HOBBS-0003795-0006235.

²¹ https://www2.sos.wa.gov/elections/faq_vote_by_mail.aspx; See, e.g., RCW 29A.40.070; see also Ballots, <https://kingcounty.gov/depts/elections/how-to-vote/ballots.aspx> ("If you have access to the internet and a printer, you can download and print your ballot.").

because elections officials can still verify that the replacement ballot was voted by the registered voter through signature verification. But without the protections, there would be significant systemic risk.

Complicating efforts to secure elections, secret ballots have become a necessary part of American voting systems, including in Washington. In the U.S., the secret ballot was a voting innovation first popularized in the late 19th century. The secret ballot was designed to guard against the twin evils of vote buying and voter intimidation.²² Before secret ballots, it was common for proponents of a particular candidate or issue to promise tangible rewards for voters who could prove they voted a particular way.²³ Even worse, institutions or people with power over voters threatened voters who did not vote in a particular fashion with adverse consequences such as job losses or even physical violence.²⁴ The secret ballot ensures that elections accurately capture true voter preferences, instead of the wishes of a small but powerful few.

Implementation of the secret ballot in a vote-by-mail system, however, presents challenges that must be addressed in the system design to ensure that any ballot is cast only by the registered voter to whom the ballot was mailed, because there is limited ability to cure any fraud or irregularity after the vote is processed. When a ballot is returned in a vote-by-mail system, including Washington's, it is generally composed of three parts.²⁵ The inside "core" is the ballot itself, which does not have any identifying information about the voter to whom the ballot was issued. Surrounding the ballot is a security envelope, which protects the secrecy of the voter's selections and also does not have any identifying information on it. The voter is identified only on the outside envelope, typically with a printed name and, in Washington, with bar codes and other

²² Rusk, Jerrold. 1970. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876-1908." *American Political Science Review* 64:1220-1238.

²³ Bense, Franklin Richard. 2004. *The American Ballot Box in the Mid-Nineteenth Century*, Cambridge University Press.

²⁴ Bense, Franklin Richard. 2004. *The American Ballot Box in the Mid-Nineteenth Century*, Cambridge University Press, pp. 9-13

Bense, Richard F. "The American Ballot Box: Law, Identity, and the Polling Place in the Mid-Nineteenth Century." *Studies in American Political Development*, 2003: 17: 1-27.

²⁵ Washington State Secretary of State, Washington Vote-By Mail (VBM) Fact Sheet, https://www.sos.wa.gov/assets/elections/wa_vbm.pdf.

machine readable identifiers facilitating automated ballot issuance tracking systems, as well as the voter's signature.

When a mail-in ballot is returned to election officials, there is a critical point at which the ballot is separated from the outside envelope and placed in the counting stream, after the ballot has been verified to have been cast by the registered voter to whom it was issued.²⁶ After this point, it is generally impossible to match the ballot with the outside envelope that it came in. Otherwise, the secrecy of the ballot would be impaired. But this also means that if election officials learn that a ballot was cast illegitimately after the ballot and envelope are separated, it is impossible to take that illegitimate ballot out of the count stream. There is simply no way to identify the illegitimate ballot and to prevent that illegitimate vote from being counted. The Office of the Secretary of State has provided me with instances in which this has occurred, where at least three individuals voted on behalf of their deceased spouses in the 2020 general election and were convicted of voter fraud in Pierce County.²⁷ Because the fraud was not caught before the ballots were separated from the outside envelopes, the votes were counted in the election.

It is important for voter confidence that illegitimate votes be captured *before* separation of the ballot from the envelope to prevent illegitimate votes from entering the counting stream. If illegitimate votes are discovered only after ballots have entered the counting stream, with no means to prevent that vote from being counted, voters may justifiably wonder whether illegitimate votes swayed the outcome of the election. Such illegitimate votes can have an outsized impact on voter confidence, particularly given the media attention focused on such events and the natural incentives of the losing party or candidate to exploit such circumstances as an explanation for their loss. When combined with the psychological factors mentioned above, the presence of these illegitimate votes can cause a significant number of voters to doubt the legitimacy of the election

²⁶ Washington Secretary of State, Frequently Asked Question on Voting by Mail, https://www.sos.wa.gov/elections/faq_vote_by_mail.aspx.

²⁷ Bates HOBBS-008739—008824.

regardless of whether the number of illegitimate votes were sufficient to change the election's outcome.²⁸

Given the time pressures under which that election systems operate, with the need to count hundreds of thousands or millions of votes in a matter of weeks,²⁹ vote-by-mail systems are particularly vulnerable to this problem. Election administrators often cannot wait for certain reports to issue (such as reports of registered voters who have recently passed away) to begin verifying and putting ballots into the counting stream. It is best, therefore, if election administrators in a vote-by-mail system have a means of verifying that a ballot was cast by the person to whom the ballot was mailed simply by comparing the outside envelope to records kept by the administrators. Any other system of identifying illegitimate ballots is likely to be too slow to catch such ballots prior to entering the counting stream.

Professor Herron's definition and measure of voter fraud and his conclusions about the incidence of voter fraud in the U.S. and Washington State are based on an inadequate methodology that does not reflect the most recent scholarship on measuring the incidence of voter fraud. On page one of Professor Herron's expert report he details what he was asked to opine upon by the plaintiffs:

- Analyze instances of **confirmed** voter fraud in Washington elections held during the period 2012-23 that involved voter signatures on the envelopes used to return mail ballots;
- Estimate to the extent possible the rate at which voter fraud involving signatures on mail ballot return envelopes has been committed in Washington in the period 2012-23;
- Assess cases of confirmed voter fraud in Washington in the period 2012-23 that were discovered solely by the state's signature verification requirement.

²⁸ Donovan, Todd and Dan Smith. 2008. "Identifying and Preventing Signature Fraud on Ballot Measure Petitions," In R. M Alvarez, T. E. Hall, & S. D. Hyde (Eds.), *Election fraud: Detecting and deterring electoral manipulation* (pp. 130-1145). Washington, DC: Brookings Institution Press.

²⁹ King County, for instance, tallied 1,220,062 votes in the November 2020 Election. Washington Secretary of State, November 3, 2020 General Election Results, <https://results.vote.wa.gov/results/20201103/turnout.html>.

On page 48 of Professor Herron's deposition, he states "an instance of voter fraud or confirmed voter fraud is one in which there is a conviction in the judicial process or guilty plea." Professor Herron does not ask about the actual incidence of voter fraud in U.S. elections in general and Washington State. What he has asked and attempted to answer is the incidence with which individuals are indicted and convicted for voter fraud. Confirmed voter fraud is a very different, and potentially a much narrower and misleading measure of the incidence of voter fraud. Professor Herron's standard for measuring the incidence of voter fraud is far narrower than the standard established in the scholarly literature on voter fraud. There are several papers that estimate voter fraud without relying on convictions or guilty pleas.³⁰ Professor Klimek and his colleagues offer the following description of how electoral forensics is used to identify voter fraud in elections.

The field of electoral forensics diagnoses the extent to which a particular type of malpractice may have affected the outcome of an election, in order to identify electoral malpractice in a timely and fully quantitative manner. A disproportionate abundance of round numbers was often the focus of early work in election forensics. The basic principle of these tests is that humans have a particular

³⁰ Klimek, P., A. Aykac, and S. Thurner 2023. "Forensic analysis of the Turkey 2023 Presidential election reveals extreme vote swings in remote areas."
Klimek P, Yegorov Y, Hanel R, and Thurner S (2012) Statistical detection of systematic election irregularities. *Proc Natl Acad Sci USA* 109:16469-16473.
Jimenez R, Hidalgo M, Klimek P (2017) Testing for voter rigging in small polling stations. *Science Advances* 3:602363.
Rozenas A (2017) Detecting election fraud from irregularities in vote-share distributions. *Political Analysis* 25(1):41-56.
Jimenez R (2011) Forensic analysis of the Venezuelan recall referendum. *Statist Sci* 26:564-583.
Zhan M, Alvarez M, Levin I (2019) Using machine learning and synthetic data for possible election anomaly detection. *Plos ONE* 14(10):0223950.
Myakgov M, Ordeshook PC, and Shaikin D (2009) *The Forensics of Election Fraud*, Cambridge University Press
Montgomery JM, Olivella S, Potter JD, Crisp BF (2015) An informed forensics approach to detecting vote irregularities. *Political Analysis* 23(4):488-505.
Lacasa L and Fernandez-Gracia J (2019) Election forensics: Quantitative methods for electoral fraud detection. *Forensic Science International* 294:19-22.
Mebane W (2008) Election forensics: The second-digit Benford's law test and recent American presidential elections, in *Election Fraud: Detecting and Detering Electoral Manipulation*, eds Alvarez RM, Hall TE and Hyde SD (Brooking Press, Washington DC), pp 162-181.
Pericchi L and Torres D (2011) Quick anomaly detection by the Newcomb-Benford Law, with applications to electoral processes data from the USA, Puerto Rico, and Venezuela. *Statist Sci* 26:513-527.
Mebane W. (2016) *Election Forensics: Frauds Tests and Observation-level Frauds Probabilities*. In 2016 Annual Meeting of the Midwest Political Science Association, Chicago, April 7-10.
Zhan M, Alvarez M, Levin I (2019) Using machine learning and synthetic data for possible election anomaly detection. *Plos ONE* 14(10):e0223950.

tendency to favor round numbers, or numbers with certain digits, when producing results. These tendencies are at odds with the statistics of the expected number and digit distributions of fair elections, including violations of Benford's Law.

The basic rationale of such approaches is to consider elections as large-scale natural experiments in which a population is divided into a large number of electoral units in which each registered voter makes the decision to (i) cast a valid ballot or not, and (ii) vote for a particular candidate. The large number of electoral units in most countries means that certain statistical regularities can be expected to hold. Election forensics then tests whether deviations from these regularities are consistent with specific types of fraud. Similar principles can be used to apply machine learning models for election forensics. These statistical tools are often complemented by analyses of secondary data, such as exit polls or survey and sampling data (Klimek, Aykac and Thurner 2023:3-4).

The electoral forensic analysis described above does not focus on individual acts of voter fraud and therefore cannot identify 'bad actors' for criminal prosecution. Rather the subject of inquiry for electoral forensics is whether the incidence of fraud is present in an electoral outcome, sufficient to have changed the outcome of an election.

Professor Herron's claims that voter fraud in the U.S. and more specifically in Washington State are small may be true, but his methodology for making this claim is inadequate. Moreover, the question he has answered—are individuals successfully prosecuted for voter fraud—does not address the actual incidence of voter fraud. We report the incidence of crime, independent of the number of successful convictions for crime. No one would accept convictions for a crime as an adequate, reliable or valid measure of the incidence of crime.

On page 63 Professor Herron states: "In my report I talk about a lot of different approaches that people -- academics -- excuse me -- use to study voter fraud." I am surprised he omitted citing any of the literature on electoral forensics in his expert report. Moreover, one of the early contributors to this literature, Professor Walter Mebane is Professor Herron's co-author on several papers. The narrow scope of Professor Herron's own definition of voter fraud allows him to ignore evidence collected by the Secretary of State that instances of voter fraud may be much higher than he claims. Herron Depo. at 42:12-43:6. There is no legitimate basis to ignore such evidence simply because it falls outside the narrow definition of voting fraud that Plaintiffs or Professor Herron

have established. Instances of voter fraud, whether confirmed or not, are still clearly relevant in assessing the role played by signature verification in Washington's mail-in voting system.

Professor Herron also specifically does not consider critical issues like the value of signature verification in deterring voter fraud, the role of signature verification in promoting voter confidence in elections, or the State's need to balance access to the ballot versus protecting election security. Herron Depo. at 92:13-16; 22:24-23:6; 16:12-17:7. Again, Professor Herron's constrained scope of work allows him to downplay the problem signature verification is meant to address, while ignoring the many benefits that signature verification provides even assuming the rarity of confirmed instances of voter fraud. Given the constrained scope of his opinion, his conclusions have limited relevance in assessing the benefits or the drawbacks of signature verification as a means of balancing voter access and protecting election security.

V. SIGNATURE VERIFICATION IS A REASONABLE MEANS OF VERIFYING VOTER IDENTITY

Having a voter sign their return ballot envelope accomplishes several goals: (1) the voter signs an oath attesting to their eligibility and certifying to the election office that their vote is contained in the envelope; and (2) this reviewable certification gives greater certainty that the ballot was cast by the voter listed on the envelope. Every state that has implemented a universal vote-by-mail system, except one, uses signature verification to authenticate a voter's identity.³¹ Signature verification is not perfect, but I am aware of no perfect system for any aspect of elections administration, including ballot verification in the vote-by-mail context. There are a number of alternatives to signature verification, some with significant advantages over comparing signatures, but also with significant drawbacks. In this section, I will outline the available means to verify ballots in a vote-by-mail system and identify the most salient pros and cons.

Signature verification is the most utilized means of verifying ballots cast by mail in the United States.³² Twenty-seven states, including Washington, conduct signature verification on

³¹ Vermont adopted vote by mail in 2020 and does not use signature verification.

³² National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots>

returned mail ballots.³³ The process is widely used because of its numerous advantages, including ease of access and implementation, transparency, history, accuracy, and voter acceptance. To start, it is the most widely available system of verification. Almost everyone has a signature and, generally, a voter must sign their voter registration form.³⁴ This means that signature comparison provides a low-barrier means to authenticate ballots. Signatures have also been used to verify identities for hundreds of years (verification of identity is why pen and paper signatures were used in the first place). Relatedly, signature verification has very low technological demands, and an observer can typically understand why a given ballot was accepted or rejected simply by looking at it. Signature verification therefore has a very high level of transparency. It also enjoys high acceptance among voters. For example, a recent survey of voters in Florida reported that 92% believe that Florida’s requirement that vote-by-mail voters sign their ballot envelope, and poll workers match the signature to those on file to verify their identity, is either ‘just right (66%)’ or ‘not strict enough’ (26%).³⁵ Finally, in spite of the variations among individual signatures and individual human assessments, signature verification in Washington is generally accurate and reproducible. The Washington State Auditor, for example, agreed with the results of Washington election officials in 98.7 percent of cases reviewed.³⁶

Signature verification also has some significant downsides, many relating to specifying the particular processes and procedures by which it should be conducted.³⁷ To obtain more uniform and consistent results, there is a need for uniform standards that answer questions like (a) what exactly does it mean for a signature to “match” another one; (b) what kind of training should election administrators receive before conducting such comparisons; and (c) what happens if a voter’s ballot is rejected for a mismatched signature. The use of signature verification will also likely have an error rate by which illegitimate votes are erroneously accepted or legitimate votes

³³ Ibid.

³⁴ Ibid.

³⁵ Atkeson, Lonna. 2022 *Florida Election Survey*, Florida State University

³⁶ Office of the Washington State Auditor Pat McCarthy, Evaluating Washington’s Ballot Rejection Rates, p. 15 (Feb. 1, 2022).

³⁷ William Janover & Tom Westphal, Signature Verification and Mail Ballots: Guaranteeing Access While Preserving Integrity—A Case Study of California’s Every Vote Counts Act 19 *Election Law Journal*. 3, 323 (2020).

are erroneously rejected. The existence of an error rate is regrettable, and should be minimized to the extent possible, but is also likely unavoidable in any voting system, particularly one that is focused on ensuring broad access to the ballot.

But other methods of voter identity verification suffer similar or greater drawbacks. Besides signature verification, another possible means of verifying ballots in a vote-by-mail system could be through verification of a government issued or photographic identification. Alaska, for example, permits absentee voters to verify their ballots by placing their driver's license number on the outside envelope accompanying their ballot.³⁸ Arkansas requires a copy of the voter's ID to be returned with an absentee or mail-in ballot.³⁹ If the ID matches the one used to register to vote, then the ballot is verified.

This method has certain advantages over signature verification in that it relies on a presumably secure identification system already in place, instead of trying to create one from signature comparisons. But election accessibility advocates generally disapprove of voter ID requirements to participate in elections because certain populations of eligible voters tend to lack these IDs, or are more likely to have expired IDs.⁴⁰ Thus, while this system may have lower error rates than signature verification, the increased reliability will come at the expense of voter participation, particularly by more marginalized voters. And such a system would not eliminate error rates associated with improper rejections or acceptances. For example, at least some voters would forget to, refuse to, or incorrectly copy down their ID number or submit a photo with defects such that it is useless for comparison purposes. Especially given concerns around identity theft, some voters may feel uncomfortable sharing their driver's license number.⁴¹

³⁸ National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots>

³⁹ National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots>

⁴⁰ Brennan Center for Justice. "Research on Voter ID," <https://www.brennancenter.org/our-work/research-reports/research-voter-id>.

⁴¹ Brennan Center for Justice. 2012. "The Challenge of Obtaining Voter Identification," <https://www.brennancenter.org/our-work/research-reports/challenge-obtaining-voter-identification>. See, e.g., RCW 42.56.570(25) (driver identification data generally confidential in Washington).

As another option, election administrators could require some kind of biometric identifier to associate with the ballot as a means of identification, such as a fingerprint or thumbprint stamped on the outside envelope accompanying a mail in ballot.⁴² Technology exists to scan such prints and match them to prints available in databases very quickly. An advantage of such a system would be that matches would be nearly certain—no two people share the same fingerprints, even twins, so as long as an entire print was obtained, this system would substantially reduce error.⁴³ It would also eliminate any human or subjective element in ballot verification. Technology has developed such that fingerprint identification can be reliably performed entirely by machine.⁴⁴ But such a system would also have significant and obvious drawbacks. Perhaps most importantly, it is unlikely voters at large would assent to the submission of fingerprints for voting purposes and collecting such information implicates potentially serious privacy concerns. Marginalized communities, who may have negative associations with and feelings toward law enforcement due at least in part to histories of over policing and systematic bias in the criminal justice system, may be especially suspicious of any attempt to gather fingerprints that are used so often in criminal investigations.⁴⁵ Individuals mistrustful of the government are also likely to resist submitting such information. Such a verification scheme will thus likely discourage voter participation, especially among these groups. Moreover, while reading fingerprints can be consistently done by machine,

⁴² Plaintiffs compare signature comparison to DNA verification in their complaint. Second Amended Complaint ¶ 3. DNA verification would be similar to fingerprint verification, but would likely be less administrable. Voters would have to provide a DNA sample at the time of registration, and then another DNA sample when they voted. Voters may have the same concerns and suspicions regarding submission of DNA samples as they have around submission of fingerprints, and voter self-taken DNA samples are likely to be even less reliable than voter self-taken fingerprints. Further, DNA comparisons are more technologically difficult than fingerprint comparisons taking longer, requiring more human expertise, and being more expensive. The Plaintiffs' implied suggestion that DNA comparison should be used instead of signature comparison to verify mail in ballots is simply unworkable.

⁴³ Asher, Claire. 2023. "Why don't identical twins have the same fingerprints? New study provides clues," *Science* <https://www.science.org/content/article/why-don-t-identical-twins-have-same-fingerprints-new-study-provides-clues>.

⁴⁴ Moses, Kenneth R. "Automated Fingerprint Identification System," <https://www.ojp.gov/pdffiles1/nij/225326.pdf>

⁴⁵ Federal Bureau of Investigation. ND. "Privacy Impact Assessment Integrated Automated Fingerprint Identification System (IAFIS)/Next Generation Identification (NGI) Biometric Interoperability," <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/freedom-of-information-privacy-act/department-of-justice-fbi-privacy-impact-assessments/iafis-ngi-biometric-interoperability>.

the taking of fingerprints requires some degree of skill to produce a readable print.⁴⁶ It is predictable that at least some ballots would be rejected due to inability to read the fingerprint. And most households do not have ready means (such as ink pads) or knowledge about how to collect finger or thumb prints. This lack of knowledge, experience, and means of participation could further discourage voter participation.

Fourth, a vote-by-mail system could be verified with a personal identifying number or token. These sorts of verification systems take two forms: (a) a secret token that is already associated with the voter (such as a social security number), and (b) a token generated for the voter for the purposes of a particular election. Starting with the pre-established token, these sorts of systems function similarly to photographic or government issued ID verification mechanisms, and have similar drawbacks and advantages. The use of social security numbers, which is probably the most ubiquitous secret, personally identifying number in the United States and therefore most suited for this type of ballot identification mechanism, has a number of practical problems. To start, not everyone knows their social security number. A 2010 survey indicated that six percent of people did not know their social security number.⁴⁷ While this number may seem small, it is far larger than the number of individuals who had their ballots rejected through signature verification. Difficulties in determining a voter's own social security number, and concerns about protecting the social security number, could also discourage voters from participating in elections.

Tokens generated specifically for a given election come with their own problems associated with communicating the token to the voter. In order to independently verify that the ballot was voted by the voter to whom the token was issued, the voter would need to verify their identity in some form or fashion to receive the token. These sorts of tokens, therefore, do not

⁴⁶ See, e.g., Federal Bureau of Investigation, Recording Legible Fingerprints, <https://le.fbi.gov/science-and-lab/biometrics-and-fingerprints/biometrics/recording-legible-fingerprints>.

⁴⁷ Survey conducted by CBS News for Vanity Fair, fielded August 3-5, 2010. [https://ropercenter.cornell.edu/CFIDE/cf/action/ipoll/questionDetail.cfm?keyword=uscbs2010%2008a&keywordoptions=4&exclude=&excludeOptions=1&topic=Any&organization=Any&label=&fromdate=1/1/1935&toDate=&stitle=&sponsor=Vanity%20Fair&studydate=August%203-5,%202010&sample=847&qstn_list=&qstnid=1780990&qstn_id4=1780990&study_list=&lastSearchId=317679634324&archno=USCBS2010-08A&keywordDisplay=.](https://ropercenter.cornell.edu/CFIDE/cf/action/ipoll/questionDetail.cfm?keyword=uscbs2010%2008a&keywordoptions=4&exclude=&excludeOptions=1&topic=Any&organization=Any&label=&fromdate=1/1/1935&toDate=&stitle=&sponsor=Vanity%20Fair&studydate=August%203-5,%202010&sample=847&qstn_list=&qstnid=1780990&qstn_id4=1780990&study_list=&lastSearchId=317679634324&archno=USCBS2010-08A&keywordDisplay=)

replace the necessity to verify identity at some point, via some trusted system such as signature verification, fingerprint identification, photographic or government issued ID, or any of the other methods discussed here. By adding complexity, this method is likely to face technological barriers, uncertainty, and difficulties in application if used as a standalone method for authenticating voter identity.

Fifth, a mail-in ballot may be verified by witness attestations, either by a lay witness or a professional, such as a notary public. Washington already allows a version of this. Where a voter cannot physically sign their name on the ballot envelope, they may instead place a “mark” that is witnessed by two people who sign the envelope indicating confirming the identity of the registered voter.⁴⁸ A similar system could be used in place of signature verification generally.⁴⁹ But there are clear drawbacks to such an approach. First, not all voters have access to witnesses willing to verify their identity. For these voters, witness attestations would present barriers to exercising their right to vote. And in every case, obtaining witness verifications is more burdensome than simply signing a ballot, creating additional barriers to voting. Second, it is potentially subject to abuse, such as in the replacement ballot conspiracy example referenced above. Especially in a jurisdiction like Washington, where replacement ballots are easy to get, a dedicated group of individuals wishing to effect electoral fraud could impersonate voters easily unless the witnesses’ signatures were themselves subject to signature comparison.

Finally, there is an option of using no form of identity verification at all. Plaintiffs, for example, identify a number of security features in the Washington election system that they suggest render signature verification unnecessary.⁵⁰ But while the features identified by Plaintiffs may be useful for identifying illegitimate ballots in some cases, they are not adequate for identifying illegitimate ballots before separation of the ballot from the outside envelope so as to

⁴⁸ WAC 434-250-120

⁴⁹ Nine states (Alabama, Alaska, Louisiana, Minnesota, North Carolina, Rhode Island, South Carolina, Virginia and Wisconsin) require the signature of a witness *in addition to* the voter’s signature. And those states may additionally conduct signature verification.

⁵⁰ Second Amended Complaint ¶¶ 92-98.

prevent illegitimate votes from influencing an election, or adequate to prevent systemic manipulation of the election. I will discuss each of the measures Plaintiffs identify in turn.

First, Plaintiffs contend that “any third-party attempt to intercept and vote a mailed ballot would likely be uncovered when the elector complains that she did not receive her ballot or when she attempts to cast a duplicative vote.”⁵¹ That may be true in some instances, but it is unlikely that action could be taken fast enough to prevent an intercepted and illegitimately submitted ballot from being separated from the outside envelope and sent into the counting stream. Many voters are unlikely to notice that their ballots have not been timely sent until long after it should have been received, if they notice at all. At best, a voter who successfully persuades election officials that their ballot was intercepted will be issued a new one. In such a case, the voter might still be able to cast a ballot, but an illegitimate ballot would also be counted. At worst, the voter would be turned away on suspicion of attempting to cast multiple ballots (especially in the absence of any voter identification mechanism such as signature verification). In that case, the electoral harm would double because the legitimate voter would be disenfranchised by the fraud. Additionally, voters whose ballots are intercepted may be unaware they did not receive a ballot in the mail. Many voters may not know about an upcoming election, especially if these voters are not attentive to elections and campaigns and have not voted in previous elections. Infrequent voters are not the object of candidates’ campaign messaging.⁵²

Second, Plaintiffs argue “each ballot is verified by comparing the information on the return envelope to the registration records to ensure that the ballot was submitted by an eligible voter who had not yet voted,” citing WAC 434-250-120.⁵³ Plaintiffs overlook, however, that the main point of comparison between the outside envelope and the registration records is the similarity of the signature. Plaintiffs then point out that Washington law criminalizes “misrepresentations

⁵¹ Second Amended Complaint ¶ 92.

⁵² Kyle Endres & Kristin J. Kelly (2018) Does microtargeting matter? Campaign contact strategies and young voters, *Journal of Elections, Public Opinion and Parties*, 28:1-18, DOI: 10.1080/17457289.2017.1378222
Leighley, Jan and Jonathan Nagler. 2014. *Who Votes Now*, Princeton University Press.

⁵³ Second Amended Complaint ¶ 93.

relating to the declaration of qualifications to cast a ballot”⁵⁴ and that each ballot submission requires an affirmation under oath that the person submitting the ballot is an eligible voter who has not yet voted.⁵⁵ But without the signature examination safeguard, it is difficult to actually identify and stop individuals or groups from committing electoral fraud. There is also no ability to verify to the public that such fraud does not occur and that Washington voting system results in legitimate elections.

Third, Plaintiffs argue that Washington and King County permit voters to check the status of their ballots online.⁵⁶ Presumably, the idea is that a voter can check their ballot status and if anything is amiss, contact elections officials to correct any errors. Most voters, however, are unlikely to use this process. This is particular true of voters who do not regularly vote in elections, such as those targeted in the North Carolina example. Moreover, similar to Plaintiffs’ point about records of ballot issuance, by the time a voter learns that a ballot has been submitted illegitimately in their name, if they learn about it at all, the damage is done and it is too late. Unless there is some mechanism for elections officials to know that the ballot was not submitted by the voter to whom the ballot was issued (such as signature verification or any of the other mechanisms listed above), elections officials will separate the ballot from the outside envelope and put the ballot into the counting stream. At that point, electoral harm has been done and the only possible amelioration is to allow the registered voter whose ballot was stolen to vote. It bears repeating that this depends on the voter being able to prove that they did not cast the illegitimately submitted ballot, which would require some kind of identity verification such as signature verification.⁵⁷ Again, this further assumes the voter is aware that they did not receive a ballot in the mail before the upcoming election.

Fourth, Plaintiffs identify the Electronic Registration Information Center (“ERIC”) system, which Washington participates in, as a means to identify illegitimately cast ballots.⁵⁸ But ERIC

⁵⁴ Second Amended Complaint ¶ 93.

⁵⁵ Second Amended Complaint ¶ 94.

⁵⁶ Second Amended Complaint ¶ 95.

⁵⁷ If proof were not required, then anyone could claim fraud and vote twice.

⁵⁸ Second Amended Complaint ¶ 96.

only identifies cases where voters cast ballots in two or more states, and would not prevent a voter's ballot from being intercepted and submitted by a third party in the same state and/or jurisdiction. Moreover, ERIC reports are slow to generate, and cannot be relied on to provide up-to-date information fast enough to prevent an illegitimately cast ballot from entering the counting stream.

Fifth, Plaintiffs claim that the Secretary of State works with other Washington State agencies to keep the registration database current, and to help prevent illegitimate votes from being counted.⁵⁹ This is true, and keeping registration databases current is an important means of protecting election integrity, but this is not adequate to protect against the systemic vulnerability created by mail-in-voting or to prevent illegitimate ballots from entering the counting stream. As mentioned above, at least three cases of voter fraud were successfully prosecuted in Pierce County Washington where the illegitimate votes were identified by use of a report of deceased voters. But this report was not received by the Pierce County elections officials in time to catch the ballots before they were separated from their outside envelopes. These are small numbers, but the systemic risk is far greater when there is no signature verification requirement or system to authenticate voter identify at all.

Finally, Plaintiffs argue that “[o]pportunities for fraud are few and far between”⁶⁰ and generally argue that electoral fraud is so rare in Washington that mechanisms of voter identification are unnecessary.⁶¹ But the history of election fraud in the United States suggests that motivated partisans, as well as hostile actors, will exploit whatever opportunities for fraud exist. This is part of the reason that the United States has designated electoral systems as critical infrastructure and why election security systems protect against hacking and other types of attacks. While there has not been any reported incident in which votes have been impacted from a successful hacking attack, that does not mean the system should be left exposed to such attacks, or that such attacks will not occur if the systems are left unprotected. The electoral system is only as secure as it is

⁵⁹ Second Amended Complaint ¶ 97.

⁶⁰ Second Amended Complaint ¶ 98.

⁶¹ Second Amended Complaint ¶ 89 (“The Signature Verification Requirement . . . is unnecessary . . . because fraud is exceedingly rare.”)

protected. While Washington has successfully closed the door on most kinds of fraud that could be perpetrated in a vote by mail system by implementing a signature verification requirement, in the absence of this mechanism or another comparable mechanism, it is impossible to say that fraud, even pervasive fraud, will not occur. While it is unknown what the rates of fraud would be, history and the recent instance of election fraud in North Carolina, suggests that without safeguards to prevent it, fraud will occur.

Moreover, even in the absence of identifiable electoral fraud, mechanisms to assure the public that elections are conducted legitimately are necessary. In the absence of these mechanisms, public faith and confidence in the election system is at risk.⁶² In the current system, elections officials can point to the signature verification process as the reason why, even where illegitimate votes mistakenly fall into the counting stream from time to time, elections on the whole can be trusted.⁶³ Without such a mechanism, elections officials, and public officers generally, would be much less persuasive to a skeptical public, especially in the current political environment. Even a handful of instances of illegitimate ballots being counted in an election can contribute to a widespread feeling of election insecurity and illegitimacy, especially where such instances are exploited for political purposes by election losers.

VI. VOTER CONFIDENCE

Maintaining voter confidence in election processes is an important justification for keeping voter identification laws, a State interest that has been recognized by the U.S. Supreme Court. In *Crawford v. Marion* (2008) the Supreme Court upheld Indiana's voter ID requirement, holding that promoting voter confidence in the electoral process is a sufficient justification for the adoption of voter ID requirements. Voter confidence has been defined and measured by researchers in terms

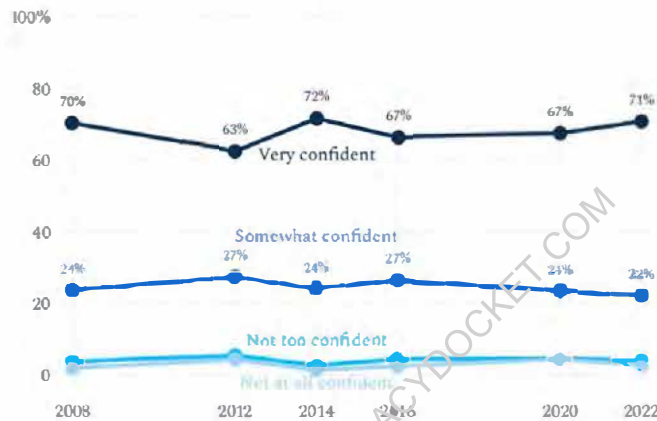
⁶² Atkeson, Lonna Rae, Eli McKown-Dawson, Robert M. Stein and M.V. Hood III. 2023. "The Costs of Voting and Voter Confidence," a paper presented at the 2023 Southern Political Science Association Meeting, St. Petersburg, Fla January 11-14, 2023.

⁶³ Washington officials typically point to signature verification as the main reason that elections in Washington can be trusted. *See, e.g.,* David Hyde & Gil Aegerter, *How easy is it to commit election fraud in Washington state?*, KUOW.org (February 21, 2020) available at <https://www.kuow.org/stories/it-s-easy-to-commit-election-fraud-in-washington-state> ("[B]ecause a signature is required when you return your ballot" the availability of online replacement ballots "is kind of irrelevant") (quoting former Washington Secretary of State Kim Wyman).

of voters' belief that their ballot and the ballots of others (i.e., voters at the county, state and national level) were counted as intended.

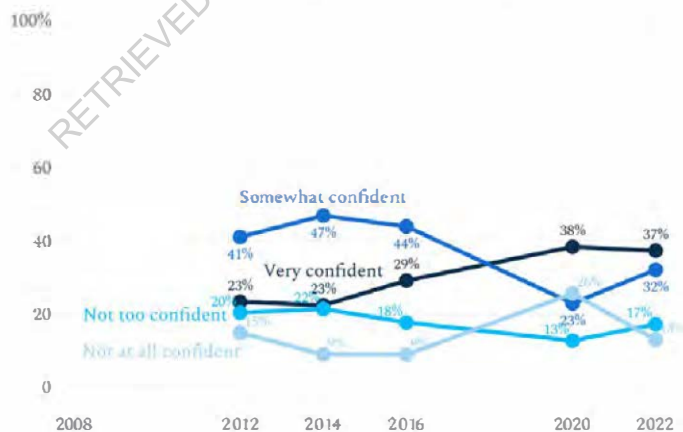
Since 2008, voters have maintained a high level of confidence that their vote was counted as they intended. Voter confidence is greater at the local and state level than at the national level.

HOW CONFIDENT ARE YOU THAT YOUR VOTE IN THE GENERAL ELECTION WAS COUNTED AS YOU INTENDED?



Source: Charles Stewart III, 2022 *How we Voted in 2022: A Topic Look at the Survey of the Performance of American Elections* <https://electionlab.mit.edu/sites/default/files/2023-05/How-We-Voted-In-2022.pdf>

HOW CONFIDENT ARE YOU THAT VOTES NATIONWIDE WERE COUNTED AS VOTERS INTENDED?

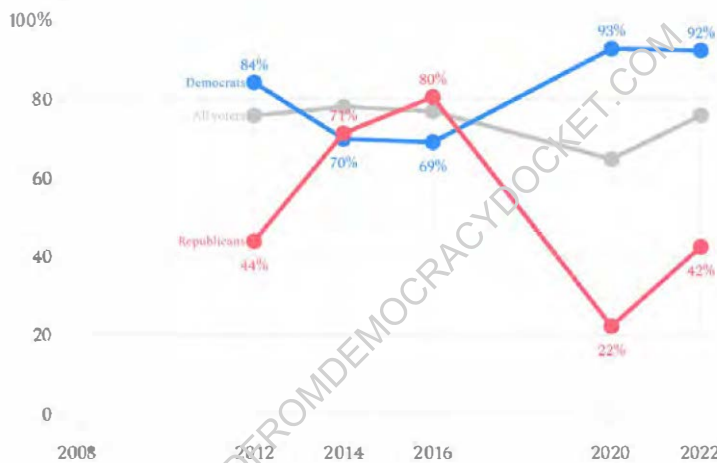


Source: Charles Stewart III, 2022 *How we Voted in 2022: A Topic Look at the Survey of the Performance of American Elections* <https://electionlab.mit.edu/sites/default/files/2023-05/How-We-Voted-In-2022.pdf>

The 2020 election changed the confidence dynamics to some extent. In 2020, for example, those reporting they were “very confident” that votes were counted as intended nationwide and the

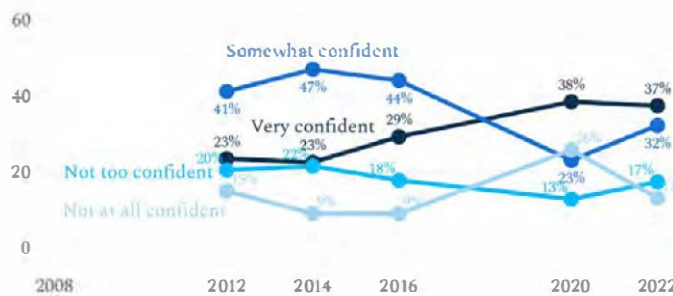
percentage reporting that they were “not confident” at all rose from 2016. In 2022, the fraction of respondents who stated they were “not at all confident” fell back to 13 percent, in line with the results prior to 2020. The share of respondents who were somewhat confident also grew by nine points. On the whole, then, “more respondents expressed at least some degree of confidence in voting nationwide in 2022 than in 2020, although overall confidence did not return to pre-2020 levels (Stewart 2022:28).” As detailed below, voter confidence tended to split on partisan lines, but large majorities of the electorate in 2022 expressed confidence in election results.

HOW CONFIDENT ARE YOU THAT VOTES NATIONWIDE WERE COUNTED AS VOTERS INTENDED? (VERY OR SOMEWHAT CONFIDENT)



Key: Red: Republicans, Blue: Democrats, Gray: Independents

Source: Charles Stewart III, 2022 *How we Voted in 2022: A Topic Look at the Survey of the Performance of American Elections* <https://electionlab.mit.edu/sites/default/files/2023-05/How-We-Voted-In-2022.pdf>



Source: Charles Stewart III, 2022 *How we Voted in 2022: A Topic Look at the Survey of the Performance of American Elections* <https://electionlab.mit.edu/sites/default/files/2023-05/How-We-Voted-In-2022.pdf>

Several researchers⁶⁴ explain the partisan disparity in voter confidence as a function of which party's candidate loses (or wins) the national vote. An alternative explanation offered by Atkeson et al (2022)⁶⁵ suggests that state laws that regulate ballot access (*see* Li 2018)⁶⁶ as a means of mitigating voter fraud positively affect voter confidence, for all voters, and significantly more so for Republican voters. The authors find a strong and positive relationship between voter confidence and state laws regulating ballot access in 2020. Moreover, this relationship strengthens for Republican voters and declines only slightly for Democratic voters in 2012, 2016 and 2020. These findings show that voters respond with greater confidence in election outcomes when their respective states enact laws designed to prevent voter fraud.

Washington State's experience with invalid voter signatures on ballot initiative petitions provides some important insight into how the state's electorate believes signature verification enhances voters' confidence in the integrity of elections. Donovan and Smith⁶⁷ studied the forging of registered voters' signatures in order to place initiatives or referenda on Washington's statewide ballot between 1990-2006. The authors report that between 10.5% and 26.6% of petition signatures for initiative and referendum ballot proposals were invalid. "On average across the ballot measures, 18.9 percent of signatures were ruled invalid, mostly because the names on the petitions could not be found among the lists of registered voters." The origin of these invalid signatures originated with paid canvassers who had a financial incentive to forge, invent and in other ways defraud the State to obtain a sufficient number of signatures to place an initiative on the ballot.

⁶⁴ Levy, Morris. 2020. "Winning Cures Everything? Beliefs about Voter Fraud, Voter Confidence, and the 2016 Election." *Electoral Studies*, April, 102156.; Sances, Michael W., and Charles Stewart. 2015. "Partisanship and Confidence in the Vote Count: Evidence from U.S. National Elections since 2000." *Electoral Studies* 40 (December): 176–88. <https://doi.org/10.1016/j.electstud.2015.08.004>; Sinclair, Betsy, Steven S. Smith, and Patrick D. Tucker. 2018. "It's Largely a Rigged System': Voter Confidence and the Winner Effect in 2016." *Political Research Quarterly* 71 (4): 854–68. <https://www.jstor.org/stable/26600633>.

⁶⁵ Atkeson, Lonna Rae, Eli McKown-Dawson, M.V. Hood III and Robert M. Stein, "The Costs of Voting and Voter Confidence," presented at the 2023 Southern Political Science Association Meetings, St. Petersburg, FL, January 11-14, 2023.

⁶⁶ Li, Quan, Michael J. Pomante II, and Scot Schraufnagel. 2018. "Cost of Voting in the American States," *Election Law Journal* 17(3): 234-247. DOI: 10.1089/elj.2017.0478.

⁶⁷ Donovan, Todd and Dan Smith. 2008. "Preventing Signature Fraud," In R. M Alvarez, T. E. Hall, & S. D. Hyde (Eds.), *Election fraud: Detecting and deterring electoral manipulation* (pp. 89-98). Washington, DC: Brookings Institution Press.

Washington state law required those who collected petition signatures to swear to the integrity of the signatures they collect. Donovan and Smith note, “[As] of 2006, however, the secretary of state was not required to reject petitions where circulators failed to swear an affidavit. The lack of any enforcement or deterrent effect—no one has been successfully prosecuted despite the fact that signature fraud is a class C felony—may explain why we find only subtle differences in invalid rates between petitions with signed affidavits and those without.” Absent any deterrent, those collecting petition signatures were free to commit fraud.

Donovan and Smith conclude “there is evidence that public confidence in the process has eroded in recent years. In 1990, more than 80 percent of respondents believed that statewide initiative elections were a good thing for the state.⁶⁸ In 2007, this share had fallen to 70 percent. Donovan and Smith conclude: “Our data suggest that the voters have grounds for their concern about the integrity of initiative campaigns. They also indicate that Washington’s initial experiment at requiring petitioners to sign affidavits has had little impact on the rate of signature invalidity. More far-reaching reforms are necessary if public confidence in this important democratic institution is to be maintained.” Washington’s experience with petition signatures suggests that, absent a means of verifying a voter’s mail ballot signature, voter confidence in the integrity of mail election will be degraded.

VII. WASHINGTON’S PARTICULAR IMPLEMENTATION OF SIGNATURE VERIFICATION IS A REASONABLE MEANS OF VERIFYING VOTER IDENTITY

Washington’s particular implementation of signature verification is a reasonable means of verifying voter identity. No system is perfect. But Washington’s focus of ensuring broad access to the ballot—a huge benefit of Washington’s permanent mail-in system—requires some form of assurance that ballots sent to every voter at their last known address are only voted by the intended recipient. Gerber et al found that increased mail voting in Washington boosted aggregate election participation by two to four percentage points, far larger than the .5% to 1% of rejected mail ballots

⁶⁸ Data from the authors’ poll of Washington voters, conducted by Applied Research Northwest (1999), and from The Washington Poll, conducted by Pacific Market Research (2006).

for non-matching signatures.⁶⁹ Moreover, “the evidence from Washington suggests that all-mail elections increase turnout most among groups that are less likely to participate. . . . this is true for young voters, and direct evidence that registrants with little or no prior vote history are more likely to vote when their county switches to all-mail elections.”⁷⁰

In 2012, there were 3,904,959 registered voters in Washington. Using Gerber et al’s estimates for the increased turnout effect of voting by mail (i.e., 2%-4%), I estimate there were between 72,000 and 144,000 persons who voted in each of the federal elections between 2012 and 2020 who would not have voted in these elections absent vote by mail. Over the five federal elections held between 2012 and 2020, this number of new voters (between 360,000 and 720,000) from ranks of younger and infrequent voters far surpasses the alleged total voters from all of these elections whose ballots were rejected for non-matching signatures. And there is no evidence of what percentage of that total number of ballots that were rejected were done so *mistakenly*. Thus, Washington, along with states like California, Colorado, and Utah, is actually a model for other parts of the United States that turned to vote-by-mail as a means of conducting a safe election during the COVID-19 pandemic.⁷¹

Washington’s particular implementation of signature verification is all the more notable because it includes a “cure” process. This cure process allows a voter whose signature has been challenged to fix a signature mismatch by re-signing and re-mailing their signature. And Washington’s extended time period for counting votes provides voters a far longer time to fix any signature challenges than many other states. Indeed, not all states’ mail-in-ballot systems even include a cure process. As of the 2020 election, 31 states required local election officials to notify a mail voter that their ballot was deficient (e.g., non-matching signature) and must be cured for it to be counted. States and local jurisdictions vary in what is required of both local election officials

⁶⁹ See Alan S. Gerber, Gregory A. Huber & Seth J. Hill, Identifying the Effects of All-Mail Elections on Turnout: Staggered Reform in the Evergreen State, 1 Pol. Sci. Res. & Methods 91 (2013).

⁷⁰ See Alan S. Gerber, Gregory A. Huber & Seth J. Hill, Identifying the Effects of All-Mail Elections on Turnout: Staggered Reform in the Evergreen State, 1 Pol. Sci. Res. & Methods 91 (2013), pp 103.

⁷¹ See William Janover and Tom Westphal, Signature Verification and Mail Ballots: Guaranteeing Access While Preserving Integrity – A Case Study of California’s Every Vote Counts Act.

and voters for curing errant mail ballots. States also vary in the number of days they provide voters to cure their mail ballot after Election Day. Washington is among the few states that allows voters five or more days after Election Day to cure their ballot.

There is no evidence that signature verification, or some other form of authenticating a voter's identification, is not required because of the low rate of prosecuted voter fraud. As detailed above, the rates of prosecuted fraud are not necessarily representative of the amount of actual fraud occurring. Clark County's determinations of ballots that had been signed by someone other than the voter (which I understand has been largely confirmed by a handwriting expert), demonstrate that voters signing someone else's ballot may be more prevalent than media reports and completed prosecutions suggest. Moreover, relying on low rates of fraud conviction confuses the issues. Washington's low percentage of fraudulently cast ballots may be attributable to signature verification, rather than provide a reason to dispense with the requirement. In other words, contrary to Plaintiffs' assertion that signature verification of mail-in ballots is unnecessary to deter voter fraud because the instances of voter fraud in Washington's vote-by-mail system are so rare, signature verification may be one reason that known instances of voter fraud is so low.

The state needs some means of verifying the identity of the voter and ensuring eligible voters vote only once. In my opinion, and as detailed above, current state practices including voter registration procedures, ballot oath requirements, systems that permit voters to check the status of their ballot online, and Electronic Registration Information Center ("ERIC"), are insufficient to achieve these goals in the absence of signature verification. Also, as detailed earlier, the use of pin numbers, government issued IDs and witness and notary signatures as an alternative standalone means for verifying identity is subject to similar objections as signature verification.⁷² As such, there are several consequences for how elections might be conducted in Washington should the plaintiffs prevail in removing the matching signature requirement for voting by mail in Washington. Below I detail several potential outcomes.

One potential consequence of eliminating signature verification is a return to in-person voting. But this would result in significant negative consequences, including:

- Significantly lower voter participation.⁷³
- Significantly lower rates of ballot completion.⁷⁴
- Significantly higher costs of conducting elections.⁷⁵
- Significantly lower voter participation among African-American, Hispanic and younger voters.⁷⁶

Election administration requires choices, trade-offs and compromises between assuring the integrity of the election and access to the ballot. Eliminating the signature verification requirement may in fact disproportionately disadvantage young voters of color. Curing these ballots reduced the share of rejected signatures by 50%. Moreover, there is strong reason to believe the number of rejected matching signatures can be improved with further training of election officials in a limited number of counties and by expanding the mechanisms available for curing ballot challenges.

⁷³ Thompson, Daniel, Jennifer A. Wu, Jesse Yoder and Andrew B. Hall. 2020. "Universal vote-by-mail has no impact on partisan turnout or vote share," *PNAS* 117(25):14052-14056.

Bonica, Adam, Jacob M. Grumbach, Charlotte Hill and Hakeem Jefferson. 2021. "All-Mail voting in Colorado increases turnout and reduces turnout inequality," *Electoral Studies* 72:

<https://doi.org/10.1016/j.electstud.2021.102363>

Barber, M. and J.B. Holbein. 2020. "The participatory and partisan impacts of mandatory vote-by-mail." *Science Advances* 6(35): <https://doi.org/10.1126/sciadv.abc7685>.

Yoder et al. 2021. "How did absentee voting affect the 2020 U.S. Election," Democracy & Polarization Lab, Stanford University

https://stanforddpl.org/papers/yoder_et_al_2020_turnout/yoder_et_al_2020_turnout.pdf

Amlmani, Sharif. 2022. "The impact of vote-by-mail policy on turnout and vote share in the 2020 election." *Election Law Journal* 21: <https://doi.org/10.1089/elj.2021.0015>.

McGhee, Eric, Jennifer Paluch and Mindy Romero "Vote-by-mail policy and the 2020 Presidential Election." *Research and Politics*. 9: <https://doi.org/10.1177/20531680221089197>

⁷⁴ Menger, Andrew, Robert M. Stein and Greg Vonnahme. 2018. "Reducing the Undervote with Vote by Mail," *American Politics Research* 46(6):1039-1064.

⁷⁵ Lamb, Matt. 2021 "The costs of voting: The effects of vote-by-mail on election administration finance in Colorado." *Social Science Quarterly* 102:1361-1379.

Stein, Robert, Andrew Menger, and Greg Vonnahme. 2011. "The Impact of Vote by Mail on the Cost and Performance of Elections in Colorado." Report Prepared for Pew Charitable Trusts

⁷⁶ Barber, Michael and John B. Holbein. 2020. "The Participatory and partisan impacts of mandatory vote-by-mail." *Science Advances* 6:1-7.

**VIII. TO THE EXTENT THAT WASHINGTON’S IMPLEMENTATION OF
SIGNATURE VERIFICATION DISPROPORTIONATELY IMPACTS CERTAIN
CATEGORIES OF VOTERS, SUCH EFFECTS CAN BE CORRECTED AT THE
COUNTY LEVEL**

To the extent that Washington’s implementation of signature verification impacts certain categories of voters, such impacts can be mitigated and potentially cured or mitigated either at the county level or statewide. Most of the work that goes into an election in Washington is carried out at the county level – that is, by county election departments. Under state law, Washington counties are responsible for developing and sending ballots to active voters, then verifying voters’ signatures and counting votes after they receive ballots.⁷⁷

The Auditor explicitly looked for bias on the basis of race or ethnicity in counties’ decisions to accept or reject individual ballots.⁷⁸ The Auditor found some disproportionate impacts, but no evidence of bias on the basis of race or ethnicity in counties’ acceptance or rejection of ballots.⁷⁹ The Auditor found some county-by-county discrepancies, but ultimately “overwhelmingly concurred with” counties’ decisions about which ballots to accept and which to reject.⁸⁰ Specifically, the Auditor had reviewed a random sample of more than 7,200 ballots to determine whether the ballots were appropriately accepted or rejected. The Auditor concurred with county determinations for more than 98 percent of the signatures that the Auditor reviewed.⁸¹

The ten counties the Auditor selected for the audit met state requirements related to ballot review and curing processes.⁸² In addition to meeting most legal requirements, audited counties implemented many leading practices to help reduce ballot rejections, such as conducting voter outreach using a variety of media.⁸³ The Auditor also concluded that counties could consider other

⁷⁷ Auditor’s Report at pg. 7.

⁷⁸ Auditor’s Report at pg. 5.

⁷⁹ Auditor’s Report at pg. 4.

⁸⁰ Auditor’s Report at pg. 5.

⁸¹ Auditor’s Report at pg. 15.

⁸² Auditor’s Report at pg. 4.

⁸³ Auditor’s Report at pg. 4.

innovative practices to reduce ballot rejection rates and potential disparities.⁸⁴ In the context of the total number of mail-in ballots, the percentage of rejected ballots at less than 1 percent in Washington for the 2020 general election was very low.⁸⁵ The Auditor's findings were not that signature verification is inherently problematic, but rather that implementation of signature verification by some counties could be improved or made consistent with statewide practice.

I understand that the Secretary's Office is already in the process of implementing regulatory changes to address the issues identified in the Auditor's report. Attached as Exhibit A is a copy of the Secretary's proposed draft regulation, which is being filed as part of Washington's rulemaking process. In my opinion, the changes proposed by the Secretary's Office will very likely reduce the number of voters' ballots that are challenged on the basis of signature challenges in the first instance, and will substantially increase the mechanisms and opportunities for voters to cure any challenges to their signature. In my opinion, these regulatory changes incorporate the benefits of a signature matching verification system, while mitigating drawbacks by allowing voters varied opportunities to cure their ballots within Washington's already generous period for curing ballot challenges.

At the outset, the regulations keep the signature matching process in place. This maintains all the benefits of the current system, which is easily accessible, transparent, flexible, accepted by public, secure against systemic vulnerabilities, provides reassurance to voters, and currently works very well for the *vast* majority of Washington voters. But the draft regulations will also improve the signature matching process in multiple ways. First, it will incorporate into a law a starting presumption that every signature is valid. Second, it will require acceptance of every voter's signature unless there are multiple, significant and obvious differences between the signature on the ballot and the signature in the voter registration file. These changes mean that voters' signatures will be accepted without challenge in every case except where signatures are dramatically different to the signature in the registration file, as would be the case if someone without access to the

⁸⁴ Auditor's Report at pg. 5.

⁸⁵ Auditor's Report at pg. 37.

voters' signature had signed the ballot. This is a significant change from current law and is likely to reduce the number of ballots that are challenged in the first instance, while still accomplishing the goals of protecting against systemic vulnerabilities and reassuring the public about the integrity of the vote.

While certain voters, such as those with dramatic changes to their signatures, may still have their signatures challenged, the Secretary will also substantially increase the opportunities for voters to cure any signature mismatch. The regulations will require counties to notify voters promptly of any signature challenge by every known means of contact: email, text, or mail. Under the new system, the voter will have an opportunity to provide secondary means of authentication in a way that tracks the identification requirements of Washington's voter registration process. Thus, voters can provide secondary authentication of their identity by providing the last four digits of their social security number, driver's license number, or Tribal I.D. or by providing a picture of such I.D., or by providing a unique pin number assigned through an automatic multi-factor authentication system. If the voter provides such secondary authentication, their vote would be counted except in the cases of obvious fraud. All voters would also be able to cure their ballots through the current methods of providing a new signature for comparison, or by providing identification in person.

These changes have significant benefits. Much of this secondary authentication process will be automated through Vote.WA so that voters have an option to provide secondary authentication through an automated process or with assistance from election administrators via telephone calls, texts, emails, or in person. By focusing on only the small subset of voters whose signatures are challenged, Washington can provide more resources to ensuring that all valid votes are counted, and can offer a variety of mechanisms to accommodate those who may not have I.D., or know their social security number, or may be technologically challenged. By providing many different avenues for cure – many of which have already been incorporated into an e-commerce economy, Washington would be at the leading edge of the nation in ensuring voter access to the ballot and ensuring that all legitimate votes are counted. In my opinion, these mechanisms are

likely to substantially mitigate any erroneous rejection of ballots, which again, is likely unavoidable in any system of verification.

IX. CONCLUSION

There are inevitable trade-offs in the conduct of elections. These trade-offs are between securing the integrity of the vote and providing ballot access to all eligible persons.

A fully vote-by-mail system, such as Washington's, using verified matching signatures to secure the integrity of the ballot may not allow for 100% accuracy in counting the vote. However, this method of ballot verification is preferable to other methods states have adopted (e.g., government issues ID, pin numbers and biometrics), which more severely impact the ballot access of certain voters.

To the extent that Washington's implementation of signature verification impacts certain categories of voters, such effects can be corrected at the county level or via statewide changes that do not jettison entirely signature verification as a means of verifying voter identity. It is my understanding that the Secretary of State's Office is already in the process of implementing regulatory changes that would reduce the number of voters whose signatures would be challenged, while still securing the election system against voter fraud and systemic attacks, and increasing the opportunities for voters to cure any signature mismatch challenges.

Removal of Washington's signature verification requirement, on the other hand, would leave the state's vote by mail system without a meaningful means of verifying that the registered voter to whom the ballot was mailed was the person who voted and returned the ballot. The substitution of alternative means of voter verification including in-person only elections would be more harmful to plaintiffs' access to the ballot, decrease voter turnout in the state, decrease ballot completion and significantly increase the cost of conducting elections.

We have strong indication from the Washington's experience with fraudulent signatures on ballot initiative petitions that the removal of Washington's signature verification would lower Washington voters' confidence in the integrity and legitimacy of their elections, potentially depressing voter participation.

My opinions and conclusions in this report are based on the information available to me as of the report's writing. I reserve the right to revise or supplement my opinions and conclusions based on additional information obtained during discovery.

robert stein

7/31/2023

Robert M. Stein

Date

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Mark Larrañaga
Noted for Hearing: September 12, 2023 at 8:30 am
With Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

NO. 22-2-19384-1 SEA

Plaintiffs,

DECLARATION OF SHARLA
COMASTRO

v.

STEVE HOBBS, et al.,

Defendants.

I, SHARLA COMASTRO, declares as follows:

1. I am the signature verification lead for the Clark County Elections Office. My duties include reviewing challenged ballots to determine the appropriateness of the reason for the challenge. I have held this position for 9 years. I am over the age of 18 years and am competent to testify to the matters stated below and do so based on my personal knowledge.

2. I am familiar with the above-captioned lawsuit. Counsel for Secretary of State Steve Hobbs has shared a copy of the Plaintiff's Second Amended Complaint with me. I am opposed to the relief that Plaintiffs request and believe that if the Court declares RCW 29A.40.110(3) unconstitutional and orders its non-enforcement statewide, including in Clark County, that will be detrimental to the elections process, the confidence of voters in the outcome of elections, and Washington democracy in general statewide, including in Clark County.

1 3. The Clark County Elections office has six permanent employees, other than
2 myself, and typically hires additional temporary employees to assist it in running elections
3 during an election. The Clark County Auditor’s Office is comprised of several departments, one
4 of which is the Clark County Elections Office.

5 4. When a voted ballot is returned to the Clark County Elections Office, the sealed,
6 unopened envelope is first scanned (that is, run through a sorting machine) so that it shows as
7 having been received and also includes taking a picture of the signature area of the envelope
8 used for signature verification. After all the envelopes are scanned, they are then locked in a
9 secured room. The images of the signatures from the affidavit envelopes then get uploaded into
10 the VoteWA system, which is the statewide voter registration system which includes ballot
11 issuance as well as tracking the status of ballots in Washington State. The signatures are viewed
12 using the signature verification module that is part of the VoteWA system. The signature on the
13 ballot declaration is then compared with the signature(s) in the voter’s registration file by trained
14 signature verifiers to confirm that the ballot was cast by the registered voter to whom the ballot
15 was issued.

16 5. All of our signature verifiers have been trained through the Washington State
17 Patrol Fraud Unit. Several of these signature verifiers have engaged in signature verification for
18 many years and love and enjoy doing it.

19 6. If, at this first stage of review, the Clark County Elections worker determines that
20 the signature is valid, the ballot is accepted. The ballot envelopes get run through the sorter
21 machine again and the accepted ones get cut open and are ready to go to the Inspection Board to
22 be counted. The Inspection Board is a group of hired, paid, and very dedicated
23 temporary/seasonal workers who are monitored by permanent staff. If the signature verifier can
24 match the signatures to count the ballot but had some hesitation and feels like the voter’s
25 signature could possibly be challenged next time, then they will accept the signature and may
26 choose to request a signature update from the voter. They do this by clicking a button labeled

1 “Signature Update Request” that is located within the signature verification module. Clicking
2 this button will generate a signature update form for the voter that gets mailed out to them after
3 the election which includes a postage-paid envelope for return. If the Elections worker does not
4 find multiple points of comparison, then they may either mark the signature as “Signature Does
5 Not Match” or “Review.” There are other challenge codes available for use but we’ll focus on
6 these two in particular. If the signature is marked as “Signature Does Not Match,” a letter gets
7 generated and mailed directly to the voter, which includes a cure form along with a postage-paid
8 envelope so that the voter can help cure their ballot. The letter/form also states that the voter may
9 scan and email the completed form to our office, which is also no cost to the voter. If the signature
10 is marked as “Review,” it means that the worker was unsure about whether to accept the
11 signature or reject it. In that case, the Elections workers ultimately want me to decide. We always
12 try to find similarities in signatures. My job is to determine why the signature verifier flagged
13 the signature in the first place. For the ballots challenged as “Review”, I will look up the
14 signature(s) for the voter as well as household members’ signatures and accept the signature (that
15 is, mark it as “Accepted” in the VoteWA system), challenge it for “Signature Does Not Match,”
16 or sometimes challenge it as Canvassing Board if I discover other discrepancies (such as signing
17 two ballots or after speaking with the voter and having them admit to signing another voter’s
18 signature.). A ballot challenged as Canvassing Board has been determined to be un-curable.

19 7. If the voter whose ballot was challenged decides not to return the
20 Signature Update form and continues to sign future ballot envelopes with their current or new
21 signature (that is not on file with us), then their ballots will likely continue to be challenged.
22 They need to return the signature update form so that we can update their signature on file.

23 8. When I work through the ballots that are challenged as “Review”, as I am
24 comparing the signatures of other voters in the same household, I occasionally determine that it
25 is likely that one household member signed for another. This can take essentially two forms.
26 First, one household member can sign their name on multiple ballot envelopes. This can

1 sometimes be difficult to spot without seeing all of the household member signatures together
2 because some people have signatures that are not recognizable as written names. But, usually, it
3 is easy to see that the same signature is being used on two different ballot declarations if you
4 have them side by side. Second, one household member might forge another household
5 member's signature. This is harder to detect, and requires comparison of the two different names
6 to see if the handwriting is the same.

7 9. All challenged signatures will eventually be examined by me. I personally review
8 every ballot affidavit envelope that was challenged as "Signature Does Not Match" before the
9 Canvassing Board does. By the time that I review a challenged ballot at least one other worker
10 has examined it and found the signatures not to match or marked it as "Review" as described
11 above. There are many times when I am reviewing a challenged ballot, I examine not only the
12 signature on the declaration and in the registration files for that voter, but also the signatures on
13 declarations for others in the same household, and their registration signatures. During this
14 review or investigation is when I discover most of the forged signatures. Oftentimes, I also
15 review prior images of the ballot affidavit envelopes as well. This helps to show the deterioration
16 or progression of a signature. Sometimes, I determine that a signature is valid, even after other
17 staff have determined that it does not match. In that case, I remove the "challenged" status on
18 the ballot in VoteWA, change the status to "accepted" and the ballot is ready to be opened,
19 inspected and counted by the Inspection Board. Otherwise, I keep the "challenged" status. After
20 my final review, all signatures that I kept as "Signature Does Not Match" are forwarded to the
21 Clark County Canvassing Board, which makes all final decisions regarding rejecting challenged
22 ballots.

23 10. My personal review of each challenged ballot may also involve calling over the
24 phone any voter whose signature has been found to be a mismatch to inquire whether their
25 signature is genuine. In instances in which I have called over the phone voters whose signatures
26 have been found to be a mismatch, such voters oftentimes have told me that a household member

1 completed that particular voter's ballot out of convenience or some other similar reason. In such
2 instances, I have explained to the voter that such actions are illegal and can result in prosecution.
3 Voters' reactions in such instances have ranged from crying in distress to apologizing and
4 promising not to engage in such behavior in the future. I have found calling such voters over the
5 phone to be effective in deterring such future behavior.

6 11. Those signatures that appear to have been fraudulently signed by a household
7 member are forwarded to the canvassing board, which then refers such mismatched signatures
8 to the Clark County Prosecuting Attorney.

9 12. The Clark County Prosecuting Attorney then drafts and mails out what we at the
10 Clark County Elections office have come to refer to as "poison pen" letters because we intend
11 these letters to serve as a warning and deterrent to future illegitimate voting. True and accurate
12 copies of a selection of these warning letters from the Clark County Prosecuting Attorney dating
13 back to February 2015 are attached hereto as **Exhibit 1**. People who receive these letters will
14 often call me, sometimes complaining and indicating that they don't believe they committed
15 forgery and assumed they did nothing wrong, saying that they sign for their partner, parent, or
16 even someone they are dating, on other documents all the time. Other times, though, they call
17 and apologize profusely or explain that they did not know what they did was against the law. I
18 have received many different responses to these letters over the years, but I am unable to recall
19 any instance of having to send such a letter to the same person a second time. Almost every time
20 I explain the process to a voter, they are receptive and appreciate the job that we do as they did
21 not realize that we checked every signature on each ballot affidavit envelope to ensure the
22 accuracy of the election process.

23 13. Since February 2015, I have personally maintained an Excel spreadsheet tracking
24 voters who may receive warning letters. A true and accurate copy of that Excel sheet is attached
25 hereto as **Exhibit 2**. This spreadsheet dates back to February 2015 and the most recent month
26 displayed is April 2023. The categories of potential warning letter recipients include but are not

1 limited to: (1) those admitting or not admitting to signing another individual's name on a ballot;
2 (2) those who voted twice (that is, voted their ballot and signed their own name on another
3 individual's ballot); (3) those who voted on behalf of another individual (i.e. POA or guardian);
4 and (4) those who signed their ballot with an X and two witnesses, but the voter was not present
5 when the "X" mark was made. When I reach out to a voter in this scenario, the voter oftentimes
6 responds with "I didn't even know that you sent me a ballot!" or "I didn't know an election was
7 going on!" As it turns out, someone else in the household signed on behalf of that voter, thinking
8 it was okay for them to do so. Some examples of notes that I have included on this spreadsheet
9 in relation to such categories of voters are: "Called regarding letter; was apologetic and said
10 wasn't his intention"; "called regarding letter; was an accident that she signed his envelope then
11 signed hers"; and "was in a rush; did not do it on purpose." I keep this spreadsheet in the normal
12 course of my duties for the Clark County Elections Office, reference it for business purposes of
13 the office especially during election times, and I record information into it around the same time
14 that I learn it. As you can see in my Excel spreadsheet that I have maintained over the years,
15 there have been many instances in which somebody signed for another voter. I am able to
16 discover this because of signature verification.

17 14. A version of that Excel spreadsheet attached hereto as Exhibit 2 exists with a tab
18 that lists voters whose signatures have been found to be a mismatch as a result of a health
19 condition or disability that prevents those voters from producing consistent signatures. The
20 voters that are included on this spreadsheet have personally contacted our office either by phone
21 or by mail through correspondence that we sent them. Over election cycles, I have grown familiar
22 with such voters and am able to recognize their names. To protect such voters' privacy, I
23 removed that tab before providing the Excel spreadsheet attached hereto as Exhibit 2. I keep
24 track of these voters so that signature mismatch caused by deterioration of their handwriting does
25 not result in the rejection of their ballot.
26

1 15. After every election, I mail out signature update forms to some voters whose
2 ballots were initially challenged as “Review” but ultimately accepted. To such voters, I
3 recommend that they update their signature on file for future elections. This is to prevent their
4 signatures from being challenged in a future election or to update their “old, unrepresentative, or
5 otherwise flawed signatures” that are on file. For mailed letters, we enclose a postage-paid
6 envelope for the voter to return their updated signature, at no cost to the voter.

7 16. Signature verification is more scrutinized in the elections world because once a
8 signature is verified, the ballot is separated from the signed affidavit envelope and is ultimately
9 counted. There is no way to trace that document back to the original “owner” of said ballot. That
10 is why signature verification for ballots is different from other documents requiring signatures.

11 17. As the signature verification lead for the Clark County Elections office, I believe
12 that signature verification is an essential part of Washington’s election system. I cannot
13 understand why anyone would want to remove this part of the process. There are times while
14 discussing the signature verification process with an upset voter, I say to them, what if your
15 ballot was accidentally delivered to your neighbor down the street (and you don’t necessarily get
16 along with that neighbor because of conflicting political views), they decide to vote your ballot
17 and turn it in. Do you want us to just accept whatever signature is on that envelope that was
18 addressed to you? Their response, one hundred percent of the time, is “no.” If signature
19 verification were to be eliminated, we would be required to accept that ballot, which would get
20 opened and separated from the envelope and counted. Then you, the actual voter, would realize
21 that you never got a ballot for the election and call us. In that scenario, we would simply have to
22 say, “Well, that’s interesting. We already have one returned from you.” At that point, are we
23 allowed to issue the voter another ballot? That doesn’t seem appropriate either. Would we be
24 required to issue the voter a provisional ballot? The results would then be skewed because it will
25 show one voter with two accepted ballots which would result in our reconciliation reports being
26 negatively impacted as well.

1 18. Getting rid of signature verification would be detrimental to voter confidence in
2 the elections process. If signature verification were to be eliminated from the elections process
3 resulting in us being required to accept any signature on the ballot envelope, that would be awful.
4 For example, we know that postal mail gets delivered to incorrect addresses from time to time.
5 With the potential of ballots getting “into the wrong hands,” that would mean that voters could
6 potentially get to vote more than once per election. There are so many times, in my personal
7 encounters, where college students would be away from home and parents would “handle” their
8 ballots – that is, vote on their behalf (which is illegal).

9 19. Another example is an “evil doer” requesting a voter download of all registered
10 voters. The “evil doer” could log into the VoteWA portal using the voter’s name and date of
11 birth, print off a replacement ballot, vote it, and return it. Without signature verification, we
12 would not know the difference and would not be able to determine whether it’s really the voter
13 or the “evil doer.”

14 20. An additional example is a husband and wife who both have ballots. The
15 individual thinks, “I know how my spouse would vote,” then votes for their spouse. Without
16 signature verification, one voter could vote all the ballots delivered to the address for the entire
17 household.

18 21. A further example is that currently, those with Power of Attorney privileges
19 cannot sign ballots on behalf of another voter. However, without signature verification, those
20 with Power of Attorney privileges could sign ballots on behalf of another voter.

21 22. Yet another example involves a non-citizen who inadvertently registers to vote.
22 A ballot gets mailed to them, someone else gets ahold of it and votes that ballot. The non-citizen
23 would have no proof that he or she didn’t actually vote that ballot, potentially making it so that
24 they could never be a citizen.

25 23. A final example is that of a voter who moves out of state. The voter fails to notify
26 us or it is past the deadline and a ballot happens to get mailed to their old address if no forwarding

1 order was submitted to the post office. There is a possibility that the new residents may choose
2 to vote and return those ballots. Then the voters who moved will register and vote in their new
3 state/jurisdiction. How would they be able to prove that they didn't vote twice in the same
4 election in more than one jurisdiction?

5 24. Signature verification is key and helps protect Washington's vote by mail system
6 in all of these scenarios and enables Washington to have a successful process. I take great pride
7 in my service to the voters of Clark County and for the State of Washington's elections process.
8 I strongly support signature verification, and do not know if vote by mail would work in
9 Washington without it.

10 I declare that the foregoing is true and correct to the best of my knowledge, and I do so
11 under the penalty of perjury of the laws of the state of Washington.

12 DATED this 9th day of August 2023.

13
14 /s/ Sharla Comastro
15 SHARLA COMASTRO
16 Clark County Elections Office
17
18
19
20
21
22
23
24
25
26

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcinttron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 16th day of August 2023 at Olympia, Washington.

/s/ Karl D. Smith
KARL D. SMITH, WSBA #41988
Deputy Solicitor General

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

THE HONORABLE MARK A. LARRAÑAGA
Hearing Date: September 12, 2023
Hearing Time: 8:30 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

VET VOICE FOUNDATION, THE
WASHINGTON BUS, EL CENTRO DE
LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL,
GABRIEL BERSON, and MARI
MATSUMOTO,

Plaintiffs,

v.

STEVE HOBBS, in his official capacity
as Washington State Secretary of State,
JULIE WISE, in her official capacity as
the Auditor/Director of Elections in King
County and a King County Canvassing
Board Member, SUSAN SLONECKER,
in her official capacity as a King County
Canvassing Board Member, AND
STEPHANIE CIRKOVICH, in her
official capacity as a King County
Canvassing Board Member,

Defendants.

No. 22-2-19384-1 SEA

**PLAINTIFFS' OMNIBUS OPPOSITION
TO DEFENDANTS' CROSS MOTIONS
FOR SUMMARY JUDGMENT AND
REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT; RESPONSE TO AMICI**

TABLE OF CONTENTS

| | Page |
|---|-------------|
| I. Introduction..... | 1 |
| II. Relief Requested..... | 2 |
| III. Statement of Facts..... | 3 |
| A. There Is No Dispute That the Signature Verification Requirement Consistently Disenfranchises Thousands of Washington Voters | 3 |
| B. There Is No Evidence That the Signature Verification Requirement Either Catches Fraud or Deters It | 4 |
| C. Signature Verification Simply Does Not Work..... | 11 |
| D. There Is No Dispute That the Signature Verification Requirement Disproportionately Disenfranchises Certain Groups | 13 |
| E. There Is No Dispute That Rates of Rejection Among Counties Vary Dramatically | 14 |
| F. Dr. Aravkin Makes Fundamental Data Errors That Undermine His Conclusions..... | 15 |
| G. States That Do Not Conduct Signature Verification Have Elections That Are No Less Secure and No Less Venerated | 18 |
| H. Washington Is a Universal Vote-by-Mail State..... | 20 |
| IV. Statement of Issues | 21 |
| V. Evidence Relied Upon | 22 |
| VI. Authority | 22 |
| A. The Signature Verification Requirement Unconstitutionally Violates the Right to Vote Guaranteed in Article I, Section 19..... | 22 |
| 1. Strict Scrutiny Applies to the Signature Verification Requirement..... | 22 |
| 2. The Signature Verification Requirement Cannot Withstand Strict Scrutiny | 28 |

| | | | |
|----|------|--|----|
| 1 | 3. | At the Very Least <i>Anderson/Burdick</i> Applies and the Burden of Signature Verification Outweighs Any Purported Benefit..... | 35 |
| 2 | | | |
| 3 | | | |
| 4 | 4. | Rational Basis Review Does Not Apply to a Restrictive Voting Measure That Consistently Disenfranchises Thousands of Voters | 37 |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | B. | The Signature Verification Requirement Violates the Privileges and Immunities Clause | 38 |
| 9 | | | |
| 10 | | | |
| 11 | C. | The Signature Verification Requirement Is Inherently and Unconstitutionally Arbitrary in Violation of the Substantive Due Process Clause of Article I, Section 3 | 40 |
| 12 | | | |
| 13 | | | |
| 14 | | | |
| 15 | D. | The Signature Verification Requirement Arbitrarily and Inherently Values the Voters in Some Counties Over the Voters in Other Counties | 41 |
| 16 | | | |
| 17 | | | |
| 18 | | | |
| 19 | E. | The Signature Verification Requirement Is Facially Unconstitutional | 44 |
| 20 | | | |
| 21 | 1. | Signature Verification Is Fundamentally Flawed | 44 |
| 22 | | | |
| 23 | 2. | King County’s Experience Shows That Signature Verification Is Fundamentally Flawed..... | 48 |
| 24 | | | |
| 25 | | | |
| 26 | 3. | The State’s New Regulations Are Irrelevant as a Matter of Law | 48 |
| 27 | | | |
| 28 | | | |
| 29 | F. | The Unconstitutional Signature Verification Requirement Is Severable..... | 49 |
| 30 | | | |
| 31 | | | |
| 32 | G. | The Proper Parties Are Before the Court..... | 50 |
| 33 | | | |
| 34 | VII. | Conclusion | 52 |
| 35 | | | |
| 36 | | | |
| 37 | | | |
| 38 | | | |
| 39 | | | |
| 40 | | | |
| 41 | | | |
| 42 | | | |
| 43 | | | |
| 44 | | | |
| 45 | | | |
| 46 | | | |
| 47 | | | |

TABLE OF AUTHORITIES

Page(s)

CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Acosta v. Democratic City Comm.,
288 F. Supp. 3d 597 (E.D. Pa. 2018).....51

All. for Retired Ams. v. Sec’y of State,
240 A.3d 45 (Me. 2020)28

American Legion Post #149 v. Washington State Dept. of Health,
164 Wn.2d 570, 192 P.3d 306 (2008).....23

Anderson v. Celebrezze,
460 U.S. 780 (1983).....35

Applewhite v. Commonwealth,
2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014).....27

Black v. McGuffage,
209 F. Supp. 2d 889 (N.D. Ill. 2002).....42

Brady v. State Ballot L. Comm’n,
149 N.E.3d 1260 (Mass. 2020).....27

Burdick v. Takushi,
504 U.S. 428 (1992).....35

Bush v. Gore,
531 U.S. 98 (2000).....26, 41

Carroll v. Superior Court of Washington for King County,
113 Wash. 54 (1920).....25

City of Redmond v. Moore,
151 Wn.2d 664 (2004).....44

City of Seattle v. State,
103 Wn.2d 663 (1985).....22, 23, 24

| | | |
|----|---|--------|
| 1 | <i>Common Cause/Georgia v. Billups,</i> | |
| 2 | 554 F.3d 1340 (11th Cir. 2009) | 26 |
| 3 | | |
| 4 | <i>Democratic Senatorial Campaign Committee v. Pate,</i> | |
| 5 | 950 N.W.2d 1 (Iowa 2020) | 28 |
| 6 | | |
| 7 | <i>Doe v. Walker,</i> | |
| 8 | 746 F. Supp. 2d 667 (D. Md. 2010)..... | 25 |
| 9 | | |
| 10 | <i>Donald J. Trump for President, Inc. v. Boockvar,</i> | |
| 11 | 493 F. Supp. 3d 331 (W.D. Pa. 2020)..... | 51 |
| 12 | | |
| 13 | <i>Donald J. Trump for President, Inc. v. Bullock,</i> | |
| 14 | 491 F. Supp. 3d 814 (D. Mont. 2020)..... | 4 |
| 15 | | |
| 16 | <i>Eugster v. State,</i> | |
| 17 | 171 Wn.2d 839 (2011)..... | 24 |
| 18 | | |
| 19 | <i>Fair Fight Action, Inc. v. Raffensperger,</i> | |
| 20 | 413 F. Supp. 3d 1251 (N.D. Ga. 2019)..... | 51 |
| 21 | | |
| 22 | <i>Fish v. Schwab,</i> | |
| 23 | 957 F.3d 1105 (10th Cir. 2020) | 36 |
| 24 | | |
| 25 | <i>Fla. Democratic Party v. Detzner,</i> | |
| 26 | No. 4:16cv607-MW/CASE, 2016 WL 6090943 (N.D. Fla. Oct. 16, 2016)..... | 36 |
| 27 | | |
| 28 | <i>Foster v. Sunnyside Valley Jr. Dist.,</i> | |
| 29 | 102 Wn.2d 395 (1984)..... | 26, 36 |
| 30 | | |
| 31 | <i>Frank v. Walker,</i> | |
| 32 | 819 F.3d 384 (7th Cir. 2016) | 36 |
| 33 | | |
| 34 | <i>Gallagher v. New York State Bd. Of Elections,</i> | |
| 35 | 477 F. Supp. 3d 19 (S.D.N.Y. 2020) | 41 |
| 36 | | |
| 37 | <i>Gold Bar Citizens for Good Gov't v. Whalen,</i> | |
| 38 | 99 Wn.2d 724 (1983)..... | 1, 23 |
| 39 | | |
| 40 | <i>Harding v. Edwards,</i> | |
| 41 | 484 F. Supp. 3d 299 (M.D. La. 2020)..... | 51 |
| 42 | | |
| 43 | | |
| 44 | | |
| 45 | | |
| 46 | | |
| 47 | | |

| | | |
|----|--|------------|
| 1 | <i>In re Coday,</i> | |
| 2 | 156 Wn.2d 485 (2006)..... | 24 |
| 3 | | |
| 4 | <i>Kohlhass v. State,</i> | |
| 5 | 518 P.3d 1095 (Alaska 2022) | 27 |
| 6 | | |
| 7 | <i>League of Women Voters of Ark. v. Thurston,</i> | |
| 8 | 60CV-21-3138 (Ark. Cir. Ct. Mar. 24, 2022)..... | 27 |
| 9 | | |
| 10 | <i>League of Women Voters of Kansas v. Schwab,</i> | |
| 11 | 525 P.3d 803 (Kan. Ct. App. 2023)..... | 27 |
| 12 | | |
| 13 | <i>League of Women Voters of Ohio v. Brunner,</i> | |
| 14 | 548 F.3d 463 (6th Cir. 2008) | 41 |
| 15 | | |
| 16 | <i>Locke v. City of Seattle,</i> | |
| 17 | 162 Wn.2d 474 (2007)..... | 21 |
| 18 | | |
| 19 | <i>Madison v. State,</i> | |
| 20 | 161 Wn.2d 85 (2007)..... | 22, 26, 39 |
| 21 | | |
| 22 | <i>Martin v. Kemp,</i> | |
| 23 | 341 F. Supp. 3d 1326 (N.D. Ga. 2018)..... | 26 |
| 24 | | |
| 25 | <i>Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.,</i> | |
| 26 | 196 Wn.2d 506 (2020)..... | 38 |
| 27 | | |
| 28 | <i>Mays v. LaRose,</i> | |
| 29 | 951 F.3d 775 (6th Cir. 2020) | 35 |
| 30 | | |
| 31 | <i>McGowan v. State,</i> | |
| 32 | 148 Wash. 2d 278 (2002)..... | 50 |
| 33 | | |
| 34 | <i>Montana Democratic Party v. Jacobsen,</i> | |
| 35 | 2022 WL 1126671 (Mont. Dist. Apr. 06, 2022), <i>aff'd</i> , 410 Mont. 114..... | 27 |
| 36 | | |
| 37 | <i>Norman v. Reed,</i> | |
| 38 | 502 U.S. 279 (1992)..... | 35 |
| 39 | | |
| 40 | <i>Obama for Am. v. Husted,</i> | |
| 41 | 697 F.3d 423 (6th Cir. 2012) | 26 |
| 42 | | |
| 43 | | |
| 44 | | |
| 45 | | |
| 46 | | |
| 47 | | |

| | | |
|----|--|--------|
| 1 | <i>Orr v. Edgar,</i> | |
| 2 | 670 N.E.2d 1243 (Ill. 1996)..... | 27 |
| 3 | | |
| 4 | <i>Pemberton v. Superior Court of Whatcom County,</i> | |
| 5 | 196 Wash. 468 (1938)..... | 25 |
| 6 | | |
| 7 | <i>Portugal v. Franklin Cnty.,</i> | |
| 8 | 530 P.3d 994 (Wash. 2023) | 22, 39 |
| 9 | | |
| 10 | <i>Rouso v. State,</i> | |
| 11 | 170 Wn.2d 70 (2010)..... | 33 |
| 12 | | |
| 13 | <i>Saucedo v. Gardner,</i> | |
| 14 | 335 F. Supp. 3d 202 (D.N.H. 2018)..... | 25 |
| 15 | | |
| 16 | <i>Self Advocacy Solutions N.D. v. Jaeger,</i> | |
| 17 | 464 F.Supp.3d 1039 (D.N.D. 2020)..... | 51 |
| 18 | | |
| 19 | <i>State ex rel. Shepard v. Superior Court of King County,</i> | |
| 20 | 60 Wash. 370 (1910)..... | 25 |
| 21 | | |
| 22 | <i>State v. Graham,</i> | |
| 23 | 14 Wn. App. 1 (1975) | 50 |
| 24 | | |
| 25 | <i>Texas Democratic Party v. Abbott,</i> | |
| 26 | 961 F.3d 389 (5th Cir. 2020) | 51 |
| 27 | | |
| 28 | <i>Weinschenk v. State,</i> | |
| 29 | 203 S.W.3d 201 (Mo. 2006) | 27 |
| 30 | | |
| 31 | <i>Yim v. City of Seattle,</i> | |
| 32 | 194 Wn.2d 682 (2019)..... | 40 |
| 33 | | |
| 34 | STATUTES | |
| 35 | RCW 29A.04.230 | 50 |
| 36 | | |
| 37 | RCW 29A.04.611(54)..... | 51 |
| 38 | | |
| 39 | RCW 29A.40.160 | 20 |
| 40 | | |
| 41 | RCW 29A.40.160(9)(a) | 21 |
| 42 | | |
| 43 | | |
| 44 | | |
| 45 | | |
| 46 | | |
| 47 | | |

RULES

CR 56(c).....21

OTHER AUTHORITIES

Elections Div., Vt. Sec’y of State, *Facts Matter - The Truth About Vermont Elections*, <https://sos.vermont.gov/elections/election-info-resources/myth-v-fact/#q13> (last visited Aug. 25, 2023)19

Elections Div., Vt. Sec’y of State, *Report Requested Under Section 21a of Act 60* (2023), <https://legislature.vermont.gov/assets/Legislative-Reports/Gov-Ops-Report-on-Mailing-Ballots.Jan2023.Final.2.6-.pdf>.....19

Elections Div., Wash. Sec’y of State, *Washington State Vote-By-Mail (VBM) Fact Sheet 1* (2021), https://www.sos.wa.gov/sites/default/files/2022-05/wa_vbm.pdf?uid=64e3cec1bd02b.....20

Elections, King Cnty., *Accessible Voting Options*, <https://kingcounty.gov/en/legacy/depts/elections/how-to-vote/ballots/accessible-voting-options.aspx> (last visited Aug. 25, 2023).....20

Elections, King Cnty., *King County Elections to Open Six Vote Center Locations Beginning on Saturday to Serve Voters Across the County* (Oct. 28, 2020), <https://kingcounty.gov/en/legacy/depts/elections/about-us/newsroom/news-releases/2020/October/28-vote-centers-open-sat.aspx>20, 26

Wash. Const. art. I, §32, 21, 41

Wash. Const. art. I, §122, 21, 41

Wash. Const. art. I, §192, 21, 22, 24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

I. Introduction

“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Gold Bar Citizens for Good Gov’t v. Whalen*, 99 Wn.2d 724, 730 (1983).

The restrictions on that fundamental right imposed by Washington’s Signature Verification Requirement are truly breathtaking. The faux science signature matching exercise mounted by election officials has—indisputably—stripped more than 170,000 Washington voters of the franchise since 2016, with a particularly appalling disparate impact on younger minority voters. An even greater number of Washington voters had their ballots challenged and were forced to bear the burden of proving election officials wrong by “curing” those official mistakes. The undisputed record vividly demonstrates that, despite the counties’ best efforts, their rejections are simply wrong as a matter of fact most of the time.

And this whole exercise serves no purpose. It is undisputed that, out of the millions of votes cast and the hundreds of thousands of ballots challenged as signature “mismatches,” only a small handful of challenged ballots have even been deemed worthy of referral to county prosecutors’ offices. Of those, *zero* voters have been charged with, much less prosecuted for, election fraud or any other election-related crime.

Not one.

Given this record, one would think that Defendants would at least soft-pedal their opposition, recognizing the severe burdens on the right to vote this scheme places on some of our most vulnerable communities and its wholly random application to others. Instead, Defendants launch a full-throated defense of the Signature Verification Requirement,

1 insisting, without support, that it is necessary to prevent fraud, to ensure voter confidence in
2 elections, and (ironically) to ensure access to the ballot. Defendants’ rhetoric rather
3 dramatically outstrips their evidence. Defendants offer up election officials’ “suspicion” as
4 if it demonstrates voter malfeasance but admit—as they must—that even in the vanishingly
5 small number of cases that they thought serious enough to warrant a referral to county
6 prosecutors, not one voter has been charged with, much less convicted of, voter fraud. This
7 reliance on mere subjective suspicion falls far short of demonstrating a statutory scheme that
8 is narrowly tailored to further a compelling state interest. The record, instead, demonstrates
9 a shameful disregard for the fundamental rights of Washington voters—with a particularly
10 outrageous impact on younger and minority voters.
11
12
13
14
15
16
17
18
19

20
21 Plaintiffs respectfully submit that, on this record, the Court should grant Plaintiffs’
22 motion for summary judgment and deny the Defendants’ cross motions for summary
23 judgment.
24
25

26 **II. Relief Requested**

27
28 Plaintiffs respectfully request that the Court (a) grant Plaintiffs’ motion for summary
29 judgment; (b) deny Defendants’ motions for summary judgment; (c) enter an order declaring
30 that the Signature Verification Requirement violates Sections 3, 12, and 19 of Article I of
31 the Washington Constitution; and (d) enjoin Washington election officials from using the
32 Signature Verification Requirement as a basis to reject or challenge an otherwise lawfully
33 cast ballot.
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

III. Statement of Facts

A. There Is No Dispute That the Signature Verification Requirement Consistently Disenfranchises Thousands of Washington Voters

The record before the Court now makes plain what is undisputed: From the 2016 general election through the February 2023 special election, the Signature Verification Requirement disenfranchised over 170,000 voters. Decl. of Heath Hyatt (“Hyatt Decl.”) Ex. B (“Herron Rep.”) 63–64. In the 2020 and 2022 general and primary elections alone, approximately 69,000 voters’ ballots were disqualified, including the ballots of almost 24,000 voters in each of the two general elections. *Id.* Ex. C (“Palmer Rep.”) 4.

As bad as that is, the actual impact of the Signature Verification Requirement is even more severe: Washington election officials initially (and wrongly) reject thousands of *additional* ballots for non-matching signatures in every election. Those challenged ballots are only counted after *voters* are forced to take additional burdensome steps to correct election officials’ errors. In the 2020 and 2022 general and primary elections, Washington election officials initially rejected almost 148,000 ballots for non-matching signatures. Nearly 79,000 (53.4%) of those voters took additional burdensome steps *to successfully prove that election officials wrongly rejected their ballots*. Decl. of Kevin J. Hamilton (“Hamilton Decl.”) Ex. A. None of this is disputed. The Secretary, King County Defendants, and Amici silently concede the point: The cure data alone shows that election officials’ rejection decisions are mostly *wrong*.

As the declarations submitted by dozens of wrongfully rejected Washington voters demonstrate, the actual error rate from wrongly rejected ballots is dramatically higher than 53% because tens of thousands of Washington voters were unable to carry that burden and

1 instead were disenfranchised by the County’s wrongful rejection of their ballots. Pls.’ Mot.
2
3 §III(B)(2).

4 **B. There Is No Evidence That the Signature Verification Requirement Either**
5 **Catches Fraud or Deters It**

6 On the other side of the equation, there is no dispute that despite disenfranchising
7
8 over 170,000 voters since 2016 and initially challenging many tens of thousands more,
9
10 Defendants *cannot identify a single case of convicted voter fraud* that was caught by the
11
12 Signature Verification Requirement *in the last eleven years, during which Washington*
13
14 *residents cast roughly 56 million mail-in ballots.* Herron Rep. 2–5¹; Hamilton Decl. Ex. R
15
16 (“Secretary Dep.”) 173:6–24; Ex. S; Hyatt Decl. Ex. F (“KCE Dep. I”) 54:3–23; Pls.’ Mot.
17
18 §III(G)(1).
19

20
21 Not one.

22
23 Because they cannot dispute the data, Defendants contend criminal convictions
24
25 aren’t an accurate measure of fraud or potential fraud. Hobbs’s Opp’n 16; KC Opp’n 31.
26
27 Defendants instead rely on declarations from other counties that raise unconfirmed
28
29 *allegations* of voter fraud. None of those voters were ever charged with, much less
30
31 convicted of voting fraud—so whatever election officials may have “thought” or
32
33 “suspected” is entirely irrelevant in this Court where evidentiary proof, not unsubstantiated
34
35 suspicion, is required. And that’s particularly true when the question at hand is the
36
37

38
39
40 _____
41 ¹ King County’s attempt to exclude Dr. Herron’s testimony can be summarily dismissed. His
42 testimony provides key data about the rate of voter fraud in Washington, which is obviously helpful
43 to the fact finder. While Defendants challenge his methodology, they offer no competing expert to
44 rebut his claims. Dr. Herron has testified as an expert witness in voter fraud cases throughout the
45 nation and has never been excluded as an expert. To the contrary, courts frequently relied on his
46 expertise in rejecting baseless voter fraud claims advanced in the wake of the 2020 election and
47 continuing to this day. *E.g., Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814,
835 (D. Mont. 2020).

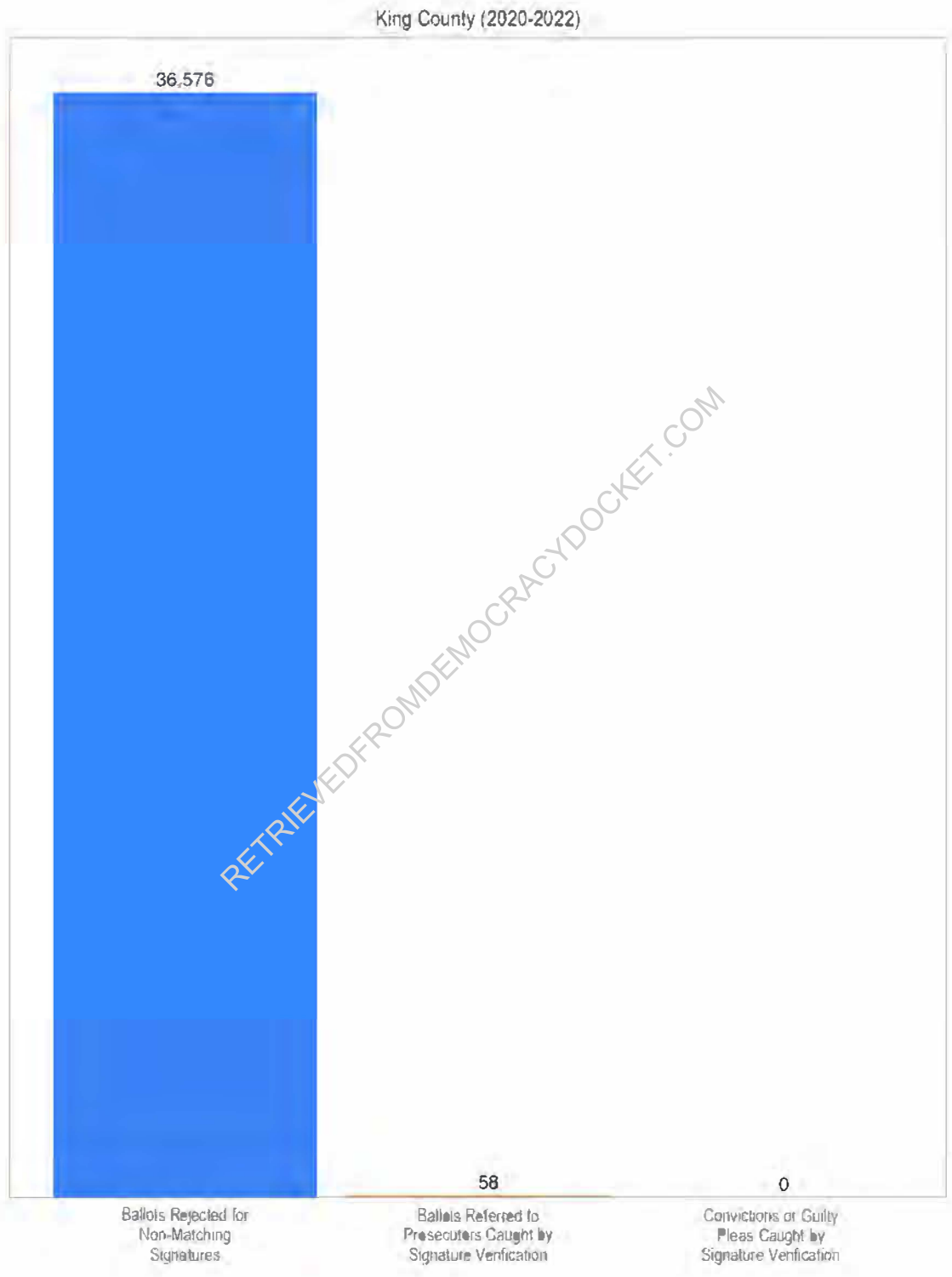
1 constitutional of this entire exercise. Fundamental rights cannot be swept aside, by the
2
3 tens of thousands, based on election officials’ unsubstantiated suspicions.

4
5 But even if the Court were to credit mere *allegations* of voter fraud arising from the
6
7 Signature Verification Requirement, those alleged voter fraud cases constitute only a
8
9 vanishingly small fraction of the tens of thousands of voters stripped of their right to vote by
10
11 the Signature Verification Requirement. Three counties— King, Clark, and Snohomish—
12
13 highlight this dramatic imbalance.

14
15 Between 2020 and 2022, King County voters cast over 5.7 *million* ballots. During
16
17 that period, King County Elections referred only 58 cases of suspected voter fraud that the
18
19 King County Defendants contend were caught solely by the Signature Verification
20
21 Requirement. Hyatt Decl. Ex. P 7–8. In *every single one* of those cases, the referrals “were
22
23 declined and no charges were filed.” *Id.* Yet during this same period, King County
24
25 disenfranchised over 35,000 voters for non-matching signatures. Hamilton Decl. Ex. A. In
26
27 other words, *King County referred fewer than .16% of the ballots that it rejected for non-*
28
29 *matching signatures to prosecutors*, a tacit admission that for all of the others (99.84% of
30
31 rejected ballots) it had no reason to suspect wrongdoing.² Looking at the elections as a
32
33 whole, King County referred a mere .001% of all votes cast during that period to
34
35 prosecutors—a rounding error. *Id.*

36
37
38
39
40
41
42
43
44 _____
45 ² These numbers, and those for the counties that follow, do not include the thousands of voters who
46 initially had their ballots challenged for non-matching signatures and then cured their ballots.
47 Including these numbers would push the ratio of likely fraudulent ballots to rejected ballots
significantly closer to zero and the rate of erroneously rejected ballots to virtually 100%.

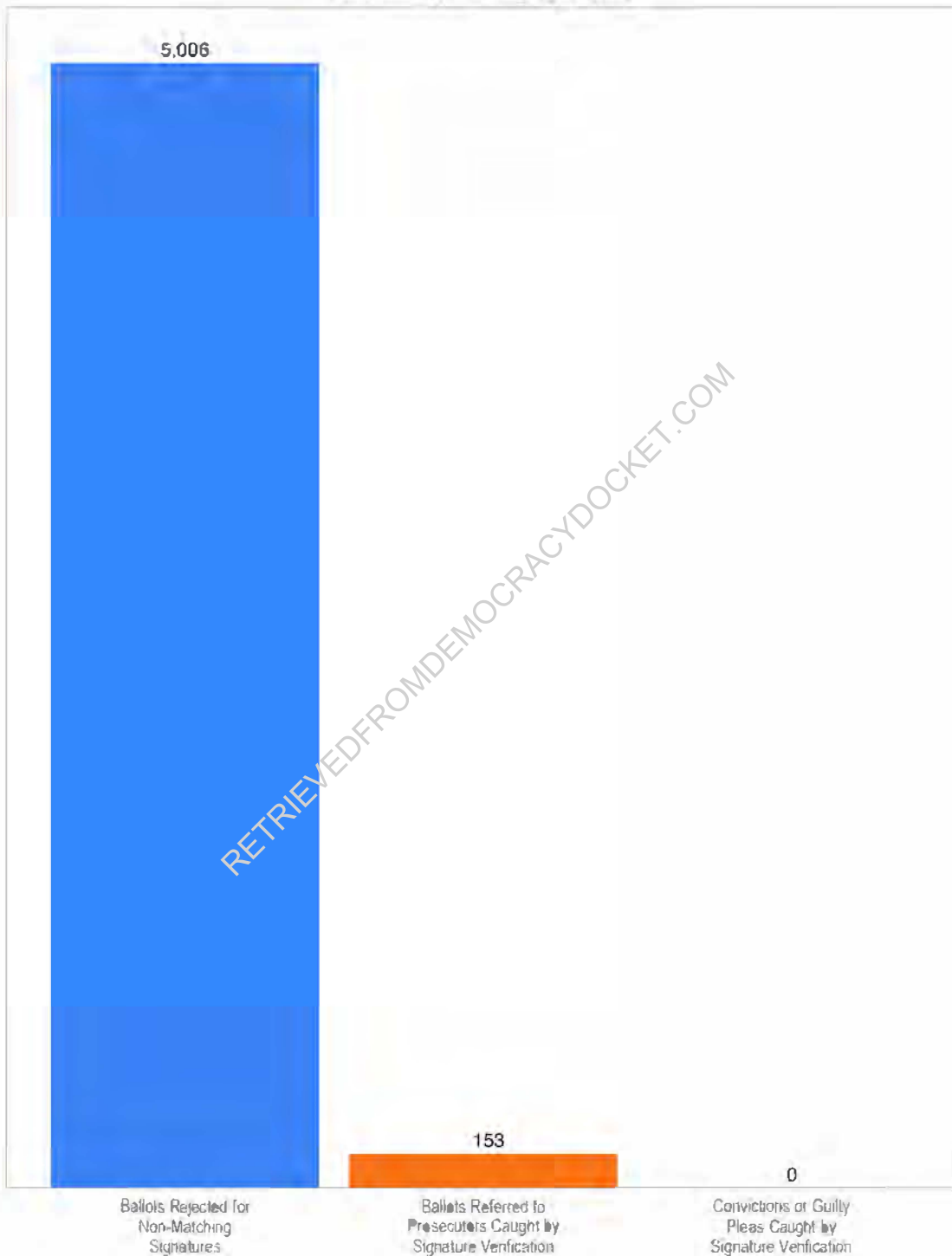
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47



1 In Clark County, which Defendants’ experts repeatedly reference and which
2
3 apparently represents Defendants’ best attempt to muster evidence of voter fraud caught by
4
5 the Signature Verification Requirement, local election officials (not prosecutors) thought
6
7 only 153 ballots cast in the five elections between February 2022 and February 2023 were
8
9 “likely” fraudulent. Hobbs’s Opp’n 8. None resulted in charges, let alone led to any
10
11 convictions or guilty pleas. Those cases make up only *three percent* of over 5,000 ballots
12
13 rejected for non-matching signatures during the same period. Hamilton Decl. Ex. A. Put
14
15 differently, of all the ballots Clark County rejected for non-matching signatures, election
16
17 officials thought it unlikely that 97% were fraudulent. Looking at those five elections as a
18
19 whole, where nearly 500,000 ballots were cast, Clark County thought only .03% of the total
20
21 ballots cast in those five elections were likely fraudulent. *Id.*
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Clark County (Feb. 2022-Feb. 2023)



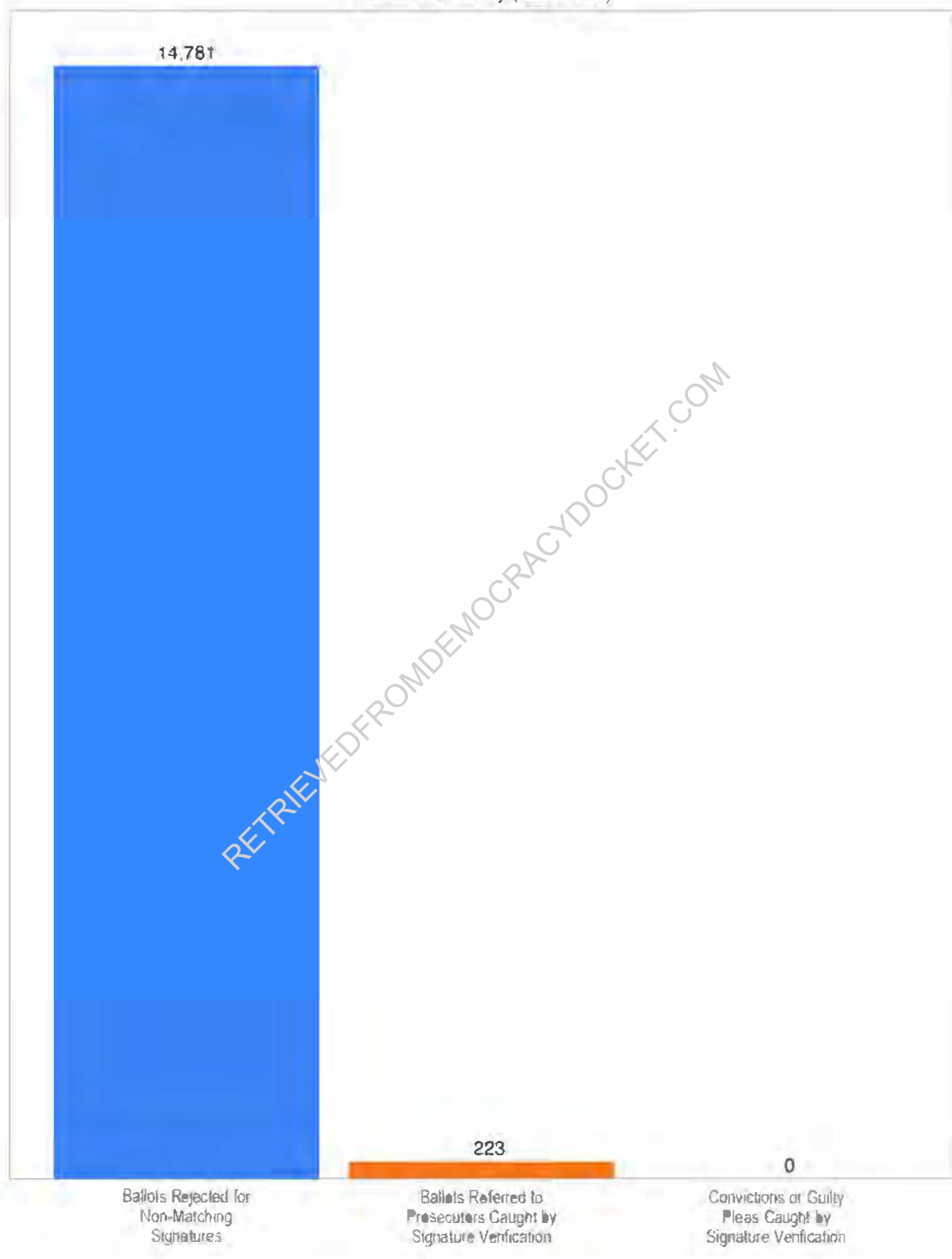
PLAINTIFFS' OMNIBUS RESPONSE TO CROSS
MOTIONS FOR SUMMARY JUDGMENT AND
REPLY ISO MOTION FOR SUMMARY
JUDGMENT- 8

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: +1.206.359.8000
Fax: +1.206.359.9000

1 The Snohomish County Auditor, who also submitted a declaration on behalf of
2
3 Secretary Hobbs, claims that election officials (not prosecutors) thought 223 ballots over
4
5 thirteen elections from 2020 through 2022 were fraudulently cast. Decl. of Garth Fell ¶16.
6
7 In each case, election officials sent letters “invit[ing]” voters to “clarify[] what happened”—
8
9 hardly concrete proof of fraud. *Id.* Ex. 1. Mr. Fell provides none of the responses. And
10
11 none of those voters was ever charged with, much less convicted, of voter fraud or any other
12
13 election-related crime. In any event, these allegations made up only 1.5% of the over 14,000
14
15 ballots rejected for non-matching signatures in those years. In other words, of the ballots
16
17 Snohomish County rejected for non-matching signatures, election officials thought it
18
19 unlikely that 98.5% of those ballots were fraudulent. Hamilton Decl. Ex. A. Out of the over
20
21 2 million ballots cast, only .01% were referred to prosecutors. *Id.*
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Snohomish County (2020-2022)



1 **C. Signature Verification Simply Does Not Work**

2 Defendants nonetheless repeatedly claim that the Signature Verification Requirement
3 (a) identifies fraudulently cast ballots, and (b) deters fraud. But neither contention is
4 supported by the record. The supposed “evidence” of fraud is nothing more than election
5 administrators’ suspicions based solely on their examination of signatures and, in almost
6 every single case, no further investigation. The only actual evidence in the record of proven
7 voter fraud are the three instances from Pierce County where the voters pled guilty. These
8 *three* instances constitute an almost imperceptible incidence of fraud and—perhaps more to
9 the point—*not one* of them was even caught by signature verification. Pls.’ Mot. 23. Not
10 one.
11

12 The Pierce County Auditor identifies only one case referred to prosecutors as
13 potential fraud that was identified by the Signature Verification Requirement. Decl. of Kyle
14 Haugh Exs. B and C. In that case, election officials rejected two ballots believing another
15 member of the household who also submitted a ballot had signed the ballots on behalf of the
16 other two voters. The voters of the two purportedly fraudulently cast ballots were
17 interviewed and denied, twice, that someone else had signed their ballot envelopes and
18 affirmed that the signatures were genuine. Even this was not enough: Their ballots were
19 still rejected for non-matching signatures. *Id.* The voters were neither charged nor
20 convicted.
21

22 And of course, this is all inevitable because signature verification is fundamentally
23 flawed. Even forensic document examiners make mistakes. Plaintiffs asked Mr. Bishop, the
24 retired Washington State Patrol forensic document examiner responsible for training
25 Washington election officials in signature verification, to verify twelve signatures during the
26 course of his deposition. Hamilton Decl. ¶12. Mr. Bishop was presented with a mix of
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 genuine voter signatures and falsified voter signatures and asked whether, applying the skills
2 he trains county election officials to utilize, he would accept or reject the signatures. *Id.*
3
4 Mr. Bishop correctly accepted or rejected only about 42% of the signatures he evaluated. *Id.*
5
6 Indeed, Mr. Bishop “accepted” all three forged signatures that he was asked to verify. *Id.*
7
8 And he wrongly rejected four other genuine signatures. *Id.* In other words, the trained
9 document examiner entrusted with training Washington election officials on signature
10 verification, with no time pressure, *got most of them wrong. Id.*
11
12

13
14
15 Mr. Bishop admitted that if the goal is to verify a voter’s identity, signatures alone
16 cannot eliminate rejection errors. Hamilton Decl. Ex. B (“Bishop Dep.”) 111:7–16. He also
17 admitted that the training he provides includes no mechanism to certify whether someone is
18 actually capable of verifying signatures. *Id.* 70:19–72:16.
19
20

21
22
23 The Secretary’s handwriting expert, Mr. Songer, a certified Forensic Document
24 Examiner, analyzed—at Defendants’ request—a 360-signature sample of ballot signatures,
25 which included 173 signatures that Clark County election officials deemed “likely”
26 fraudulent ballots. Hamilton Decl. Ex. C (“Songer Dep.”) 93:7–12. Mr. Songer concluded
27 that 8% of those 173 ballots were not only not fraudulently cast, but were in fact signed by
28 the voter and should have been accepted and counted. *Id.* 94:21–24.
29
30
31

32
33
34 Despite using the term “fraud” repeatedly in his report, Mr. Songer conceded that he
35 has no basis to say whether ballots were cast “fraudulently” or in an “attempt to perpetrate
36 fraud.” *Id.* 112:22–113:19. He has no idea and certainly no evidence of the state of mind
37 (fraudulent or otherwise) of any of the voters whose ballots were flagged for potential fraud.
38
39
40
41
42
43
44
45
46
47
Id. Most of the examples contained in his report were instances of one spouse allegedly
signing for the other—where both spouses were properly registered to vote and “fully

1 entitled to vote.” *Id.* 121:11–122:20. All of these instances could just as easily have
2
3 resulted from a mistake. *Id.* 117:25–118:6.
4

5 **D. There Is No Dispute That the Signature Verification Requirement**
6 **Disproportionately Disenfranchises Certain Groups**
7

8 There is similarly no dispute that voters of color, young voters, young voters of
9
10 color, first-time voters, non-English speakers, and those who have previously had ballots
11
12 rejected for non-matching signatures have their ballots rejected at dramatically higher rates.
13
14 *See* Secretary Dep. 41:13–42:22, 43:5–16; KCE Dep. I. 91:8–13, 92:1–5; Hyatt Decl. Ex. G
15 (“Audit”) 17–19. That impact is, in the words of King County Elections “disturbing” and
16
17 King County’s witness “outrageous.” KCE Dep. I 112:11; Bishop Dep. 125:19–25. Exactly
18
19 so.
20

21 **Young Voters** are rejected at significantly higher rates than older voters. Pls.’ Mot.
22
23 §III(C)(2). Everyone agrees. Audit 17; Secretary Dep. 43:5–16; KCE Dep. I. 91:8–13;
24
25 Palmer Rep. 8. Even Dr. Aravkin, the Secretary’s statistical expert, found “a ballot cast by a
26
27 20-year-old would have 3.4 times higher odds to be rejected for signature mismatch
28
29 compared to a ballot cast by a 40-year-old, and would have 11.8 times higher odds to be
30
31 rejected for signature mismatch compared to a ballot cast by a 60-year-old.” Decl. of Dr.
32
33 Aleksander Aravkin Ex. 1 (“Aravkin Rep.”) ¶17. And that’s the *Defendants’* expert.
34

35 **Voters of Color** are rejected at far higher rates than White voters. Pls.’ Mot.
36
37 §III(C)(1). Defendants do not dispute the Auditor’s conclusion that there are disparities in
38
39 rejection rates between racial and ethnic groups. Secretary Dep. 43:5–16; KCE Dep. I 91:8–
40
41 13, 92:1–5. The Audit determined that voters of color had their ballots rejected for non-
42
43 matching signatures between *two and four times* more than White voters. Audit 19. Dr.
44
45 Palmer reached similar conclusions across the state and across multiple elections. Palmer
46
47

1 Rep. 6. Dr. Aravkin does not challenge Dr. Palmer’s findings that voters of color are
2 rejected at higher rates. Hamilton Decl. Ex. E (“Aravkin Dep.”) 75:22–76:17.
3

4 **Military and Overseas Voters** are rejected at higher rates than voters who are
5 located within Washington. Pls.’ Mot. §III(C)(4). King County has acknowledged this
6 disparity for years. Hyatt Decl. Ex. J. Dr. Aravkin did not calculate the rates at which
7 UOCAVA and non-UOCAVA voters had their ballots rejected and so has no basis to
8 disagree. *See* Aravkin Dep. 80:16–24.
9

10 **First-Time Voters** are rejected at higher rates. Pls.’ Mot. §III(C)(5). The Audit
11 determined that the rejection rate for first-time voters in the 2020 general election was
12 “more than five times greater than for voters with previous voting experience.” Audit 18
13 (cleaned up). The Secretary and Dr. Aravkin agree that first-time voters have their ballots
14 rejected at a higher rate. Secretary Dep. 28:13–19; Aravkin Rep. ¶¶80–81.
15

16 **Other Voters** also face higher rejection rates or are at greater risk for rejection
17 including:
18

- 19 • **Non-native English speakers**, Pls.’ Mot. §III(C)(6);
- 20 • **Previously rejected voters**, Pls.’ Mot. §III(C)(2);
- 21 • **Voters in less affluent and more diverse areas in at least King County**, Pls.’
22 Mot. §III(C)(8); and
- 23 • **Voters with certain disabilities, diseases, or other physical limitations**, Pls.’
24 Mot. §III(C)(9).
25

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41 **E. There Is No Dispute That Rates of Rejection Among Counties Vary**
42 **Dramatically**

43 The Signature Verification Requirement also results in ballots being rejected at
44 dramatically different rates across Washington counties. Pls.’ Mot. §III(D). The Audit
45
46
47

1 concluded that “the county where a ballot was cast was the most significant variable related
2 to rejection.” Audit 53. “[B]allots submitted to some counties were four to seven times
3 more likely to be rejected than ballots submitted to other counties.” Audit 3. Dr. Palmer
4 confirmed that the wide range of rejection rates among the counties in the 2020 general
5 election was not an outlier.³ See Palmer Rep. 14–15; Pls.’ Mot. 16–19.
6
7
8
9

10
11 **F. Dr. Aravkin Makes Fundamental Data Errors That Undermine His**
12 **Conclusions**

13
14 Dr. Aravkin does not dispute Dr. Palmer’s conclusions about disparate effects. See
15 Section I(D); Hamilton Decl. Ex. D (“Third Supp. Palmer Rep.”). Instead, Dr. Aravkin
16 opines that Dr. Palmer did not go deep enough and concludes that a voter’s age and a voter’s
17 experience more accurately explain who has their ballots rejected for non-matching
18 signatures than a voter’s race. *Id.* 61:22–62:5. Unfortunately, Dr. Aravkin made a series of
19 fundamental errors in his analysis, which helps explain the differences between his findings
20 and those of the Audit and Dr. Palmer.
21

22
23 First, and most fundamentally, Dr. Aravkin misreads the data on voter experience,
24 which leads him to dramatically over-estimate the number of first-time voters in his
25 analysis. The voting history that Dr. Aravkin relies on to answer that question only begins
26 *in 2019*. Third Supp. Palmer Rep. ¶4. In other words, when Dr. Aravkin set up his 2020
27 data to analyze voter history, the only data he drew from was whether a voter had voted in
28 2019. *Id.* As an example, Plaintiff Escalante Martinez attempted to vote in the 2020 general
29 election, 2022 primary, and 2022 general election. Her ballot was rejected in all three
30 elections. Ms. Escalante Martinez appears in Dr. Aravkin’s data three times as a first-time
31 voter. But Ms. Escalante Martinez voted in 2018. *Id.*
32
33
34
35
36
37
38
39
40
41
42
43
44

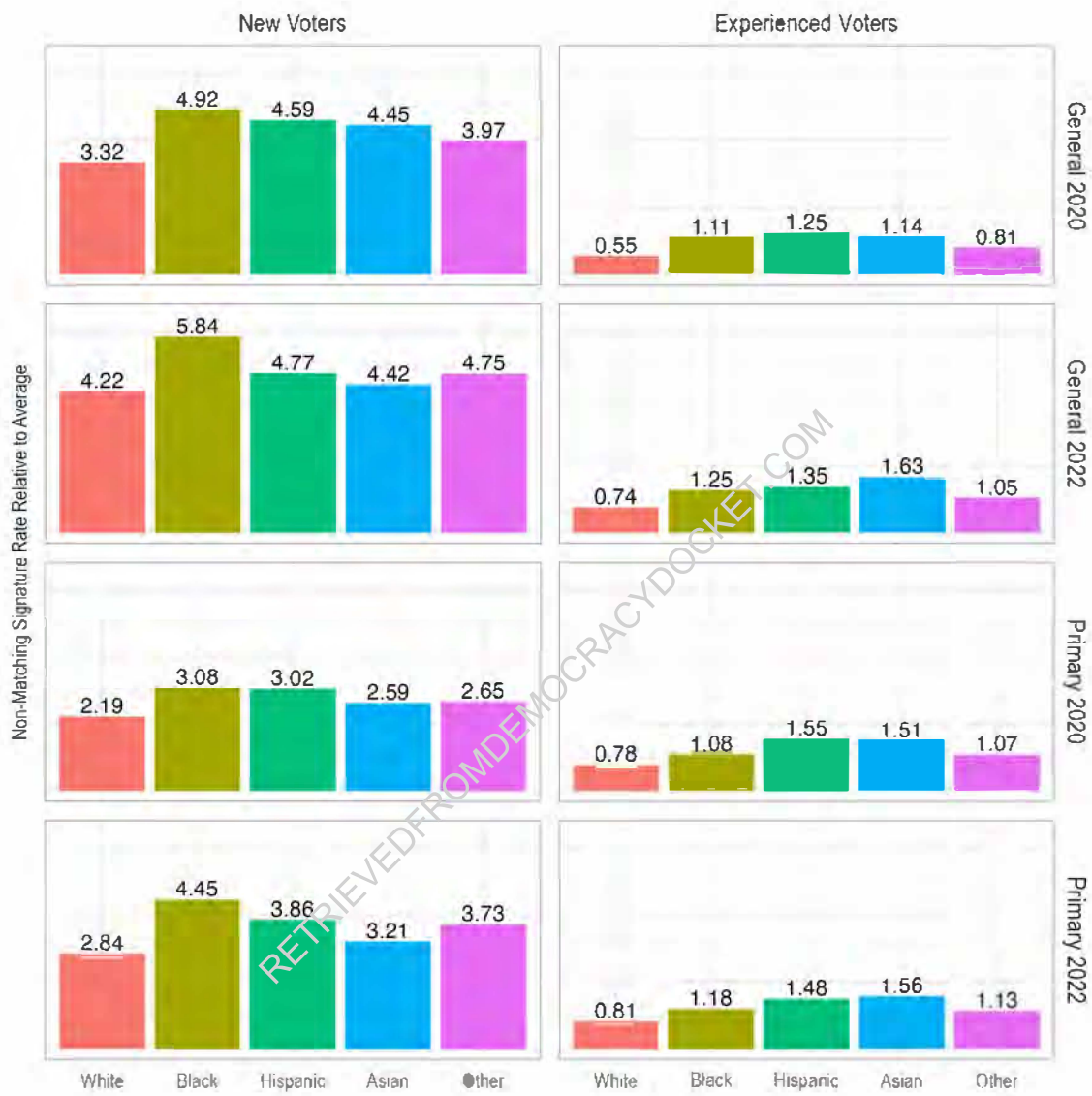
45
46 ³ Dr. Aravkin did not calculate the rates of rejection in different counties and, because he did not, has
47 no basis to disagree with Dr. Palmer’s findings here, either. Aravkin Dep. 84:4–7.

1 In total, across the seven counties and seven elections that Dr. Aravkin analyzed,
2
3 *over half of the voters that he identifies as first-time voters in 2020 actually voted in a prior*
4
5 *election. Id. ¶5.* For example, Dr. Aravkin’s data includes around 1.2 million voters for the
6
7 2020 general election in King County, around 280,000 of which he identifies as first-time
8
9 voters. But over 150,000 of those supposed first-time voters (around 53%) *had voted prior*
10
11 *to 2019. Id.* With such a dramatic overestimate of first-time voters, Dr. Aravkin’s findings
12
13 are fundamentally flawed.

14
15 Dr. Palmer added the correct voter history data as a variable to his models and
16
17 concluded that there are *still significant and disturbing racial disparities* between voters
18
19 with experience and those who are voting for the first time. For example, in the 2020
20
21 general election, first-time Latino voters were 1.4 times as likely to be rejected than first-
22
23 time White voters. Experienced Latino voters fared worse—2.3 times as likely to be
24
25 rejected than first-time White voters. *Id. ¶7.*

26
27 The figure below from Dr. Palmer’s Third Supplemental Report shows the
28
29 differences in rejection rates for non-matching signatures by voter experience and estimated
30
31 race. Rates are relative to statewide average rejection rate in each election. *Id. 3.*
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47



Second, Dr. Aravkin analyzed only the seven most populous of Washington’s 39 counties, which by itself is curious. Obviously, he cannot opine about statewide trends or ballot rejection in the other 32 counties because he didn’t examine those data. And it’s more than a little odd that he excluded the eighth largest county, Yakima, which has the largest Latino population in the state. *Id.* ¶12. In fact, Dr. Aravkin didn’t analyze even a single

1 county from all of Yakima Valley, rendering his conclusions about Latino voters suspect at
2
3 best.

4
5 Third, Dr. Aravkin weighted each county election equally even though each county's
6
7 voting population varies dramatically between counties and across elections. For example,
8
9 Dr. Aravkin's methodology gives equal weight to the 2020 general election in King County
10
11 where there were 1.2 million voters, of whom 22% were voters of color, and the 2021
12
13 primary election in Kitsap County that had only 46,000 voters, of whom only 5% were
14
15 people of color. *Id.* ¶11. By putting these counties and elections on equal footing in his
16
17 analysis, it is hardly surprising that he reached incorrect conclusions about the existence of
18
19 racial disparities.

20
21 But regardless of Dr. Aravkin's analytical errors, the larger point remains
22
23 undisputed: The Signature Verification Requirement routinely disenfranchises tens of
24
25 thousands of Washington voters with utterly no countervailing fraud-prevention benefits. It
26
27 does so with a disproportionate impact on either first-time voters, among other groups (by
28
29 Dr. Aravkin's initial and mistaken calculation), or minority voters regardless of voter
30
31 experience (as Dr. Aravkin's own analysis shows once his errors are corrected).

32
33 **G. States That Do Not Conduct Signature Verification Have Elections That Are No**
34 **Less Secure and No Less Venerated**

35
36 Defendants' core argument is that signature verification is necessary in Washington,
37
38 and they speculate about a parade of horrors that will befall the state without it. But
39
40 numerous states do not use signature verification on mail ballots, and Defendants' efforts to
41
42 distinguish Washington's system from those states is unpersuasive. At least seven states—
43
44 Connecticut, Delaware, Maryland, New Mexico, Pennsylvania, Vermont, and Wyoming—
45
46 and the Virgin Islands do not conduct this faux science signature verification on absentee
47

1 ballots. And there is no evidence that voter fraud in those states is any more prevalent, fraud
2 is deterred less effectively, or that those jurisdictions are any more threatened by hostile
3 foreign actors. Hamilton Decl., Ex. F (“Stein Dep.”) 84:11–94:5.
4

5
6 Vermont, for example, transitioned to a universal vote-by-mail system for the 2020
7 general election and did not implement signature verification. Not one occurrence from
8 Defendants’ parade of horrors occurred in that presidential election. Just the opposite.
9 Vermont recorded the highest turnout *ever recorded in the state*. Elections Div., Vt. Sec’y
10 of State, *Report Requested Under Section 21a of Act 60*, at 2 (2023),
11 [https://legislature.vermont.gov/assets/Legislative-Reports/Gov-Ops-Report-on-Mailing-](https://legislature.vermont.gov/assets/Legislative-Reports/Gov-Ops-Report-on-Mailing-Ballots.Jan2023.Final.2.6-.pdf)
12 [Ballots.Jan2023.Final.2.6-.pdf](https://legislature.vermont.gov/assets/Legislative-Reports/Gov-Ops-Report-on-Mailing-Ballots.Jan2023.Final.2.6-.pdf) (“Vt. SoS Rep.”).
13
14

15
16 According to the Vermont Secretary of State, of the 370,968 votes cast in that
17 election, election officials referred only *seven* cases of potential voter fraud to the Vermont
18 Attorney General. Only one of them resulted in a charge. Elections Div., Vt. Sec’y of State,
19 *Facts Matter—The Truth About Vermont Elections*,
20 <https://sos.vermont.gov/elections/election-info-resources/myth-v-fact/#q13> (last visited Aug.
21 25, 2023). And—critically—*not one* of those cases, or any cases of suspected voter fraud in
22 Vermont *in the last four election cycles*, involved someone signing a ballot on behalf of
23 another voter. Vt. SoS Rep. 12.
24
25

26
27 Earlier this year, the Vermont Secretary of State studied whether to recommend
28 signature verification and the Secretary vehemently rejected it, saying:
29

30
31 [R]esearch shows signature matching to be an unreliable,
32 subjective procedure that is much more likely to disenfranchise
33 qualified, legitimate voters than it is to prevent fraud, which is
34 exceedingly rare. It would require a massive amount of
35 ongoing training and investment and would represent a
36 significant additional burden on our town and city clerks and
37 other local election officials. We are confident in the current
38
39

1 systems to verify voter identities upon registration and confirm
2 eligibility, and we believe the penalties for voter impersonation
3 and perjury are sufficient to discourage any fraudulent
4 submission of voted ballots.

5
6 *Id.* 1.

7
8 **H. Washington Is a Universal Vote-by-Mail State**

9 Washington has been a universal vote-by-mail state since 2011. Some counties have
10 voted entirely by mail since 2005. Elections Div., Wash. Sec’y of State, *Washington State*
11 *Vote-By-Mail (VBM) Fact Sheet* 1 (2021), [https://www.sos.wa.gov/sites/default/files/2022-](https://www.sos.wa.gov/sites/default/files/2022-05/wa_vbm.pdf?uid=64e3cec1bd02b)
12 [05/wa_vbm.pdf?uid=64e3cec1bd02b](https://www.sos.wa.gov/sites/default/files/2022-05/wa_vbm.pdf?uid=64e3cec1bd02b). “In Washington, all eligible voters are sent a
13 ballot. . . . Ballots have pre-paid postage and are returned through the mail or at ballot drop
14 boxes.” *Id.* There is now an entire generation of Washington voters who have never voted
15 any other way. Absentee voting in Washington stretches back even further, to over a
16 century ago. Hobbs’s Opp’n 20; KC Opp’n 43. Voting by mail is more than simply
17 ingrained in Washington’s electoral process; it *is* Washington’s electoral process.
18
19

20 While Washington law requires that each county set up at least one “vote center,”
21 these vote centers focus on *accessibility* for those in need of extra assistance. In King
22 County for example, “[e]ach center has voting machines that offer audio or large print
23 ballots, and other assistive devices.” Elections, King Cnty., *Accessible Voting Options*,
24 [https://kingcounty.gov/en/legacy/depts/elections/how-to-vote/ballots/accessible-voting-](https://kingcounty.gov/en/legacy/depts/elections/how-to-vote/ballots/accessible-voting-options.aspx)
25 [options.aspx](https://kingcounty.gov/en/legacy/depts/elections/how-to-vote/ballots/accessible-voting-options.aspx) (last visited Aug. 25, 2023); *see also* RCW 29A.40.160. Voters can also visit a
26 vote center to register to vote and vote on the same day, update their address, get a
27 replacement ballot, or get other in-person help. Elections, King Cnty., *King County*
28 *Elections to Open Six Vote Center Locations Beginning on Saturday to Serve Voters Across*
29 *the County* (Oct. 28, 2020), <https://kingcounty.gov/en/legacy/depts/elections/about->
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 us/newsroom/news-releases/2020/October/28-vote-centers-open-sat.aspx (“*Six Vote Center*
2 *Locations*”). But, as Defendant Julie Wise made clear ahead of the 2020 general election,
3
4 vote centers are *not* traditional polling places designed for Washington voters who would
5
6 prefer to vote in person. Defendant Wise told King County voters:
7

8 I also want to caution those voters who are looking for an in-
9 person voting ‘experience’—you will not find that at a Vote
10 Center. Those who come to get a ballot at any of our locations
11 will be issued the same paper ballot that we have mailed to
12 their home and will fill that out and return it to a drop box on-
13 site. There are no electronic voting machines, nor are there
14 the voting booths that many of us remember from the days
15 before vote-by-mail. Do not wait to cast your ballot because
16 you’re waiting to come in-person.
17
18

19 *Id.* There were only *six* accessible voting centers in all of King County for the 2020 general
20 election to serve a population of over 2.2 million people. In any event, those who do not or
21 cannot provide acceptable identification at a vote center will have their ballot subject to the
22 Signature Verification Requirement. *See* RCW 29A.40.160(9)(a). Even those who vote in
23 person cannot escape this unconstitutional practice.
24
25
26
27
28

29 **IV. Statement of Issues**

30 Whether the Signature Verification Requirement facially violates Article I, Sections
31 3, 12, and 19 of the Washington Constitution.
32
33

34 Whether Washington’s Signature Verification Requirement is severable from
35 Washington’s universal mail voting system.
36
37

38 Whether Plaintiffs were required to sue every county auditor, county canvassing
39 board, and anyone else who might implement the Signature Verification Requirement.
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

V. Evidence Relied Upon

Plaintiffs rely on the declarations of Plaintiffs, Kevin J. Hamilton, Heath Hyatt, the additional 61 voter-witnesses, and the attached exhibits including deposition transcripts, expert reports, discovery responses, and other documents.

VI. Authority

A. The Signature Verification Requirement Unconstitutionally Violates the Right to Vote Guaranteed in Article I, Section 19

In Washington, “[a]ll Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Wash. Const. art. I, §19. The Signature Verification Requirement plainly infringes that fundamental right to vote, mandating the application of strict scrutiny. The undisputed record before the Court demonstrates that the Signature Verification Requirement cannot survive strict scrutiny because it neither advances a compelling state interest nor is narrowly tailored to meet any state interests. Pls.’ Mot. §VI(C). Nevertheless, Defendants argue that the Signature Verification Requirement does not infringe the right to vote and is a reasonable regulation of elections. KC Opp’n §V(C); Hobbs’s Opp’n §V(A). Defendants are wrong.

1. Strict Scrutiny Applies to the Signature Verification Requirement

Washington law is clear: “[A]ny statute which infringes upon or burdens the right to vote is subject to strict scrutiny” and must therefore be “narrowly tailored to further a compelling state interest.” *City of Seattle v. State*, 103 Wn.2d 663, 670 (1985); *Madison v. State*, 161 Wn.2d 85, 99 (2007); Pls.’ Mot. §VI(C). Indeed, this principle was emphatically restated by the Washington Supreme Court earlier this summer. *Portugal v. Franklin Cnty.*, 530 P.3d 994, 999 (Wash. 2023) (any law “abridging voting rights” triggers strict scrutiny).

1 Ignoring this clear precedent, Defendants argue that *Anderson/Burdick* or rational basis, not
2 strict scrutiny, should apply because the Signature Verification Requirement is just a manner
3 of voting. Defendants are wrong as a matter of law.
4
5

6
7 **a. The Signature Verification Requirement Burdens, Infringes, and**
8 **Abrides the Fundamental Right to Vote**
9

10 The right to vote in Washington, like the rights to marry, to have children, to marital
11 privacy, and to bodily integrity, is a fundamental right. *See Gold Bar Citizens*, 99 Wn.2d at
12 730 (“The right to vote freely for the candidate of one’s choice is of the essence of a
13 democratic society, and any restrictions on that right strike at the heart of representative
14 government.”); *Am. Legion Post #149 v. Wash. State Dept. of Health*, 164 Wn.2d 570, 600
15 (2008). There can be no reasonable dispute about that.
16
17

18 The Signature Verification Requirement quite obviously infringes upon, burdens,
19 and abridges the fundamental right to vote. *City of Seattle*, 103 Wn.2d at 670. It has
20 disenfranchised 170,000 voters since 2016 and both threatened and burdened that
21 fundamental right for tens of thousands more, who had to take additional steps to fix the
22 mistakes made by election officials. These voters did everything required of them under the
23 Washington Constitution: They were eligible and registered to vote, they filled out their
24 ballots, they sealed the envelopes, they signed the declaration on the back, and they timely
25 returned their ballot to election officials with the understanding that their votes would be
26 counted. Because of the Signature Verification Requirement, they weren’t. The Court
27 would be hard pressed to find a case that more clearly and definitively burdens, infringes,
28 and abridges the fundamental right to vote.
29
30
31
32
33
34
35
36
37
38
39
40
41
42

43 Defendants seek to evade strict scrutiny by recasting the Signature Verification
44 Requirement as merely regulating the “manner of voting,” similar to the requirement that a
45
46
47

1 voter must vote in their assigned precinct, that ballots be mailed on a certain day, or even
2 that only a specific ink color is acceptable to cast a ballot. But that ignores the inevitable,
3 and, more importantly, undisputed fact that the Signature Verification Requirement
4 consistently strips thousands of voters of their right to vote and forces thousands more voters
5 to take burdensome additional steps just to have their votes counted.
6
7
8
9

10
11 Defendants repeatedly suggest that subjecting all voting restrictions that infringe or
12 burden the right to vote to strict scrutiny would “cripple the State’s ability to administer
13 elections.” Hobbs’s Opp’n 34. Hardly. Strict scrutiny differentiates between benign
14 election regulations and those that infringe the right to vote. Before courts apply strict
15 scrutiny, the court must determine whether the right to vote is impaired, burdened, or
16 abridged. *See City of Seattle*, 103 Wn.2d at 670. Once this Court makes that determination,
17 it has no discretion: Strict scrutiny applies under Washington law. *Id.*
18
19
20
21
22
23

24
25 Defendants’ cited cases offer them precious little help because they involve neither
26 infringements on Washingtonians’ right to vote nor mass disenfranchisement. In *State ex*
27 *rel. Shepard v. Superior Court of King County*, the Court addressed a challenge to a law
28 preventing candidates from appearing on a ballot more than once—the law did not prevent
29 any eligible voters from voting. 60 Wash. 370, 371 (1910).
30
31
32
33

34
35 *Eugster v. State*, 171 Wn.2d 839 (2011), considered whether the different sizes of the
36 Court of Appeals districts violated Article I, Section 19. *Id.* 841. Here again, no one was
37 disenfranchised. *In re Coday*, 156 Wn.2d 485 (2006), is even further removed from this
38 case—a number of individual voters challenged the results of an election on a variety of
39 grounds, including by arguing that the recount procedures were constitutionally deficient.
40
41
42
43
44 *Id.* 498. Obviously, in that case the votes were tallied and the election was over.
45
46
47

1 *Carroll v. Superior Court of Washington for King County*, 113 Wash. 54 (1920),
2
3 involved the proof required for a foreign-born citizen to register to vote, which the court
4
5 noted was a “condition precedent to his right to register, and not . . . a question of the right
6
7 to vote.” *Id.* 57. And while Defendants accurately quote *Pemberton v. Superior Court of*
8
9 *Whatcom County*, 196 Wash. 468 (1938), the Court in that case instructs, in words aptly
10
11 suited for this litigation: “[C]ourts should not be too ready to reject ballots or votes on
12
13 account of the violation of technical requirements, especially in the absence of a charge of
14
15 fraud, lest, in so doing, they disfranchise persons who voted in entire good faith.” *Id.* 480.

16
17 **b. The State Cannot Expand the Right to Vote, Unconstitutionally**
18 **Burden It, and Then Expect to Evade Strict Scrutiny**

19
20 Defendants and Amici argue that this Court should treat voting by mail as a privilege
21
22 that can be limited and impaired by the Legislature at will. Not so. As a universal vote-by-
23
24 mail state, Washington voters exercise their fundamental right to vote by mail. Washington
25
26 does not offer traditional in-person polling places. And because of the Signature
27
28 Verification Requirement, voters are disenfranchised through no fault of their own, with no
29
30 way to know in advance if their ballots will be the ones arbitrarily rejected.

31
32 Even if Washington’s universal vote-by-mail system is not considered intertwined
33
34 with the fundamental right to vote, the Legislature cannot choose to enact a universal vote-
35
36 by-mail system and tack on unconstitutional restrictions. *See Saucedo v. Gardner*, 335 F.
37
38 Supp. 3d 202, 217 (D.N.H. 2018) (“Having induced voters to vote by absentee ballot, the
39
40 State must provide adequate process to ensure that voters’ ballots are fairly considered and,
41
42 if eligible, counted.”); *Doe v. Walker*, 746 F. Supp. 2d 667, 681 (D. Md. 2010) (“[W]here a
43
44 state has authorized the use of absentee ballots, any restriction it imposes on the use of those
45
46 absentee ballots which has the effect of severely burdening a group of voters must be
47

1 narrowly tailored to further a compelling state interest.”); *Martin v. Kemp*, 341 F. Supp. 3d
2 1326, 1338 (N.D. Ga. 2018) (“Having created an absentee voter regime through which
3 qualified voters can exercise their fundamental right to vote, the State must now provide
4 absentee voters with constitutionally adequate due process protection.”). *See also Bush v.*
5
6
7
8
9 *Gore*, 531 U.S. 98, 104–05 (2000) (“Having once granted the right to vote on equal terms,
10 the State may not, by later arbitrary and disparate treatment, value one person’s vote over
11 that of another.”); *Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012) (“The right
12 to vote is protected in more than the initial allocation of the franchise. Equal protection
13 applies as well to the manner of its exercise.”) (cleaned up); *Common Cause/Georgia v.*
14
15
16
17
18
19 *Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009) (“[A] citizen has a constitutionally protected
20 right to participate in elections on an equal basis with other citizens in the jurisdiction.”).
21

22
23 Defendants’ and Amici’s efforts to undermine the importance of voting by mail in
24 Washington stumble at the outset. The fact that accessible vote centers exist to help certain
25 voters with physical limitations or other needs such as same-day registration hardly mean
26 that Washingtonians’ fundamental right to vote extends only to voting at such centers. The
27 suggestion is absurd and incompatible Defendant Wise’s own words instructing voters in no
28 uncertain terms that those centers are *not* meant to be traditional in-person voting centers.
29
30
31
32
33
34
35 *See Six Vote Center Locations, supra*.

36
37 **c. Defendants Ignore Other States That Apply Strict Scrutiny**

38
39 Defendants argue that applying strict scrutiny would depart from the practices of
40 federal courts and other states. The argument both is misleading and irrelevant.
41

42
43 First, and most importantly, the Washington Constitution is more protective of the
44 right to vote than the federal constitution. *Madison*, 161 Wn.2d at 97; *Foster v. Sunnyside*
45
46
47 *Valley Irr. Dist.*, 102 Wn.2d 395, 404 (1984). It is more than a little misleading to ask the

1 Court to use the standard that federal courts apply to evaluate the constitutionality of voting
2 restrictions under the *federal* constitution.
3

4
5 Second, numerous states, including Montana, Missouri, Pennsylvania, and Illinois,
6 have substantively similar free and equal elections clauses and apply strict scrutiny to laws
7 that infringe the right to vote. *See Montana Democratic Party v. Jacobsen*, 2022 WL
8 1126671, at *22 (Mont. Dist. Apr. 06, 2022) (granting a preliminary injunction after
9 analyzing statutes using strict scrutiny), *aff'd*, 410 Mont. 114; *League of Women Voters of*
10 *Ark. v. Thurston*, 60CV-21-3138, at *15 (Ark. Cir. Ct. Mar. 24, 2022) (ordering a permanent
11 injunction by applying strict scrutiny to signature matching requirement restrictions and
12 other voting statutes); *Applewhite v. Commonwealth*, 2014 WL 184988, at *20 (Pa.
13 Commw. Ct. Jan. 17, 2014) (applying strict scrutiny to voter ID restrictions); *Weinschenk v.*
14 *State*, 203 S.W.3d 201, 215 (Mo. 2006) (“In light of the substantial burden that the Photo–
15 ID Requirement places upon the right to vote, the statute is subject to strict scrutiny.”); *Orr*
16 *v. Edgar*, 670 N.E.2d 1243, 1253 (Ill. 1996) (applying strict scrutiny to a two-tiered
17 registration system).
18
19

20
21 Kansas and Massachusetts courts, even without a similar free and equal elections
22 clause, apply strict scrutiny to laws that infringe, burden, or abridge the right to vote. *See*
23 *League of Women Voters of Kansas v. Schwab*, 525 P.3d 803, 831 (Kan. Ct. App. 2023),
24 *review granted* (applying strict scrutiny to a similar signature verification requirement
25 because there was “no question that the right to vote is a fundamental right protected by the
26 Kansas Constitution”); *Brady v. State Ballot L. Comm’n*, 149 N.E.3d 1260, 1267 (Mass.
27 2020) (applying strict scrutiny to signature gathering requirement).
28
29

30
31 Defendants’ cases from other states are readily distinguishable. In *Kohlhass v. State*,
32 518 P.3d 1095 (Alaska 2022), the Alaska Supreme Court rejected strict scrutiny in a
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 challenge to ranked choice voting, which, of course, involves the method for counting
2 ballots but does not disenfranchise voters. *Democratic Senatorial Campaign Committee v.*
3 *Pate*, 950 N.W.2d 1 (Iowa 2020) involved three rogue counties that failed to follow an
4 election directive. Finally, the Maine constitution does not have a similar free and equal
5 exercise clause. *See All. for Retired Ams. v. Sec’y of State*, 240 A.3d 45, 59 (Me. 2020).
6
7
8
9

10 Despite Defendants’ efforts to avoid it, strict scrutiny plainly applies to the
11 constitutional analysis of the Signature Verification Requirement.
12
13

14
15 **2. The Signature Verification Requirement Cannot Withstand Strict**
16 **Scrutiny**

17 The Signature Verification Requirement cannot survive strict scrutiny because
18 Defendants provide no evidence that it actually advances state interests, or that there are no
19 less burdensome ways to achieve those interests. Instead, Defendants ask the Court to take
20 their word that the requirement is necessary to advance legitimate goals in election
21 administration. That is flatly insufficient.
22
23
24
25
26

27 Defendants claim that signature verification advances four state interests: (1)
28 Ensuring the integrity of the election; (2) upholding public confidence in elections; (3)
29 protecting the voting rights of individual voters; and (4) promoting efficient administration
30 of elections. Hobbs’s Opp’n 23–30; KC Opp’n 41. These are all perfectly legitimate state
31 interests. But there is little beyond a patchwork of self-serving anecdotal evidence to
32 suggest the requirement actually advances these interests, much less that it is narrowly
33 tailored to serve those interests.
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 evidence of any of that happening in Washington. Secretary Dep. 59:17-24 (“I would say
2 we—we don’t have any data that shows—or studies that we’ve conducted that show a
3 comparative rate of what life without signature verification would be like.”). Washington
4 has many overlapping protections against voter fraud, *see* Plfs. Mot. 24-26, and those
5 protections are actually catching voter fraud. There isn’t any evidence of that happening in
6 the states that do not signature match, either. And in any event, voters’ signatures on ballot
7 envelopes are sworn statements under penalty of perjury: The state has an entire army of
8 law enforcement officers to investigate and prosecute those who would falsely sign that
9 declaration.
10
11
12
13
14
15
16
17
18

19 Indeed, despite their repeated incantations that Signature Verification Requirement is
20 indispensable, Defendants acknowledge that they have conducted no reviews, no analyses,
21 and no studies to determine whether it actually improves election security or prevents voter
22 fraud. Secretary Dep. 228:15-229:9 (“[t]here has been none.”), 254:14-20 (“But neither the
23 Secretary of State nor the State Auditor has weighed in or has any data or evidence on
24 whether any of those ballots that were rejected were actually submitted and signed by
25 someone other than the voter as opposed to just being signed in a different way by the actual
26 voter, correct? Correct, or the reverse of that.”); KCE Dep. I 34:3–15 (“We have not
27 conducted any studies.”).
28
29
30
31
32
33
34
35
36

37 Moreover, Defendants have no idea whether the hundreds of thousands of ballots
38 rejected for non-matching signatures “were actually submitted and signed by someone other
39 than the voter as opposed to just being signed in a different way by the actual voter.”
40 Secretary Dep. 254:14–20; 156:5–24; 67:22–68:2 (“So the Secretary of State acknowledges
41 that some of the ballots that are rejected were, in fact, signed by the voter him or herself and
42 not by another person. A. Yes.”).
43
44
45
46
47

1 Defendants' contentions that eliminating signature verification would leave a gaping
2 vulnerability for fraud in replacement ballots, inviting hostile state or non-state actors to
3 interfere in Washington elections, are merely evidence-free scare tactics. Hobbs's Opp'n 8.
4 They are severely undermined by the experience of the other states that do not conduct
5 signature verification. Defendants identify no such problems in those seven jurisdictions.
6
7 And the Secretary's expert on absentee voting admitted that he is not aware of any
8 differences in the rates of voter fraud in those states compared to Washington or the country
9 as a whole. Stein Dep. 84:11-94:5. Moreover, signature verification does not work as an
10 identity-verification tool. Defendants' own expert, Mr. Bishop, demonstrated a 58% failure
11 rate at evaluating whether signatures presented to him were genuine and a full 100% failure
12 rate at identifying actual fraudulent signatures. Hamilton Decl. ¶12.
13
14

15 The Signature Verification Requirement simply does not safeguard Washington
16 elections or the rights of Washington residents to cast their ballots.
17

18
19
20
21
22
23
24
25
26
27 **b. There Is No Evidence That the Signature Verification**
28 **Requirement Upholds Public Confidence in Washington Elections**
29

30 Defendants also contend that Washington's Signature Verification Requirement is
31 necessary to uphold public confidence in Washington elections. Hobbs's Opp'n 24. But the
32 idea that disenfranchising voters by the tens of thousands (mostly younger and minority
33 voters) in every election somehow generates "public confidence" in Washington elections is
34 both implausible and unsupported by any record evidence.
35

36 First, it is implausible. For the tens of thousands of voters facing challenges to their
37 ballots based on a faux scientific handwriting analysis that is remarkably inaccurate, the
38 exercise is neither academic nor confidence inspiring. §III(A). The heartbreaking impact is
39 vividly demonstrated on the record before the Court by the dozens of voter declarations
40
41
42
43
44
45
46
47

1 before the Court, some from voters who faced wrongful disenfranchisement in multiple
2 elections. *E.g.*, Pls.’ Mot. 38; 5–9. For those voters, this exercise of raw unbridled state
3 power to strip them of their most fundamental civil rights can be called a lot of things.
4
5 “Confidence building” is not one of them. The Signature Verification Requirement erodes,
6
7 rather than enhances, voter confidence in elections. Over twenty declarants who have been
8
9 disenfranchised by the Signature Verification Requirement expressed concern “that the
10
11 signature verification system may prevent myself and many of my fellow citizens from
12
13 being able to exercise their right to vote.” *E.g.*, Muzik Decl. ¶10; Stroble Decl. ¶11. That
14
15 concern isn’t speculation; it’s from affected voters themselves.
16
17

18
19 Moreover, Defendants’ argument is unsupported. Other than glib pronouncements,
20
21 there is precious little admissible evidence in the record before the Court to support this
22
23 contention—no polling, no studies, no data, nothing, including no evidence to suggest that
24
25 those states that do not utilize signature matching suffer a lower level of voter confidence in
26
27 their elections. Pls.’ Mot. 35–36; Stein Dep. 84:11–94:5 Instead, the Defendants offer bold
28
29 and self-serving statements supported by little more than a yawn and a vague wave of the
30
31 arm or unrelated warnings such as the January 6th insurrection or the 2000 Mules movie.
32
33 *See* Decl. of Julie Wise ¶26; Decl. of Stuart Holmes ¶¶18–23. It goes without saying that a
34
35 fear of conspiracies is not even a remotely acceptable justification for disenfranchising
36
37 eligible voters.

38
39 There is simply no evidence that the Signature Verification Requirement advances
40
41 the state interest of public confidence in elections.
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

c. There Is No Evidence That the Signature Verification Requirement Promotes Efficient Administration of Elections

To claim that that the Signature Verification Requirement promotes the efficient administration of elections, the Secretary urges the Court to consider the alternatives. Hobbs’s Opp’n 29–30. But this argument, the weighing of alternatives to signature verification or weighing whether to return to in-person voting, is rather decidedly premature. As Defendants say in their brief, “it is the role of the legislature, not the judiciary, to balance public policy interests and enact law.” *Rouso v. State*, 170 Wn.2d 70, 92 (2010). The Court’s role is limited to determining whether the fundamental flaws and the inevitable wrongful disenfranchising effects of signature verification renders it unconstitutional. As the record before the Court rather vividly demonstrates, it does.

There are numerous alternatives to signature verification utilized by different states. But those choices are not before this Court or even relevant to the decision before this Court. They would be in the province of the Legislature. *See id.*

But on the question of whether the Signature Verification Requirement advances the efficient administration of elections, Defendants offer no argument. Surely the additional steps and manpower required to verify signatures, follow up with voters who have had their ballots rejected, and collect additional comparison signatures cut strongly against the argument that the Signature Verification Requirement makes anything more efficient.

Perhaps Defendants mean to suggest that signature verification increases access to voting. But the Signature Verification Requirement *reduces* access to elections by placing additional burdens on the right to vote by requiring thousands of voters *every election* to “cure” ballots and, for those who cannot, by stripping them of their right to vote at the outrageous rate of up to (so far) 24,000 voters per election. Pls.’ Mot. 37. Only in a truly

1 Orwellian sense could stripping the voting rights of over 170,000 Washingtonians since
2 2016 and imposing additional burdens on an additional 79,000 voters from 2020 through
3 2022 be called increasing “access to elections.”
4
5

6 And, while voting by mail undoubtedly leads to greater access in elections,
7
8 Defendants offer no evidence that the *Signature Verification Requirement* increases access.
9
10 Nor can they, as the Secretary’s expert candidly admits. Stein Dep. 50:3–52:21. Even if
11 they could, Vermont’s experience would throw cold water on such an argument. In the 2020
12 general election, Vermont, another universal vote-by-mail state, had the largest turnout in
13 the history of the state even without what Defendants claim is the key ingredient—any kind
14 of signature verification requirement. Vt. SoS Rep. 2, 8.
15
16
17
18
19

20 The Defendants cannot demonstrate that the Signature Verification Requirement
21 improves election administration.
22
23

24
25 **d. The Signature Verification Requirement Is Not Narrowly**
26 **Tailored to Meet These Interests**
27

28 Even if the state had identified a compelling state interest advanced by the Signature
29 Verification Requirement (and it has not), Defendants have failed to establish that the
30 Signature Verification Requirement is narrowly tailored to advance that state interest.⁴ In
31 every respect, the Signature Verification Requirement is wildly overinclusive. Defendants
32 have disenfranchised over 170,000 voters since 2016 and subjected tens of thousands more
33 voters to additional burdens, but they cannot identify *a single case of voter fraud*, ever, that
34 was caught by the Signature Verification Requirement and led to a conviction or guilty plea.
35
36
37
38
39
40

41
42 _____
43 ⁴ King County offers the existence of some unidentified issue of fact arising from the expert
44 testimony (or an imagined rule requiring expert testimony to show a lack of narrow tailoring). The
45 suggestion can be dispatched with equally short shrift: There is no material fact in dispute. To be
46 sure, the outrageous disparate impact on the tens of thousands of rejected ballots cast by younger and
47 minority voters is appalling, but merely insult to constitutional injury. The injury itself – like this
litigation – does not turn on that disparate impact.

1 The Signature Verification Requirement is especially overbroad when considering that over
2
3 56,000 ballots in King, Snohomish, and Clark counties were rejected for non-matching
4
5 signatures, but only .77% of those ballots were referred to prosecutors. None, not a single
6
7 one, was even charged, let alone resulted in a conviction.

8
9 There is no question why Defendants seek to avoid subjecting the Signature
10
11 Verification Requirement to strict scrutiny—the law cannot survive.

12
13 **3. At the Very Least *Anderson/Burdick* Applies and the Burden of**
14 **Signature Verification Outweighs Any Purported Benefit**

15
16 Even if the Court were to set aside well-settled Washington law and apply instead a
17
18 lesser constitutional standard, as the Secretary suggests, the Signature Verification
19
20 Requirement would easily fail even that test. The Signature Verification Requirement
21
22 imposes a substantial burden on the right to vote, with precious little to offset or justify that
23
24 burden. Under any version of the *Anderson/Burdick* analysis, the Signature Verification
25
26 Requirement fails constitutional scrutiny.

27
28 When assessing claims that a law imposes an undue burden on the right to vote in
29
30 violation of the Constitution, federal courts first consider the restrictions imposed on the
31
32 plaintiff's rights. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). The restrictions are
33
34 weighed against “the precise interests put forward by the State as justifications for the
35
36 burden imposed by its rule,’ taking into consideration ‘the extent to which those interests
37
38 make it necessary to burden the plaintiff’s rights.’” *Burdick v. Takushi*, 504 U.S. 428, 434
39
40 (1992) (quoting *Anderson*, 460 U.S. at 789). A law imposing a severe burden must meet
41
42 strict scrutiny and thus must be “narrowly tailored to serve a compelling state interest.” *Id.*
43
44 Less severe burdens must be justified by a “corresponding interest sufficiently weighty to
45
46 justify the limitation.” *Norman v. Reed*, 502 U.S. 279, 289 (1992).
47

1 *Anderson/Burdick* requires a careful and meaningful scrutiny of the burden and
2
3 proffered justification for the law at issue. Courts view the restriction “from the perspective
4
5 of only affected electors—not the perspective of the electorate as a whole.” *Mays v. LaRose*,
6
7 951 F.3d 775, 785–86 (6th Cir. 2020); *see also Frank v. Walker*, 819 F.3d 384, 386–87 (7th
8
9 Cir. 2016) (“The right to vote is personal and is not defeated by the fact that 99% of other
10
11 people can secure the necessary credentials easily.”). In considering the state’s interests in
12
13 an *Anderson/Burdick* analysis, it is not enough that “the proffered interests are legitimate in
14
15 the abstract”—courts must “ask whether the concrete evidence demonstrates that ‘those
16
17 interests make it necessary to burden the plaintiff’s rights.’” *Fish v. Schwab*, 957 F.3d 1105,
18
19 1133 (10th Cir. 2020). These standards, applied to the record before the Court, easily
20
21 condemn the Signature Verification Requirement.⁵

22
23 The burden imposed by the Signature Verification Requirement is not just *a* severe
24
25 burden—it is the most severe burden that can be imposed on a voter. Since 2016, over
26
27 170,000 Washington voters were disenfranchised the Signature Verification Requirement.
28
29 §III(A). As one federal court stated, “If disenfranchising thousands of eligible voters does
30
31 not amount to a severe burden on the right to vote, then this Court is at a loss as to what
32
33 does.” *Fla. Democratic Party v. Detzner*, No. 4:16cv607-MW/CASE, 2016 WL 6090943, at
34
35 *6 (N.D. Fla. Oct. 16, 2016). Because the Signature Verification Requirement will
36
37 inevitably (and demonstrably does) lead to the disenfranchisement of tens of thousands of
38
39

40
41 ⁵ The federal test flows from federal constitutional guarantees. *Anderson/Burdick* does not account
42
43 for the fact that the Washington Constitution has long been recognized as more protective of voting
44
45 rights than the federal. *See Foster*, 102 Wn.2d at 404 (“[T]he Washington constitution goes further
46
47 to safeguard [the right to vote] than does the federal constitution.”). To the extent that the Court
even considers applying the inapplicable federal standard to this state constitutional claim, then it
must put an additional judicial thumb on the scale for finding the Signature Verification Requirement
unconstitutional to account for the more expansive protections of the right to vote under the
Washington Constitution.

1 lawful voters each election, it is not narrowly tailored, and there is no evidence that it serves
2 any of the interests put forward by Defendants, however important. §VI(A)(2).
3

4 Even if this Court were to determine that the burden is something less than “severe”
5 (which is difficult to imagine), the Signature Verification Requirement still cannot withstand
6 *Anderson/Burdick*. The burden for each impacted voter is still high—disenfranchisement or
7 undertaking multiple additional steps not required of other voters to have their vote counted.
8
9 And there is no evidence to support the relationship of the Signature Verification
10 Requirement to the identified state interests, or the evidence cuts directly against any such
11 relationship. Hobbs’s Opp’n 23; KC Opp’n 41. The substantial burden to each voter
12 (particularly the tens of thousands impacted by the requirement each election) cannot be
13 justified by such imprecise and unproven interests.
14
15

16 In short, even if the Court were to apply the inapplicable federal *Anderson/Burdick*
17 standard to this state constitutional case, the Signature Verification Requirement cannot
18 survive it.
19
20

21
22
23
24
25
26
27
28
29 **4. Rational Basis Review Cannot Apply to a Restrictive Voting Measure**
30 **That Consistently Disenfranchises Thousands of Voters**

31 Defendants—obviously aware that application of strict scrutiny (and even
32 *Anderson/Burdick* balancing) would doom the Signature Verification Requirement—hedge
33 their bets and boldly encourage the court to apply simple rational basis review in its
34 analysis. Hobbs’s Opp’n 22; KC Opp’n 41. This is nothing less than an invitation to error.
35 Washington law plainly mandates strict scrutiny. Even if this Court were to somehow find it
36 appropriate to apply the rational basis standard, the requirement would fail that test, too.
37
38

39 Applying rational basis analysis would be plain error as there is simply no support
40 for its application in Washington law.
41
42
43
44
45
46
47

1 **B. The Signature Verification Requirement Violates the Privileges and Immunities**
2 **Clause**

3 The Signature Verification Requirement violates the Privileges and Immunities
4 Clause because it favors certain classes of voters and it infringes the fundamental right to
5 vote. Pls.’ Mot. §VI(D).
6
7

8
9 Courts considering a Privileges and Immunities claim ask “whether a challenged law
10 grants a privilege or immunity for purposes of our state constitution” and “whether there is a
11 reasonable ground for granting that privilege or immunity.” *Martinez-Cuevas v. De Ruyter*
12 *Bros. Dairy, Inc.*, 196 Wn.2d 506, 519 (2020). Courts apply strict scrutiny to statutes that
13 infringe a fundamental right, such as the right to vote. Otherwise, the less exacting
14 “reasonable grounds” test applies. Pls.’ Mot. §VI(D).
15
16

17 Defendants argue that the Privileges and Immunities Clause complies with the
18 Signature Verification Requirement because on its face, it “applies on the same terms to all
19 Washington voters” and it implicates not “the right to vote, but the manner of voting.”
20 Hobbs’s Opp’n 36; KC Opp’n 37. Neither argument is persuasive.
21

22 Defendants’ first argument conveniently ignores the considerable evidence that many
23 of these wide-ranging and disparate impacts are inherent in signature verification. *E.g.*,
24 Mohammed Rep. 9–16 (18–25-year-old voters “are not likely to have fully developed
25 signatures” which “exacerbate[s] the potential for error in rejecting their ballots.”), 12–13
26 (voters with native languages such as Chinese and Urdu show more variations in signatures).
27 It inherently will not apply “on the same terms to all Washington voters.” That’s the
28 problem.
29

30 Defendants’ proffered interpretation of the Privileges and Immunities Clause as
31 applied to voting rights also makes no sense in this context. If express classifications on the
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 face of the statute are required for a Privileges and Immunities Clause violation, the state
2 could hide behind well-crafted grants of favoritism and enjoy immunity to challenge. For
3 example, a statute mandating that each county have just one polling location would present
4 no Privileges and Immunities problem, despite giving King County (a population of over 2
5 million people) and Ferry County (a population of less than 8,000 people) the same number
6 of polling locations. That cannot be right.
7
8
9
10
11

12 Moreover, the cases cited by Defendants on this point are distinguishable. The Court
13 in *Madison* made clear that the constitution itself, not simply a statute limits the rights of
14 felons to vote. *Madison*, 161 Wn.2d at 96 (holding that the Privileges and Immunities
15 Clause does not apply because the increased protection of voting rights under the
16 Washington Constitution does not apply to felons). And, unlike in *Portugal*, where the
17 WVRA affirmatively protects the “equal opportunity” of all voters “to elect candidates of
18 their choice,” the Signature Verification Requirement inherently favors those classes of
19 citizens who are more likely to have consistent signatures and strips those who do not of
20 their fundamental right to vote. *Portugal*, 530 P.3d at 999; Pls.’ Mot. §IV(D). The two are
21 clearly distinct because the WVRA grants a right, while the Signature Verification
22 Requirement arbitrarily strips that constitutional right away.
23
24
25
26
27
28
29
30
31
32
33

34 As for the Defendants’ second argument, it is easily dispatched for the same reasons
35 discussed in Section VI(A)(1) above. *Portugal* does not apply here because the WVRA did
36 not “trigger strict scrutiny by . . . abridging voting rights.” 530 P.3d at 999. The Signature
37 Verification Requirement does exactly that. As discussed in Section VI(A)(2), the
38 requirement cannot withstand strict scrutiny. Even if the lowest possible level of scrutiny,
39 the reasonable ground test, were applied, it would still be unconstitutional under the
40 Privileges and Immunities Clause. Pls.’ Mot. 44.
41
42
43
44
45
46
47

1 **C. The Signature Verification Requirement Is Inherently and Unconstitutionally**
2 **Arbitrary in Violation of the Substantive Due Process Clause of Article I,**
3 **Section 3**

4 Article I, Section 3 of the Washington Constitution “protects against arbitrary and
5 capricious government action even when the decision to take action is pursuant to
6 constitutionally adequate procedures.” *Yim v. City of Seattle*, 194 Wn.2d 682, 688–89,
7 (2019), as amended (Jan. 9, 2020). Because the Signature Verification Requirement strips
8 tens of thousands of Washington voters of the franchise in an entirely unpredictable way,
9 strict scrutiny applies to the Due Process analysis. *Id.* 689 (Within the context of a
10 substantive due process claim, “[s]tate interference with a fundamental right is subject to
11 strict scrutiny.”).
12
13
14
15
16
17
18
19

20 The King County Defendants focus entirely on the undisputed disparities caused by
21 the Signature Verification Requirement and argue that “Plaintiffs do not attempt to prove
22 that disparities are the result of bias or any policy or practice.” KC Opp’n 42. Not quite.
23
24
25

26 As even a *cursory* review of the papers demonstrates, one of the central points of this
27 entire litigation is that the Signature Verification Requirement (which is most assuredly a
28 “policy or practice”) operates to consistently and arbitrarily disenfranchise tens of thousands
29 of voters and place additional burdens on tens of thousands more (based on no fault of the
30 voter) based on the flawed and arbitrary science of signature verification. That is
31 fundamentally unfair, especially when, as discussed above, those voters did everything
32 required of them to vote. Pls.’ Mot. 44–45.
33
34
35
36
37
38
39

40 Moreover, the Signature Verification Requirement is “ultimately subject to human
41 judgment” and “deciding whether a signature matches is inherently subjective[.]” Audit 3,
42 16; *see* Secretary Dep. 42:23-43:4; Hyatt Decl. Ex. K (“KCE Dep. II”) 83:18–84:3 (“We all
43 have implicit biases, and since signature verification is inherently subjective, those biases
44
45
46
47

1 can influence our decisions to accept or reject a signature.”), 96:16–97:19 (“So even if there
2 is disagreement amongst the [reviewers], that ballot still could be challenged, right?”
3 “Correct.”). These differences are not reconciled by additional investigation. KCE Dep. II
4 at 96:16–97:19. Rather, the most senior person decides. *Id.* The Auditor observed the same
5 kinds of debates and disagreements in other counties, with employees at the Secretary of
6 State’s office, and even within the report team. Audit 16–17. As Mr. Bishop’s performance
7 in the deposition exercise shows, even a certified document examiner errs. Hamilton Decl.
8 ¶12. By definition, this is arbitrary governmental action, and a hallmark constitutional
9 violation of the due process clause.
10
11
12
13
14
15
16
17
18

19 **D. The Signature Verification Requirement Arbitrarily and Inherently Values the**
20 **Voters in Some Counties Over the Voters in Other Counties**

21 Signature rejection rates, moreover, indisputably vary dramatically and
22 unconstitutionally from county to county within Washington. Pls.’ Mot. 17–19; Wash.
23 Const. art. I, §§3, 12.
24
25
26
27

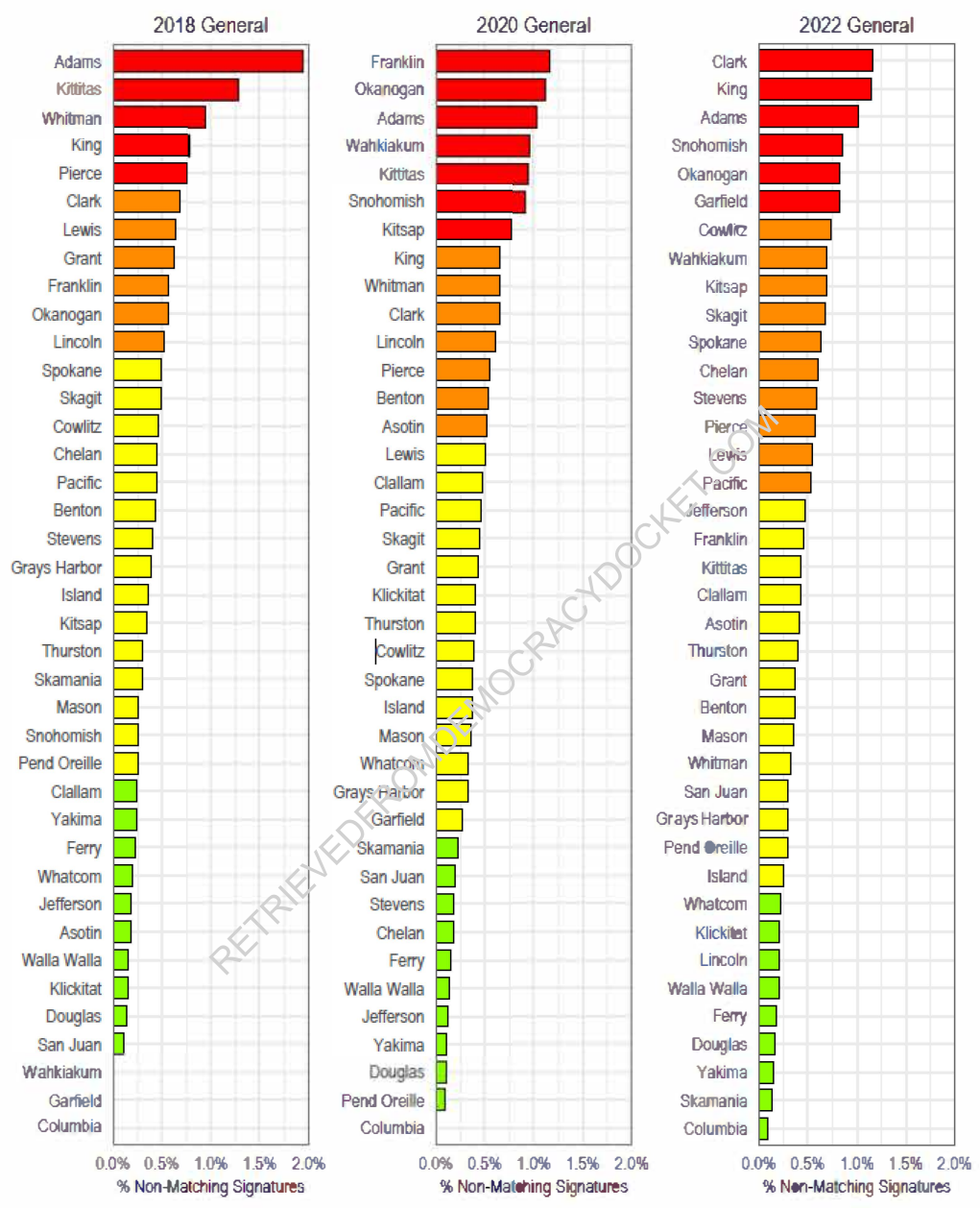
28 “The right to vote is protected in more than the initial allocation of the franchise.
29 Equal protection applies as well to the manner of its exercise. Having once granted the right
30 to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value
31 one person’s vote over that of another.” *Bush*, 531 U.S. at 104–05 (2000); *see also*
32 *Gallagher v. New York State Bd. of Elections*, 477 F. Supp. 3d 19, 48 (S.D.N.Y. 2020)
33 (finding the voting process arbitrary when “whether the votes of these two voters—who cast
34 their votes in precisely the same manner—are counted depends entirely on the speed at
35 which their local post office delivered their votes.”); *League of Women Voters of Ohio v.*
36 *Brunner*, 548 F.3d 463, 478 (6th Cir. 2008) (alleged failure to allocate voting machines
37 among counties “proportionately to the voting population” in each county, which “caus[ed]
38
39
40
41
42
43
44
45
46
47

1 more severe wait times in some counties than in others,” unconstitutionally violated voters’
2 rights “based on where they live”); *Black v. McGuffage*, 209 F. Supp. 2d 889, 899 (N.D. Ill.
3 2002) (“That people in different counties have significantly different probabilities of having
4 their votes counted, solely because of the nature of the system used in their jurisdiction is the
5 heart of the problem.”).
6
7
8
9

10 Dr. Palmer’s undisputed findings that the rates of rejection vary between counties,
11 across elections years, and even when accounting for population, are illustrated below:
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47



1 The Signature Verification Requirement creates an election system that values the
2 votes of voters in counties with lower rejection rates over those who live in counties with
3 higher rejection rates. And for precisely that reason, it fails even the most superficial due
4 process scrutiny.
5
6
7

8
9 **E. The Signature Verification Requirement Is Facially Unconstitutional**

10 A statute is facially unconstitutional when “no set of circumstances exists in which
11 the statute, as currently written, can be constitutionally applied.” *City of Redmond v. Moore*,
12 151 Wn.2d 664, 669 (2004). Such statutes are totally inoperative. *Id.* The Signature
13 Verification Requirement is a textbook example.
14
15
16
17

18
19 **1. Signature Verification Is Fundamentally Flawed**

20 Signature verification is a fundamentally flawed means of verifying a voter’s
21 identity. It is an imperfect faux science “art” even under the best of circumstances. As the
22 record before the Court demonstrates, even under optimal conditions such as (1) an analysis
23 conducted by a forensic document examiner, (2) who has adequate time (approximately one
24 hour for simple signatures and a minimum of two to four hours for a complex one), (3) with
25 10–15 contemporaneous comparator samples, (4) with adequate equipment (including
26 magnification tools and proper lighting), and (5) excellent eyesight, there will be a
27 significant rate of error and a non-trivial rate of inconclusive results that will inevitably lead
28 to voters whose ballots are wrongly rejected for non-matching signatures. *See* Mohammed
29 Rep. 7–8.⁶ One study found that even certified and trained forensic document examiners
30 wrongly concluded that genuine signatures were non-genuine 7% of the time. *Id.* 8. That
31
32
33
34
35
36
37
38
39
40
41
42

43 ⁶ The King County Defendants offer a short-form attempt to exclude Dr. Mohammed’s testimony.
44 Dr. Mohammed has testified as an expert witness opining on signature verification in the context of
45 election administration throughout the nation and has never been excluded as an expert. To the
46 contrary, courts frequently cite and rely on his expertise (and similar experts) in rejecting signature
47 verification requirements and other flawed policies. Hamilton Decl. Ex. G 80–81.

1 number alone would be unconstitutionally overinclusive – by a wide margin, to the tune of
2
3 over 214,000 ballots in the 2022 general election.

4
5 But it’s far worse than that. Election administration does not allow for optimal
6
7 conditions for signature verification, which inevitably results in more errors and more voters
8
9 whose ballots are wrongfully rejected for non-matching signatures. For example, a proper
10
11 signature analysis of a “simple” signature could still take up to an hour because of its few
12
13 distinguishing features. Mohammed Rep. 2. A complicated signature requires a minimum
14
15 of two to four hours to conduct a proper analysis. *Id.* But the careful and time-consuming
16
17 analyses required to minimize errors simply cannot work in the context of elections. In the
18
19 2020 general election, election officials received over 4.1 million ballots. Even under the
20
21 implausible assumption that every signature was “simple,” that would still require 4.1
22
23 million person-hours. Election officials do not have “weeks or years” to validate signatures.
24
25 KCE Dep. II 88:8–10. Instead, King County expects its first-level reviewers to review each
26
27 signature in about five seconds. *Id.* 30:22–31:10. Secretary Hobbs suggests that election
28
29 officials can do signature verification in about three seconds. Hobbs’s Opp’n 5; Secretary
30
31 Dep. 202:25–203:17.

32
33 It is also undisputed that Washington election officials do not have the minimum 10–
34
35 15 contemporaneous comparator signatures in their review—officials are limited to
36
37 whatever “signature(s)” is or are available in VoteWA, the state’s voter registration and
38
39 voter history database. Hobbs’s Opp’n 5.

40
41 The error rate inherent in signature verification used in election administration could
42
43 likely be reduced if each Washington county had trained forensic document examiners who
44
45 had the right equipment, 10–15 comparator signatures available for each voter, and,
46
47 collectively, millions of hours to devote to the task. *See* Mohammed Rep. 2–3.

1 But, of course, they don't. And even if they did, some voters—a lot of voters—
2 would *still* be disenfranchised, as the state unintentionally but convincingly demonstrated
3 with its expert Mr. Songer. Even with all of his training, tools, and time, he disagreed with
4 county election officials' rejection decisions a full 8% of the time. Same with King
5 County's witness Mr. Bishop. When tested in favorable conditions, even he, a certified
6 document examiner with twenty years of experience training election officials and
7 performing signature verification, failed to spot forged signatures and wrongly rejected
8 genuine ones. Hamilton Decl. ¶12.
9

10 Both Defendants point to the State Auditor's agreement with county election
11 officials signature determinations 98.7% of the time as evidence that the process works.
12 Hobbs's Opp'n 12; King County Opp'n 10 ("Trained auditors reviewed 7,200 signatures and
13 'overwhelmingly concurred with counties' decisions about which ballots to accept and
14 reject."). Hardly.
15

16 For starters, it is ironic that Defendants would cite the very Auditors' report that
17 identified the shameful disparate impact that the Signature Verification Requirement inflicts
18 on many demographic groups including young voters, voters of color, and non-English
19 speakers as a defense of that very system. The fact that State Auditors (who play no role in
20 elections administration and have utterly no expertise in signature verification themselves)
21 "agreed" with county election officials' determinations is entertaining—but irrelevant. Even
22 so, in the 2022 general election that 1.3% error rate would have impacted 40,000
23 Washington voters. That's hardly a cause for celebration.
24

25 And in any event, none of this addresses the actual reliability of the Signature
26 Verification Requirement. Defendants have produced no evidence to suggest that the ballots
27 that were rejected for non-matching signatures were in fact non-genuine signatures.
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 Certainly, the Auditor has no idea. In fact, the record before the Court suggests staggering
2 error rates: A full 57.3% of ballots rejected statewide in the 2020 and 2022 general and
3 primary elections, were ultimately proven to be genuine by the voters themselves. Palmer
4 Rep. 11. In other words, the majority of signature rejections statewide were wrong and only
5 a tiny fraction of those ultimately rejected were thought to be fraudulently cast. The
6 Auditor’s review of, and agreement with, *those erroneous decisions* hardly makes them any
7 better.
8
9

10 As for the remaining 42.7% of rejections, the only actual evidence in the record
11 before this Court is that they were in error as well, detailed in the heartbreaking declarations
12 which demonstrate both the error and its impact on Washington voters. Pls.’ Mot. 5–9. The
13 fact that the Auditor “agreed” with the election officials who disenfranchised those voters
14 offers precious little comfort to them and utterly no competent evidence of anything to this
15 Court.
16
17

18 The King County Defendants argue that the existence of some counties with “little or
19 no rejection of ballots pursuant to the signature verification requirement” proves that
20 constitutional applications of the Signature Verification Requirement exist. KC Opp’n at
21 23–24. No. What it in fact demonstrates is that some counties simply do not apply the
22 Signature Verification Requirement in any meaningful way.
23
24

25 But even if they did, the fact that voters in a particular geographic area escaped
26 disenfranchisement due to an arbitrary process only demonstrates the arbitrary nature of the
27 process itself. Wahkiakum County and Ferry County have similarly sized voting
28 populations. Pls.’ Mot. 19. Yet in 2022, Wahkiakum (1%) rejected ballots at nearly four
29 times the rate of Ferry (.25%). There is no evidence that Wahkiakum County is
30 substantially more prone to voter fraud than Ferry County, as Defendants’ witness and
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 expert readily conceded. *See* Bishop 108:5–24; Songer 147:12–16. Indeed, there is no
2 evidence of increased fraudulent activity in Wahkiakum County in 2022 (when the county
3 rejected nearly 1% of ballots) as compared to 2018 (when the county rejected none). Palmer
4
5 Rep. 15. The undisputed evidence proves that the Signature Verification Requirement is
6
7 fundamentally flawed.
8
9

10
11 **2. King County’s Experience Shows That Signature Verification Is**
12 **Fundamentally Flawed**
13

14 The King County Defendants devote considerable space to describing the laudable,
15 years-long efforts King County Elections has made to improve the flawed procedure behind
16 the Signature Verification Requirement and to attempt to remove potential biases.⁷ These
17 efforts to reduce rejection rates, increase cure rates, and eliminate disparate impact are
18 interesting and certainly far beyond what is required by Washington law—but all of this
19 defensive posturing only serves to poignantly demonstrate how badly flawed the whole
20 exercise is from the outset: Despite all of the time and attention devoted by King County to
21 making this system work, King County consistently has one of the highest rejection rates of
22 any county in the entire state. Pls.’ Mot. 20–23. Put simply, King County’s experience
23 proves that the fundamental flaws of signature verification cannot be fixed.
24
25
26
27
28
29
30
31
32
33

34 **3. The State’s New Regulations Are Irrelevant as a Matter of Law**
35

36 The Secretary, by contrast, tacitly admits the failure of the Signature Verification
37 Requirement by pointing the Court to a variety of proposed, but not yet adopted, regulations
38 that would tinker with the mechanics of the Signature Verification Requirement. But the
39
40
41

42 ⁷ These efforts include “a two-to-three-hour training on the signature verification process before each
43 election” for both new and returning employees, anti-bias training, “an audit of 100% of the first
44 batch of 250 ballot signatures completed by each member of the signature verification work group”
45 and ongoing random audits after that, multiple levels of review, letters, calls, and emails to
46 encourage voters to cure challenged ballots, ballot tracking, and multiple levels of review on
47 signature resolution forms, among others. KC Opp’n 10–12.

1 Secretary offers no proof that those regulations would do anything but marginally effect the
2 rejection rates. And, in his defense, how could he?⁸ These new regulations have never been
3 tested, they have never been analyzed, they have never been piloted, and they have never
4 been adopted here or anywhere else in any jurisdiction. Even the Secretary's expert who
5 parrots the Secretary's wishful thinking admits that he has no evidence whatsoever to
6 conclude that these rules will be better. *See* Stein Dep. 84:11–94:5. The Secretary is bereft
7 of any actual admissible evidence that suggests that his latest and belated efforts to tinker
8 with the machinery would change anything of constitutional significance: The routine
9 rejection of tens of thousands of ballots cast by fully-qualified citizens; the viciously unfair
10 disenfranchisement born more heavily by younger and minority voters; and the
11 heartbreaking impact of it all on elections in Washington.
12
13
14
15
16
17
18
19
20
21
22

23 And in any event, it is clear that these regulations will not change the fundamental
24 and unconstitutional flaws with signature verification. For example, even if these
25 regulations reduced by *half* the number of voters disenfranchised for non-matching
26 signatures, over 12,000 Washington voters will still have their right to vote stripped in the
27 2024 general election. And there will still be no discernable benefit to any of the state's
28 interests in the Signature Verification Requirement.
29
30
31
32
33

34 **F. The Unconstitutional Signature Verification Requirement Is Severable**

35 Defendants argue that the Signature Verification Requirement cannot be severed
36 without unraveling Washington's entire vote-by-mail system. That's nonsense.
37
38

39 Courts sever an unconstitutional provision when it is reasonably believed that the
40 statute would be enacted without the inclusion of the provision at issue or if the elimination
41
42
43

44
45 ⁸ It's remarkable that Secretary Hobbs would assert that it is "undisputed" that these procedures will
46 substantially mitigate any erroneous rejection of ballots. After all, it's difficult to dispute evidence
47 when there is none.

1 of the invalid part would not render the remaining part useless to accomplish the legislative
2 purposes. *McGowan v. State*, 148 Wash. 2d 278, 294 (2002). The presence or absence of a
3 severability clause is not dispositive. *Id.* 295. It is well-established that where a statute's
4 procedural provisions have been held in whole or in part to be unconstitutional, the
5 substantive remainder of those statutes remain valid. *State v. Graham*, 14 Wn. App. 1, 4
6 (1975).
7
8
9
10
11
12

13 Contrary to Defendants' assertions, the provisions at issue here are not so intertwined
14 that striking them would contravene the Legislature's intent when it enacted the vote-by-
15 mail system, nor would it render the entire vote-by-mail system unable to accomplish the
16 legislative purpose. Instead, if Plaintiffs' relief is granted, the portion of the statute
17 requiring signature verification would be struck down and Defendants would only be
18 enjoined from using the guilty-until-proven-innocent Signature Verification Requirement to
19 invalidate ballots, leaving the rest of the statute's procedures intact. The onus will be placed
20 on the Defendants to find other methods to verify that ballots are indeed fraudulently signed
21 before disenfranchising voters, rather than place the burden on lawful voters. Vote-by-mail
22 can still be accomplished without this provision. Though not the results Defendants would
23 prefer, this would hardly spell the end of vote-by-mail in Washington.
24
25
26
27
28
29
30
31
32
33

34 **G. The Proper Parties Are Before the Court**

35 Defendants seek dismissal because Plaintiffs failed to join necessary parties, namely
36 the 38 other county canvassing boards. Their argument aligns with neither common sense,
37 experience, nor the law.
38
39
40
41

42 Plaintiffs bring a facial constitutional challenge *to a state-wide election statute*. The
43 Secretary is the Chief Elections Officer for Washington State. RCW 29A.04.230. Indeed,
44 the Secretary has rulemaking authority to implement the unconstitutional Signature
45
46
47

1 Verification Requirement. RCW 29A.04.611(54). This lawsuit is about that singular
2
3 statewide statutory obligation, not the specific application in any particular county. It would
4
5 make little sense for plaintiffs here to have sued all 39 counties.

6
7 Courts routinely hold that local election officials and county level canvassing boards
8
9 are not necessary parties in challenges to election statutes. *See Texas Democratic Party v.*
10
11 *Abbott*, 961 F.3d 389, 399 (5th Cir. 2020) (finding that the voting-related injuries were fairly
12
13 traceable to and redressable by the Secretary of State); *Harding v. Edwards*, 484 F. Supp. 3d
14
15 299, 321 (M.D. La. 2020) (analyzing standing precedent to hold that local election officials
16
17 were not indispensable parties in election-related litigation against the Louisiana Secretary
18
19 of State); *Acosta v. Democratic City Comm.*, 288 F. Supp. 3d 597, 649 (E.D. Pa. 2018)
20
21 (declining to find election boards indispensable merely because the defendants may need to
22
23 direct them to hold a new election based on the outcome of the litigation); *Fair Fight Action,*
24
25 *Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1284 (N.D. Ga. 2019) (determining county
26
27 elections official were not indispensable because “defendants have the statutory oversight
28
29 ability to enforce uniform and state-wide election standards and processes.”); *Self Advocacy*
30
31 *Solutions N.D. v. Jaeger*, 454 F.Supp.3d 1039, 1050 (D.N.D. 2020) (finding that suing only
32
33 the Secretary of State was sufficient because the local election officials were “subordinate to
34
35 the Secretary in election matters.”).

36
37 Defendants cite *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d
38
39 331 (W.D. Pa. 2020), without acknowledging that the county canvassing boards at issue
40
41 there had far more discretion to administer elections based on the unique needs of the county
42
43 than any county canvassing board in Washington. *See id.* 375.

44
45 Defendants also claim “it would be patently unfair” to enjoin the other 38 counties
46
47 “without giving them the opportunity to appear and litigate this action.” KC Opp’n 19. Of

1 course, if any of the other 38 counties believed they needed to protect their own interests or
2 practices, they could have moved to intervene in this matter. None of them did.

3 4 5 **VII. Conclusion**

6 The Signature Verification Requirement imposes an unconstitutional burden on
7 Washington voters, stripping the most precious and fundamental right from tens of
8 thousands of qualified voters who did everything required to exercise the franchise. This
9 unconstitutional penmanship requirement does nothing to advance any compelling state
10 interest and is most certainly not “narrowly tailored.” Its undisputed disparate impact on
11 young and minority voters only adds gratuitous insult to constitutional injury. Plaintiffs
12 respectfully submit that summary judgment should be entered.
13
14
15
16
17
18
19
20
21
22

23 Dated: August 28, 2023

24 I certify that this motion/memorandum
25 contains 13,486 words, in compliance with the
26 Local Civil Rules and the July 11, 2023
27 Stipulation, Dkt. # 76.
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

s/ Kevin J. Hamilton

Kevin J. Hamilton, WSBA No. 15648
KHamilton@perkinscoie.com
Matthew P. Gordon, WSBA No. 41128
MGordon@perkinscoie.com
Heath L. Hyatt, WSBA No. 54141
HHyatt@perkinscoie.com
Hannah E.M. Parman, WSBA No. 58897
HParman@perkinscoie.com
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Telephone +1.206.359.8000
Facsimile +1.206.359.9000

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

On August 28, 2023, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

| | | |
|--------------------------------|-------------------------------------|--|
| Karl D. Smith, WSBA #41988 | <input type="checkbox"/> | Via hand delivery |
| Tera M. Heintz, WSBA #54921 | <input type="checkbox"/> | Via U.S. Mail, 1st Class, Postage Prepaid |
| William McGinty, WSBA #41868 | <input type="checkbox"/> | Via Overnight Delivery |
| Susan Park, WSBA #53857 | <input checked="" type="checkbox"/> | Via Email |
| OFFICE OF THE ATTORNEY GENERAL | <input checked="" type="checkbox"/> | Via Eservice |
| 7141 Cleanwater Drive SW | | |
| PO Box 40111 | | |
| Olympia, WA 98504-0100 | | |
| Karl.Smith@atg.wa.gov | | |
| Tera.Heintz@atg.wa.gov | | |
| William.McGinty@atg.wa.gov | | |
| Susan.Park@atg.wa.gov | | |

Attorneys for State Defendant Steve Hobbs

| | | |
|-------------------------------------|-------------------------------------|--|
| David J. Hackett, WSBA #21236 | <input type="checkbox"/> | Via hand delivery |
| Ann M. Summers, WSBA #21509 | <input type="checkbox"/> | Via U.S. Mail, 1st Class, Postage Prepaid |
| Lindsey Grieve, WSBA #42951 | <input type="checkbox"/> | Via Overnight Delivery |
| Senior Deputy Prosecuting Attorneys | <input checked="" type="checkbox"/> | Via Email |
| 516 Third Avenue, #W554 | <input checked="" type="checkbox"/> | Via Eservice |
| Seattle, WA 98104 | | |
| david.hackett@kingcounty.gov | | |
| ann.summers@kingcounty.gov | | |
| lindsey.grieve@kingcounty.gov | | |

Attorneys for King County Defendants

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

EXECUTED at Seattle, Washington, on August 28, 2023.


June Starr

The Honorable Mark Larrañaga
Noted for Hearing: September 12, 2023 at 8:30 am
With Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

NO. 22-2-19384-1 SEA

Plaintiffs,

SECOND DECLARATION OF
WILLIAM MCGINTY

v.

STEVE HOBBS, et al.,

Defendants.

I, William McGinty, declare as follows:

1. I am counsel for Secretary of State Steve Hobbs in the above captioned matter. I am over the age of 18 years and am competent to testify to the matters stated below and do so based on my personal knowledge.

2. I was present for the deposition of Dr. Robert Stein taken on August 17, 2023. Attached as **Exhibit 6** is a true and correct copy of excerpts from the transcript of that deposition.

3. I was present for the deposition of Dr. Aleksandr Aravkin taken on August 16, 2023. Attached as **Exhibit 7** is a true and correct copy of excerpts from the transcript of that deposition.

4. I was present for the deposition of Mr. Mark Songer taken on August 22, 2023. Attached as **Exhibit 8** is a true and correct copy of excerpts from the transcript of that deposition.

Exhibit 9 is a true and correct copy of Exhibit 14 to the deposition of Mark Songer.

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcintron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 6th day of September 2023 at Olympia, Washington.

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General

Exhibit 6

RETRIEVEDFROMDEMOCRACYDOCKET.COM



COURT REPORTING

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

TRIAL PRESENTATION

MOCK JURY SERVICES

LEGAL TRANSCRIPTION

COPYING AND SCANNING

LANGUAGE INTERPRETERS



NAEGELI
DEPOSITION & TRIAL



(800) 528-3335

NAEGELIUSA.COM

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY**

VET VOICE FOUNDATION, THE WASHINGTON BUS,
EL CENTRO DE LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL, GABRIEL
BERSON, and MARI MATSUMOTO,

Plaintiffs,

v.

CASE NO.: 22-2-19384-1 SEA

STEVE HOBBS, in his official capacity as
Washington State Secretary of State, JULIE
WISE, in her official capacity as the
Auditor/Director of Elections in King County
and a King County Canvassing Board Member,
SUSAN SLONECKER, in her official capacity
as a King County Canvassing Board Member,
AND STEPHANIE CIRKOVICH, in her official
capacity as a King County Canvassing Board Member,

Defendants.

REMOTE STREAMING DEPOSITION OF

ROBERT STEIN, M.D.

**TAKEN ON
THURSDAY, AUGUST 17, 2023
9:33 A.M.**

**DEPARTMENT OF POLITICAL SCIENCE
RICE UNIVERSITY
HOUSTON, TEXAS 77251
2nd Decl. McGinty**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES BY REMOTE STREAMING

Appearing on behalf of the Plaintiffs:

HEATH L. HYATT, ESQUIRE

Perkins Coie LLP

1201 Third Avenue, Suite 4900

Seattle, Washington 98101

(206) 359-8000

(206) 359-9000 (Fax)

HHyatt@perkinscoie.com

Appearing on behalf of Defendant Steve Hobbs:

SUSAN E. PARK, ESQUIRE

WILLIAM MCGINTY, ESQUIRE

Office of the Attorney General

7141 Cleanwater Drive SW

P.O. Box 40111

Olympia Washington 98504

Susan.Park@atg.wa.gov

William.McGinty@atg.wa.gov

Also Present:

Diane Hoosier, Paralegal, Attorney General's Office

Mark Nilson and Tom Hazelhurst, Remote Technicians

REMOTE STREAMING DEPOSITION OF**ROBERT STEIN, M.D.****TAKEN ON****THURSDAY, AUGUST 17, 2023****9:33 A.M.**

THE REPORTER: We are now on the record on Thursday, August 17, 2023 at 9:33 a.m. Pacific Time. This is the deposition of Dr. Robert Stein in the matter of Vet Voice Foundation, et al., versus Steve Hobbs, et al. -- in his official capacity as Washington State Secretary of State, et al., I'm sorry -- case number 22-2-19384-1 SEA in the Superior Court, State of Washington, for King County.

Counsel, for the record, could you please state your name and whom you represent?

MR. HYATT: Heath Hyatt with Perkins Coie on behalf of the Plaintiffs.

THE REPORTER: Thank you.

MS. PARK: Susan Park with the Office of the Washington State Attorney General, representing Defendant Secretary Hobbs.

MR. MCGINTY: And William McGinty, also representing Secretary Hobbs.

THE REPORTER: I'll now swear in the witness.

Dr. Stein, please raise your right hand. Do you

1 solemnly swear or affirm under penalty of perjury that the
2 testimony you'll give today will be the truth, the whole
3 truth, and nothing but the truth?

4 **DR. STEIN:** I do.

5 **THE REPORTER:** Thank you.

6 Counsel, you may proceed.

7 **ROBERT STEIN, M.D.**, having been first duly sworn, was
8 examined, and testified as follows.

9 **EXAMINATION**

10 **BY MR. HYATT:**

11 **Q. Good morning, Dr. Stein.**

12 **A. Good morning.**

13 **Q. How are you doing this morning?**

14 **A. Fine.**

15 **Q. Great. Well, thanks -- thanks for being here, and**
16 **-- and thanks for -- for taking the -- the time today. Would**
17 **you please state your name and business address?**

18 **A. My name is Robert Mark Stein, and my business**
19 **address is Department of Political Science, Rice University,**
20 **Houston, Texas 77251.**

21 **Q. Great. Thank you, Dr. Stein, I -- I assume you've**
22 **been deposed before, correct?**

23 **A. Yes.**

24 **Q. And how many times have you been deposed?**

25 **A. At least a dozen to maybe 14.**

1 A. I --

2 MS. PARK: Same objection.

3 THE WITNESS: I don't know.

4 BY MR. HYATT:

5 Q. Is it okay to throw out any valid votes in order
6 to catch one case of voter fraud?

7 MS. PARK: Object to form.

8 THE WITNESS: Again, not to be argumentative, but
9 that's not how I would fashion the stat, the -- the -- what
10 I call the standard here. I balance these two principles,
11 but I could not give you a precise number of ballots that
12 needed to be "thrown out," I think you used?

13 MR. HYATT: Okay.

14 THE WITNESS: Those ballots that would be
15 fraudulent. I think there's a -- there is a balance there.
16 I don't know what that balance is, as -- as you posed the
17 question.

18 BY MR. HYATT:

19 Q. I understand, Dr. Stein, that your testimony is
20 that it is a balance. Where does the balance tip?

21 MS. PARK: Objection. Form.

22 THE WITNESS: Again, I -- I don't mean to be
23 argumentative. As I've written in my report, there's a
24 tension. And that tension is between making voting
25 accessible to all those who are eligible, and, of course,

1 preventing those individuals who are ineligible to vote.

2 That tension is not a precise point, but rather a
3 set of trade-offs so that both legislators and election
4 officials can have full confidence that the election truly
5 represents the opinions and preferences of a majority of
6 eligible voters.

7 **BY MR. HYATT:**

8 **Q. Dr. Stein, let's pull up the file that's marked**
9 **PDX 5. And just for your clarification purposes, that first**
10 **page you'll see "Expert Report of Maxwell Palmer."**

11 A. Give me a second; 5 -- 5 -- I have it -- the
12 supplemental? Or --

13 **Q. No, this is --**

14 A. No, it's the -- you -- I -- huh. I've got the
15 supplemental. Is that Exhibit -- no, I'm sorry. I --

16 **Q. If you're looking in the file folder, Dr. Stein,**
17 **and if you pulled up the one that's listed as the**
18 **supplemental report, it's probably the one just above that**
19 **that I'm -- I'm interested in.**

20 A. I -- I -- yeah, I apologize. Let -- let me go
21 back into --

22 **Q. No problem.**

23 A. PDF 5 on my -- oh. I'm -- I'm terribly sorry. I'm
24 usually much more adept at this. PDF 5 is the number,
25 right?

1 A. I am --

2 **MS. PARK:** Object to form.

3 **THE WITNESS:** I am aware of research that purports
4 to claim the number of signatures rejected.

5 **BY MR. HYATT:**

6 **Q. And you don't have any reason to dispute that**
7 **research, right?**

8 A. I have no basis in this case of accepting or
9 rejecting. I do, however, have an opinion regarding how
10 experts in this case or the plaintiff have defined and
11 measured voter fraud and fraudulent mail signatures.

12 In Professor Herron's report and deposition, he
13 takes the standard that voter fraud, or fraudulent
14 signatures on mail ballots, are those that are detected,
15 prosecuted, and convicted, or confess, to mail voter fraud.

16 I find objection to that definition, as I've
17 written in my report. It is difficult both to detect, and
18 more difficult and unlikely to prosecute, mail ballot fraud.
19 And that a standard that Mr. Herron uses, to use the
20 analogy, seems to be particularly narrow.

21 For instance, we would never claim that a measure
22 of burglaries is simply limited to the number of individuals
23 caught, tried, and convicted for burglary. We would
24 recognize that there are many, many more burglaries that
25 occur that are not detected, prosecuted, and convicted.

1 Moreover, as I reported on page 17 and 18, I was
2 somewhat surprised that Professor Herron would not have at
3 least recognized that there are other ways to measure voter
4 fraud, widely used in the literature inaugurated by one of
5 Professor Herron's collaborators, Michael Mebane, that
6 though -- do not necessarily target individual fraud, but
7 measure it.

8 This is not to suggest for the moment, as I said
9 before, I know or did independent work; but I do find the
10 definition of fraud in his report and deposition to be
11 sufficiently narrow as to not tell us a great deal about the
12 incidence of fraud.

13 **BY MR. HYATT:**

14 **Q. Dr. Stein, what standard would you use to assess a**
15 **state's policy to prevent voter fraud?**

16 **MS. PARK:** Object to form.

17 **THE WITNESS:** Could you be a little more explicit
18 about "assess"?

19 **MR. HYATT:** Sure.

20 **THE WITNESS:** In what -- what way would I assess
21 it?

22 **BY MR. HYATT:**

23 **Q. Well, Dr. Stein, you take issue with Dr. Herron's**
24 **methodology. I'm asking you what methodology you would use**
25 **to assess the Washington signature verification**

1 forgive me for reading, but I think it's important. "In
2 2012, there were" three-million-point-oh-four million votes
3 cast in Washington. Research by Gerber, et al., estimates
4 that "for the increased turnout" of 2.4 percent -- 2 to 4
5 percent -- as a result of Washington State adopting vote by
6 mail. There were probably between 72- and 144-thousand
7 persons who voted in each federal election "between 2012 and
8 2020 who would not have voted. Over the five federal
9 elections between 2012 and 2020," the "number of new voters
10 were somewhere between 360,000 and" 720, and from the "ranks
11 of younger and infrequent voters far surpasses the alleged
12 total" number of voters, all of these -- in "all of these
13 elections whose ballots were rejected for non-matching
14 signatures."

15 So. To your question. If you can see my hands,
16 there's a balancing act here. I might note here that
17 Gerber, et al., and others I cite below, measure vote-by-
18 mail both in Washington and other states that have adopted
19 it, as not only having a substantial and positive effect on
20 turnout, but particularly among the targeted marginal groups
21 that are identified in the plaintiff's complaint.

22 I consider a trade-off of two to four percent
23 increase in turnout against a diminution in balloting of
24 .04, and I believe that to be the accurate percentage of
25 votes rejected for signature -- or failed-match signatures

1 as a reasonable trade-off.

2 Furthermore, if you go to page 34 I think there
3 are other benefits. That is to say, not only is there going
4 to be higher voter turnout, particularly among targeted
5 populations, research shows in Washington and other states
6 of vote-by-mail significant rates of ballot completion,
7 people voting the whole ballot, lower costs of conducting
8 the election.

9 And most importantly, the assumption is that our
10 inability, or lack of information on voter fraud, does not
11 deny the possibility that the requirement to sign your
12 ballot is itself a legal requirement -- statutory
13 requirement, under criminal penalty -- is itself a strong
14 deterrent to what the plaintiff claims is non-substantial
15 rates or fraudulent voting.

16 **MS. PARK:** Heath, we've been going for about an
17 hour now. Are you ready for a break? I need to step out
18 for a bit as well. Like, just five minutes.

19 **MR. HYATT:** Yeah, yeah, just -- not quite. I just
20 want to sort of tie off this thread here really quick, so if
21 you could just give me a couple of minutes, Susan, I'd
22 appreciate it. And then absolutely can take a break. Unless
23 you absolutely need to take one now.

24 **MS. PARK:** No, I just need to step out, so I would
25 appreciate it. Thank you.

1 To the extent you understand the question you can
2 answer, Dr. Stein.

3 **THE WITNESS:** You're going to have to be much more
4 specific, Mr. Hyatt. What do you mean by alternative
5 verification?

6 **BY MR. HYATT:**

7 **Q.** Okay. Well, let's take one step back, just to
8 make sure I really understand the calculation that you're
9 doing here. You're estimating that there were 72,000 and
10 144,000 persons who voted in each federal election between
11 2012 and 2020 who would not have voted in these elections
12 absent vote-by-mail; correct? That -- that's the conclusion
13 that you're reaching there, right?

14 **A.** The conclusion I'm reaching, to be very specific,
15 comes from the Gerber, et al., article. They estimate in
16 the absence of vote-by-mail, which was adopted in a
17 staggered format in the state of Washington -- wasn't done
18 wholesale, as I'm sure you're aware -- that they estimated
19 between 2 and 4 percent increase in voter turnout among
20 people who would not have otherwise voted without the vote-
21 by-mail system.

22 **Q.** And just to make sure I understand that, when you
23 say "without the vote-by-mail system," you mean like in-
24 person voting, right? That's the alternative?

25 **MS. PARK:** Object to form.

1 verifications. There was only one.

2 **BY MR. HYATT:**

3 Q. All right. Thanks, Dr. Stein, for that. I
4 appreciate it. It -- you'll agree with me then, that the
5 increase in turnout that the Gerber, et al., study was a
6 result of universal vote-by-mail, not the signature
7 verification requirement compared to some other means of
8 voter verification, correct?

9 MS. PARK: Object to form.

10 You can answer.

11 THE WITNESS: Interesting question. I would not
12 agree with that, and I'll explain why.

13 When adopting a mode of voting, such as all mail-
14 in voting, what's most important is that there be a uniform
15 application implementation. To the best of my knowledge,
16 from everything I have read and been provided by the
17 Attorney General, the rollout of vote-by-mail on a staggered
18 format used, and only, used signature verification.

19 That is part of the vote-by-mail system. It's
20 like saying, "Now what part of Bob's body swims in the
21 water?" All of it does. Arms and legs.

22 So it's impossible for me to say to you that the
23 vote-by-mail system is what accounts -- but not the
24 signature verification. The signature verification is an
25 integral part of the vote-by-mail system, as is the use of

1 the United States Postal Service to distribute -- and in
2 some cases return -- the ballot, along with drop-off
3 locations. And yes, the procedures and rules and
4 regulations for verifying a signature ballot. All of that
5 is part of the vote-by-mail system.

6 Neither Gerber nor -- and his colleagues, nor
7 others who studied the vote-by-mail systems, attempt to
8 separate elements of the vote-by-mail system such as
9 signature verification. Doesn't mean that it couldn't be
10 done as a study, it just simply means their paper looked at
11 the totality of vote-by-mail as implemented in the state of
12 Washington.

13 So I would disagree. I would say that vote-by-
14 mail, along with the signature verification and all of the
15 other elements to implementing this method of voting,
16 account for the 2.4 -- or 2 to 4 percent increase they
17 observed in voter turnout.

18 **BY MR. HYATT:**

19 **Q. Is it possible, Dr. Stein, that Gerber, et al.,**
20 **would reach the same increased turnout findings if**
21 **Washington State, instead of signature verification had**
22 **used, say, a unique PIN identification?**

23 **MS. PARK:** Object to form, and foundation.

24 **BY MR. HYATT:**

25 **Q. Is it possible, Dr. Stein, they would have reached**

1 knowing whether the fraud is difficult to detect or if it
2 just is rare; right?

3 MS. PARK: Object to form, and foundation.

4 THE WITNESS: I don't think it's an either-or. I
5 think both are possible. I simply raise the possibility
6 that the detection, prosecution, and conviction of voter
7 fraud, Professor Herron's definition, might be sufficiently
8 narrow not to be able to detect the existence of voter
9 fraud.

10 MR. HYATT: Dr. Stein --

11 THE WITNESS: That's true --

12 MR. HYATT: Oh, I'm sorry. Go ahead. Go ahead.
13 Sorry. I didn't mean to interrupt you.

14 THE WITNESS: I didn't -- I don't think the -- the
15 way you phrased the question is an either-or. I think the
16 absence of detection, prosecution, and conviction, and
17 confessions for voter fraud, may arrive from the difficulty
18 of both detecting, and the willingness of prosecutors to
19 take cases to trial.

20 BY MR. HYATT:

21 Q. And Dr. Stein, let me ask you this. You -- you
22 agree that voter fraud in Washington State is rare; right?

23 A. I don't know what you --

24 MS. PARK: Object to form.

25 THE WITNESS: -- I'm -- I'm sorry.

1 **MS. PARK:** Object to form.

2 You can answer, Dr. Stein.

3 **THE WITNESS:** Okay. I don't know what you mean by
4 "rare." I find that just a -- a too ambiguous and gross
5 statement.

6 **BY MR. HYATT:**

7 **Q.** Okay. Let me ask you this way, Dr. Stein. You'd
8 agree with me that voter fraud in Washington State is not
9 rampant; right?

10 **MS. PARK:** Object to form.

11 **THE WITNESS:** I believe that voter fraud in the
12 state of Washington is not sufficiently consequential to
13 have substantially changed the outcome of elections, and
14 therefore distorted the preferences of the majority of
15 eligible voters.

16 I further believe that that condition is in large
17 part due to the way the state of Washington secures and
18 verifies mail-in ballots, due to the signature requirement.

19 **BY MR. HYATT:**

20 **Q.** So, I -- I want to ask you about your standard of
21 fraud. It's something that we were talking about earlier.
22 Could you give me that standard for how you assess and
23 measure a state's policy to combat voter fraud. How -- how
24 do you assess that policy?

25 **MS. PARK:** Object to form.

1 that he was asked the instance of voter fraud that was
2 investigated, people indicted, and convicted. I'm not
3 certain that that would be the definition Michael Herron
4 would offer.

5 So I want to be very clear. I know Michael has
6 written on these topics. I've read his work. I know his
7 vitae. I'm not certain how Michael would agree with a
8 definition, but his standard for the plaintiff was
9 conviction or confession.

10 I believe there are broader ways by which we can
11 detect voter fraud, and I've discussed them on -- help me
12 here, page 35?

13 And these are -- I'm sorry, not on 35. I
14 apologize for -- there but there are other ways to do
15 this. And, again, the core argument is the deterrent of
16 voter fraud, and I believe that the signature verification
17 is a better way to deter fraud.

18 And it's absence or rarity, which I'm inclined to
19 agree with you on. That is to say, my definition of fraud
20 is when it rises to the occasion of having consequential
21 changes in the outcome of elections that would not have
22 occurred without the fraud. Somebody being elected who
23 shouldn't have been elected. Some referendum that shouldn't
24 have been.

25 I don't believe that the conviction or confession

1 don't have the "before."

2 So you're asking a question that's a fair one. But
3 to my knowledge, no state has ever had a vote-by-mail system
4 of any sort. Excuse, no excuse, of what we would call
5 universal mail, like Washington, that did not have a
6 signature verification, so that we could then compare, as
7 you posed the question, what is the instance of fraud before
8 and after?

9 The nearest we have to that, however, is the
10 situation in Washington that occurred -- and I report about
11 it in my expert report, dealing with initiative referendum
12 and petitions.

13 And in that part of my report, I pointed out that
14 at a certain time, signature would be -- signatures would be
15 solicited for petitions to put ballot referendum on the
16 ballot. And, not surprisingly, those who were soliciting
17 the petition signatures who were paid for the signatures,
18 they were able to obtain -- might obtain fraudulent
19 signatures.

20 And Donovan and Dan Smith detected a high rate of
21 fraudulent signatures. And only when the state enacted laws
22 to regulate and prohibit those types of signatures and
23 penalize the solicitors of them, did that rate go down.

24 And as I point out later on in a -- another part
25 of the report, this had a dramatic effect on voter

1 confidence, both in the petition and initiative procedure.

2 So that's the nearest thing we know to what happens with or

3 without more, what would I will call, vigilant enforcement

4 of signature verification.

5 **BY MR. HYATT:**

6 Q. Okay. Well, thank you for that, Dr. Stein. We're

7 -- we're certainly going to come back to that initiative

8 study a little bit later, because I think certainly, it is

9 an interesting one, as are the conclusions.

10 But I wanted to ask you about your definition of
11 voter fraud. And because you've said it a couple of times,
12 but it's just been a little too fast for me to capture it
13 completely.

14 So could you say what your definition is of voter
15 fraud? Or -- or of -- of catching and prevent -- how to
16 assess voter fraud. Is what I meant.

17 **MS. PARK:** Object to form.

18 **THE WITNESS:** Which of the two would you --

19 **MR. HYATT:** Sure.

20 **THE WITNESS:** I'm sorry, we --

21 **BY MR. HYATT:**

22 Q. Yeah. No -- no problem, Dr. Stein. But what I'm

23 asking you to just restate is, is how you would assess the

24 prevalence of voter fraud in Washington State in order to

25 judge the signature verification requirement within the

1 discussion in my report of signature verifications on
2 petitions for referendum.

3 **BY MR. HYATT:**

4 **Q.** So I guess what -- what I'm trying to understand,
5 **Dr. Stein, is going back to your first principles of**
6 **balancing access and election security. And if you don't**
7 **know how many people -- well, let me ask you this.**

8 I'm going back to the first principles of your --
9 of -- of elections and -- and voting by mail. And -- and
10 the balance, as you've described it, is access to voting and
11 election security.

12 But if you don't have a workable way of assessing
13 the level of fraud, how can you do that balancing?

14 **MS. PARK:** Object to form.

15 **BY MR. HYATT:**

16 **Q.** And reach a conclusion about a policy or state law
17 that impacts voting?

18 **MS. PARK:** Object to form.

19 **THE WITNESS:** Good question. And -- and it -- it
20 -- I pondered it a great deal when I was writing my report.
21 And I'm sure you've read it carefully.

22 First, we probably cannot test -- it's
23 counterfactual. What would have happened had we not had
24 signature verification? To the best of my knowledge,
25 neither the state or Washington, nor any other state, other

1 than Vermont -- every state with any type of mail-in voting
2 has required signature verification.

3 The trade-off I talked about was between whether
4 or not the number of people who are given access to a voting
5 system, under a voting system, is greater than the number of
6 people who might be prevented from voting unjustly, such as
7 in the case of a signature that wasn't verified, but in
8 fact, was the valid voter.

9 So I tried to estimate what that trade-off would
10 look like. I don't know for a fact that the number of
11 voters the professor Herron identified as having their votes
12 removed -- disenfranchised, is accurate. I will not contest
13 that there is not a number of voters whose signatures
14 unjustly were rejected. But I measure that against a number
15 of voters who would not have voted without a vote-by-mail
16 system.

17 And I estimate, as I did in the report, what that
18 difference is. A 2 to 4 percent increase in voter turnout
19 against 0.04 percent of alleged ballots rejected is a trade-
20 off that I think is worth considering.

21 Moreover, efforts by the state of Washington --
22 and other states, but particularly in this case -- to
23 improve on their verification of signatures with curing
24 procedures. Notification procedures. Other changes, which
25 essentially give the benefit of the doubt to the voter, and

1 opportunities to correct the error, make that weighing of
2 pluses and minuses, the tension, more favorable to keeping
3 the signature verification against its removal, which may--
4 but I can't estimate -- increase the vulnerability, the
5 fragility of the security of a vote-by-mail system.

6 **BY MR. HYATT:**

7 Q. I -- I appreciate that, Dr. Stein, and -- but --
8 but I -- I only heard you talk about one aspect of the
9 balancing, and that's access. I didn't hear you say
10 anything about Washington's ability to prevent or detect
11 signature verification in any concrete terms as you're
12 talking about this tension.

13 A. So you -- your question, if I'm not --

14 **MS. PARK:** Is that a question? Or --

15 **THE WITNESS:** Yeah. I -- I -- sorry.

16 **BY MR. HYATT:**

17 Q. Yeah. I'm -- I'm asking, Dr. Stein, if you don't
18 have a way of measuring fraud, or you don't have any
19 evidence of measuring fraud in Washington State, how can you
20 then use that in a balancing test or analysis about whether
21 to keep a state law?

22 **MS. PARK:** Object to form.

23 You can answer, Dr. Stein.

24 **THE WITNESS:** First, I did offer an alternative
25 means of measuring the instance of voter fraud and its

1 consequences on our elections.

2 Number two, that measure -- that measurement has
3 not been undertaken by myself, or anyone that I know of, in
4 the state of Washington.

5 I do not disagree with the statement that voter
6 fraud has not risen to a level that has been consequential
7 in recent elections, though I do remind everybody -- I think
8 it's a 208 election for governor? If I'm not mistaken?
9 Which the winning candidate was less than 200 votes.

10 So there's always a chance that this could have
11 occurred. We can't know that, because we don't have any
12 data to measure the existence of voter fraud, as I've
13 outlined in the paper, without signature verification.

14 Again, I believe that the system in place not only
15 prevents, but has been a prevention, a deterrent, to people
16 doing things that are wrong. As in the case of North
17 Carolina. As in the case of petition signatures solicited
18 for referenda and initiatives.

19 So I -- I've offered several ways to measure voter
20 fraud. I can't, so to speak, change history. The state has
21 never had even, with absentee mail-in voting, it's never had
22 a system without signature verification.

23 How do I measure fraud? We talk -- I talk about
24 it in the report. It's possible, it's reasonable, to
25 assume, or maybe to conjecture, that the presence of a

1 **MR. HYATT:** Okay.

2 **THE WITNESS:** At this -- at this time.

3 **MS. PARK:** And Dr. Stein, you don't need to rush.
4 You should take the time that you need, and Counsel should
5 not be interrupting you.

6 **MR. HYATT:** And -- and again, Dr. Stein, I -- I
7 apologize. As you can imagine it's difficult over Zoom to --
8 -- to do this. It's certainly my -- not my intention to cut
9 you off, just to be clear.

10 **BY MR. HYATT:**

11 **Q. Dr. Stein, did I hear your testimony correctly**
12 **that you think the signature verification requirement is**
13 **sufficient deterrent for voter fraud?**

14 **MS. PARK:** Objection. Form.

15 **THE WITNESS:** I believe it's the only deterrent to
16 voter fraud that would not unbalance, if that's the right
17 word I can use here, the tensions, or the preferences for
18 security and access.

19 So I -- like discussed in the report, there are
20 other ways to secure mail ballots, and we talked about them
21 before. IDs.

22 We didn't mention witnesses and signatures,
23 biometrics, handprints -- handprints and the -- the DNA, the
24 -- the issuance of a token.

25 But I consider those, and I think the literature

1 does, as more suppressive of voter access than the signature
2 verification requirement.

3 So to answer your question, the signature
4 verification requirement is the only mechanism currently
5 available that I think deters bad people from doing bad
6 things, voter fraud, without increasing the cost and access
7 for some people, to the ballot in the state with vote-by-
8 mail, such as Washington.

9 **BY MR. HYATT:**

10 **Q. And just to be clear, Dr. Stein, you have no**
11 **evidence to suggest that the signature verification actually**
12 **deters bad conduct in elections, correct?**

13 **MS. PARK:** Object to form, and foundation.

14 **THE WITNESS:** I believe there is evidence of that.
15 And again, the evidence is the absence of widespread -- and
16 as I called it before, "consequential voter fraud." I
17 believe an analysis of the type I -- I detailed in the
18 report would probably show that in the state of Washington,
19 there has not been widespread and consequential voter fraud,
20 and I would attribute that and offer as evidence, the
21 state's history of signature verification.

22 And as I said before lunch, there is a history in
23 the state of Washington of signature fraud in another
24 electoral arena for petition initiatives that I believe
25 provides us some reason to believe that the presence of

1 signature verification in Washington as part of the totality
2 of mail-in voting practices has kept the type of fraud that
3 I have defined as consequential, well below what I would
4 call of -- of -- that would raise concerns. And still
5 balance voter access with security.

6 **BY MR. HYATT:**

7 **Q. Dr. Stein, in any of the states that don't do**
8 **signature verification, including Vermont, which is also a**
9 **universal vote-by-mail state, as you've identified, are you**
10 **aware of any widespread fraud in those states?**

11 **MS. PARK:** Object to form, and foundation.

12 **THE WITNESS:** As I said before lunch, no. But I
13 want to make it very clear, I don't believe that a
14 comparison of the sort you're making -- Vermont,
15 Connecticut, or the other states -- is a -- is a fair one
16 that would hold up to the type of scrutiny that, you know,
17 we would want for -- in my business, social science
18 practice.

19 **BY MR. HYATT:**

20 **Q. Let's go to the next page, page 12, Dr. Stein.**

21 **A. I'm there.**

22 **Q. It -- the -- do you see the sentence that starts,**
23 **"For example"?**

24 **A. "The need for" -- yes. "For example, if an**
25 **individual were"?**

1 Q. Yeah, that's right. So that sentence reads, "For
2 example, if an individual were to intercept and steal a
3 voter's ballot and cast to vote, such fraud would be
4 detected in Washington's current system only through" the
5 "signature verification." Is that right? That -- is that
6 your conclusion?

7 MS. PARK: Form.

8 THE WITNESS: Yes.

9 BY MR. HYATT:

10 Q. Okay. And you're not aware of any such instances
11 actually occurring, right?

12 MS. PARK: Object to form, and foundation.

13 THE WITNESS: I'm thinking for my -- I mean, I'm
14 just trying to remember the Pierce case. No. I do not know
15 of any. No.

16 BY MR. HYATT:

17 Q. And is it your opinion, Dr. Stein, that the
18 signature verification requirement would catch all of those
19 cases of fraud?

20 MS. PARK: Object to form.

21 THE WITNESS: I don't think -- no. Not all. But
22 I -- I would -- I would be confident to believe that a
23 signature verification might be the only way to catch them.
24 However, what's the right word I want to use here.
25 However, non -- non-absolute. There's -- lots of people run

1 stop signs, and occasionally police officers don't see that,
2 but I still think that we need traffic lights, stop signs,
3 and police officers to both deter and to apprehend
4 violators.

5 So the answer is no, not absolutely perfect. But
6 I know of no better way to do it without unbalancing, or I
7 should use the word "imbalancing," that tension between
8 access and security.

9 **BY MR. HYATT:**

10 Q. Okay. I want to go to the next paragraph here.
11 You talk about obtaining replacement ballots. Do you -- do
12 you recall that discussion?

13 A. Yes.

14 Q. Okay. Are -- are you offering any testimony about
15 whether the state should use replacement ballots in the way
16 that they do, and have signature verification, versus the
17 alternative, no signature verification and no ballots --
18 replacement ballots online?

19 **MS. PARK:** Object to form, and foundation.

20 **THE WITNESS:** You're going to have to break that
21 one up.

22 **BY MR. HYATT:**

23 Q. Sure. Yeah. Are -- are you offering any opinions
24 on whether replacement ballots online and access to those
25 ballots is -- is good policy for elections?

1 **MS. PARK:** Object to form.

2 **THE WITNESS:** I -- I -- as I -- written at the end
3 of my report regarding some of the proposed changes in
4 Washington State's mail ballot program, particularly in
5 verification, I think one of the strong -- strong suits? Is
6 that the right word? Is the votewa-dot-gov.

7 It -- it's a, I think, an exceptional website. I
8 think it provides voters with lots of information; but most
9 importantly, maybe importantly, at least, it does provide
10 them with this feature. So should you just lose, or
11 misplace, or your dog ate your ballot, you have an easy way
12 to request and obtain a replacement ballot. And as I'm --
13 I'm sure we'll talk about later, there is even proposals to
14 make it even easier, using it over the Internet or over the
15 phone or even texting.

16 I think this is particularly a strong -- what's
17 the right word? -- weight on the side of the balance of
18 access. I think it gives voters more access.

19 However, absent signature verification, this
20 particular feature of Washington's mail ballot is
21 susceptible to exposure? Is that the right word? Exposure
22 and -- and exploitation by bad people. Bad institutions,
23 domestic and foreign.

24 So no, I am not saying that the state should get
25 rid of this option of going online and getting a replacement

1 ballot. I think it's a fine option. I think it is part of
2 this what I call totality of circumstances that makes
3 Washington State's vote-by-mail system not only one of the
4 best in the country, in terms of independent raters, but the
5 2 to 4 percent turnout rate.

6 However, should the signature verification be
7 removed, and this particular feature remain in place, along
8 with all of the other features of vote-by-mail, I think it
9 is susceptible to the attacks that I've stipulated in page
10 12 and beginning of page 11 and end of page 11.

11 **BY MR. HYATT:**

12 **Q. Do you know how many people utilize the**
13 **replacement ballot system online?**

14 **MS. PARK:** Objection, form, and foundation.

15 **THE WITNESS:** No, I -- I'm sorry. No, I do not.

16 **BY MR. HYATT:**

17 **Q. So when you say it's an important part of**
18 **increasing access, you're just speculating there, because**
19 **you don't know how many actually -- how many people actually**
20 **use it, right?**

21 **MS. PARK:** Object to form, and foundation.

22 **THE WITNESS:** I don't think I have to know how
23 many people participate to be able to say that it is part of
24 a overall system of vote-by-mail that works extremely well.
25 And it -- it's attributable to the 2 to 4 percent increase

1 in turnout that Gerber and Green have reported.

2 **BY MR. HYATT:**

3 **Q. Was the replacement ballot option part of the**
4 **Gerber study, Dr. Stein?**

5 **MS. PARK:** Object to form.

6 **THE WITNESS:** I believe so. I mean, I -- let me
7 say this. They did not isolate the replacement ballot, or
8 the verified signature requirement, or the due dates, or
9 local drop-off, as a separate independent regressor or
10 measure, they looked at the totality.

11 So your question is, is this an integral part of
12 vote-by-mail. That is to say, if we remove the option of
13 replacing a ballot, would Gerber and -- and et al.'s
14 findings be different? I don't know. That's speculative.
15 There's a way to study that, but they studied the current
16 operation.

17 I am inclined to believe that this is one part of
18 many parts to vote-by-mail in Washington that make it a
19 successful program. And by "successful" -- I want to be
20 very specific -- it addresses this tension or balance
21 between access and security. If you were to remove one part
22 of that system, and there are many parts of it, it's
23 possible we get different results in the Gerber-Green paper
24 -- excuse me, Gerber, et al. paper; I don't think Don
25 Green's there.

1 **MS. PARK:** Object to form, and foundation.

2 **THE WITNESS:** I'd say this. That what I have read

3 in the literature on voter ID laws, both for in-person and

4 mail-in voting, and the estimates that have been reported on

5 suppressed voter turnout as a percent of eligible voters, is

6 far greater than the 0.04 percent that has been reported --

7 I think, agreed upon -- for rejected mail ballots for

8 signature verification in the state of Washington.

9 **BY MR. HYATT:**

10 **Q.** And Dr. Stein, you've referenced the 0.04 percent

11 number a fair amount today. It -- it -- was that the

12 percentage that you've based your opinions on, and -- and

13 done your analysis of, throughout your -- your, testimony

14 and your report?

15 **MS. PARK:** Object to form, and foundation.

16 **THE WITNESS:** Not the precise. I -- I -- I've

17 been probably using that number -- I've seen as high as -- I

18 -- the number I have seen is less than 1 percent. And most

19 frequently quoted in the plaintiffs' expert reports and in

20 the Auditor's report, as about a half a percent, of

21 registered eligible voters in the state.

22 **Q.** Okay. And -- and just to be clear, you know, I --

23 I've heard you say 0.04 percent, but do you mean 0.4

24 percent?

25 **A.** Yeah. Let -- let me be -- half a percent. Call -

1 **THE WITNESS:** You're referring to the -- the
2 chapter in the edited volume?

3 **MR. HYATT:** That's correct.

4 **THE WITNESS:** As I write in my report, Washington
5 State's experience with invalid voter signatures, invalid
6 initiatives, it gives us at least some insight into how
7 voter confidence might be shaped, by this lack of -- of
8 stringent oversight on signatures.

9 And as Donovan and Smith point out, "the forging
10 of registered voters' signatures in order to place
11 initiatives or referenda on" the "statewide ballot between
12 1990" and 2006 became a problem. I -- I believe other
13 reporters in my report I mentioned, almost as much as --
14 more than a quarter of petition signatures were found to be
15 invalid. "On average," to quote the report, the ballot
16 measures -- 20 percent, a fifth -- almost a 5th of all the
17 signatures were "invalid, mostly because the names on the
18 petitions" were not found on the registered voter lists.

19 And the origin of this seemed to be solicitors
20 with signatures having a fiduciary -- financial incentive to
21 forge these signatures.

22 Now I point out from the report that Washington
23 had a law that prohibited -- or required "petition
24 signatures to swear to the integrity of the signatures," but
25 the enforcement of this was, as Donovan and Smith's note --

1 how can I say this -- lacks. Failed to swear an affidavit.

2 It -- it was -- at the time, I think a -- as I
3 report in the report, a -- a C -- or class C felony, and
4 "may explain why we find only subtle differences in" the
5 "invalid rates."

6 So it -- it created a problem. And Donovan and
7 Smith -- and I believe it was Donovan and Dan Smith. I -- I
8 if you read carefully the footnotes of the paper, it was
9 Donovan that conducted yearly surveys in the state of
10 Washington on voter confidence, and he linked voter
11 confidence declining between this period, 1990, and the
12 early parts of 2000, to, a -- a extraordinary high level of
13 -- of fraudulent signatures on these petition for -- for
14 initiatives.

15 So my suspicions are that voter confidence has --
16 had declined during this period. I believe he talked about
17 it being, you know, almost a 10-point -- percentage point
18 decline in voter confidence simply due to voters losing
19 confidence that these initiatives and petitions that put
20 these initials on the ballot were not fraudulent -- that
21 they were fraudulent, and that voter confidence was -- was
22 significantly affected.

23 I will recognize that signatures on petitions are
24 not valid signatures. But consistent with my earlier
25 observation, if you're looking for any evidence of how a

1 signature -- verified signature, whether it's on ballot or
2 on a petition, might affect voter confidence, this is the
3 closest we'll -- I -- I suspect we'll have to a natural
4 experiment.

5 During this early part of the -- late part of the
6 20th and early part of the 21st century, Washington had a
7 problem, with signatures on -- on petitions. And they --
8 this problem was not just fraudulent signatures, but it
9 invaded or infected voter confidence. And as Donovan
10 reports, it required action by the State.

11 I consider it a lesson, a potential lesson for
12 what might happen should there be a removal of signature
13 verification of mail ballots.

14 **BY MR. HYATT:**

15 **Q.** Just to be clear, Dr. Stein, you mentioned that
16 the study finds that a majority of the signatures were --
17 but let -- let me actually ask you one question first.

18 The study discusses the signatures in terms of
19 validity and invalidity, right?

20 **MS. PARK:** Object to form.

21 **THE WITNESS:** What -- do you mean by -- what do
22 you mean by "validity and invalidity"?

23 **BY MR. HYATT:**

24 **Q.** Well, let -- let me let me ask you this way, Dr.
25 Stein.

1 A. I --

2 Q. -- curing of signature verification?

3 MS. PARK: Object to form, and foundation.

4 THE WITNESS: I do not know.

5 BY MR. HYATT:

6 Q. Is there implicit bias training provided to
7 election officials in every county in Washington State?

8 MS. PARK: Object to form.

9 THE WITNESS: I am not knowledgeable of that.

10 BY MR. HYATT:

11 Q. Are examples provided to election officials,
12 whether -- when they're being trained in signature
13 verification to help illustrate different ways of
14 determining whether signatures are valid or not?

15 MS. PARK: Object to form, and foundation.

16 THE WITNESS: I am not familiar with whether --
17 whether that is provided or not.

18 BY MR. HYATT:

19 Q. Okay. But it is your testimony that more training
20 at the county level is going to reduce the disparities,
21 right?

22 MS. PARK: Object to form.

23 THE WITNESS: Let me make it clear. I -- what I
24 have written in my report here suggests that there are a
25 number of steps, additional training and -- and potentially

1 the type of training you've alluded to in your previous
2 questions, I believe will reduce -- correct the false
3 positives or -- or mistaken validations. Yes.

4 But the -- it is not the only -- the steps that
5 are being proposed here. As I elaborate on page 36, I think
6 starting with the presumption that every signature is valid
7 will go a long way through reducing mistaken and invalid
8 rejections.

9 I believe that the steps to allow voters to
10 further cure their ballots, particularly the secondary
11 authentication, opportunities to contact voters that might
12 not have internet, phones, will further opportune -- further
13 enhance those opportunities.

14 And as we talked about before, the automated
15 effort to use vote WAA so that a voter can -- doesn't have
16 to walk in or mail in, but can do online curing of their
17 mail ballots.

18 So the implication that training is the only thing
19 I'm suggesting, or that has been suggested by the state, is
20 miss -- is not accurate or -- or ,nor -- nor the totality of
21 things that are being proposed.

22 **BY MR. HYATT:**

23 **Q. I understand that, Dr. Stein. And -- and we'll --**
24 **we'll get to those things to -- to be sure in a few minutes,**
25 **but what I'm trying to figure out is, your testimony right**

1 **MS. PARK:** Object to form and mischaracterizes the
2 witness's testimony.

3 **THE WITNESS:** I'm not -- I am simply not capable
4 of answering that question for you, because it's beyond the
5 scope of my expertise.

6 **BY MR. HYATT:**

7 **Q. Understood. So let me then ask you more**
8 **specifically, Dr. Stein, for the bases of your opinion that**
9 **the changes posed by the Secretary of State's office "will**
10 **very likely reduce the number of voters' ballots that are**
11 **challenged on the basis of signature challenges in the first**
12 **instance."**

13 **MS. PARK:** Object to form.

14 **THE WITNESS:** As I've endeavored to -- to explain
15 in the past, and in my report, I think the presumption in
16 number 2, that a signature is valid, goes a long way to
17 reducing the number of false or mistaken signature
18 rejections.

19 I think the steps that are taken here lay out
20 clearly ways in which they can detect whether or not the
21 match between a voter's registered signature and their
22 ballot signature is a valid one.

23 I believe that the steps after that verification,
24 where it moves on to secondary review, curing, are more
25 robust than the current procedures, particularly allowing

1 voters to do a curing process online, on the phone,
2 providing many of the additional ways in which a voter might
3 be identified. Social Security number. And the multiple
4 ways in which they can communicate to the election
5 officials.

6 So I think the initial steps of verification, the
7 presumption that the signature is valid, and the need for
8 what I will call an overwhelming evidence that it is not the
9 voter's original signature.

10 And then the steps for curing -- and the curing
11 steps are not only how somebody cures their ballot, but the
12 additional access the election administrator is given to the
13 voter, and the voter is given to the election administrator
14 -- I think, assures us that there will be surely a
15 diminution in the number of mistaken rejected signature
16 ballots.

17 **BY MR. HYATT:**

18 **Q. By raising the standard for when to reject a**
19 **signature, Dr. Stein, does that inherently mean that more**
20 **fraudulent ballots will be cast and pass the signature**
21 **verification steps?**

22 **MS. PARK:** Object to form.

23 **THE WITNESS:** You said "raising the standards"?

24 **MR. HYATT:** That's right --

25 **THE WITNESS:** Were you -- King --

1 **MR. HYATT:** That's right. King.

2 **THE WITNESS:** Raising the standards. I -- I would
3 take section 1, and -- and the -- that's the section that
4 deals with for verifying ballot, is not "raising the
5 standards," but starting with a presumption that these are
6 valid signatures.

7 Then saying if there is to be a challenge, there
8 are steps along the way that delineate everything from --
9 again, I'm not a hand -- hand -- a handwriting expert, but,
10 steps (a) through, I think it's (k), give you all the ways
11 to pause to consider whether or not there's real evidence
12 here of a fraudulent signature.

13 Then starting with 4, if there are discrepancies,
14 verifying signatures should exceed -- that is, any of these
15 (a) through (k), then they give you a number 4, and it says,
16 well, then start looking at whether or not there might be
17 explanations. Aging, shaky hands, illness, change in the
18 signature over time, et cetera.

19 I think this is what we call the "balancing act."
20 I thought this gives a presumption that people aren't
21 engaging in fraud, and that these are valid signatures.

22 And as I've said before, I believe the signature
23 verification requirement is a significant deterrent to voter
24 fraud. The method for determining signature matching, and
25 for curing mistaken signature matching rejections, has been

1 improved. But you need to consider, as I said, how the
2 signature verification process operates. And it has several
3 stages; two, in my mind.

4 One is a deterrent, and two, as a means of
5 accessing whether or not signatures are valid or not. I
6 think this is an improvement on the second. I think the
7 deterrent still remains, and I can see why there would be a
8 presumption in number 2 that the signature is valid. We
9 don't presume that there is a lot of voter fraud. Because
10 we have it returned. But there may be some.

11 And more importantly, as the secretary -- excuse
12 me, as the Auditor's report has shown, in some counties, in
13 some years -- election years, for some target populations,
14 there is a higher rate of rejected mail ballot signatures.

15 These proposed changes, I believe, address those
16 possible mistaken rejected mail ballot signatures, and would
17 correct and therefore reduce not just the overall number,
18 but as the Auditor's report and Mr. Palmer's report and Mr.
19 Aravakin's report, in those target populations.

20 **BY MR. HYATT:**

21 **Q. Dr. Stein, do you think these new regulations --**
22 **let me -- let me rephrase this way.**

23 **Do you think it's more likely that fraudulent**
24 **ballots will be accepted through these new regulations than**
25 **with the current regulations?**

CERTIFICATE

I, Carolyn Blakeslee Proeber, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true, and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August, 2023.



Carolyn Blakeslee Proeber

Exhibit 8

RETRIEVEDFROMDEMOCRACYDOCKET.COM



COURT REPORTING

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

TRIAL PRESENTATION

MOCK JURY SERVICES

LEGAL TRANSCRIPTION

COPYING AND SCANNING

LANGUAGE INTERPRETERS



**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

VET VOICE FOUNDATION, THE WASHINGTON BUS,
EL CENTRO DE LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL, GABRIEL BERSON,
and MARI MATSUMOTO,

Plaintiffs,

vs.

NO. 22-2-19384-1 SEA

STEVE HOBBS, in his official capacity as
Washington State Secretary of State,
JULIE WISE, in her official capacity as the
Auditor/Director of Elections in King County
and a King County Canvassing Board Member,
SUSAN SLONECKER, in her official capacity as
a King County Canvassing Board Member, and
STEPHANIE CIRKOVICH, in her official capacity
as a King County Canvassing Board Member,

Defendants.

RETRIEVED FROM DEMOCRACYDOCKET.COM



NAEGELI
DEPOSITION & TRIAL



(800) 528-3335

NAEGELIUSA.COM

REMOTE DEPOSITION OF

MARK SONGER

**TAKEN ON
TUESDAY, AUGUST 22, 2023
8:59 A.M.**

**DENVER, COLORADO
2nd Decl. McGinty**

Ex. 8 Page 89

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

For the Plaintiffs:

Kevin J. Hamilton, Esquire

PERKINS COIE, LLP

1201 Third Avenue, Suite 4900

Seattle, Washington 98101

(206) 359-8000

(206) 359-9000 (Fax)

khamilton@perkinscoie.com

For State Defendant Steve Hobbs:

William McGinty, Esquire

OFFICE OF THE ATTORNEY GENERAL

7141 Clearwater Drive Southwest

Olympia, Washington 98504

(360) 586-7707

(360) 664-4170 (Fax)

william.mcginty@atg.wa.gov

Also Present:

Garmai Gorlorwulu

1 REMOTE DEPOSITION OF

2 MARK SONGER

3 TAKEN ON

4 TUESDAY, AUGUST 22, 2023

5 8:59 A.M.

6
7 **MARK SONGER**, deponent herein, having been first duly sworn
8 on oath, was examined and testified as follows:

9 (Exhibits 1-14 were premarked.)

10 **EXAMINATION**

11 **BY MR. HAMILTON:**

12 Q. Good morning, Mr. Songer. My name is Kevin
13 Hamilton, with the Perkins Coie law firm. I represent the
14 plaintiffs in this case.

15 Can you please state your name and address for the
16 record.

17 A. Sure. Mark Songer, 720 South Colorado Boulevard,
18 Suite 650 North -- excuse me -- 640 North, Denver, Colorado
19 80246.

20 Q. You are, as I understand it, a forensic document
21 examiner who has been retained by the Attorney General's
22 Office of the State of Washington to prepare a report in
23 connection with this litigation; is that right?

24 A. That is correct.

25 Q. I gather this is not the first time you've

1 **folder. We just uploaded it. It's the document that we**
2 **discussed earlier.**

3 A. I don't think I have --

4 **MR. MCGINTY:** Shall we take a small break, here?
5 We'll just need to pull it off of that Share Point and send
6 it on to Mark.

7 **MR. HAMILTON:** Okay. Sure, we can go off the
8 record here for a couple minutes, or just pause the
9 deposition.

10 **(Pause in the proceedings.)**

11 **MR. HAMILTON:** Okay. So we're back on the record.

12 **Q. I want to look at these two documents together,**
13 **Exhibit 7 and Exhibit 8.**

14 **Why was Exhibit 7 typewritten after he had this**
15 **handwritten document all laid out?**

16 A. Because my writing is atrocious, and I wanted to
17 create a spreadsheet that would be more readable.

18 **Q. And who actually prepared the spreadsheet?**

19 A. I believe one of my assistants did it.

20 **Q. And did you review it for accuracy?**

21 A. I did, to the best -- Yes, to the best of my
22 ability. Yes, I did look at it.

23 **Q. So let's look at -- In Exhibit 7, the sixth and**
24 **the seventh entry are for Tellinghusen, first initial "E."**

25 **Do you see that?**

1 A. Yes.

2 Q. Two entries there.

3 First entry under Comments is "R, signature style
4 not consistent."

5 I assume "R" means "Reject"?

6 A. Correct.

7 Q. "A" means "Accept"?

8 A. Correct.

9 Q. And then the same voter, next down, it says, A-R,
10 "4-12-22" due to signature style not consistent.

11 What does "A-R" mean?

12 A. So again, when I was given this data dump of
13 signatures, they weren't in any particular order. So it was
14 very common for me to see lots of duplicates of signatures.
15 Also, they weren't together, necessarily, so I had to -- I
16 might not come across Tellinghiusen until 20 signatures
17 down.

18 So that's why we have -- So other ballots from
19 Tellinghiusen might not have shown up until further down in
20 my analysis, and that's where the rejection -- we'd compare
21 that signature with other ballot signatures from other
22 voting periods of times, and that's how the rejection would
23 occur.

24 Does that make sense to you?

25 Q. Well, I'm not sure. So let's look at Exhibit 8.

1 **And if we, on the first page of Exhibit 8, look**
2 **down six entries or so, there's an "E" Tellinghiusen, same**
3 **person. But there's only one entry, and it says "R-style."**

4 A. So this is the way -- this is the way that the
5 data was provided to me. I just basically took all these
6 signatures from -- right from the get-go, which would be
7 Debra Deans would be the first one, and just went right --
8 just printed them out, whatever order they came in, and
9 that's how this list was created.

10 So Tellinghiusen might not have come back up again
11 until multiple documents down.

12 **Q. Okay. So if we look at page 5 of Exhibit 8?**

13 A. Okay.

14 **Q. About three-quarters of the way down, there's also**
15 **an entry for Tellinghiusen?**

16 A. Yep.

17 **Q. And so when this person typed the list, is it your**
18 **testimony that they went through and tried to clump them all**
19 **together?**

20 A. Correct, as best as we could.

21 **Q. And let me ask you again: What does "A-R" mean?**
22 **Was that "Accepted" or "Rejected"?**

23 A. So there were -- So both. There were multiple
24 voting months, years, ballots.

25 So I would accept maybe -- if there were four or

1 five different years or months that they were -- excuse me
2 -- months in which they voted, the acceptance would be I
3 accepted portions of it, but also rejected a ballot based on
4 style differences not seen in the other accepted signatures.

5 **MR. MCGINTY:** I'll just go ahead and jump in that
6 my paralegal has, as of 10:45, emailed Exhibit 14 to the
7 witness.

8 **MR. HAMILTON:** Great. We'll come back to that.
9 I'm going to finish going through this, but thank you.

10 **Q. Return to page 2 of Exhibit 7. The name at the**
11 **top of page 2 is "Muhlhausen." Do you see that?**

12 A. Yes.

13 **Q. Go down about halfway down the page. There's**
14 **Eiesland, L, and the notation says, A-R - "4-25-22"**
15 **signature style not consistent.**

16 **So is this another instance in which you accepted**
17 **one ballot but rejected another ballot by the same voter?**

18 A. Correct. There was another ballot that the
19 signature style did not match the other Eiesland writings.

20 **Q. If we look at page 2 of Exhibit 8, Eiesland, about**
21 **seven lines down, Accepted, but in the typed document, it's**
22 **Accepted-Rejected.**

23 A. Yes. So again, multiple voting months. So
24 portions of Eiesland, S, would be accepted, with the
25 exception of the one dated, in my notes, 4-25-22. And then

1 **The same thing we're looking at, page 12 of that**
2 **exhibit, there's a -- It may be a different version of the**
3 **same spreadsheet.**

4 A. So this looks -- this appears to be the Songer
5 Clark merge spreadsheet.

6 **Q. And what is the Songer Clark merge spreadsheet?**

7 A. It would be a merger of my spreadsheet information
8 with the Signatures2Get spreadsheet, which I looked at,
9 signatures that Clark County determined were submitted
10 illegitimately.

11 **Q. I thought your report was complete when you**
12 **received that Signature2Get spreadsheet from Mr. McGinty.**

13 **Was that --**

14 A. -- received the spreadsheet.

15 **Q. Did you create this merger of the two documents,**
16 **or was that done by Mr. McGinty or someone else?**

17 A. It definitely -- It wasn't created by myself.

18 **Q. Okay. So somebody at the Attorney General's**
19 **office took your work product spreadsheet that was shown in**
20 **one form as Exhibit 7, and in another form, the first 11**
21 **pages of Exhibit 14, and merged some other data with it and**
22 **then gave it back to you?**

23 A. I believe that is correct.

24 **Q. Okay. And the data that was added was the -- this**
25 **potential recipient column and the Voter ID recipient**

1 Q. And how would we find those 28 or 29 instances?

2 A. Those are reflected in the -- on my spreadsheet,
3 actually. They would be marked as accepted -- or excuse me.
4 Yeah, they would be marked as accepted.

5 But I do -- But that would also appear on the list
6 that we previously discussed initially, before the
7 deposition, at the initial onset of the deposition.

8 I'm not sure how to identify the document. It was
9 the one that was brought up in terms of my discussions with
10 the AG's office.

11 Q. Okay. And it's, I think, Exhibit 14, which is the
12 paper copy, and Exhibit 15, which is the --

13 A. Yeah.

14 Q. -- which is the electronic copy.

15 And if you could just tell me how -- I've got
16 Exhibit 14 open. You tell me if you need the electronic
17 version instead.

18 But how do we go through and find the ones where
19 you disagreed with the Attorney General -- sorry -- with the
20 Clark County officials?

21 A. So I actually used the sheets -- So there were
22 actually 14. So out of the 173 -- How I calculated that was
23 out of the 173 warning letters, right, derived from the
24 spreadsheet that's marked Songer Clark Merge, 14 of those I
25 accepted rather than rejected, which gave me a number of

1 159.

2 Q. Okay. And how did you get the 8 percent?

3 A. Right, and then I divided that by the 173, which
4 gives me the 92 percent.

5 Q. You divided 159 by 173?

6 A. Correct.

7 Q. Okay. So in this pool --

8 Why is it only 173 instead of 360?

9 A. Because the 173 represented the warning letters.

10 So that was the comparison I used, where, you know, we could
11 actually -- in which I was in agreement with that someone in
12 the same household might have signed for another.

13 Q. But the difference between 173 and 360 is 187.

14 There were 187 cases in which no warning letters were sent.

15 Of those, I assume all 187 were accepted by Clark
16 County?

17 A. I would --

18 MR. MCGINTY: Object to form --

19 THE WITNESS: Sorry, Will.

20 MR. MCGINTY: Object to form.

21 Go ahead.

22 A. I would assume, yes.

23 Q. And what was your rate of agreement with respect
24 to those?

25 A. I didn't calculate that.

1 the bulk of the 360, in which the County accepted -- we know
2 by definition you just said -- accepted the signatures, but
3 we don't know whether you agreed or disagreed with those; is
4 that right?

5 A. Correct.

6 Q. And to find the 14 that Clark County sent a
7 warning letter to, but that you thought should have been
8 accepted, we would look on the spreadsheet that is Exhibit
9 14.

10 And how would we identify them?

11 A. By their Voter ID number.

12 Q. Well, so turn to Exhibit 14. Let's see if we can
13 do this together.

14 A. Okay.

15 Q. So the second line on page 1 of Exhibit 14. The
16 voter's name is Beans, G. Beans. And under Comment, it says
17 "A."

18 Now, from your prior testimony, I think that means
19 you concluded that the signature was genuine, and the ballot
20 should have been accepted; is that right?

21 A. Correct.

22 Q. And then if we look across under Potential
23 Recipient, it says "Debra Dean."

24 Is that an indication that Clark County sent this
25 person a warning letter and rejected this person's ballot?

CERTIFICATE

I, Patricia A. Blevins, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 25th day of August, 2023.



A handwritten signature in cursive script, appearing to read "Patricia A. Blevins", is written over a horizontal line.

Patricia A. Blevins

WA CCR#2484

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Mark Larrañaga
Noted for Hearing: September 12, 2023 at 8:30 am
With Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

Plaintiffs,

v.

STEVE HOBBS, et al.,

Defendants.

NO. 22-2-19384-1 SEA

SECOND DECLARATION OF
STUART HOLMES

I, STUART HOLMES, declare as follows:

1. I submitted a declaration in the above-captioned matter dated August 16, 2023. All of the information therein is still true and correct to the best of my knowledge.
2. My previous declaration had attached to it an Exhibit 7, which showed the counts of certain information relating to ballot submissions and issuances from the August 6, 2019 primary onwards.
3. August 6, 2019 was the date this information began in the exhibit because that is the first election that comprehensive information from the VoteWA system was available. As I explained in my previous declaration, VoteWA is Washington State’s centralized voter registration and voter history database.
4. Attached to this declaration as **Exhibit 7** is a true and correct copy of information pulled from reconciliation reports as well as the Election Administration and Voting Survey

1 showing, for each election from November 8, 2016 through February 12, 2019, the total ballots
2 submitted, the total ballots accepted, the total ballots rejected, the number of ballots rejected for
3 missing signatures, the number of ballots rejected as untimely, and the number of ballots rejected
4 for mismatched signatures. Exhibit 7 to this declaration also includes the same information from
5 Exhibit 7 of my previous declaration for each election after February 12, 2019 pulled from the
6 VoteWA system.

7 5. The reconciliation reports for the November 8, 2016 general election did not
8 include ballot rejection reasons. For this election, and for this election only, I used information
9 from the Election Administration and Voting Survey to determine the reason for ballot rejection.
10 For the other elections (until the August 6, 2019 election) I used the official reconciliation
11 reports. The Election Administration and Voting Survey is a survey administered by the
12 United States Election Commission to which the Office of the Secretary of State routinely
13 submits information. The Office of the Secretary of State strives to submit accurate data to the
14 Election Administration and Voting Survey, and it can be relied upon for generally accurate
15 information in those cases where official records of the Office of the Secretary of State omit
16 certain information, such as the reason for ballot rejection for the November 8, 2016 general
17 election.

18 6. Totaling up each column where information is available from November 8, 2016
19 yields the following totals:

- 20 a. 37,636,320 ballots submitted;
- 21 b. 37,064,537 ballots accepted;
- 22 c. 564,084 ballots rejected;
- 23 d. 80,799 ballots rejected for missing a signature;
- 24 e. 215,631 ballots rejected for being untimely;
- 25 f. 183,458 ballots rejected for mismatched signatures.

1 7. Totaling up only that information where information is available from August 6, 2019
2 forward yields the following totals:

3 a. 791,508 replacement ballots issued;

4 b. 409,705 re-issued ballots issued.

5 I declare that the foregoing is true and correct to the best of my knowledge, and I do so
6 under the penalty of perjury of the laws of the state of Washington.

7 DATED this 1st day of September 2023.

8 /s/ Stuart Holmes

9 Stuart Holmes

10 Director of Elections

11 Washington State Office of the Secretary of State

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcinttron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 6th day of September 2023, at Olympia, Washington.

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General

Exhibit 7

RETRIEVEDFROMDEMOCRACYDOCKET.COM

| Election Date | Election Type | Year | Total ballots submitted | Total ballots accepted | Total ballots rejected | Ballots rejected for missing signatures | Ballots rejected as untimely | Ballot rejected for mismatched signatures | Replacement Ballots Issued | Re-issued Ballots |
|---------------|----------------------|------|-------------------------|------------------------|------------------------|---|------------------------------|---|----------------------------|-------------------|
| 11/8/2016 | General | 2016 | 3,401,591 | 3,363,442 | 35,927 | 6,018* | 4,680* | 17,592* | | |
| 8/1/2017 | Primary | 2017 | 1,042,335 | 1,028,029 | 14,380 | 2,175 | 7,520 | 3,535 | | |
| 11/7/2017 | General | 2017 | 1,601,152 | 1,582,467 | 18,533 | 3,372 | 8,825 | 5,811 | | |
| 2/3/2018 | February | 2018 | 908,044 | 896,492 | 10,978 | 2,170 | 4,781 | 3,546 | | |
| 8/7/2018 | Primary | 2018 | 1,782,911 | 1,753,546 | 29,112 | 2,890 | 17,167 | 7,932 | | |
| 11/7/2018 | General | 2018 | 3,171,933 | 3,133,462 | 34,428 | 4,696 | 9,379 | 17,673 | | |
| 2/12/2019 | February | 2019 | 546,637 | 531,768 | 14,211 | 1,274 | 10,910 | 2,359 | | |
| 8/6/2019 | Primary | 2019 | 1,196,162 | 1,176,240 | 19,351 | 2,153 | 12,552 | 4,015 | 38,057 | 35,789 |
| 11/5/2019 | General | 2019 | 2,060,929 | 2,035,401 | 25,406 | 2,928 | 14,337 | 7,340 | 65,313 | 43,430 |
| 2/11/2020 | February | 2020 | 765,727 | 754,810 | 10,808 | 2,191 | 5,452 | 2,892 | 17,076 | 5,826 |
| 3/10/2020 | Presidential Primary | 2020 | 2,352,866 | 2,256,279 | 95,261 | 3,448 | 12,970 | 11,989 | 81,456 | 20,717 |
| 4/28/2020 | April | 2020 | 25,298 | 24,992 | 313 | 54 | 187 | 58 | 265 | 34 |
| 8/4/2020 | Primary | 2020 | 2,553,672 | 2,510,881 | 40,299 | 5,912 | 21,679 | 12,056 | 95,371 | 47,780 |
| 11/3/2020 | General | 2020 | 4,158,350 | 4,116,870 | 32,334 | 4,847 | 2,486 | 23,930 | 216,282 | 76,751 |
| 2/9/2021 | February | 2021 | 303,728 | 300,326 | 3,382 | 691 | 1,572 | 1,044 | 3,988 | 2,777 |
| 4/27/2021 | April | 2021 | 113,300 | 111,739 | 1,556 | 230 | 852 | 445 | 1,972 | 190 |
| 8/3/2021 | Primary | 2021 | 1,314,332 | 1,294,522 | 19,509 | 2,655 | 11,482 | 5,018 | 28,055 | 36,096 |
| 11/2/2021 | General | 2021 | 1,921,285 | 1,896,481 | 24,213 | 3,306 | 12,943 | 7,446 | 43,183 | 34,216 |
| 2/8/2022 | February | 2022 | 981,020 | 966,966 | 13,927 | 2,123 | 7,009 | 4,529 | 19,938 | 9,846 |
| 4/26/2022 | April | 2022 | 244,171 | 240,236 | 3,921 | 467 | 2,057 | 1,296 | 3,578 | 1,120 |
| 8/2/2022 | Primary | 2022 | 1,970,363 | 1,941,933 | 27,935 | 2,892 | 14,574 | 10,072 | 39,811 | 35,813 |
| 11/8/2022 | General | 2022 | 3,108,271 | 3,068,886 | 38,237 | 5,023 | 8,358 | 23,755 | 95,694 | 36,149 |
| 2/14/2023 | February | 2023 | 459,258 | 451,969 | 7,249 | 993 | 3,728 | 2,375 | 7,639 | 1,108 |
| 4/25/2023 | April | 2023 | 539,419 | 530,405 | 9,005 | 1,270 | 4,944 | 2,692 | 13,387 | 1,140 |
| 8/1/2023 | Primary | 2023 | 1,113,565 | 1,096,395 | 33,809 | 17,021 | 15,187 | 4,058 | 20,443 | 20,923 |

*Source: Election Assistance Commission's Election Administration and Voting Survey

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

VET VOICE FOUNDATION, THE
WASHINGTON BUS, EL CENTRO DE
LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL,
GARVRIEL BERSON, and MARI
MATSUMOTO,

Plaintiffs,

v.

STEVE HOBBS, in his official capacity as
Washington State Secretary of State, JULIE
WISE, in her official capacity as the
Auditor/Director of Elections in King
County and a King County Canvassing
Board Member, SUSAN SLONECKER, in
her official capacity as a King County
Canvassing Board Member, and
STEPHANIE CIRKOVICH, in her official
capacity as a King County Canvassing
Board Member,

Defendants.

No. 22-2-19384-1SEA

ORDER RE: PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT; DEFENDANT
HOBBS' CROSS MOTION FOR
SUMMARY JUDGMENT; AND
DEFENDANT KING COUNTY
CANVASSING BOARD MEMBERS'
CROSS MOTION FOR SUMMARY
JUDGMENT

1 **I. INTRODUCTION**

2 “[V]oting is of the most fundamental significance under our constitutional structure.”
3 *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, (1979). “Other rights, even
4 the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S.
5 1, 17 (1964). “It does not follow, however, that the right to vote in any manner ... [is] absolute.”
6 *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). The Constitution explicitly provides State
7 legislatures with authority to regulate the “Times, Places and Manner of holding Elections[.]”
8 U.S. Const. art. I, § 4, cl. 1. Stated slightly different:

9 Restrictions on voting can burden equal protection rights as well as
10 interwoven strands of liberty protected by the First and Fourteenth
11 Amendments—namely, the right of individuals to associate for the
12 advancement of political beliefs, and the right of qualified voters,
13 regardless of their political persuasion, to cast their votes
14 effectively.

15 At the same time, and even though voting is of the most
16 fundamental significance under our constitutional structure, States
17 retain the power to regulate their own elections. Each available
18 election system, whether it governs the registration and
19 qualifications of voters, the selection and eligibility of candidates,
20 or the voting process itself, inevitably affects—at least to some
21 degree—the individual's right to vote.¹

22 Here, Plaintiffs² claim Washington’s statutory signature-verification requirement
23 unconstitutionally infringes on the right to vote because it arbitrarily rejects ballots for
24 purportedly non-matching signatures resulting in the disproportionate disenfranchising of

20 ¹ *Dudum v. Arntz*, 640 F.3d 1098, 1106 (9th Cir. 2011) (internal quotations and citations omitted).

21 ² Plaintiffs include Vet Voice Foundation, a non-profit, non-partisan organization dedicated to
22 empowering active-duty service members, veterans, and military families; The Washington Bus (“Bus”), a non-
23 profit organization dedicated to increasing political access and participation in young people across Washington
24 State; El Centro de la Raza (“El Centro”), a non-profit, non-partisan organization grounded in the Latino
community of Washington State; and three eligible Washington voters. Dkt. 1, pg. 5-9.

1 voters of color, young voters, uniformed service-members serving outside of Washington, first-
2 time voters, and voters who speak a language other than English.

3 On the other hand, Defendants³ dispute Plaintiffs' premise and argue that signature
4 verification is the linchpin and a necessary safeguard of the vote-by-mail system by affording
5 the broadest possible access to voting while simultaneously promoting public confidence in a
6 safe and secure voting process by ensuring only ballots from registered voters are counted.

7 While States can undoubtedly regulate elections, they must be careful not to unduly
8 burden the right to vote when doing so. It is this tension that's at the core of the issues here.

9
10 **II. WASHINGTON STATE'S VOTING BY MAIL SYSTEM:
BACKGROUND AND PROCEDURE**

11 In 1915, Washington began allowing absentee ballots for voters at least 25 miles away
12 from their precinct on Election Day.⁴ Absentee voters had to appear in-person at their home
13 precinct and sign a certificate.⁵ On Election Day, absentee voters presented the signed
14 certificate in-person at another precinct and signed an affidavit.⁶ Vote-by-mail allowances
15
16
17

18 ³ Defendants named in the Complaint are Secretary of State of Washington, Steve Hobbs, in his official
19 capacity as the "chief election officer for all federal, state, county, city, town, and district elections" RCW
20 29A.04.230; Auditor/Director of Elections in King County (Julie Wise), Supervising Attorney at the King County
Prosecuting Attorney's Office (Susan Slonecker), and Chief of Staff at the King County Council (Stephanie
Cirkovich), all in their official capacities as members of the King County Canvassing Board ("Canvassing
Board"). Dkt. 1, pg. 9-10.

21 ⁴ Laws of 1915, ch. 189.

22 ⁵ *Id.*, § 2.

23 ⁶ *Id.*, § 6.

1 expanded to include disability, religion, illness, and counties with fewer than 100 registered
2 voters.⁷

3 In 1974, Washington became the first state to allow no-excuse absentee voting –
4 permitting anyone to request a mail in-ballot without a reason.⁸ In 2011, Washington became
5 the second state, after Oregon, to require that all elections be conducted by mail.⁹ As of 2021,
6 Washington is one of eight states allowing all voters to vote by mail, although other states use
7 mail-in voting to varying degrees.¹⁰

8 There are several advantages to voting by mail - ease of casting a ballot; convenient
9 and flexible way for voters to cast their vote; reduce or eliminate long wait times in polling
10 places; and in some circumstances an increase in voter turnout.

11 In Washington, the county auditor sends each registered voter a ballot, a security
12 envelope in which to conceal the ballot after voting, a larger envelope in which to return the
13 security envelope, a declaration that the voter must sign, and instructions on how to obtain
14 information about the election, how to mark the ballot, and how to return the ballot to the
15 county auditor. RCW 29A.40.091(1). The voter must swear under penalty of perjury that he
16 or she meets the qualifications to vote and has not voted in any other jurisdiction at this election.
17 RCW 29A.40.091(2). Furthermore, the declaration must clearly inform the voter that it is
18 illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she is serving
19

20 ⁷ Dkt. 78, Exh. G, pg. 7 (“Evaluating Washington’s Ballot Rejection Rate”, Office of the Washington State
Auditor Pat McCarthy, Feb. 1, 2022 (the “Audit)).

21 ⁸ *Id.*

22 ⁹ *Id.*; Laws of 2011, Ch. 10, §41(3).

23 ¹⁰ Dkt. 78, Exh. G, pg. 7.

1 confinement under the jurisdiction of the Department of Corrections for a felony conviction or
2 incarcerated for federal our out-of-state felony conviction; and it is illegal to cast a ballot or
3 sign a ballot declaration on behalf of another voter. *Id.* The ballot materials must provide a
4 space for the voter to sign the declaration, indicate the date on which the ballot was voted, and
5 include a telephone number.¹¹ *Id.*

6 Ballots must be received no later than 8:00 p.m. on the day of the primary or election,
7 or must be postmarked no later than the day of the primary or election. RCW 29A.40.110(3).¹²
8 All received return envelopes are placed in a secure location from the time of delivery to the
9 county auditor until their subsequent opening. RCW 29A.40.110(2). After opening the return
10 envelopes, the county canvassing board places the ballots in secure storage until processing.
11 *Id.* Either the canvassing board or its designated representative must examine the postmark on
12 the return envelope and signature on the declaration before processing the ballot. *Id.*

13 Personnel shall verify that the “voter’s signature on the ballot declaration is the same
14 as the signature of that voter in the registration files of the county.” *Id.* All personnel assigned
15 to verify signature must receive training on statewide standards for signature verification. *Id.*¹³

17 ¹¹ RCW 29A.40.091(3) sets out protocols and procedures for overseas and service voters.

18 ¹² Dkt. 160, pg. 3, ¶4 (Decl. of Stuart Holmes).

19 ¹³ As currently drafted, the signature verification standard reads:

20 A signature on a petition sheet must be matched to the signature on file in the voter
21 registration records. The following characteristics must be utilized to evaluate signatures
22 to determine whether they are by the same writer:

- 21 (1) The signature is handwritten.
- 22 (2) Agreement in style and general appearance, including basic construction, skill,
23 alignment, fluency, and a general uniformity and consistency between signatures;
- 23 (3) Agreement in the proportions of individual letters, height to width, and heights of the
24 upper to lower case letters;
- (4) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;

1 If the signatures “match”, the ballot is marked “accepted”, the security envelope is removed,
2 and the ballot is added to the counting stream.¹⁴

3 A different process occurs when the signature on a ballot declaration is not the same as
4 the signature on the registration file. If an initial signature reviewer has concerns, the reviewer
5 can perform a closer examination.¹⁵ Further signature review by a second examiner may also
6 take place.¹⁶ If confirmation of the match remains questionable, the ballot is designated as
7 “challenged.”¹⁷ When a ballot is “challenged”, the auditor must notify the voter by first-class
8 mail, enclose a copy of the declaration, and advise the voter of the correct procedure for
9 updating his or signature on the voter registration file. RCW 29A.60.155. That is, if the voter’s
10 signature does not match the signature on file, the ballot is rejected and not counted until the
11 voter is notified and completes the correct procedure to cure the ballot.

12 To cure a rejected ballot, a voter is sent another registration declaration to sign and
13 return before the election is certified. The county election official follows a similar signature
14 verification procedure by comparing the “cured” form signature with the challenged ballot

15
16 (5) After considering the general traits, agreement of the most distinctive, unusual traits
17 of the signatures.

18 A single distinctive trait is insufficient to conclude that the signatures are by the same
19 writer. There must be a combination or cluster of shared characteristics. Likewise, there
must be a cluster of differences to conclude that the signatures are by different writers.

20 WAC 434-379-020.

21 ¹⁴ Dkt. 158, Holmes Decl. ¶11.Exh.1.

22 ¹⁵ Dkt. 158, pg. 6, McGinty Decl., Ex. 1 at 41.

23 ¹⁶ Dkt. 158, pg. 6, Haugh Decl. ¶¶5-7.

24 ¹⁷ Dkt. 158, pg. 6, Haugh Decl. ¶4.

1 declaration to determine whether there is a match to count the ballot.¹⁸ If the signature does
2 not match, the ballot is rejected and not counted.

3 III. PROCEDURAL HISTORY

4 In its original Complaint filed on November 22, 2022, Plaintiffs challenged
5 Washington's Signature Matching Procedure claiming it unconstitutionally disenfranchises
6 voters' right to vote in violation of Article I, Section 19, the right to equal treatment protected
7 by Article, I, Section 12, the rights to due process protected by Article I, Section 3, and RCW
8 29A.04.206.¹⁹ According to Plaintiffs, every Washington State voter's fundamental right to
9 vote is contingent on an arbitrary, fundamentally flawed, and unlawful signature matching
10 procedure that has from 2018 Primary Election through the 2022 Primary Election resulted in
11 more than 113,000 ballots of Washington voters being rejected.²⁰

12 Defendants dispute Plaintiffs' constitutional challenges to the voter's signature
13 verification review.²¹ Not in dispute is that voter's signature verification is a means to verify
14 that the ballot was cast by the person to whom it was issued; election officials conducting
15 signature verification reviews are human; and a ballot is not counted if it is determined that the
16 signatures do not match.²² Secretary Hobbs notes, however, that from the 2018 Primary
17 Election through the 2022 Primary Election, tens of thousands of voters whose ballots were
18

19 ¹⁸ Dkt. 158, pg. 6, McLoughlin Decl. ¶9.

20 ¹⁹ Dkt. 1 (Complaint).

21 ²⁰ *Id.*

22 ²¹ Dkt. 22 (Answer).

23 ²² *See* Dkt. 22, pg. 2, ¶3.

1 initially rejected for mismatched signatures were later able to cure their ballots resulting in
2 those ballots being counted.²³

3 Defendants also set forth a variety of defenses, pertinent here the assertion that Plaintiffs
4 failed to join necessary and indispensable parties.²⁴

5 On January 17, 2023, the Republic National Committee and Washington State
6 Republican Party filed a Motion to Intervene.²⁵ Plaintiffs opposed.²⁶ On February 1, 2023, the
7 Court denied the Republic National Committee and Washington State Republican Party's
8 Motion to Intervene but permitted filing of amicus briefing for any dispositive motions.²⁷

9 Defendant Hobbs requested the matter be transferred from King County Superior Court
10 to Thurston County Superior Court because RCW 4.12.020²⁸ and 34.05.570²⁹ require venue be
11 in Thurston County since Secretary Hobbs is sued entirely for his official duties that he
12 undertook in Thurston County.³⁰ Plaintiffs claimed the authority Defendant Hobbs relied upon
13 was inapplicable since Plaintiffs were not challenging an "official act" but the constitutionality
14

15 ²³ *Id.*

16 ²⁴ *Id.*, pg. 19.

17 ²⁵ Dkt. 11 (Motion to Intervene).

18 ²⁶ Dkt. 34 (Plaintiff's Opposition to Motion to Intervene).

19 ²⁷ Dkt 40 (Order on Motion to Intervene).

20 ²⁸ RCW 4.12.020 states actions for causes shall be tried in the county where the cause arose "against a
21 public officer, or person specially appointed to execute his or her duties, for an act done by him or her in virtue of
22 his or her officer, or against a person who, by his or her command or in his or her aid, shall do anything touching
23 the duties of such officer.

24 ²⁹ RCW 34.05.570(2) notes, in party, that in an action challenging the validity of a rule should be addressed
to the superior court of Thurston County.

³⁰ Dkt. 37 (Defendant Hobbs Motion for Change of Venue).

1 of RCW 29A.40.110(3) and Secretary Hobbs is a named defendant because he is Washington's
2 Chief Election Officer.³¹ The Court denied Defendant Hobbs' motion to change venue on
3 condition that Plaintiffs amend its complaint to clarify its intent to bring a constitutional
4 challenge to RCW 29A.40.110(3).³²

5 Over Defendants' objection, Plaintiffs were granted leave to file its Second Amended
6 Complaint that reflected its constitutional facial challenge to the statutory requirement for
7 ballot declaration signature verification.³³

8 When the parties informed the Court that various cross motions for summary judgment
9 were forthcoming, the Court issued a briefing and oral argument.³⁴ The following documents
10 related to the current issues have been filed:

- 11 - July 27, 2023: Plaintiffs' Motion for Summary Judgment
12 (w/exhibits).³⁵
- 13 - August 16, 2023: Amicus Curiae Brief of The Republican National
14 Committee And Washington State Republican Party
15 in Support of Defendants.³⁶
- 16 - August 16, 2023: King County Canvassing Board Members'
17 Opposition to Plaintiffs' Motion for Summary
18 Judgment and Cross Motion for Summary Judgment
19 (w/exhibits).³⁷

18 ³¹ Dkt. 41 (Plaintiff's Opposition to Motion for Change of Venue).

19 ³² Dkt. 48 (Order on Motion for Change of Venue).

20 ³³ Dkt. 53, 54, 57, 59, 60, 61.

21 ³⁴ Dkt. 76. The Order also granted additional words to the word count.

22 ³⁵ Dkt. 77-146.

23 ³⁶ Dkt. 147.

24 ³⁷ Dkt. 150-153, 156-157, 181.

- 1 - August 16, 2023: Defendant Steve Hobbs' Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgments (w/exhibits).³⁸
- 2
- 3 - August 28, 2023: Plaintiffs' Omnibus Opposition to Defendants' Cross Motions for Summary Judgment and Reply in Support of Plaintiffs Motion for Summary Judgment; Response to Amici (w/exhibits).³⁹
- 4
- 5
- 6 - September 6, 2023: Defendant Steve Hobbs' Reply in Support of His Motion for Summary Judgment (w/exhibits).⁴⁰
- 7
- 8 - September 6, 2023: King County Canvassing Board Members' Reply in Support of Cross Motion for Summary Judgment (w/exhibits).⁴¹
- 9

10 Given the number of parties, multiple cross-motions, voluminous record, and nature of the issues, three hours on September 12, 2023, were dedicated to oral argument.

11 On October 4, 2023, after argument and while the matter was pending, Defendant
 12 Hobbs filed a notice of supplemental authority bringing to the Court's attention a recent
 13 decision: *League of Women Voters of Arkansas, et al., v. Thurston et al.*, No. 5:20-CV-05175-
 14 PKH (W.D. Ark. Sept. 2023).⁴² The parties had an opportunity to file a limited brief to address
 15 how (if at all) the supplemental authority applies to the issues at hand.⁴³

18 ³⁸ Dkt. 158– 170.

19 ³⁹ Dkt. 175-176.

20 ⁴⁰ Dkt. 184-187.

21 ⁴¹ Dkt. 188,190.

22 ⁴² Dkt. 193.

23 ⁴³ Dkt. 194, 195 (Plaintiffs' Brief Regarding Notice of Supplemental Authority); Dkt. 196 (Defendants' Join Brief Relating to Submitted Supplemental Authority).

1 **IV. ISSUES**

2 A. County Canvassing Boards are not Indispensable Parties

3 Defendants seek to dismiss Plaintiffs’ action for failure to join indispensable parties,
4 namely the thirty-eight (38) other counties that conduct elections.⁴⁴ Plaintiffs disagree,
5 claiming since it is bringing a facial constitutional challenge to a state-wide election statute,
6 and the Secretary is the Chief Elections Officer for Washington State with rulemaking authority
7 to implement the Signature Verification Requirement (RCW 29A.04.611(54), it is unnecessary
8 and nonsensical to have to sue each county.⁴⁵

9 Under Civil Rule (CR) 19, the Court first determines whether absent persons are
10 *necessary* for a just adjudication. If the absentees are ‘necessary,’ the court determines whether
11 it is *feasible* to order the absentees' joinder.” *Auto. United Trades Org. v. State*, 175 Wn.2d
12 214, 221–22, 285 P.3d 52, 55 (2012) (emphasis added). “If joining a necessary party is not
13 feasible, the Court then considers whether, *in equity and good conscience*, the action should
14 still proceed without the absentees under CR 19(b).” *Id.* (quoting CR 19(b)) (emphasis added).
15 If the Court determines that ‘in equity and good conscience’ the matter should not proceed, CR
16 19(b) and CR 12(b)(7) grant the Court the authority to dismiss. However, “[d]ismissal . . . for
17 failure to join an indispensable party is a ‘drastic remedy’ and should be ordered only when the
18 defect cannot be cured and significant prejudice to the absentees will result.” *Auto. United*
19 *Trades Org.*, 175 Wn.2d at 222–23 (quoting *Gildon v. Simon Prop. Grp., Inc.*, 158 Wn.2d 483,

20
21
22

⁴⁴ Dkt. 150, pg. 19-21; Dkt. 158, pg. 1, n.1.

23 ⁴⁵ Dkt. 175, pg. 50-51.

1 493, 145 P.3d 1196 (2006)). “The burden of proof for establishing indispensability is on the
2 party urging dismissal.” *Gildon*, 158 Wn.2d at 495.

3 Finally, if the Court finds that the party is necessary, but joinder is not feasible, the rule
4 requires the Court to consider the following factors:

5 (1) to what extent a judgment rendered in the person's absence might be prejudicial
6 to the person or those already parties; (2) the extent to which, by protective
7 provisions in the judgment, by the shaping of relief, or other measures, the
8 prejudice can be lessened or avoided; (3) whether a judgment rendered in the
9 person's absence will be adequate; (4) whether the plaintiff will have an adequate
10 remedy if the action is dismissed for nonjoinder.

11 CR 19(b). “In examining each of the four factors, as well as any other relevant considerations,
12 the Court determines how heavily the factor weighs in favor of, or against, dismissal. The Court
13 then determines whether the case can proceed ‘in equity and good conscience’ without the
14 absentee in light of these factors.” *Auto. United Trades Org.*, 175 Wn. 2d at 229.

15 Citing *Donald J. Trump for President, Inc v. Boockvar*, 493 F.Supp.3d 331 (W.D. Pa.
16 2020), Defendants assert the failure to name all county election boards preclude the requested
17 relief.⁴⁶ *Boockvar* is distinguishable. *Boockvar*’s focus was not on state-wide application of a
18 statute, but instead on various procedures in place amongst several counties. *Boockvar*, 493
19 F.Supp.3d, at 343 - 44. Additionally, several defendants in *Boockvar* were seeking to be
20 dismissed from the case, not to dismiss an action for failure to join necessary parties. *Id.*, at
21 374.

22 On the other hand, numerous courts have concluded local election and county level
23 canvassing boards are not necessary parties in actions challenging election statutes.⁴⁷

24 ⁴⁶ Dkt. 150, pg. 20.

⁴⁷ Dkt. 175, pg. 51, citing *See Texas Democratic Party v. Abbott*, 961 F.3d 389, 399 (5th Cir. 2020) (finding that the voting-related injuries were fairly traceable to and redressable by the Secretary of State); *Harding v.*

1 The other 38 county canvassing boards are not “necessary” parties. A party is
2 “necessary” if they claim a legally protected interest that will be impaired or impeded by the
3 action. CR 19(a); *see also Auto. United Trades Org.*, 175 Wn.2d at 223. A “well-recognized”
4 exception to this necessity standard exists where the absent party’s “interest will be adequately
5 represented by existing parties to the suit.” *Id.* at 225 (quoting *Washington v. Daley*, 173 F.3d
6 1158, 1167 (9th Cir.1999)). It is debatable whether county canvassing boards even have a legal
7 interest in the signature verification requirement since the Secretary of State, who is a party to
8 this action, is the chief state elections officer (RCW 29A.04.230) and therefore tasked with
9 promulgating state-wide rules relating to signature verification (RCW 29A.04.611(54)).
10 Nevertheless, assuming county canvassing boards do have a legally protected interest in
11 administering signature verification, the Secretary of State in defending the statute against a
12 facial challenge is able to adequately represent the interests of the county canvassing boards as
13 those interests relate to the *facial* validity of the statute.

14 B. Applicable Scrutiny Standard

15 The parties strenuously disagree as to the applicable standard of scrutiny the Court
16 should use to decide constitutional challenges to the signature verification requirement. The
17 proper standard turns on whether the signature verification requirement is an unconstitutional
18

19 _____
20 *Edwards*, 484 F. Supp. 3d 299, 321 (M.D. La. 2020) (analyzing standing precedent to hold that local election
21 officials were not indispensable parties in election-related litigation against the Louisiana Secretary of State);
22 *Acosta v. Democratic City Comm.*, 288 F. Supp. 3d 597, 649 (E.D. Pa. 2018) (declining to find election boards
23 indispensable merely because the defendants may need to direct them to hold a new election based on the outcome
of the litigation); *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1284 (N.D. Ga. 2019)
(determining county elections official were not indispensable because “defendants have the statutory oversight
ability to enforce uniform and state-wide election standards and processes.”); *Self Advocacy Solutions N.D. v.*
Jaeger, 464 F.Supp.3d 1039, 1050 (D.N.D. 2020) (finding that suing only the Secretary of State was sufficient
because the local election officials were “subordinate to the Secretary in election matters.”).

1 restriction on the right to vote, or a constitutionally permitted law regulating the election
2 process.

3 Washington courts have not had many occasions to review voting law challenges under
4 its constitution. When it has, courts distinguish between restrictions on *who* may vote and
5 restrictions on the *manner* in which eligible voters may vote. In the former situation,
6 Washington courts have generally applied a strict scrutiny standard, requiring the restriction
7 on the right to vote be narrowly tailored to further a compelling state interest. *See e.g.*,
8 *Madison*, 161 Wn.2d at 99; *City of Seattle v. State*, 103 Wn.2d 663, 670, 694 P.2d 641 (1985);
9 *Foster v. Sunnyside Valley Irr. Dist.*, 102 Wn.2d at 410. The latter - manner of voting - has
10 been treated differently with a lower rational basis review being applied. *See e.g.*, *Eugster v.*
11 *State*, 171 Wn.2d 839, 844-846, 259 P.3d 146 (2011); *State ex rel. Shepard v. Superior Court*
12 *of King Cnty*, 60 Wash. 370, 111 P.233 (1910).

13 Neither approach provides a solid framework to address the constitutionality of
14 signature verification requirement. For instance, Washington courts have generally applied
15 strict scrutiny standard dealing with restrictions on the right to vote. *See e.g.*, *City of Seattle v.*
16 *State*, 103 W.2d 663, 670, 694 P.2d 641 (1985) (any statute which infringes upon or burdens
17 the right to vote is subject to strict scrutiny) (citations omitted); *Portugal v. Franklin County*,
18 530 P.3d 994, 999 (2023) (finding voting rights act did not trigger strict scrutiny by . . .
19 abridging voting rights). But not always. *See Madison*, 161 Wn.2d at 99 (restrictions on the
20 right to vote generally subject to strict scrutiny, but because felons are constitutionally excluded
21 from voting, laws relating to felon enfranchisement are not subject to strict scrutiny).

1 The much lower rational basis standard doesn't fare much better. Defendants cite
2 *Eugster, In re Coday*⁴⁸, and *Shepard* as examples of when Washington courts have employed
3 the lower standard⁴⁹; however, none of those cases provide much guidance as to the applicable
4 standard to analogous facts presented here.

5 In *Eugster*, the Court was asked whether unequal apportionment of districts for electing
6 Court of Appeals judges violated "one person, one vote" principle and article I, section 19.
7 *Eugster*, 171 Wn.2d at 844. The Court rejected the challenge, noting that Washington cases
8 have never held that article I, section 19 requires substantial numerical equality between voting
9 districts. Rather article I, section 19 historically was interpreted to prohibit the complete denial
10 of the right to vote to a group of affected citizens. *Id.*, at 845. The Court did not employ a strict
11 scrutiny standard but acknowledged that "[o]ther provisions of the Washington Constitution .
12 . . . dealt explicitly with the issue of apportionment of voting districts, strongly suggesting the
13 framers considered numerical apportionment to be a separate issue from whether an election
14 was 'free and equal.'" *Id.*, at 845.

15 *In re Coday* also doesn't shed much light. *In re Coday* involved various challenges to
16 the results of the 2006 governor election. More specifically, the contestants challenged the
17 election contest statute, chapter 29A.68 RCW, that permitted an election be contested for
18 specific reasons. *In re Coday*, 156 Wn.2d at 495. While dismissing some claims on procedural
19 res judicata grounds, the Washington State Supreme Court concluded the contestants did not
20 state a cognizable claim that provisions of the contested election statute - the statutory

21
22 ⁴⁸ *In re Coday*, 156 Wn.2d 485, 130 P.3d 809 (2006).

23 ⁴⁹ Dkt. 158, pg. 19-20.

1 requirement that a deposit be made to cover the costs of a recount, counting certain ballots in
2 recount that were not previously counted, or the practice of ballot enhancement - ran afoul of
3 Washington's constitutional requirement for an "equal" election. *Id.*, at 498-501. The facts
4 and constitutional challenges in *In re Coday* are significantly different than those presented
5 here.

6 Finally, in *Shepard*, a century old case, the Washington Supreme Court rejected a
7 challenge to a law establishing how candidates appear on the ballot. *Shepard*, 60 Wash. 370
8 (1910). The Court was not faced with whether any constitutional right of a voter was violated,
9 but whether a political party was being denied a constitutional right. *Id.*, at 373 ("In this case it
10 is not contested that any constitutional right of the voter is violated, but it is insisted that the
11 candidate and the political party which is his sponsor is denied a constitutional right. . ."). The
12 Court found the regulation establishing how candidates appear on the ballot reasonable since
13 it afforded a voter the ability to vote for the candidate of his or her choice. *Id.* Thus, the *Shepard*
14 court was not faced with restrictions to a voter but rather restrictions on a party. *Id.*, at 382
15 ("Finding no guaranty, express or implied, in favor of either a candidate or a party in the
16 Constitution, it follows that he (or she) or his (her) party can claim no greater rights than the
17 voter him(her)self.").

18 Under current Washington case law, the applicable standard to analyze any challenge
19 to voting restrictions appears limited to either strict scrutiny or rational basis. Unfortunately,
20 this rigid approach fails to appreciate the different degrees and types of tension between the
21 right to vote and restrictions to that right.

1 The hybrid *Anderson-Burdick*⁵⁰ framework taken by federal courts provides useful
2 guidance.⁵¹ Instead of applying any “litmus test”⁵² to separate valid from invalid restrictions,
3 federal courts, “to assure that elections are operated equitably and efficiently”, apply a “flexible
4 standard” when considering constitutional challenges to election regulations.

5 A court considering a challenge to a state election law must weigh “the character
6 and magnitude of the asserted injury to the rights protected by the First and
7 Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise
8 interests put forward by the State as justifications for the burden imposed by its
9 rule,” taking into consideration “the extent to which those interests make it
10 necessary to burden the plaintiff’s rights.”

11 *Dudum v. Arntz*, 640 F.3d 1098, 1106 (9th Cir. 2011) (quoting *Anderson*, 460 U.S. at 789).

12 The more flexible *Anderson-Burdick* has a two step-inquiry. First, courts determine the
13 magnitude of the burden. *Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 789. The second
14 step requires the courts “identify and evaluate the precise interests put forward by the State as
15 justification for the burden imposed by its rule,” weighing “the legitimacy and strength of each
16 of those interests.” *Anderson*, 460 U.S. at 739. Under this two-step analysis, when the burdens
17 on voting imposed by the government are “severe,” strict scrutiny applies, and the “regulation
18 must be ‘narrowly drawn to advance a state interest of compelling importance.’ ” *Id.* (quoting
19 *Norman v. Reed*, 502 U.S. 279, 289, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992)). But where non-
20 severe, “[l]esser burdens” on voting are at stake, we apply “less exacting review, and a State’s
21 important regulatory interests will usually be enough to justify reasonable, nondiscriminatory

22 ⁵⁰ *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick. Takushi*, 504 U.S. 428 (1992).

23 ⁵¹ Although question to varying degrees whether the federal approach is applicable to Washington, the
24 parties agree that federal jurisprudence may be instructive. Dkt. 158, pg. 30-33; Dkt. 150, pg. 29-30; Dkt. 175, pg.
35-37.

⁵² *Crawford v. Marion County Election Bd.*, 533 U.S. 181, 190, 170 L.Ed.2d 574 (2008).

1 restrictions. ”*Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364, 137
2 L.Ed.2d 589 (1997) (internal quotations omitted); *see also Caruso v. Yamhill County ex rel.*
3 *Cnty. Comm’r*, 422 F.3d 848, 859 (9th Cir.2005).

4 This Court is cognizant that no Washington court has examined the *Anderson-Burdick*
5 framework but given a paucity of Washington cases evaluating constitutional challenges to
6 manner of voting statutes with analogous facts⁵³, the federal hybrid-approach is a reasonable
7 alternative.

8 And there is support for this proposition.

9 First, Washington courts have long held that Washington’s right to vote is more
10 protective than the federal counterpart. The right to vote is fundamental under both the United
11 States and Washington Constitutions. *Reynolds v. Sims*, 377 U.S. 533, (1964); *Malim v.*
12 *Benthien*, 114 Wash. 533, 196 P.7 (1921). The Washington Constitution, unlike the federal
13 constitution, specifically confers upon its citizens the right to “free and equal” elections. Const.
14 art. 1, § 19; *Foster v. Sunnyside Valley Irr. Dist.*, 102 Wn.2d 395, 404, 687 P.2d 841, 846
15 (1984); *see also, Madison*, 161 Wn.2d at 97 (“The Washington Constitution grants the right to
16 vote to all Washington citizens on equal terms.”). It would therefore appear logically
17 inconsistent and at odds with Washington authority to apply a lower rational basis test to
18 challenges to right to vote under Washington State Constitution when federal courts apply a
19 higher standard when analyzing similar type challenges under the Federal Constitution.

20
21
22 ⁵³ Dkt. 158, pg. 20: Acknowledging there “are not directly analogous cases involving article I, section 19
23 challenges to verification of voter’s identity.”

1 Second, courts have concluded Washington state due process clause is similar to its
2 federal counterpart. *See, e.g., In re Pers. Restraint of Dyer*, 143 Wn.2d 384, 394, 20 P.3d 907
3 (2001) (“Washington's due process clause does not afford a broader due process protection than
4 the Fourteenth Amendment.”); *In re Pers. Restraint of Matteson*, 142 Wn.2d 298, 310, 12 P.3d
5 585 (2000) (rejecting the claim that state due process rights are greater than federal due process
6 rights because “there are no material differences between the ‘nearly identical’ federal and state
7 [due process clauses]). As such, Washington courts have reasoned that “[a]lthough not
8 controlling, federal decisions regarding due process are afforded great weight due to the
9 similarity of the language.” *Rozner v. City of Bellevue*, 116 Wn.2d 342, 351, 804 P.2d 24
10 (1991); *Petstel, Inc. v. County of King*, 77 Wn.2d 144, 153, 459 P.2d 937 (1969); *Bowman v.*
11 *Waldt*, 9 Wn.App. 562, 570, 513 P.2d 559 (1973).

12 And federal courts have engaged in *Anderson-Burdick* two step-inquiry when analyzing
13 the federal Due Process Clause of the Fourteenth Amendment. *See e.g., Richardson v. Texas*
14 *Sec'y of State*, 978 F.3d 220, 233–34 (5th Cir. 2020) (For several reasons, the *Anderson/Burdick*
15 framework provides the appropriate test for the plaintiffs’ due process claims); *Anderson*, 460
16 U.S. at 789 (Supreme Court prescribed for “[c]onstitutional challenges to specific provisions
17 of a State's election laws” under “the First and Fourteenth Amendments,”); and *Crawford v.*
18 *Marion County Election Bd.*, 553 U.S. 181, 204 (2008) (Scalia, J., concurring) (emphasis
19 added) (As several Justices have noted, “[t]o evaluate a law respecting the right to vote—
20 whether it governs voter qualifications, candidate selection, *or the voting process*—we use the
21 approach set out in *Burdick v. Takushi*.”).

22 For the reasons discussed below, the implementation of the *Anderson/Burdick* standard
23 and conclusions therefrom can only be determined after the factual development is completed.

1 C. Summary Judgment - Constitutional Challenges

2 Each party has filed a motion for summary judgment requesting the Court to find, as a
3 matter of law, the signature verification provision violates (or does not) Article I, Section 19
4 (Right to Vote)⁵⁴, Article I, Section 12 (Privileges and Immunities)⁵⁵, and/or Article I, Section
5 3 (Due Process)⁵⁶.

6 1. Summary Judgment: Standard of Review

7 Summary judgment is properly granted when “the pleadings, depositions, answers to
8 interrogatories, and admissions on file, together with the affidavits, if any, show that there is
9 no genuine issue as to any material fact and that the moving party is entitled to a judgment as
10 a matter of law.” CR 56(c). “A ‘material fact’ is a fact upon which the outcome of the litigation
11 depends, in whole or in part.” *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974)
12 (quoting CR 56(c)).

13 The party moving for summary judgment bears the initial burden of showing that there
14 is no disputed issue of material fact. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770
15 P.2d 182 (1989). The burden then shifts to the nonmoving party to present evidence that an
16 issue of material fact remains. *Young*, 112 Wn.2d at 225. The party may accomplish this by
17 submitting affidavits setting forth any facts that would be admissible as evidence and attaching
18

19 ⁵⁴ Dkt. 77, pg. 30-41 (Plaintiff’s Motion for Summary Judgment); Dkt. 158, pg. 18-35 (Defendant Hobbs’
20 Cross Motion for Summary Judgment); Dkt. 150, pg. 24-36 (Defendant King County Canvassing Board Members’
Cross Motion for Summary Judgment).

21 ⁵⁵ Dkt. 77, pg. 41-44 (Plaintiff’s Motion for Summary Judgment); Dkt. 158, pg. 35-38 (Defendant Hobbs’
22 Cross Motion for Summary Judgment); Dkt. 150, pg. 36-40 (Defendant King County Canvassing Board Members’
Cross Motion for Summary Judgment).

23 ⁵⁶ Dkt. 77, pg. 44-47 (Plaintiff’s Motion for Summary Judgment); Dkt. 158 pg. 38-39 (Defendant Hobbs’
Cross Motion for Summary Judgment); Dkt. 150, pg. 40-42 (Defendant King County Canvassing Board Members’
Cross Motion for Summary Judgment).

1 any documents that would be similarly admissible. CR 56(e). The party may also support its
2 position by submitting depositions, answers to interrogatories, and admissions. CR 56(e).

3 2. Constitutional Challenges

4 The parties have presented conflicting evidence about the efficacy of signature
5 verification - a critical component, and a genuine issue of material fact in any analysis of the
6 constitutional issues before the Court. Indeed, other than basic agreements as to Washington's
7 voting procedure; generally, the parties hotly contest nearly all other aspects of this litigation.⁵⁷
8 To name just a few, there are competing affidavits and evidence as to alleged adverse impact
9 of signature verification⁵⁸; whether signature verification promotes election security, greater
10 access to elections and voter confidence⁵⁹; efficacy of the Secretary's proposed regulations⁶⁰;
11 and even expert opinions and methodology.⁶¹

12 The level of conflicting and antagonistic evidence demonstrates there are genuine issues
13 as to material facts upon which the outcome of the litigation depends, in whole or in part.
14 Consequently, regardless of the applicable standard of scrutiny, summary judgment in favor of

15
16 ⁵⁷ See e.g., Dkt. 158, pg. 11 (Defendant Hobbs' Opposition) ("Contrary to Plaintiffs' assertion, the State
disputes virtually all of the evidence cited in their summary judgment motion regarding the alleged effects of
signature verification.

17 ⁵⁸ Compare declaration and evidence at Dkt. 77, pg. 11-16 (Plaintiff's Motion for Summary Judgment),
18 Dkt. 175, pg. 13-14 (Plaintiffs' Reply) with Dkt. 158, pg. 11-14 (Defendant Hobbs' Opposition).

19 ⁵⁹ Compare declaration and evidence at Dkt. 158, pg. 7-11 (Defendant Hobbs' Opposition), Dkt. 184, pg. 3
(Defendant Hobbs' Reply), Dkt. 150, pg. 16 (Defendant King County Canvassing Board Members' Opposition)
20 with Dkt. 77, pg. 23-26, 32-38 (Plaintiffs' Motion for Summary Judgment), Dkt. 175, pg. 4-10 (Plaintiffs' Reply).

21 ⁶⁰ Compare declarations and evidence at Dkt. 158, pg. 11-16 (Defendant Hobbs' Opposition), Dkt. 184, pg.
4 (Defendant Hobbs' Reply) with Dkt. 175, pg. 48 (Plaintiffs' Reply).

22 ⁶¹ Compare declarations and evidence at Dkt. 158, pg. 11-16 (Defendant Hobbs' Opposition), Dkt. 150, pg.
33 (Defendant King County Canvassing Board Members' Cross Motion for Summary Judgment), Dkt. 158, pg.
18, n.1 (Defendant King County Canvassing Board Members' Reply), Dkt. 184, pg. 4-6 (Defendant Hobbs' Reply)
23 with Dkt. 175, pg. 12, 15-18 (Plaintiffs' Reply).

1 any party as to the constitutional issues of whether the signature verification provision violates
2 the Washington constitution to vote is **DENIED**.

3 D. Severability

4 Whether the signature verification provision can be severed from Washington's entire
5 vote-by-mail system if found to be unconstitutional is debatable.⁶² Defendants claim it cannot
6 because the constitutional and unconstitutional provisions are so connected that the legislature
7 would not have passed one without the other and severing the unconstitutional provision would
8 make it useless to accomplish the purpose of the legislature.⁶³ Defendants further point out that
9 2011 legislation does not contain a severability clause.⁶⁴

10 Plaintiffs counter that the absence of a severability clause is not dispositive, that courts
11 have retained valid substantive sections of statutes where the statute's procedural provisions
12 have been held in whole, or in part unconstitutional, and that striking down the portion of the
13 statute requiring signature verification would not render the entire vote-by-mail system unable
14 to accomplish its legislative purpose.⁶⁵

15 The ripeness doctrine will aid in identifying where review would be premature. *State*
16 *v. Bahl*, 164 Wn.2d 739, 751, 193 P.3d 678 (2008). A claim is fit for judicial determination if
17 the issues raised are primarily legal, do not require further factual development, and the

18
19 ⁶² Dkt. 158, pg. 39-40 (Defendant Hobbs' Cross Motion for Summary Judgment); Dkt. 150, pg. 42-43
(Defendant King County Canvassing Board Members' Cross Motion for Summary Judgment); Dkt. 175, pg. 49-
20 50 (Plaintiff's Omnibus Response to Cross Motions for Summary Judgment and Reply in Support of Motion for
Summary Judgment).

21 ⁶³ Dkt. 158, pg. 39-40 (citations omitted), Dkt. 175, pg. 175, pg. 42-43 (also arguing signature verification
has been an integral part of absentee voting since 1921 and of universal mail voting since its adoption in 2011).

22 ⁶⁴ Dkt. 158, pg. 40.

23 ⁶⁵ Dkt. 175, pg. 49-50 (citations omitted).

1 challenged action is final. *First United Methodist Church v. Hr’g Exam’r*, 129 Wn.2d 238,
2 255-56, 916 P.2d 374 (1996). The Court must also consider “the hardship to the parties of
3 withholding court consideration.” *Id.*, at 255 (internal quotation marks omitted).

4 Here, the issue of severance is not primarily legal – it only becomes ripe if the signature
5 verification provision is deemed unconstitutional, which, as noted above, can only be
6 determined after further factual development. Nor does reserving the issue of severability
7 create a hardship to the parties. Therefore, whether the signature verification requirement can
8 be severed is not ripe and is **RESERVED**.

9 E. Motion to Exclude Plaintiffs’ Expert – ER 702

10 Defendant King County Canvassing Board, joined by Defendant Hobbs, moves to
11 exclude the opinions of Dr. Herron and Dr. Mohammed under Evidence Rule (ER) 702.⁶⁶
12 Expert testimony in the form of an opinion is permitted if “scientific, technical, or other
13 specialized knowledge will assist the trier of fact to understand the evidence or to determine a
14 fact in issue” and “a witness qualified as an expert by knowledge, skill, experience, training,
15 or education.” ER 702. Both Dr. Herron and Dr. Mohammed possess the expertise, training,
16 and education to testify as experts. Moreover, their respective specialized knowledge will assist
17 the trier of fact to understand the evidence or determine a fact. *See e.g., Donald J. Trump for*
18 *President, Inc. v. Bullock*, 491 F. Supp. 3d 814, 835 (D. Mont. 2020) (The record is replete
19 with evidence that Montana's elections and the use of mail ballots present no significant risk of
20 fraud. The Declaration of Dr. Michael Herron is particularly enlightening.).⁶⁷ Challenges to

21
22 ⁶⁶ Dkt. 150, pg. 33; Dkt. 158, pg. 18, n.1.

23 ⁶⁷ See also *C.L. v. Dep’t of Soc. & Health Servs.*, 200 Wn. App. 189, 200, 402 P.3d 346 (2017) (In general,
summary judgment is not appropriate when experts offer competing, apparently competent evidence That is

1 findings and the adequacy of methodology are potential fodder for cross-examination and goes
2 to weight, not admissibility.

3 For the reasons stated above, IT IS HEREBY ORDERED:

- 4 1. Defendants' Motion to Dismiss for failure to join indispensable parties is **DENIED**.
- 5 2. The *Anderson-Burdick* standard of scrutiny will be used to analyze the constitutional
6 challenges to the Signature Verification statute.
- 7 3. Plaintiffs' Motion for Summary Judgment is **DENIED**.
- 8 4. Defendant Hobbs' Motion for Summary Judgment is **DENIED**.
- 9 5. Defendant King County Canvassing Board Members' Motion for Summary Judgment
10 is **Denied**.
- 11 6. Whether signature verification provision can be severed is **RESERVED**.
- 12 7. Defendants' Motion to Exclude opinions of Dr. Herron and Dr. Mohammed is
13 **DENIED**.

14 IT IS SO ORDERED.

15 Dated this 12th day of October, 2023.

16 Mark A. Larrañaga
17 JUDGE MARK A. LARRAÑAGA

18
19
20
21
22 because resolving competing opinions involves a credibility determination best left to the finder of fact. *Larson*
23 v. *Nelson*, 118 Wn.App. 797, 810, 77 P.3d 671 (2003)).

24 ORDER RE: PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT; DEFENDANT
HOBBS' CROSS MOTION FOR SUMMARY
JUDGMENT; AND DEFENDANT KING
COUNTY CANVASSING BOARD MEMBERS
CROSS MOTION FOR SUMMARY JUDGMENT- 24

HON. MARK A. LARRAÑAGA
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE
COURTROOM W-739
SEATTLE, WASHINGTON 98104
(206) 447-1525

King County Superior Court
Judicial Electronic Signature Page

Case Number: 22-2-19384-1
Case Title: VET VOICE FOUNDATION ET AL VS HOBBS ET AL
Document Title: ORDER RE MTNS FOR SUMMARY JUDGMENT
Signed By: Mark Larranaga
Date: October 12, 2023



Judge: Mark Larranaga

RETRIEVEDFROMDEMOCRACYDOCKET.COM

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: B53C561C3AC69D12359B2A3F0D343B31FEB70629
Certificate effective date: 5/11/2023 12:14:51 PM
Certificate expiry date: 5/11/2028 12:14:51 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Mark Larranaga:
DEwZqakz7RGaDc2sztdelA=="

The Honorable Mark Larrañaga
Noted for Hearing: November 17, 2023
Without Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

NO. 22-2-19384-1 SEA

Plaintiffs,

DEFENDANTS' JOINT
UNOPPOSED MOTION TO
CERTIFY OCTOBER 12, 2023
ORDER PURSUANT TO
RAP 2.3(B)(4)

v.

STEVE HOBBS, et al.,

Defendants.

I. INTRODUCTION

Defendant Hobbs and the King County Canvassing Board (“Defendants”) respectfully request that this Court certify for discretionary review its October 12, 2023 order denying summary judgment to all parties. Under RAP 2.3(b)(4), certification is appropriate where an order involves a controlling question of law, there is substantial ground for a difference of opinion, and immediate review may materially advance the litigation. Certification is uniquely appropriate here and Plaintiffs do not oppose the certification requested by this motion.

In its order on summary judgment, this Court correctly recognized “that no Washington court has examined the *Anderson-Burdick* framework.” This Court may well be correct that the *Anderson-Burdick* framework is a “reasonable alternative.” But this holding is novel, and, as reflected in this Court’s observation that “[u]nder current Washington case law, the applicable standard . . . appears limited to either strict scrutiny or rational basis,” there is substantial ground for a difference of opinion. And the correct legal standard is certainly a controlling question of

1 law. Moreover, regardless of the legal standard, there is a substantial ground for a difference of
2 opinion as to whether either party is entitled to summary judgment. While this Court is certainly
3 correct that “the parties hotly contest nearly all . . . aspects of this litigation,” all parties contend
4 that they are nonetheless entitled to judgment as a matter of law. In addition, because this is a
5 facial challenge, involving consideration of the text of the statute, it is uniquely suited for
6 resolution by the appellate court.

7 Immediate appellate review would materially advance the resolution of the case in at
8 least two ways. First, appellate review may result in a dispositive decision regarding the facial
9 constitutionality of the challenged statute. All parties contend that they are entitled to a
10 dispositive decision. Second, even short of a dispositive ruling, appellate review will clarify the
11 legal standard, which will allow the parties to more appropriately tailor their evidence and
12 argument and allow this Court to tailor its findings and conclusion, thus significantly reducing
13 the possibility of a later reversal and second trial.

14 Because this Court’s October 12, 2023 order involved controlling questions of law as to
15 which there is substantial ground for a difference of opinion and because immediate review of
16 the order may materially advance the ultimate termination of this litigation, this Court should
17 certify its October 12, 2023 order under RAP 2.3(b)(4). No party to this lawsuit opposes
18 certification of the following two issues under RAP 2.3(b)(4): (1) what is the appropriate
19 standard of judicial review for Plaintiffs’ facial challenges to RCW 29A.40.110(3) under the
20 Washington State Constitution Article 1, sections 3, 12, and 19?; and (2) whether, under the
21 appropriate standard of judicial review, any party is entitled to summary judgment?

22 II. ISSUE

23 Should this Court certify under RAP 2.3(b)(4), these two issues are implicated by this
24 Court’s October 12, 2023 order:
25
26

1 1) What is the appropriate standard of judicial review for Plaintiffs’ facial challenge to
2 RCW 29A.40.110(3) under the Washington State Constitution Article 1, sections 3, 12, and 19?
3 and

4 2) Whether, under the appropriate standard of judicial review, any party is entitled to
5 summary judgment?

6 III. EVIDENCE RELIED UPON

7 This motion relies upon material in the Court file, material of which the Court may take
8 judicial notice, and the Declaration of William McGinty in Support of Motion to Certify filed
9 herewith.

10 IV. RELEVANT FACTS

11 Plaintiffs challenge the constitutionality of RCW 29A.40.110(3), which provides, in
12 relevant part, that “[p]ersonnel shall verify that the voter’s signature on the ballot declaration is
13 the same as the signature of that voter in the registration files of the county.” Plaintiffs have
14 made clear that this is a strictly facial challenge to the constitutionality of the statute; they have
15 expressly disclaimed any challenge to the regulations or an as-applied challenge to the statute.

16 The parties brought cross-motions for summary judgment, which were heard on
17 September 12, 2023. Dkt. 77, Dkt. 150; Dkt. 158; Dkt. 175; Dkt. 184; Dkt. 188; Dkt. 191.
18 Plaintiffs’ motion confirmed that their challenge to RCW 29A.40.110(3) was a facial
19 constitutional challenge. Dkt. 77 at 39 n.6 (“Here, Plaintiffs submit that Washington’s signature
20 verification statute is facially unconstitutional . . .”). At oral argument on the cross-motions,
21 Plaintiffs again confirmed that their challenge to RCW 29A.40.110(3) was only a facial
22 challenge. Declaration of William McGinty in Support of Motion to Certify, Ex. 1 at 7 (“[T]his
23 is a facial challenge to the statute.”). Plaintiffs recited the standard for facial challenges in
24 *City of Redmond v. Moore*, 151 Wn. 2d 664, 669 (2004) and argued that “no set of circumstances
25 exists in which the statute, as currently written, can be constitutionally applied.” *Id.* at 7.
26

1 A major point of contention between the parties was the appropriate level of judicial
2 scrutiny for the signature verification law under the Washington Constitution. The Defendants
3 argued that rational basis scrutiny applied. Dkt. 150 at 25-27; Dkt. 158 at 31-39. Plaintiffs argued
4 that strict scrutiny applied. Dkt. 77 at 40.

5 This Court denied summary judgment to all parties, holding that the federal *Anderson-*
6 *Burdick* standard applied to RCW 29A.40.110(3) under the Washington State Constitution.
7 Dkt. 197 at 13-19. In doing so, the Court was “cognizant that no Washington court has examined
8 the *Anderson-Burdick* framework” but held nonetheless that “given the paucity of Washington
9 cases evaluating constitutional challenges to manner of voting statutes with analogous facts, the
10 federal hybrid-approach is a reasonable alternative.” *Id.* at 18. After determining the applicable
11 standard of review, the Court held that disputed issues of fact precluded summary judgment. *Id.*
12 at 21-22.

13 V. ARGUMENT

14 Orders of the trial court which are not appealable as of right, may nonetheless be appealed
15 if they meet the requirements of RAP 2.3(b). Where an order “involves a controlling question of
16 law as to which there is substantial ground for a difference of opinion” and where “immediate
17 review of the order may materially advance the ultimate termination of the litigation” the trial
18 court may certify the order for interlocutory review. RAP 2.3(b)(4). The purpose of discretionary
19 review under RAP 2.3(b)(4) is to narrow and advance the litigation in order to avoid a useless
20 trial. *See Shannon v. State*, 110 Wn. App. 366, 369, 40 P.3d 1200 (2002) (“immediate appeal
21 would serve judicial economy and simplify the trial”).

22 In this case, there are novel, controlling questions of law: what is the appropriate standard
23 for evaluating Plaintiffs’ challenges to RCW 29A.40.110(3) and how should that standard be
24 applied to Plaintiffs’ facial challenge? The novelty of these questions was recognized by this
25 Court’s order. Dkt. 197 at 13-19. There are substantial grounds for a difference of opinion in
26 both what test ought to be applied and how that test ought to be applied in the context of this

1 particular case. Settling these questions now, before trial, will materially advance the ultimate
2 termination of the litigation by (1) determining the appropriate standard prior to trial so that the
3 parties can marshal evidence tailored to that standard; and (2) potentially disposing of Plaintiffs’
4 claims as a matter of law without a trial. This Court should certify its October 12, 2023 order
5 denying summary judgment to all parties for interlocutory review under RAP 2.3(b)(4).

6
7 **A. The Appropriate Constitutional Standard, and How to Apply It In This Case, Is
8 Subject to Reasonable Differences of Opinion**

9 This Court itself acknowledged that its application of the federal *Anderson-Burdick*
10 framework to Plaintiffs’ challenges under the Washington Constitution was novel. Dkt. 197 at
11 14. The Court recounted the case law applicable to election challenges in Washington, and
12 recognized that Washington “courts distinguish between restrictions on *who* may vote and
13 restrictions on the *manner* in which eligible voters may vote.” *Id.* The former being subject to
14 strict scrutiny, and the latter to rational basis review. *Id.*

15 Nonetheless, this Court held “[n]either approach provides a solid framework to address
16 the constitutionality of [the] signature verification requirement.” Dkt. 197 at 14. This Court
17 adopted the test used by federal courts for challenges to election laws under the federal
18 constitution. *Id.* at 15-17. There is no published authority addressing whether the standard under
19 article I, section 19 the Washington Constitution is identical to federal constitutional challenges
20 in this context, and that is certainly subject to reasonable disagreement. There is an established
21 and nuanced body of law involving the standards for determining whether provisions of the
22 Washington Constitution are coextensive with provisions of the federal constitution in a given
23 context. *E.g., State v. Rivers*, 533 P.3d 410, 424 (Wash. Aug. 3, 2023) (“To determine whether
24 our state constitution extends broader rights than the federal constitution in a particular context,
25 we examine the constitutional guaranties in light of the six criteria outlined in *State v.*
26 *Gunwall*.”).

1 Moreover, the application of the correct standard for judicial review of Plaintiffs’ facial
2 challenges is also a controlling question of law. This Court held that disputes of fact precluded
3 summary judgment, including “about the efficacy of signature verification.” Dkt. 197 at 21. This
4 Court held that application of the *Anderson-Burdick* framework to Plaintiffs’ facial challenge
5 requires factual findings regarding the severity of the burden on the right to vote and the
6 government interests served by that burden. *See* Dkt. 197 at 21-22.

7 However, generally speaking, challenges to the constitutionality of a statute present pure
8 questions of law. *State v. Grocery Mfrs. Ass’n*, 195 Wn.2d 442, 461 (“The constitutionality of
9 a statute is a question of law that we review de novo.”). And the regular rule on facial challenges
10 is that plaintiffs must show that the statute cannot be applied constitutionally in any conceivable
11 set of circumstances, not only in those circumstances that exist as a matter of fact and evidence.
12 *City of Redmond*, 151 Wn.2d at 669 (“[A] successful facial challenge is one where no set of
13 circumstances exists in which the statute, as currently written, can be constitutionally applied.”).

14 In facial challenges, courts are required to consider hypothetical facts that would permit
15 constitutional application of the statute. *State v. Brayman*, 110 Wn.2d 183, 193 (1988) (“[I]f a
16 court can reasonably conceive of a state of facts to exist which would justify the legislation,
17 those facts will be presumed to exist and the statute will be presumed to have been passed with
18 reference to those facts.”). For this reason, when reviewing the facial constitutionality of a
19 statute, courts focus on the text of the statute itself and evidence is generally irrelevant.
20 *Tunstall v. Bergeson*, 141 Wn.2d 201, 221 (2000) (“[T]he court’s focus when addressing
21 constitutional facial challenges is on whether the statute’s language violates the constitution . . .
22 .”); *see also City of Seattle v. Webster*, 115 Wn.2d 635, 640 (1990) (“Constitutional analysis is
23 made upon the language of the ordinance or statute itself.”).

24 Here, there is a substantial ground for a difference of opinion as to whether the disputed
25 facts are material to the resolution of Plaintiffs’ facial challenge to the constitutionality of RCW
26 29A.40.110(3). Because both the appropriate standard that should be applied to Plaintiffs’ facial

1 challenge and the correct application of that standard to the statute are novel questions of law,
2 the first part of RAP 2.3(b)(4)'s certification requirement is met.

3 **B. Immediate Appellate Review May Materially Advance the Ultimate Termination of
4 this Case**

5 Appellate review now, rather than after trial, benefits the Court and the parties in at least
6 two ways.

7 First, if the Defendants' view is correct, and factual findings are unnecessary because
8 Plaintiffs' claims posit only pure questions of law, then an appeal may entirely dispose of all
9 disputed issues in this case without the need for trial. Plaintiffs bears the burden of proving in
10 this facial challenge that the challenged statutes are unconstitutional in every conceivable
11 application. *City of Redmond v. Moore*, 151 Wn.2d 664, 669 (2004) (“[A] successful facial
12 challenge is one where no set of circumstances exists in which the statute, as currently written,
13 can be constitutionally applied.”). But Plaintiffs admittedly have no evidence that the process
14 for signature verification under the Secretary's new proposed regulations would burden anyone's
15 right to vote and instead improperly sought to shift the burden to Defendants to prove that the
16 new regulations are constitutional. *See* Dkt. 175 at 56-57. Plaintiffs thus cannot meet their burden
17 of proving that the signature verification statute is facially unconstitutional as a matter of law
18 under any standard. *Quinn v. State*, 1 Wn. 3d 453, 470-71 (2023) (“The burden to prove a
19 legislative act is unconstitutional rests on the statute's challenger . . . and is sometimes expressed
20 as requiring proof beyond a reasonable doubt.”). A determination by an appellate court on this
21 dispositive legal question could obviate the need for a trial altogether.

22 Second, even if a decision by the appellate court did not resolve this case in its entirety,
23 a final binding decision about the standard that this Court should apply at trial may prevent
24 unnecessary time and expense trying these issues for a second time. Both Plaintiffs and
25 Defendants can be expected to preserve their arguments that a different standard from the
26 *Anderson-Burdick* framework ought to apply to judicial review of the signature verification

1 statute. But, knowing that this Court will apply that framework to Plaintiffs' claims, the parties
2 will present evidence and argument at trial tailored to that framework. After judgment, no matter
3 who prevails, an appeal will almost certainly follow challenging this Court's holding that the
4 *Anderson-Burdick* framework was the appropriate standard of judicial review. If this Court is
5 reversed on that issue, and if the appellate court holds (as this Court did) that disputes of fact
6 preclude judgment for either party under the appropriate standard of judicial review, then a
7 remand would be necessary to allow the parties to present evidence and argument tailored to
8 whatever standard the appellate court determines is appropriate, which may include a second
9 trial. *See Wold v. Wold*, 7 Wn. App. 872, 876-77 (1972). This would not be an efficient use of
10 judicial resources. It would be much better to have a determinative holding about what the
11 standard of judicial review is before evidence and argument are presented to this Court.

12 Immediate review of the novel issues of law implicated by this Court's October 12, 2023
13 order is likely to materially advance the ultimate termination of this litigation, and the second
14 part of RAP 2.3(b)(4)'s certification requirement is met.

15 VI. CONCLUSION

16 Plaintiffs do not oppose the certification requested by Defendants. And, for the reasons
17 stated above, this Court should certify that its October 12, 2023 order involves controlling
18 questions of law as to which there is a substantial ground for a difference of opinion and that
19 immediate review of that order may materially advance the ultimate termination of this litigation.
20 This Court should certify these two questions: 1) what is the appropriate standard of judicial
21 review for Plaintiffs' facial challenges to RCW 29A.40.110(3) under the Washington State
22 Constitution Article 1, sections 3, 12, and 19?; and 2) whether, under the appropriate standard
23 of judicial review, any party is entitled to summary judgment?
24
25
26

1 DATED this 3rd day of November 2023.

2 ROBERT W. FERGUSON
3 Attorney General

4 /s/ William McGinty

5 KARL D. SMITH, WSBA #41988
6 TERA M. HEINTZ, WSBA #54921
7 Deputy Solicitors General
8 WILLIAM MCGINTY, WSBA #41868
9 SUSAN PARK, WSBA #53857
10 NATHAN BAYS, WSBA #43025
11 Assistant Attorney General
12 7141 Cleanwater Drive SW
13 PO Box 40111
14 Olympia, WA 98504-0111
15 (360) 709-6470
16 karl.smith@atg.wa.gov
17 tera.heintz@atg.wa.gov
18 william.mcgintry@atg.wa.gov
19 susan.park@atg.wa.gov
20 nathan.bays@atg.wa.gov
21 *Counsel for Defendant Steve Hobbs*

22 LEESA MANION
23 King County Prosecuting Attorney

24 /s/ Ann Summers

25 ANN SUMMERS, WSBA #21509
26 LINDSEY GRIEVE, WSBA #42951
Senior Deputy Prosecuting Attorneys
DAVID J. HACKETT, WSBA #21236
Special Deputy Prosecuting Attorney
701 Fifth Avenue, Suite 600
Seattle, WA 98104
(206) 477-1120
ann.summers@kingcounty.gov
lindsey.grieve@kingcounty.gov
david.hackett@kingcounty.gov
Counsel for King County Canvassing Board

I certify that this memorandum contains 2,492 words, in compliance with the Local Civil Rules..

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcintron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 3rd day of November 2023, at Olympia, Washington.

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General

The Honorable Mark Larrañaga
Noted for Hearing: November 17, 2023
Without Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

NO. 22-2-19384-1 SEA

Plaintiffs,

DECLARATION OF WILLIAM
MCGINTY IN SUPPORT OF
DEFENDANTS' JOINT
UNOPPOSED MOTION TO
CERTIFY OCTOBER 12, 2023
ORDER PURSUANT TO RAP
2.3(B)(4)

v.

STEVE HOBBS, et al.,

Defendants.

I, William McGinty, declare as follows:

1. I am counsel for Secretary of State Steve Hobbs in the above captioned matter. I am over the age of 18 years and am competent to testify to the matters stated below and do so based on my personal knowledge.

2. Attached to this declaration as Exhibit 1 is a true and correct copy of excerpts of the transcript from oral argument held before this Court on September 12, 2023, on the Parties' cross-motions for summary judgment.

3. Prior to filing Defendants' motion to certify this Court's October 12, 2023 order under RAP 2.3(b)(4), I communicated via email with counsel for Plaintiffs to request their position on that motion. Counsel represented that Plaintiffs do not oppose certification of the issues Defendants request this court to certify. That is: 1) what is the appropriate standard of judicial review for Plaintiffs' facial challenges to RCW 29A.40.110(3) under the Washington

1 State Constitution Article 1, sections 3, 12, and 19?; and 2) whether, under the appropriate
2 standard of judicial review, any party is entitled to summary judgment?

3 I declare that the foregoing is true and correct to the best of my knowledge, and I do so
4 under the penalty of perjury of the laws of the state of Washington.

5 DATED this 3rd day of November 2023.

6 /s/ William McGinty
7 WILLIAM MCGINTY, WSBA #41868
8 Assistant Attorney General
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1 **DECLARATION OF SERVICE**

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcintron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 3rd day of November 2023 at Olympia, Washington.

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General

Exhibit 1

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Vet Voice Foundation, et al. v. Hobbs, et al.

Summary Judgment Hearing

September 12, 2023



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: audio@buellrealtime.com



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

VET VOICE FOUNDATION, THE
WASHINGTON BUS, EL CENTRO DE
LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL, and
DAISHA BRITT,

Plaintiffs,

v.

STEVE HOBBS, in his official
capacity as Washington State
Secretary of State, JULIE
WISE, in her official capacity
as the Auditor/Director of
Elections in King County
and a King County Canvassing
Board Member, SUSAN SLONECKER,
in her official capacity
as a King County Canvassing
Board Member, and STEPHANIE
CIRKOVICH, in her official
capacity as a King County
Canvassing Board Member,

Defendants.

No. 22-2-19384-1 SEA

SUMMARY JUDGMENT HEARING CONDUCTED VIA ZOOM

September 12, 2023

The Honorable Mark Larranaga Presiding

Transcribed by: Marjorie Jackson, CET

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

On Behalf of Plaintiffs:

KEVIN J. HAMILTON
HEATH L. HYATT
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099

On Behalf of State Defendant Steve Hobbs:

WILLIAM McGINTY
KARL D. SMITH
TERA M. HEINTZ
Office of the Attorney General
1125 Washington Street SE
Olympia, Washington 98504-0100

On Behalf of King County Defendants Julie Wise, Susan Slonecker
and Stephanie Cirkovich:

ANN SUMMERS
LINDSEY GRIEVE
DAVID J. HACKETT
Special Deputy Prosecuting Attorneys
701 Fifth Avenue, Suite 600
Seattle, Washington 98104

RETRIEVED FROM DEMOCRACYDOCKET.COM

I N D E X O F P R O C E E D I N G S

PAGE

1

2

3

4 September 12, 2023 hearing commenced..... 4

5 Introductions and preliminary matters..... 4

6 Argument by Mr. Hamilton..... 7

7 Argument by Mr. McGinty..... 29

8 Argument by Ms. Summers..... 58

9 Argument by Mr. Hamilton..... 70

10 Argument by Mr. McGinty..... 90

11 Argument by Ms. Summers.....108

12 Ruling reserved.....114

13 September 12, 2023 hearing concluded.....117

RETRIEVEDFROMDEMOCRACYDOCKET.COM

14
15
16
17
18
19
20
21
22
23
24
25

1 some amended changes that haven't been adopted yet, but
2 these changes may significantly cure some of the issues
3 that you're raising. My question to you is more of a
4 procedural question. What, if anything, should the --
5 under the posture we're in now, motions for summary
6 judgment -- should these proposed changes that have
7 not been adopted, should the Court take into
8 consideration?

9 MR. HAMILTON: I think the Court can consider them
10 like they might -- the Court might consider a hypothetical
11 in a brief. As the Court points out, those regulations
12 have never been tested; they've never been analyzed;
13 they've never been piloted, and they certainly have never
14 been adopted either here or anywhere else in this
15 jurisdiction. Even the Secretary's expert admitted that
16 he has no evidence whatsoever to conclude that these rules
17 would perform any better.

18 So I think what the Court can conclude is that the
19 Secretary has no evidence that this would change anything,
20 that it would prevent the routine rejection of tens of
21 thousands of ballots cast by fully qualified voters.
22 Instead, it just underscores to -- just serves to
23 underscore how flawed this whole exercise is.

24 Your Honor, the Defendants' -- the argument, I guess,
25 that you're putting your finger on is -- **this is a facial**

1 challenge to the statute. The plaintiffs assert three
2 different claims.

3 First, that signature verification violates the right
4 to vote secured by the free and equal clause of Article I,
5 section 19 of the Washington Constitution; that it
6 violates the privileges and immunities clause in Article
7 I, Section 12 of the Washington Constitution; and,
8 finally, that violates the due process clause in Article
9 I, Section 3.

10 As I mentioned, it's a facial challenge to the
11 statute. The statute is facially unconstitutional when
12 no set of circumstances exists in which the statute is
13 currently written can be constitutionally applied. That's
14 the City of Redmond vs. Moore standard. Your Honor, the
15 statute is a classic example.

16 Plaintiffs aren't challenging the specific way that
17 the statute is applied in Pend Oreille County or Yakima
18 County or Clark County. Instead, we're challenging the
19 entire exercise, however applied, as a violation of
20 Washington voters' constitutional rights. Simply put, it
21 is a fundamentally flawed means of verifying a voter's
22 identity. It is an imperfect faux science art, even under
23 the best of circumstances.

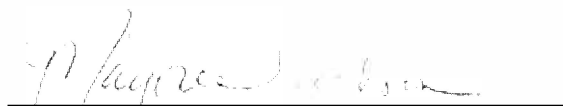
24 Indeed, this isn't verification at all. It's simply
25 an exercise in matching signatures, which for a million

C E R T I F I C A T E

1
2 STATE OF WASHINGTON)
3)
4 COUNTY OF KING)

5 I, the undersigned, do hereby certify under penalty
6 of perjury that the foregoing court proceedings or legal
7 recordings were transcribed under my direction as a certified
8 transcriptionist; and that the transcript is true and accurate
9 to the best of my knowledge and ability, including changes, if
10 any, made by the trial judge reviewing the transcript; that I
11 received the electronic recording in the proprietary court
12 format; that I am not a relative or employee of any attorney or
13 counsel employed by the parties hereto, nor financially
14 interested in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 27th day of September, 2023.

17
18
19 



20 s/ Marjorie Jackson, CET

1
2
3
4
5
6 **STATE OF WASHINGTON**
 KING COUNTY SUPERIOR COURT

7 VET VOICE FOUNDATION, et al.,

NO. 22-2-19384-1 SEA

8 Plaintiffs,

ORDER GRANTING DEFENDANTS’
JOINT UNOPPOSED MOTION TO
CERTIFY OCTOBER 12, 2023 ORDER
PURSUANT TO RAP 2.3(B)(4)

9 v.

10 STEVE HOBBS, et al.,

11 Defendants.

12
13 THIS MATTER came before the Court Defendants’ Joint Unopposed Motion to Certify
14 October 12, 2023 Order Pursuant to RAP 2.3(b)(4).¹

15 The Court, having considered the entire record herein and being otherwise fully advised,
16 hereby ORDERS that:

17 1. Defendants’ Joint Unopposed Motion to Certify October 12, 2023 Order Pursuant
18 to RAP 2.3(b)(4) is **GRANTED**;

19 2. In accordance with RAP 2.3(b)(4), this Court certifies that its October 12, 2023
20 order denying summary judgment to all parties involves controlling questions of law as to which
21 there is a substantial ground for difference of opinion and immediate review of the October 12,
22 2023 order may materially advance the termination of this litigation. The issues this Court
23 certifies are: (1) what is the appropriate standard of judicial review for Plaintiffs’ facial
24

25 ¹ This matter was noted for a hearing without oral argument for November 17, 2023. Since
26 the motion was filed jointly and unopposed, all parties agree it was unnecessary for the court to
wait for the noted hearing date to issue the order.

1 challenges to RCW 29A.40.110(3) under the Washington State Constitution Article 1, sections
2 3, 12, and 19?; and (2) whether, under the appropriate standard of judicial review, any party is
3 entitled to summary judgment?

4 DATED this 9th day of November, 2023.

5
6 Mark A. Larrañaga
7 HONORABLE MARK A LARRAÑAGA
8 King County Superior Court
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RETRIEVEDFROMDEMOCRACYDOCKET.COM

King County Superior Court
Judicial Electronic Signature Page

Case Number: 22-2-19384-1
Case Title: VET VOICE FOUNDATION ET AL VS HOBBS ET AL
Document Title: ORDER RE CERTIFY PER RAP 2.3
Signed By: Mark Larranaga
Date: November 09, 2023



Judge: Mark Larranaga

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: B53C561C3AC69D12359B2A3F0D343B31FEB70629
Certificate effective date: 5/11/2023 12:14:51 PM
Certificate expiry date: 5/11/2028 12:14:51 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Mark Larranaga:
DEwZqakz7RGaDc2sztdelA=="

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

THE HONORABLE MARK A. LARRAÑAGA

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

VET VOICE FOUNDATION, THE
WASHINGTON BUS, EL CENTRO DE
LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL,
GABRIEL BERSON, and MARI
MATSUMOTO,

Plaintiffs,

v.

STEVE HOBBS, in his official capacity
as Washington Secretary of State, JULIE
WISE, in her official capacity as the
Auditor/Director of Elections in King
County and a King County Canvassing
Board Member, SUSAN SLONECKER,
in her official capacity as a King County
Canvassing Board Member, and
STEPHANIE CIRKOVICH, in her
official capacity as a King County
Canvassing Board Member,

Defendants.

No. 22-2-19384-1 SEA

NOTICE OF DISCRETIONARY REVIEW
TO SUPREME COURT

1 Plaintiffs Vet Voice Foundation, the Washington Bus, El Centro de la Raza,
2
3 Kaeleene Escalante Martinez, Bethan Cantrell, Gabriel Berson, and Mari Matsumoto seek
4
5 direct review by the designated appellate court of the Order re: Plaintiffs' Motion for
6
7 Summary Judgment; Defendant Hobbs' Cross Motion for Summary Judgment; and
8
9 Defendant King County Canvassing Board Members' Cross Motion for Summary Judgment
10
11 entered on October 12, 2023.

12
13 A copy of the decision is attached to this notice.
14
15

16
17 Dated: November 9, 2023

s/ Kevin J. Hamilton

18
19 Kevin J. Hamilton, WSBA No. 15648
20 KHamilton@perkinscoie.com
21 Matthew P. Gordon, WSBA No. 41128
22 MGordon@perkinscoie.com
23 Heath L. Hyatt, WSBA No. 54141
24 HHyatt@perkinscoie.com
25 Hannah E.M. Parman, WSBA No. 58897
26 HParman@perkinscoie.com
27 **Perkins Coie LLP**
28 1201 Third Avenue, Suite 4900
29 Seattle, Washington 98101-3099
30 Telephone +1.206.359.8000
31 Facsimile +1.206.359.9000

32
33 *Attorneys for Plaintiffs*
34
35
36
37
38
39
40
41
42
43
44
45
46
47

CERTIFICATE OF SERVICE

On November 9, 2023, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

| | | |
|--|-------------------------------------|---|
| Karl D. Smith, WSBA #41988 | <input type="checkbox"/> | Via hand delivery |
| Tera M. Heintz, WSBA #54921 | <input type="checkbox"/> | Via U.S. Mail, 1st Class, Postage Prepaid |
| William McGinty, WSBA #41868 | <input type="checkbox"/> | Via Overnight Delivery |
| Susan Park, WSBA #53857 | <input type="checkbox"/> | Via Overnight Delivery |
| OFFICE OF THE ATTORNEY GENERAL | <input checked="" type="checkbox"/> | Via Email |
| 7141 Cleanwater Drive SW, P.O. Box 40111 | <input checked="" type="checkbox"/> | Via Eservice |
| Olympia, WA 98504-0100 | | |
| Karl.Smith@atg.wa.gov | | |
| Tera.Heintz@atg.wa.gov | | |
| William.McGinty@atg.wa.gov | | |
| Susan.Park@atg.wa.gov | | |

Attorneys for State Defendant Steve Hobbs

| | | |
|-------------------------------------|-------------------------------------|---|
| David J. Hackett, WSBA #21235 | <input type="checkbox"/> | Via hand delivery |
| Ann M. Summers, WSBA #21509 | <input type="checkbox"/> | Via U.S. Mail, 1st Class, Postage Prepaid |
| Lindsey Grieve, WSBA #42951 | <input type="checkbox"/> | Via Overnight Delivery |
| Senior Deputy Prosecuting Attorneys | <input type="checkbox"/> | Via Overnight Delivery |
| 516 Third Avenue #W554 | <input checked="" type="checkbox"/> | Via Email |
| Seattle, WA 98104 | <input checked="" type="checkbox"/> | Via Eservice |
| david.hackett@kingcounty.gov | | |
| ann.summers@kingcounty.gov | | |
| lindsey.grieve@kingcounty.gov | | |

Attorneys for King County Defendants

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

EXECUTED at Seattle, Washington, on November 9, 2023.

s/June Starr

June Starr

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

| | | |
|---|---|--------------------------------------|
| VET VOICE FOUNDATION, THE |) | |
| WASHINGTON BUS, EL CENTRO DE LA |) | King County Superior Court No. 22-2- |
| RAZA, KAELEENE ESCALANTE |) | 19384-1 SEA |
| MARTINEZ, BETHAN CANTRELL, AND |) | |
| DAISHA BRITT; |) | |
| |) | Court of Appeals No. _____ |
| Plaintiffs, |) | |
| v. |) | NOTICE OF DISCRETIONARY |
| |) | REVIEW TO COURT OF APPEALS, |
| STEVE HOBBS, in his official capacity as |) | DIVISION I |
| Washington State Secretary of State, JULIE |) | |
| WISE, in her official capacity as the |) | |
| Auditor/Director of Elections in King County |) | |
| and a King County Canvassing Board Member, |) | |
| SUSAN SLONECKER, in her official capacity |) | |
| as a King County Canvassing Board Member, |) | |
| AND STEPHANIE CIRKOVICH, in her |) | |
| official capacity as a King County Canvassing |) | |
| Board Member; |) | |
| |) | |
| Defendants. |) | |

Julie Wise, Susan Slonecker and Stephanie Cirkovich, the King County Canvassing Board Defendants, seek review by the Court of Appeals of the State of Washington, Division I, of the trial court’s “Order Re: Plaintiffs’ Motion For Summary Judgment; Defendant Hobbs’ Cross Motion For Summary Judgment; And Defendant King County Canvassing Board Members’ Cross Motion For Summary Judgment” entered on October 12, 2023, pursuant to RAP 2.3(b)(4).

NOTICE OF DISCRETIONARY REVIEW
TO COURT OF APPEALS, DIVISION I - 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

A copy of the order is attached to this notice.

DATED this 9th day of November, 2023.

LEESA MANION (she/her)
King County Prosecuting Attorney

By: 

ANN SUMMERS, WSBA #21509
LINDSEY GRIEVE, WSBA #42951
Senior Deputy Prosecuting Attorneys

DAVID J. HACKETT, WSBA #21236
Special Deputy Prosecuting Attorney

Attorneys for King County Canvassing Board
701 5th Avenue, Suite 600
Seattle, WA 98104
Phone: (206) 477-1120
ann.summers@kingcounty.gov
lindsey.grieve@kingcounty.gov
david.hackett@kingcounty.gov

RETRIEVEDFROMDEMOCRACYWATCH.COM

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 9, 2023, I electronically filed the foregoing document
3 with the Clerk of the Court using the King County Superior Court E-Filing System which will
4 send notification of such filing to the following parties:

5 Kevin J. Hamilton, WSBA #15648
6 Matthew Gordon, WSBA #41128
7 Heath L. Hyatt, WSBA #54141 s
8 Hannah Parman, WSBA #58897
9 KHAMILTON@perkinscoie.com
MGORDON@perkinscoie.com
HHYATT@perkinscoie.com
HPARMAN@perkinscoie.com
Attorneys for Plaintiffs

10 Karl D. Smith, WSBA #41988
11 Tera M. Heintz, WSBA #54921
12 William McGinty, WSBA #41868
13 Susan Park, WSBA #53957
14 Nathan Bays, WSBA #43025
15 OFFICE OF THE ATTORNEY GENERAL
Karl.Smith@atg.wa.gov
Tera.Heintz@atg.wa.gov
William.McGinty@atg.wa.gov
susan.park@atg.wa.gov
nathan.bays@atg.wa.gov
16 *Attorneys for State Defendant Steve Hobbs*

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

19 DATED this 9th day of November, 2023.

20 

21 RAFAEL MUNOZ-CINTRON
22 Paralegal I
23 King County Prosecuting Attorney's Office

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Mark Larrañaga

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

VET VOICE FOUNDATION, et al.,

Plaintiffs,

v.

STEVE HOBBS, et al.,

Defendants.

NO. 22-2-19384-1 SEA

DEFENDANT STEVE HOBBS'S
NOTICE FOR DISCRETIONARY
REVIEW TO THE COURT OF
APPEALS, DIVISION I

FILING FEE EXEMPT PER
RCW 2.32.070

Defendant Steve Hobbs seeks review by Division I of the Court of Appeals of: (1) the attached Order Re: Plaintiffs' Motion for Summary Judgment; Defendant Hobbs' Cross Motion for Summary Judgment; and Defendant King County Canvassing Board Members' Cross Motion for Summary Judgment entered by the King County Superior Court on October 12, 2023 and (2) any other ruling that relates to or prejudices review of the Designated Order. Defendant Hobbs seeks discretionary review pursuant to RAP 2.3.

The names and addresses of the attorneys for each of the parties are as follows:

William McGinty
Susan Park
Nathan Bays
Tera Heintz
Karl D. Smith
Office of the Attorney General
7141 Cleanwater Dr. SW
PO Box 40111
Olympia, WA 98504
william.mcginity@atg.wa.gov
susan.park@atg.wa.gov

1 nathan.bays@atg.wa.gov
2 tera.heintz@atg.wa.gov
3 karl.smith@atg.wa.gov

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 1202 Third Avenue, Suite 4900
11 Seattle, WA 98101-3099
12 KHamilton@perkinscoie.com
13 MGordon@perkinscoie.com
14 HHyatt@perkinscoie.com
15 HParman@perkinscoie.com
16 AndrewFerlo@perkinscoie.com

17 Ann M. Summers
18 David J. Hackett
19 Lindsey Grieve
20 King County Prosecutor's Office
21 701 5th Avenue, Suite 600
22 Seattle, WA 98104
23 ann.summers@kingcounty.gov
24 david.hackett@kingcounty.gov
25 lindsey.grieve@kingcounty.gov
26

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1 DATED this 9th day of November 2023.

2 ROBERT W. FERGUSON
3 Attorney General

4 /s/ William McGinty

5 KARL D. SMITH, WSBA #41988
6 TERA M. HEINTZ, WSBA #54921
7 Deputy Solicitors General
8 WILLIAM MCGINTY, WSBA #41868
9 SUSAN PARK, WSBA #53857
10 NATHAN BAYS, WSBA #43025
11 Assistant Attorneys General
12 7141 Cleanwater Drive SW
13 PO Box 40111
14 Olympia, WA 98504-0111
15 (360) 709-6470
16 Karl.Smith@atg.wa.gov
17 Tera.Heintz@atg.wa.gov
18 William.McGinty@atg.wa.gov
19 Susan.Park@atg.wa.gov
20 Nathan.Bays@atg.wa.gov
21 *Counsel for Defendant Steve Hobbs*

1 DECLARATION OF SERVICE

2 I hereby declare that on this day I caused the foregoing document to be served, via
3 electronic mail, on the following:

4 Kevin J. Hamilton
5 Matthew Gordon
6 Heath L. Hyatt
7 Hannah Parman
8 Andrew Ferlo
9 Perkins Coie LLP
10 KHamilton@perkinscoie.com
11 MGordon@perkinscoie.com
12 HHyatt@perkinscoie.com
13 HParman@perkinscoie.com
14 AndrewFerlo@perkinscoie.com
15 EGonzalez@perkinscoie.com
16 JBible@perkinscoie.com
17 *Counsel for Plaintiffs*

18 Ann M. Summers
19 David J. Hackett
20 Lindsey Grieve
21 ann.summers@kingcounty.gov
22 david.hackett@kingcounty.gov
23 lindsey.grieve@kingcounty.gov
24 kris.bridgman@kingcounty.gov
25 rmuozcintron@kingcounty.gov
26 *Counsel for King County Defendants*

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

DATED this 9th day of November 2023, at Olympia, Washington.

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General

WA STATE ATTORNEY GENERAL'S OFFICE, COMPLEX LITIGATION DIVISION

November 22, 2023 - 1:18 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,569-6
Appellate Court Case Title: Vet Voice Foundation et al. v. Steve Hobbs et al.

The following documents have been uploaded:

- 1025696_Motion_Discretionary_Review_20231122131643SC528116_7151.pdf
This File Contains:
Motion for Discretionary Review - Discretionary Review Superior Ct.
The Original File Name was MDR.pdf
- 1025696_Other_20231122131643SC528116_6687.pdf
This File Contains:
Other - Petitioner's Appendix
The Original File Name was MDR_Appendix_Rdcd.pdf

A copy of the uploaded files will be sent to:

- HParman@perkinscoie.com
- Nathan.Bays@atg.wa.gov
- SGOOlyEF@atg.wa.gov
- ann.summers@kingcounty.gov
- david.hackett@kingcounty.gov
- diane.hoosier@atg.wa.gov
- hhyatt@perkinscoie.com
- jstarr@perkinscoie.com
- jvanarcken@kingcounty.gov
- karl.smith@atg.wa.gov
- khamilton@perkinscoie.com
- lindsey.grieve@kingcounty.gov
- mgordon@perkinscoie.com
- mlyles@perkinscoie.com
- nicole.beck-thorne@atg.wa.gov
- nikki.gamon@atg.wa.gov
- rebecca.davilasimmons@atg.wa.gov
- susan.park@atg.wa.gov
- tera.heintz@atg.wa.gov

Comments:

Sender Name: Victoria Johnson - Email: victoria.johnson@atg.wa.gov

Filing on Behalf of: William McGinty - Email: william.mcginity@atg.wa.gov (Alternate Email: Victoria.Johnson@atg.wa.gov)

Address:
800 Fifth Avenue, Suite 2000
Seattle, WA, 98104

Phone: (206) 233-3395

Note: The Filing Id is 20231122131643SC528116

RETRIEVEDFROMDEMOCRACYDOCKET.COM