

No. 102569-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

VET VOICE FOUNDATION, THE WASHINGTON BUS, EL
CENTRO DE LA RAZA, KAELEENE ESCALANTE
MARTINEZ, BETHAN CANTRELL, AND DAISHA BRITT;

Plaintiffs/Respondents,

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/Appellants.

KING COUNTY CANVASSING BOARD'S MOTION FOR
DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONER

King County Canvassing Board members, Julie Wise, Susie Slonecker and Stephanie Cirkovich (hereinafter “the Canvassing Board”), request review of the decision designated in Part B of this Motion pursuant to RAP 2.3(b)(1) and (4).

II. DECISION

The Canvassing Board seeks review of the King County Superior Court’s order denying the Canvassing Board’s motion for summary judgment. A-1-25.¹ The Superior Court granted an unopposed motion to certify that order pursuant to RAP 2.3(b)(4). A-26-28.

III. INTRODUCTION

The Washington Legislature has broad discretion under the state and federal constitutions to provide for the method of voting. Preventing election fraud and maintaining voter confidence are paramount goals for the legislature and election

¹ The appendix to this motion will be cited as “A-__”.

officials and have been universally recognized by courts as compelling state interests. In enacting universal mail voting in 2011, the legislature balanced voter access with election security. The legislature made voting more accessible by mailing ballots to all registered voters for every election, but enacted signature verification as the safeguard employed to ensure that ballots are not intercepted and returned by someone other than the registered voter.

At issue in this case is the constitutionality of RCW 29A.40.110(3). That statute provides simply that election personnel “shall verify that the voter's signature on the ballot declaration is the same as the signature of that voter in the registration files of the county.”

Plaintiffs, consisting of advocacy groups and individual voters, (hereinafter “Vet Voice”) bring only a facial constitutional challenge to the signature verification requirement. They seek to end signature verification on returned ballot envelopes. They do not propose an alternative verification

process that is more workable, but rather ask that the courts to simply disregard the legislature's judgment that verification is necessary to deter and prevent fraud.

Summary judgment for the Canvassing Board should have been granted because Vet Voice failed to show beyond a reasonable doubt that the signature verification requirement is unconstitutional on its face. Moreover, the trial court's decision to apply a federal constitutional framework under the state constitution warrants interlocutory appellate review.

IV. ISSUES PRESENTED FOR REVIEW

1. Did the trial court misapply the test applicable to a facial constitutional challenge to a statute in denying summary judgment for the Canvassing Board where Vet Voice failed to show that no set of circumstances exist in which the signature verification requirement can be constitutionally administered, or that the legislature had discriminatory intent in adopting the requirement?

2. Did the trial court err where Vet Voice failed to show that the signature verification requirement is, on its face, outside the legislature's constitutional power to regulate the method of voting pursuant to Wash. Const. article 4, § 6 and article 1, §19, or U.S. Constitution Article I, § 4?
3. Did the trial court err where Vet Voice failed to show that the signature verification requirement is, on its face, an unconstitutional grant of favoritism prohibited by the privileges and immunities clause of Wash. Const. article 1, § 12?
4. Did the trial court err where Vet Voice failed to show that the signature verification requirement violates substantive due process pursuant to Wash. Const. article 1, § 3 on its face?
5. If unconstitutional, does the signature verification requirement jeopardize Washington's entire universal mail voting system because it is not severable?

V. STATEMENT OF THE CASE

A. In Enacting Washington's Universal Vote-by-mail Election System, the Legislature Balanced Voter Access with Protecting the Integrity of the Electoral Process, and Enacted Signature Verification to Prevent Election Fraud.

In 2011, the Washington Legislature adopted universal mail voting statewide for all elections. RCW 29A.40 *et seq.* Since 2011, every person registered to vote in Washington receives a ballot mailed to their registered address at each election. RCW 29A.40.010, .091. Voters can return their ballot through the mail with prepaid postage, drop it into a secure ballot drop box, or complete their ballot at a voting center. RCW 29A.40.010, .091. Registered voters may also request a replacement ballot by mail, electronically, or in person. RCW 29A.40.070(3).

The legislature enacted safeguards to ensure that the universal mail voting process is secure from election fraud. One of those safeguards is at issue in this case. Ballot return envelopes contain a declaration that the voter must sign and date. RCW

29A.40.091. By signing, the voter swears under penalty of perjury that he or she meets the qualifications to vote and has not voted in any other jurisdiction in that election. *Id.* There is no allegation that the signature verification requirement was adopted with the purpose of discriminating against any group of voters.

RCW 29A.40.110 requires election personnel to examine the signature on the return envelope before processing a ballot. *Id.* They are required to verify that the voter's signature on the ballot declaration is the same as the signature of that voter "in the registration files of the county." *Id.* Personnel assigned to verify signatures are required to undergo training on the statewide standards for signature verification. *Id.*

B. The Rate of Ballots Challenged for Signature Mismatch in King County Fluctuates But is Consistently Very Low.

On average approximately 99% of King County voters succeed in submitting ballots that face no challenge. The rate that ballots that were rejected for non-matching signatures has varied

between 0.27% and 1.14% in King County between 2018 and 2022. A-077. In comparison, the rate that ballots were rejected for *missing* signatures has varied between 0.10% and 0.41% in King County for those years. *Id.*

C. King County Employs a Robust Cure Process.

For ballots that are challenged, King County Elections (“KCE”) employs a robust cure process. When a ballot is challenged for either having no signature or a non-matching signature, KCE sends the voter a letter by first class mail advising them that their ballot has been challenged and providing them with a signature resolution form to sign and return, with a prepaid return envelope. A-084-085, A135-137. The form provides three spaces for a voter to provide three separate versions of their signature. A-137.

In addition to sending a letter, if the voter has provided a phone number with their return envelope or if there is a phone number on file for that voter, KCE places an automated courtesy telephone call to that number within a few days of the challenge.

A-084-085. The courtesy call informs the recipient that there is an issue with the signature on the ballot return envelope and instructs the recipient to contact KCE. A-085. Within three days of certification, KCE places a second automated telephone call to voters if their signature challenge remains unresolved. *Id.*

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

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

A King County voter may return a signed signature resolution form by mail using the prepaid return envelope that is enclosed with the form. A-085-086. Alternatively, a King

County voter may return the form by taking a picture of it with their phone and sending it via email, by fax, or in person at any of multiple vote centers. A-086. At a vote center, the voter may view the signatures that are in their voter registration file in the VoteWA election management system as long as they provide photo identification. *Id.*

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

When a signature resolution form is returned after a challenge for a non-matching signature, a member of the envelope review work group makes a determination whether any signatures on the signature resolution form match the signature on the challenged ballot return envelope. A-086-087. If so, the ballot is accepted. A-087. All returned signature resolution forms are reviewed by a second member of the envelope review team to ensure the appropriate decision was made. *Id.* If there was a questioned decision, the resolution form is reviewed by the envelope review workgroup lead or supervisor. *Id.*

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

D. King County Endeavors to Educate All Voters About the Importance of Ballot Return Envelope Signatures and Providing Updated Signatures.

The instruction sheet enclosed in the ballot materials for the August 2023 primary election highlighted the importance of

the voter's signature on the ballot return envelope. A-161. The instruction sheet read as follows:

Your signature matters. Make it match.

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

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

Id.

KCE has been partnering with Voter Education Fund grant recipients, including the Washington Bus Education Fund, El Centro de la Raza, the Urban League of Metropolitan Seattle and the Latino Community Fund of Washington State to decrease inequities in voter registration and voting, specifically in historically disenfranchised communities. A-164. This includes

educating voters about the signature verification process and the importance of providing updated signatures to KCE. *Id.*

Currently, KCE is in the process of mailing signature update forms to *all* registered voters in King County to ask for updated signatures. *Id.* Voters may return the form to KCE by email, in-person, or by mail (with a prepaid return envelope). *Id.* KCE is mailing signature update letters to voters in phases, starting with voters in zip codes with the highest signature challenge rates. A-076. As of July 2023, KCE had mailed 395,457 signature update letters and approximately 30% of the signature update forms had been returned as of August 2023. *Id.*

VI. ARGUMENT AS TO WHY REVIEW SHOULD BE GRANTED.

The trial court, with the agreement of the parties, has certified this as a case that involves “a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the

ultimate termination of the litigation.” RAP 2.3(b)(4); A-026. Further, interlocutory review of this case is appropriate because the trial court committed obvious error in misapplying the well-established standard for a facial challenge to a statute. RAP 2.3(b)(1).

A. Summary Judgment for Defendants Was Warranted Because Vet Voice Failed To Present A Colorable Facial Challenge To RCW 29A.40.110(3).

All parties agree that Vet Voice makes only a facial challenge to the signature verification requirement. A-9. 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 whether the ordinance would be constitutional ‘as applied’ to the facts of a particular case.” *Rental Hous. Ass'n v. City of Seattle*, 22 Wn. App. 2d 426, 437, 512 P.3d 545 (2022). When lodging a facial challenge to an election statute, “a plaintiff can only succeed in a facial challenge by ‘establish[ing] that no set of circumstances exists under which the Act would be valid,’ *i.e.*, that the law is unconstitutional in

all of its applications.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)); *City of Redmond v. Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004).

Vet Voice’s challenge, however, is based on allegations of flaws in the execution of the signature verification requirement, not an inherent flaw in the requirement itself. Evidence regarding how a statute is applied is not relevant to a facial challenge. The trial court committed obvious error by not applying the facial standard to Vet Voice’s challenge. The facial challenge should have been rejected because Vet Voice failed to show the signature verification requirement cannot be constitutionally applied. Facts can be conceived that support the constitutional application of RCW 29A.40.110(3). *Redmond v. Moore*, 151 Wn.2d at 669.

Indeed, Vet Voice admitted there is substantial variance between counties, and there is variance from election to election within counties, on ballot rejection rates, including instances

where there have been little to no rejections in a county. Because a “constitutional application” under Vet Voice’s own constitution theories is possible, the trial court erred by failing to grant summary judgment for defendants as a matter of law. Summary judgment for the Canvassing Board should have been granted because facts can be conceived that support the constitutional application of RCW 29A.40.110(3). *Redmond v. Moore*, 151 Wn.2d at 669.

Rather than a proper facial challenge to the statutory language, Vet Voice alleges flaws in execution of the signature verification requirement by individual counties. Evidence of how the statute might be misapplied is not relevant to a facial challenge.

B. Washington’s Long-standing Signature Verification Requirement Comports with Article. 1, § 19.

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

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

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

- Article 4, § 6 provides: “All elections shall be by ballot. The legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot.”
- Article 6, § 1 provides: “All persons of the age of eighteen years or over who are citizens of the United States and who have lived in the state, county, and precinct thirty days immediately preceding the election at which they offer to vote, except those disqualified by Article 6, § 3 of this

Constitution, shall be entitled to vote at all elections.”²

- Article 1, § 19 provides: “All 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.”

Under these provisions, the state constitution defines who may vote and the legislature is authorized to provide for the method and proper conduct of elections. *State ex rel. Kurtz v. Pratt*, 45 Wn.2d 151, 156, 273 P.2d 516 (1954). The *right* to vote is a constitutional right guaranteed by article 6, § 1, but “the *manner* in which the franchise shall be exercised is purely statutory.” *State ex. rel Carroll v. Superior Ct. of Washington for King Cnty.*, 113 Wash. 54, 57, 193 P. 226 (1920) (quoting *State ex rel. Shepard v. Superior Ct. of King Cnty.*, 60 Wash. 370, 372, 111 P. 233 (1910)). The legislature may not “destroy the franchise, but it may control and regulate the ballot, so long as

² Article 6, § 3 disqualifies persons convicted of infamous crimes and the mentally incompetent from voting.

the right is not destroyed or made so inconvenient that it is impossible to exercise it.” *State ex. rel. Shepard*, 60 Wash. at 372. Article 1, § 19 “does not mean that elections and voters may not be regulated and properly controlled.” *State v. Wilson*, 137 Wash. 125, 132, 241 P. 970 (1925). “[W]e have historically interpreted article I, section 19 as prohibiting the complete denial of the right to vote to a group of affected citizens” *Eugster v. State*, 171 Wn.2d 839, 845, 259 P.3d 146 (2011).

Similarly, the Elections Clause of the federal constitution, Article I, § 4, clause 1, allows state legislatures to regulate state elections for federal offices. It provides that “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” *Id.* The exercise of powers under the Elections Clause is fundamentally a “lawmaking” process. *Moore v. Harper*, 143 S. Ct. 2065, 2085 (2023).

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

Regulations related to the proof necessary to register and vote fall within the legislature's authority under article 4, § 6 of the Washington Constitution. The most analogous case is *State ex. rel. Carroll, supra*, 113 Wash. at 55. In that case, W.J. Brown, a Scottish immigrant, brought a mandamus action against the city comptroller to direct him to allow Brown to register to vote. The comptroller had refused because Brown could not provide proof of citizenship as required by statute, in particular, naturalization papers. *Id.* The Washington Supreme Court concluded the legislature had not exceeded its powers by enacting a law that required naturalization papers for registration. *Id.* The court explained, "such a law is not for the purpose of adding to or modifying the qualifications of a voter as fixed by the Constitution, but is for the purpose of making regulations and determining the proof which one shall present to establish the fact that he is a citizen and entitled to register and vote." *Id.* at

57. The court concluded “that which does not destroy or unnecessarily impair the right must be held to be within the constitutional power 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 question of proof, and not with a question of the right to vote,” and was within the legislature’s authority to enact. *Id.*

Washington courts have previously acknowledged that mail voting can be particularly susceptible to fraud, and recognized that the manner of providing for a secure method of voting by mail is generally a matter of legislative prerogative:

If permission to vote as an absentee voter results in large numbers thus voting and thereby enlarges the possibility of fraudulent and illegal voting, the subject is one for 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.

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

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

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

Universal mail voting increases access by making voting easier, but also increases the possibility of any voter’s ballot being fraudulently intercepted and submitted. The legislature has enacted multiple safeguards to protect the security of our elections. But the signature verification requirement is the only safeguard that ensures that a ballot has been returned by the registered voter. If a ballot is fraudulently intercepted and signed, no other safeguard will prevent that intercepted ballot from being counted.

Vet Voice posits that the signature verification requirement is unnecessary. But that argument defies common sense, and carries little weight in the face of the legislature's prerogative to protect against election fraud. First, by relying only on the number of voter fraud convictions to assert that voter fraud is "rare," Vet Voice oversimplifies the issue. As the United States Supreme Court has observed, "an examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud." *Burson v. Freeman*, 504 U.S. 191, 206 (1992).

More fundamentally, Vet Voice disregards the State's interest in deterring voter fraud. Any election system must protect against fraud, both fraud that occurs on an individual basis and widespread coordinated efforts. The voter signature verification process protects against both individual fraud and widespread coordinated efforts. If the signature verification requirement was invalidated, there would be no mechanism that would detect a fraudulently intercepted ballot, and no mechanism

to detect a coordinated effort to submit fraudulent ballots, at least until election officials realize they have received an unusual number of duplicate voters. By then, however, many fraudulent votes could have been already tabulated, potentially irretrievably spoiling the election. The fact that the current system has effectively prevented such coordinated efforts to date is not an argument for abandoning the signature verification requirement.

C. Washington’s Signature Verification Requirement Comports with the Privileges and Immunities Clause of Article 1, § 12.

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 particular class of voters. Article I, section 12 of the Washington Constitution provides that “[n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.” The provision was enacted due to distrust towards laws that served special interests,

which were rampant during the territorial period. *Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc.*, 196 Wn.2d 506, 51, 475 P.3d 164 (2020). The text and aims of the privileges and immunities clause is different from the federal equal protection clause. *Id.* The plaintiff bears the burden of proving a privileges and immunities violation. *Quinn v. State*, 1 Wn.3d 453, 487, 526 P.3d 1 (2023).

The right to vote is a privilege of state citizenship that implicates the privileges and immunities clause. *Madison v. State*, 161 Wn.2d 85, 95, 463 P.3d 757 (2007). However, on its face, the signature verification requirement does not deprive any person of the right to vote. The signature verification requirement is one aspect of the process of voting that applies to all voters. There is no fundamental right under the state constitution to a particular process of voting.

The signature verification requirement does not confer any privilege to any class of citizens. *See Portugal v. Franklin Cnty.*, 1 Wn.3d 629, 657, 530 P.3d 994 (2023) (concluding that the

Washington Voting Rights Act confers no privilege to any class of citizen where it applies equally). The signature verification requirement applies the same standard for ballot processing to all voters.

Moreover, when a challenged law grants a privilege for purposes of the state constitution, the court analyzes whether there are reasonable grounds for granting that privilege. *Martinez-Cuevas*, 196 Wn.2d at 519. The signature verification requirement clearly rests on reasonable grounds.

D. Washington’s Signature Verification Requirement Comports with Substantive Due Process Under Article 1, § 3.

Article I, section 3 of the Washington State Constitution provides, “No person shall be deprived of life, liberty, or property, without due process of law.” It has both procedural and substantive components. *Yim v. City of Seattle*, 194 Wn.2d 682, 688, 451 P.3d 694 (2019). The state constitution does not provide protection beyond the federal constitution with regard to substantive due process. *Id.* at 692.

The substantive component of due process “protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures.” *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 216, 143 P.3d 571 (2006). Arbitrary and capricious government action does not exist when there is a fit between the means used and the end to be accomplished. *Yim*, 194 Wn.2d at 689. State action that does not interfere with a fundamental right is subject to rational basis review, which requires only that “the challenged law must be rationally related to a legitimate state interest.” *Amunrud*, 158 Wn.2d at 220.

While the right to vote is fundamental, there is no fundamental right to a particular method of voting or to vote without proving one’s eligibility to vote. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (explaining that while voting is “fundamental,” the “right to vote in any manner” is not and states may prescribe the manner of elections without being subject to strict scrutiny). Because the signature verification requirement

on its face addresses only the means of voting and does not interfere with a fundamental right, it is subject to rational basis review. *In re J.R.*, 156 Wn. App. 9, 19, 230 P.3d 1087 (2010).

Vet Voice cannot show that the signature verification requirement is “wholly unrelated to the achievement of a legitimate state purpose.” *Id.* There is a sufficient “means-end” fit between the signature verification requirement the compelling state interests of election security, integrity and voter confidence.

E. Invalidation of the Signature Verification Requirement Jeopardizes Universal Vote by Mail in Washington Because It Has Long Been Integral to Mail Voting and Is Not Severable.

Vet Voice requests that the signature verification requirement be declared unconstitutional. If the signature verification requirement is unconstitutional, it must be determined whether it can be severed from the remainder of the statutory scheme. Generally, a statute is not unconstitutional as a whole when one of its provisions is found to be unconstitutional

if the statute can serve its purpose independently after the unconstitutional clause is removed. *Mt. Hood Beverage v. Constellation Brands*, 149 Wn.2d 98, 118, 63 P.3d 779 (2003). But provisions of a statute are not severable if the constitutional and unconstitutional provisions are so connected that the legislature would not have passed one without the other. *Id.* A provision is not severable if elimination of the invalid part would render the remaining part useless to accomplish the legislative purpose. *League of Women Voters of Washington v. State*, 184 Wn.2d 393, 412, 355 P.3d 1131 (2015) (holding that unconstitutional provision of Charter School Act was integral to the act and not severable).

Signature verification has been an integral part of universal mail voting since its adoption in 2011. It accomplishes one of the fundamental purposes of the election system: “to protect the integrity of the electoral process.” RCW 29A.04.205. There is no basis to conclude that the legislature would have enacted universal vote by mail without a method of verifying the

voter's identity to protect against fraudulently intercepted ballots. The signature verification requirement cannot be severed from the rest of the universal mail voting system. This further supports the need to uphold the entire legislative scheme that establishes Washington's innovative universal vote-by-mail approach.

VII. CONCLUSION

Discretionary review should be granted because this case involves a controlling legal question of what constitutional standard of scrutiny applies to voting regulations that safeguard against election fraud under the state constitution, and because the regulation at issue is a key safeguard that has always been employed as part of Washington's universal mail voting system to maintain election security. There is a substantial ground for a difference of opinion and appellate review of the trial court's order will materially advance the ultimate termination of by determining that RCW 29A.40.110(3) is facially constitutional.

In addition, the trial court misapplied the standard for a facial challenge, committing obvious error.

I certify that this memorandum contains 4,698 words in compliance with RAP 18.17.

DATED this 27th day of November, 2023.

Respectfully submitted,

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