

NO. 102569-6

SUPREME COURT OF THE STATE OF WASHINGTON

VET VOICE FOUNDATION, et al.,

Respondents,

v.

STEVE HOBBS, et al.,

Petitioners,

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

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I. INTRODUCTION

Washington State has one of the most successful election systems in the country, ranked second in the nation for ease of voting. A key part of Washington's election success is its early adoption of mail-in voting, where every registered voter is mailed a ballot every election. Mail-in voting increases voter participation by hundreds of thousands of voters each election, with the greatest gains among voters of color, voters experiencing poverty, and youth voters. Washington also allows voters to easily obtain a replacement or re-issued ballot, a convenience used by over a million voters over the last five years alone.

Washington simultaneously prioritizes election security and integrity, recognizing the critical importance of preserving public faith in the electoral process. To serve these purposes, it is essential to include a mechanism for verifying that vote-by-mail ballots are cast by the intended voter and that no one votes more than once. The linchpin to preserving both broad

accessibility and voter confidence in Washington is signature verification, which requires voters to simply sign their ballots so that election officials can compare the ballot signature to the signatures in the voters' registration file. Every election, this method is used successfully by more than 99% of all voters without issue. Combined with a robust cure process, it is the most accessible and least burdensome way to verify voter identity.

Even with such electoral successes, the Secretary of State is always seeking to improve election processes. As such, the Secretary recently issued new draft regulations that will substantially improve the signature verification process before the next general election. The regulations will change signature verification in two key ways by: (1) reducing the number of ballots challenged in the first place; and (2) making the cure process as easy as possible, by giving the small percentage of voters whose signatures are challenged an alternative method for verifying their identity, as easily as providing a drivers' license

number, social security number, or multi-factor authentication code by text, email, phone, or online.

Plaintiffs, however, allege that this process is facially unconstitutional under Washington's Constitution. In making this argument, Plaintiffs rely solely on evidence related to alleged disparate impacts from *past* applications of signature verification. While the Secretary disputes these alleged impacts, these disputes do not prevent summary judgment on Plaintiffs' claims because the facial constitutionality of a statute is a legal question focusing on the text of the statute itself. Plaintiffs have not and cannot meet their burden to show that the statute, on its face, violates the Constitution, or that signature verification is unconstitutional in every application. This is only underscored by Plaintiffs' failure to show that signature verification under the Secretary's new regulations would burden voters in any way. The trial court erred in holding that evidentiary disputes preclude summary judgment against Plaintiffs on this legal question.

Discretionary review is appropriate here. The trial court certified this case for interlocutory review under RAP 2.3(b)(4), recognizing that its order rested on controlling questions of law, the resolution of which could obviate the need for a trial. Discretionary review is also independently warranted under RAP 2.3(b)(1) and (b)(3) because the trial court committed obvious error rendering further proceedings useless, and significantly departed from the usual course of judicial proceedings, by failing to apply settled law governing facial challenges.

II. ISSUES PRESENTED FOR REVIEW

Plaintiffs bring a facial constitutional challenge to Washington's statute requiring verification of a voter's signature on their ballot declaration, but Plaintiffs did not show that the statute's text itself violates any constitutional limit, and presented no evidence showing that the verification process under the Secretary's proposed regulations will unduly burden voters. Did the Superior Court err by failing to grant the

Secretary's motion for summary judgment because Plaintiffs cannot meet their burden to show the statute is unconstitutional in all conceivable circumstances?

III. STATEMENT OF THE CASE

A. Signature Verification Makes Voting in Washington Easy

Washington is ranked second in the nation for the ease of obtaining and casting a ballot. App. 427. The State has one of the most accessible voter registration processes in the country, allowing voters to register up until Election Day itself. RCW 29A.08.140(1)(b). A key part of Washington's election success is its universal vote-by-mail system, in which the State mails every registered voter a ballot, allowing voters to complete their ballots at home and return them by mail (postage paid) or conveniently located ballot drop boxes. Voters can also choose to vote in person on Election Day if preferred. RCW 29A.40.160.

Universal vote-by-mail has enormous positive impacts. It increased voter turnout by up to 320,000 voters in the last

presidential election alone, with the greatest participation increases among marginalized groups, including voters of color, voters experiencing poverty, and young voters. App. 496, 520. Such voters tend to be the most impacted by barriers to voting, such as competing demands on their time, lack of paid-time-off, transportation obstacles, and lack of notice. These voters benefit most from improvements to ballot accessibility, such as mail-in-voting, which provides specific notice to all voters of an upcoming election with enough time to research and complete ballots at home, and allows voters to easily authenticate and return their ballots in postage pre-paid envelopes.

Vote-by-mail, however, also creates unique security issues. Unlike polling-site voting systems, vote-by-mail makes it possible to intercept a voter's ballot at a shared living space, the mailbox, or by obtaining an online replacement ballot, making it far easier to vote someone else's ballot. App. 497-503. These unique vulnerabilities have led to fraudulent or illegitimate voting in Washington in the past. Indeed, the State produced

evidence of over 150 instances of illegitimate ballot submission in a single county, in a single year. App. 449-86, 654-55. Other states have similarly experienced fraudulent submission of vote-by-mail ballots, in some cases requiring decertification of election results and a “redo” election. App. 497-98. And, of course, it is impossible to know how many would-be instances of election fraud have been deterred by the presence of signature verification before ever taking place. *See* App. 613.

Identity verification is particularly important in Washington because the State makes it so easy for voters to obtain a replacement or re-issued ballot. Any voter can go online to votewa.gov and print out a replacement ballot if their first ballot is lost or destroyed or if the voter simply changes their mind about what selections to make. App. 426. The only information a voter needs to obtain a replacement ballot is a name and birthdate, which is publicly available information for every voter in Washington. *Id.*; *see also* Vote Reference | Washington, <https://voteref.com/voters/WA> (last visited Nov.

22, 2023) (publicly accessible online database of all registered voters in Washington). Voters can also receive a re-issued ballot if they move, even if a ballot was already mailed to their old address. App. 428. Washington voters have taken advantage of easily accessible replacement and re-issued ballots more than one million times just since 2019. App. 660.

While these options are popular with voters, and online replacement ballots make it easy to vote even without a reliable mailing address, they also create systemic security risks if the State does not also have a means of verifying the voter's identity upon receipt of a ballot. App. 500-01. Without such a mechanism for verifying voter identity, it is possible to print out large numbers of replacement ballots online, and for those ballots to be cast and counted before any fraud or irregularity is detected, if detected at all. Because Washington's Constitution protects the secrecy of the ballot, once such ballots are removed from their security envelopes and added to the vote-counting stream, they cannot be identified and removed from the vote count. App. 535.

And because ballots are mailed in, anyone anywhere in the world could exploit this systemic vulnerability.

Signature verification is the “linchpin” for maintaining both the accessibility and security of Washington’s vote-by-mail system. App. 428, 240. The Legislature has relied on signature verification in some form since it first authorized absentee voting in 1915 over 100 years ago. *See* Laws of 1915, ch. 189. Signature verification is the most accessible mechanism available for verifying voter identity because it does not require voters to have access to any technologies, tools, specialized information, or identification to cast a ballot. Any other method of voter identification would require such access, creating barriers to voting and damaging voter participation, especially among marginalized groups. App. 506-15 (comparing methods to verify voter identity in a vote-by-mail system).

With signature verification, county elections officials compare the declaration signature on the outside ballot envelope to the signatures available in a statewide database to verify that

the ballot was cast by a registered voter and that the voter has not already voted. RCW 29A.40.110(3). The vast majority of signatures on ballots—over 99% each election—are readily deemed a “match,” and those ballots are accepted. For the small percentage of signatures that are initially determined not to match and challenged on that basis, the State provides the most generous cure process in the nation to allow those ballots to be counted. *See National Conference of State Legislatures*, Table 15: States With Signature Cure Processes <https://www.ncsl.org/elections-and-campaigns/table-15-states-with-signature-cure-processes> (last visited Nov. 21, 2023). State law requires prompt notice to the voter of any signature challenge, with most counties reaching out to voters multiple times in multiple ways, and providing voters until the day before the election is certified (up to 20 days after the election) to cure the mismatch. App. 663.

And the State continues to improve its electoral processes all the time. Pursuant to authority to enact rules governing

signature verification standards, the Secretary has recently issued draft regulations that will improve signature verification in two significant ways. First, while current WAC 434-379-020 requires rejection of a voter's signature unless there is an "[a]greement in style and general appearance," the new draft regulations will require election officials to apply a presumption that a voter's signature is valid. Wash. St. Reg. 23-16-099 (proposed July 31, 2023). That presumption can only be overcome if two election officials independently identify "multiple, significant, and obvious discrepancies" between the ballot signature and all the other signatures in the voter's registration file. *Id.* This change will likely reduce the number of signatures that are challenged in the first instance. App. 437, 524-27.

Second, the proposed regulations make it much easier to cure a challenged ballot. *Id.* To cure a challenged ballot under the current process, a voter must send in a form signing both the ballot and registration declarations. App. 443-45. If the signature on this form matches the signature on the ballot, the ballot is

accepted. *Id.* The new regulations will substantially expand this cure process by adding options for verifying a voter's identity without providing another signature. Wash. St. Reg. 23-16-099 (proposed July 31, 2023). Instead, voters will be able to cure by providing the voter's driver's license or identicard number, the last four digits of the voter's social security number, a copy of any document that the voter could use to register to vote in the first place, or through use of a multi-factor authentication system. *Id.* Voters will also have the option to cure online, by phone, or in-person. App. 436.

B. The Superior Court Denied All Parties' Summary Judgment on Plaintiffs' Facial Challenge to the Signature Verification Statute

Plaintiffs sued the Secretary of State and King County election officials in late 2022, challenging the signature verification statute, RCW 29A.40.110(3), as facially unconstitutional under article 1, sections 3, 12 and 19 of the Washington Constitution. *See generally* App. 1. All parties moved for summary judgment. App. 44-102, 132-227.

Although Plaintiffs admittedly brought only a facial challenge to the text of RCW 29A.40.110(3), they relied exclusively on evidence about how signature verification had been applied in specific past elections to challenge signature verification. *See generally* App. 44-102. Plaintiffs argued that signature verification resulted in disproportionate ballot rejections for certain populations of voters, including young voters and voters of color. *Id.* at 11-19. Plaintiffs' expert, however, did not investigate and thus did not opine on whether signature verification processes under the Secretary's new proposed regulation would result in disproportionate effects. App. 313-15, 318-19, 325-30, 336-37, 340-43. And their handwriting expert, who opined generally that signature verification was error-prone, did not know whether the error rates would persist with the process changes that would be made under the Secretary's proposed rules. App. 414-15, 418-20, 422.

Defendants disputed most of Plaintiffs' factual claims and evidence, but primarily argued that Plaintiffs could not prevail in

their facial challenge to the statute because they could not meet their burden to show that signature verification was unconstitutional in all possible applications, including under the Secretary's proposed regulations. *See generally* App. 177-227. All parties agreed that in a facial challenge, Plaintiffs must show that no set of circumstances exist in which signature verification could be constitutionally applied. App. 708, 202, 155.

The parties disagreed about the proper standard of judicial scrutiny to apply under the Washington Constitution. Defendants argued that under Washington State Supreme Court precedent, the manner in which an election is conducted was reviewed under the rational basis standard and the federal *Anderson-Burdick* framework for Plaintiffs' due process claims. App. 210-12, 162-70. Plaintiffs argued that strict scrutiny applied to all of its claims. App. 92.

The superior court held that the *Anderson-Burdick* framework, the flexible standard applied under the U.S. Constitution to election laws, applied to Plaintiffs' facial

challenge to the signature verification statute. App. 680. The Superior Court acknowledged that its application of *Anderson-Burdick* to Plaintiffs' facial challenge was a novel holding of law. App. 681 ("This Court is cognizant that no Washington court has examined the *Anderson-Burdick* framework . . .").

The Court further held that disputed issues of material fact precluded summary judgment for any party. App. 683-85. In its recitation of the summary judgment standard, the superior court did not mention or apply the agreed-on standard for facial challenges—that Plaintiffs bore the burden to prove that signature verification was unconstitutional in all conceivable applications. *Id.*

C. The Superior Court Certified its Order Under RAP 2.3(b)(4) and All Parties Seek Discretionary Review

The Defendants jointly moved the superior court to certify its order denying summary judgment under RAP 2.3(b)(4). App. 689-98. Plaintiffs did not oppose certification.

App. 699-709. The court granted certification on two questions: (1) what is the appropriate standard of judicial review for Plaintiffs' facial challenges to RCW 29A.40.110(3) under the Washington State Constitution Article 1, sections 3, 12, and 19?; and (2) whether, under the appropriate standard of judicial review, any party is entitled to summary judgment? App. 710-12. The Defendants filed notices of discretionary review with the Court of Appeals, and Plaintiffs filed a notice of discretionary and direct review with the Supreme Court. App. 713-22.

IV. ARGUMENT

This Court should grant discretionary review under RAP 2.3(b)(4), 2.3(b)(1), and 2.3(b)(3). Discretionary review is appropriate here for at least two reasons. First and foremost, the superior court certified its order denying summary judgment. App. 713-15. The trial court correctly determined that its order involved controlling issues of law for which there is substantial ground for a difference of opinion and that final resolution of these issues will materially advance the conclusion of this

litigation. Appellate review is appropriate to determine the facial constitutionality of RCW 29A.40.110(3), a pure question of law reviewed de novo by appellate courts.

Second, review should also be granted under RAP 2.3(b)(1) and (b)(3) because the trial court obviously erred, and departed from the usual course of proceedings, by failing to apply the appropriate legal standard to Plaintiffs' facial constitutional challenge. Under that standard, Plaintiffs bear the burden of proving that the statute cannot be applied constitutionally in any conceivable set of circumstances, not only based on the evidence in a particular case. *City of Redmond v. Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004). The trial court did not cite this standard anywhere in its order. And, evidentiary disputes about past applications of signature verification cannot preclude summary judgment in Defendants' favor on Plaintiffs' challenge. Plaintiffs' facial challenge involves questions of law: under a facial challenge, if there are any *hypothetical facts* which *could* justify signature verification, the court must presume them

to exist. The very fact that Plaintiffs did not submit any evidence showing that signature verification burdens voters under the Secretary's new regulations underscores that they have not and cannot prove that signature verification is unconstitutional in all its applications. Resolution of this issue will obviate the need for any trial in this case, rendering further proceedings useless under RAP 2.3(b)(1).

Because the trial court failed to apply the correct standard on facial challenges, discretionary review is appropriate under RAP 2.3(b)(1) and 2.3(b)(3).

A. Review is Appropriate Under 2.3(b)(4) Because the Superior Court Certified its Order

The RAP 2.3(b)(4) criteria are satisfied here because the superior court certified its order under RAP 2.3(b)(4). This certification alone justifies review. And while RAP 2.3(b)(4) does not require this Court to independently confirm that the criteria are met, the superior court here correctly certified this case for appeal.

Plaintiffs bring solely a facial challenge to the signature verification statute, which presents a pure question of law. *State v. Grocery Mfrs. Ass'n.*, 195 Wn.2d 442, 461 (2020) (“The constitutionality of a statute is a question of law that we review de novo.”). When reviewing the facial constitutionality of a statute, courts focus “on whether the statute’s *language* violates the constitution.” *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220 (2000)(emphasis added); *see also City of Seattle v. Webster*, 115 Wn.2d 635, 640 (1990) (“Constitutional analysis is made upon the language of the ordinance or statute itself.”).

As all parties acknowledged here, because Plaintiffs bring only a facial challenge, Plaintiffs bear the burden to show that the statute cannot be applied constitutionally in any conceivable set of circumstances. *City of Redmond*, 151 Wn.2d at 669 (“[A] successful facial challenge is one where no set of circumstances exists in which the statute, as currently written, can be constitutionally applied.”). The Washington Supreme Court has

made clear that, with a facial challenge, “if a court can reasonably conceive of a state of facts to exist which would justify the legislation, those facts will be presumed to exist and the statute will be presumed to have been passed with reference to those facts.” *State v. Brayman*, 110 Wn.2d 183, 193, 751 P.2d 294 (1988). For this reason, the superior court’s order denying summary judgment to all parties involves a controlling question of law—namely, whether RCW 29A.40.110(3) is facially constitutional.

Review by an appellate court of this question will also materially advance the conclusion of this lawsuit by providing a dispositive answer to Plaintiffs’ constitutional claims, obviating the need for a lengthy trial at taxpayer expense. The trial court appropriately certified its order denying summary judgment to all parties so that this case could be resolved without a trial, and this Court should grant discretionary review.

B. Review is Appropriate Under RAP 2.3(b)(1) and (b)(3) Because the Superior Court Failed to Apply the Established Standard for Facial Challenges

Review is also independently warranted under RAP 2.3(b)(1) and (b)(3). As discussed above, the facial constitutionality of a statute is a question of law. By holding that material facts precluded summary judgment against Plaintiff, the superior court failed to apply binding precedent governing facial challenges, and committed error that an appellate court can and should correct under RAP 2.3(b)(1) and (b)(3).

1. Discretionary review is appropriate because the superior court failed to apply binding precedent requiring rejection of Plaintiffs' facial constitutional challenges as a matter of law

Review is warranted under RAP 2.3(b)(1) because the superior court committed an obvious error that renders further proceedings useless by failing to grant summary judgment to the Defendants on a pure question of law. The Washington Supreme Court has held, time and again, that the facial constitutionality of a statute is a question of law focusing on the text of the statute itself and any conceivable hypotheticals to be drawn from that

text. *Brayman*, 110 Wn.2d at 193; *Tunstall*, 141 Wn.2d at 221. The Court has applied this standard as recently as this past June, when it affirmed dismissal of a facial challenge to the Washington Voting Rights Act (WRVA) based solely on its analysis of the statute's text. *Portugal v. Franklin County*, 1 Wn. 3d 629, 659 (2023). The Court readily determined that WVRA can "clearly be applied in a manner" that does not violate the State Privileges or Immunities clause because the statute "on its face" did not grant any privileges or immunities. *Id.* The Court in *Portugal* also emphasized that dismissal of the facial challenge did not preclude a later as-applied challenge based on specific applications of the statute, but that such applications were not relevant to the facial challenge. *Id.*

The same holds true here. The superior court committed obvious error by failing to even cite, let alone apply, this settled law in addressing a purely legal question about the facial constitutionality of Washington's signature verification statute. App. 683-85. Granting summary judgment on Plaintiffs' facial

challenge to RCW 29A.40.110(3) does not require consideration of evidence because the court's focus is purely the text of the statute itself. *Id.* And here, Plaintiffs do not and cannot argue that the text of the statute itself burdens the right to vote, creates a forbidden privilege or immunity, or violates due process.

Plaintiff also failed to show that the law is unconstitutional in every possible application, underscored by their failure to produce evidence that signature verification under the Secretary's new proposed regulations will burden voters in any way. Even if the Secretary's draft regulations were purely hypothetical, this failure of proof would be sufficient to defeat Plaintiffs' challenge. The very fact that Plaintiffs' challenge would prevent regulatory changes from going into effect, without any evidence that the regulations will not entirely address Plaintiffs' concerns, illustrates why the burden on a facial challenge is so high. The standard on a facial challenge is purposefully exacting because it "short circuit[s] the democratic process by preventing laws embodying the will of the people

from being implemented in a manner consistent with the Constitution.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008).

The trial court’s error also renders further proceedings useless. While the trial court was correct that the parties hotly contest almost everything about the way signature verification has been applied in Washington in past elections, this only supports granting summary judgment in the Secretary’s favor. *See* App. 684. Plaintiffs will present expert testimony that signature verification is too error-prone to be useful in an elections context. App. 107-31. And Secretary Hobbs will present expert testimony that, “[c]ombined 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.” App. 449-86. The trial court relied on this disagreement to deny summary judgment to all parties. App. 684. (“The parties

have presented conflicting evidence about the efficacy of signature verification - a critical component, and a genuine issue of material fact in any analysis of the constitutional issues before the Court.”). But in a facial challenge, “where scientific opinions conflict on a particular point, the Legislature is free to adopt the opinion it chooses, and the court will not substitute its judgment for that of the Legislature.” *Brayman*, 110 Wn. 2d at 193; *see also State v. Fraser*, 199 Wn.2d 465, 476, 509 P.3d 282 (2022) (quoting *Brayman*, 110 Wn.2d at 193) (in assessing facial constitutionality “‘if a court can reasonably conceive of a state of facts to exist which would justify the legislation, those facts will be presumed to exist and the statute will be presumed to have been passed with reference to those facts.’”). In a facial challenge, it is not appropriate to subject scientific opinions like the ones presented here to a trial for a decision by the court, as opposed to the Legislature.

Accordingly, a trial to test these two expert opinions against each other would not be legally relevant to deciding

summary judgment against Plaintiffs' facial challenge. It does not matter which of these two opinions the trial court finds more credible. The Legislature is instead free, as a matter of law, to adopt the opinion that signature verification is a reasonable means of identity verification in an elections context: an opinion that is well-supported in the relevant expert community. *Brayman*, 110 Wn. 2d at 193. Holding a trial for the court to make this determination would serve no purpose in this facial challenge.

The same can be said for each of the disputed issues of fact the trial court recounted. *See* App. 684 (listing "alleged adverse impacts of signature verification," "whether signature verification promotes election security", "greater access to elections and voter confidence", the "efficacy of the Secretary's proposed regulations" and "even expert opinions and methodology" as disputed issues of material fact). In a facial challenge, the Court must accord deference to the Legislature's

prerogative to decide between such disputed issues of fact. *Fraser*, 199 Wn.2d at 476; *Brayman*, 110 Wn.2d at 193.

The facial validity of a statute is a question of law that appellate courts review de novo. *Grocery Mfrs. Ass'n.*, 195 Wn.2d at 461. There is no point in putting on a trial to make factual findings that would be appropriately disregarded on appeal. If discretionary review is not taken now, the parties and the trial court will spend unnecessary time and resources holding a trial only for this question to be decided as a matter of law on appeal. This case is ready for appellate review now, rendering further trial proceedings useless.

The trial court also erred by improperly shifting the burden to Defendants to justify signature verification instead of requiring Plaintiffs to prove that it is unconstitutional in all of its conceivable applications. It is blackletter law in Washington that “[t]he burden to prove a legislative act is unconstitutional rests on the statute’s challenger . . . and is sometimes expressed as requiring proof beyond a reasonable doubt.” *Quinn v. State*,

1 Wn. 3d 453, 471, 526 P.3d 1 (2023). Plaintiffs submitted no evidence at all that the Secretary's proposed regulations instituting a new standard for signature verification and creating new options to cure mismatched signatures would not completely solve every one of the problems they identified. App. 594-95. Instead, Plaintiffs argued only that the Secretary had no evidence the new rules would solve any of the problems they identified. *Id.* Yet, the trial court relied on this argument to find disputed issues of material fact precluded summary judgment for the Defendants. App. 684, n. 60. Without a showing that *all* of signature verification's possible applications are unconstitutional, including the application proposed by the Secretary's new rules, Plaintiffs cannot prevail in this lawsuit. *City of Redmond*, 151 Wn.2d at 669. The superior court, in failing to apply the appropriate standard to Plaintiffs' facial constitutional challenge, committed obvious error rendering further proceedings useless.

2. Discretionary review is appropriate because the trial court departed from the usual and customary course of judicial proceedings

Review is appropriate under RAP 2.3(b)(3) for these same reasons. A trial court departs from the usual and customary course of judicial proceedings by ignoring binding precedent. *Folise v. Folise*, 113 Wn. App. 609, 613, 54 P.3d 222 (2002) (holding review under RAP 2.3(b)(3) was appropriate because trial court “ignor[ed] unambiguous language in the statutory scheme and case law on the subject.”); *see also Wahler v. Dept. of Soc. and Health Servs.*, 20 Wn. App. 571, 575–76, 582 P.2d 534 (1978).

Here, decades of case law establish the standard to apply on a facial challenge to a statute. *See, e.g., In re Det. Of Turay*, 139 Wn. 2d 379, 417 n. 27, 986 P.2d 790 (1999). Every party agreed that this standard applied. *See, e.g., App.* 708. The superior court, however, did not cite this law or apply it to Plaintiffs’ claims. By ignoring this binding and well-established precedent, the trial court departed from the usual course of

judicial proceedings such as to call for review. *See* RAP 2.3(b)(3).

V. CONCLUSION

For the reasons stated above, this Court should grant discretionary review under RAP 2.3(b)(4), (1), and (3).

This document contains 4,734 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 22nd day of November 2023.

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DECLARATION OF SERVICE

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

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

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

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Assistant Attorney General

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Appellate Court Case Number: 102,569-6
Appellate Court Case Title: Vet Voice Foundation et al. v. Steve Hobbs et al.

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