

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;

Petitioners,

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,
AND STEPHANIE CIRKOVICH, in their official capacity as a
King County Canvassing Board Members;

Respondents.

KING COUNTY CANVASSING BOARD'S BRIEF OF
RESPONDENT

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I. INTRODUCTION

Both the Washington Constitution and U.S. Constitution grant the legislature discretion to provide for the method of voting. In enacting universal mail voting in 2011, the legislature made voting very accessible by mailing ballots to all registered voters for every election, but also employed signature verification as a safeguard that ensures that ballots are not intercepted and returned by someone other than the registered voter. Signature verification has been a hallmark of election security in Washington for over one hundred years, and is widely used in other states.

Courts recognize that deterring election fraud is a compelling state interest, and therefore decline to second-guess reasonable election fraud safeguards.

Plaintiffs, consisting of several voter advocacy groups and four individual King County voters (hereinafter “Vet Voice”), challenge the facial constitutionality of Washington’s signature verification requirement. While touting other election security

measures, they nonsensically argue that the legislature has no legitimate concern about the potential for election fraud and thus no constitutionally sufficient reason to employ signature verification as a safeguard. Vet Voice seeks to end signature verification, not improve it. They do not propose any alternative verification process that would prevent fraudulently intercepted ballots. Rather, they ask this Court to simply disregard the legislature's judgment that our universal mail voting system requires verification so that mailed ballots cannot be fraudulently intercepted and returned by someone other than the intended voter. Because signature verification is key aspect of Washington's universal mail voting system it is not severable; invalidation of signature verification would invalidate the entire voting system. Even if it was severable, invalidation of signature verification would wreak havoc by leaving our elections open to widespread election fraud, and claims of election fraud, at a time when experts warn that our elections are under unprecedented

attack. This Court should reject Vet Voice's invitation to sow chaos in Washington's elections.

Summary judgment for the King County Canvassing Board and Secretary of State should have been granted because Vet Voice failed to show beyond a reasonable doubt that the signature verification requirement is unconstitutional on its face.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in not excluding the expert report of Dr. Herron.
2. The trial court erred in denying summary judgment in favor of the King County Canvassing Board.

III. ISSUES PRESENTED FOR REVIEW

1. Is the signature verification requirement severable from Washington's universal mail voting system where it has been the safeguard against fraudulently intercepted ballots since universal mail voting was enacted in 2011, and has been the key safeguard against

fraudulently intercepted absentee ballots for over 100 years prior to universal mail voting?

2. Should summary judgment for the defendants have been granted where the signature verification requirement, on its face, is within the legislature's constitutional power to regulate the method of voting?
3. Should summary judgment for the defendants have been granted where the signature verification requirement, on its face, is not an unconstitutional grant of favoritism prohibited by the privileges and immunities clause of the state constitution?
4. Should summary judgment for the defendants have been granted where the signature verification requirement, on its face, does not violate substantive due process under the state constitution?
5. Under the *Anderson-Burdick* framework, is the signature verification requirement constitutional

because it places a minimal burden on the right to vote and serves compelling state interests?

IV. STATEMENT OF THE CASE

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

In 2011, the Washington Legislature adopted universal mail voting statewide for all elections. RCW 29A.40 *et seq.*; Laws of 2011, Ch. 10, § 35. Since 2011, every person registered to vote in Washington receives a ballot mailed to their registered address before each upcoming election until the death or disqualification of the voter, cancellation of the voter's registration, or placement of the voter on inactive status. RCW 29A.40.010, .091.

Ballots mailed to voters include a security envelope in which to conceal the ballot after voting, a larger return envelope, and a declaration on the envelope that the voter must sign and date. RCW 29A.40.091. The declaration must be signed and

dated in order for the ballot to be valid. *Id.* 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.*

Washington voters have the option to 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 request a replacement ballot by mail, electronically, or in person. RCW 29A.40.070(3).

To provide additional access to voting, each county is required to open a voting center to be open during business hours during the 18 days prior to any election. RCW 29A.40.160. Larger counties must have additional voting centers. RCW 29A.40.160(2)(b). At voting centers, voters who cannot sign their name may be identified by another registered voter. *Id.*

The processing of returned ballots is governed by RCW 29A.40.110. To ensure that ballots are valid, election personnel examine the postmark and signature before processing the ballot.

Id. Personnel assigned to verify signatures are required to undergo training on the statewide standards for signature verification. *Id.* Those personnel are required to verify that the voter has signed the ballot declaration and that the signature is the same as the signature of that voter “in the registration files of the county.” *Id.* The statute directs that “[a] variation between the signature of the voter on the ballot declaration and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.” *Id.*

B. Washington’s Voting System Is One of the Most Accessible Systems in the Nation.

The Washington Legislature has enacted a voting process that has one of the lowest “costs of voting” in the nation. Schraufnagel, et al., *Cost of Voting in the American States: 2022*, 21 Election L.J. 220 (2023); CP 1200-08. Professor Scot Schraufnagel and his colleagues developed a cost of voting index in 2018. CP 1200-01. The cost of voting index measures

provisions such as registration deadlines, registration restrictions, the availability of early voting, and voting convenience. CP 1201-03. In 2022, Washington ranked second out of the 50 states with the lowest cost of voting. CP 1204. By another measure, “item response theory,” Washington ranked first out of the 50 states with the lowest cost of voting. CP 1207.

C. The Signature Verification Process Required by RCW 29A.40.110 Has Been a Key Aspect of Deterring Election Fraud In Washington For Over 100 Years.

Signatures have been an integral part of election security in Washington for over 100 years. In 1905, Washington voters were required to sign poll books “opposite to the original signature of the voter offering to vote, which original signature shall be concealed as not be seen by the voter offering to vote.” Laws of 1905, Ch. 39, § 2; CP 1171. In 1921, the legislature began requiring county auditors to compare the signature on an absentee voter affidavit with the signature on a voter certificate so that the auditor could determine the “signatures are made by the same person.” Laws of 1921, Ch. 143, §§ 3-4; CP 1174-76.

In 1963, the legislature expanded absentee voting by allowing all duly registered voters to vote by absentee ballot for any election if they expected to be absent from their precinct on election day, or were unable to appear in person due to illness or disability. Former RCW 29.36.010; Laws of 1963, Ex. Sess., Ch. 23, § 1; CP 1178-79. The request for an absentee ballot could not be approved unless the voter's signature on the request "compare[d] favorably with voter's signature upon his permanent registration card." *Id.* In addition, a completed absentee ballot had to be accompanied by a declaration under penalty of perjury that the voter had the legal right to vote, and had not voted another ballot. Former RCW 29.36.030; Laws of 1963, Ex. Sess., Ch. 23, § 3; CP 1180. The processing of absentee ballots required the canvassing board or its representative to verify that the voter's signature on the ballot declaration was the same as the signature on the application for the absentee ballot. Former RCW 29.36.060; Laws of 1963, Ex. Sess., Ch. 23, § 5; CP 1182.

In 1977, the legislature expanded absentee voting to “any duly registered voter.” Former RCW 29.36.010; Laws of 1977, 1st Ex. Sess., Ch. 361, § 76; CP 1186. The signature verification requirement remained essentially the same. *Id.*, § 78; CP 1188 (“The canvassing board or its duly authorized representatives shall examine the postmark, receipt mark and statement on the outer envelope containing the absentee ballot and verify the voter’s signature thereon is the same as that on the original application”).

In 2006, the legislature amended RCW 29A.40.110 to require training on statewide standards for signature verification. Laws of 2006, Ch. 206, § 6; CP 1191.

In 2011, the legislature adopted universal voting by mail and amended RCW 29A.40.110, retaining the long-standing signature verification requirement that had previously been utilized for absentee ballots. Laws of 2011, Ch. 10, § 41; CP 1198. Signature verification provided the only mechanism to ensure that mailed ballots were returned by the registered voter.

D. Signature Verification Is Widely Used as an Election Security Measure.

Many other states use signature verification in their election process, either as part of universal mail voting, or to verify absentee ballots. These states include: Arizona, California, Colorado, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Tennessee, Texas, Utah, and West Virginia.¹ See National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots>. In lieu of signature

¹ Ariz. Rev. Stat. § 16-550; Cal. Elec. Code § 3019; Colo. Rev. Stat. § 1-7.5-107.3; Fla. Stat. § 101.68; Haw. Rev. Stat. § 11-106; 10 Ill. Comp. Stat. 5/19-8; Ind. Code § 3-11.5-4-13.5; Iowa Code § 53.18; Ky. Rev. Stat. § 117.087; Me. Rev. Stat. tit. 21-A, § 756; Mass. Gen. Laws ch. 54, § 94; Mich. Comp. Laws § 168.766; Mont. Code § 13-13-241; Nev. Rev. Stat. § 293C.26327; 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.

verification, some states employ other means of voter identity verification. For example, Arkansas requires a copy of a photo identification.² Georgia and Minnesota require the voter to provide a driver's license or identification card number, or the last four digits of the voter's Social Security Number.³

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

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

All full-time employees of King County Elections (KCE) that perform signature verification attend an annual training on signature verification provided by the Secretary of State's Office. CP 1221. The lead employees of the signature verification and envelope review work groups are full time KCE employees. *Id.* In addition, short-term temporary staff are hired to conduct the signature verification process. *Id.* They receive a two-to-three-

² Ark Code § 7-5-409(b)(4), 7-5-412, 7-5-416.

³ Ga. Code § 21-2-384, 21-2-386(a)(1); Minn. Stat. § 203B.07, 203B.121.

hour training on the signature verification process before each election. *Id.* All returning employees repeat the training for each election. *Id.* The signature verification training for temporary staff consists of a PowerPoint presentation based on the information from the annual training provided by the Secretary of State's Office, as well as anti-bias training. *Id.*

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

During each election, the lead of the signature verification work group conducts an audit of 100% of the first batch of 250 ballot signatures comparisons completed by each member of the signature verification work group to confirm that each group member understands the process and is conducting verification consistently with the training. CP 1222. If needed, additional training is provided. *Id.* In addition, every week during an election, one batch of ballots verified by every signature verification work group member is randomly selected to be

audited by the lead of the signature verification work group to ensure consistency with training standards. *Id.*

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

When ballots are completed and returned to KCE by voters, the ballot return envelopes are processed through mail-sorting machines that capture a digital image of the signature area on the ballot return envelope. *Id.* The digital image also captures the barcode on the envelope, which is a unique identifying number for that specific ballot packet. *Id.* The digital images of the voter signatures are uploaded to the statewide election management system, called VoteWA. CP 1223. The software displays the image of the signature from the envelope with the signatures contained in the VoteWA voter registration file for that voter on a computer screen. *Id.* The members of the signature verification work group compare the signature from the envelope with all signatures in the registration file to determine if it is the same as any of them pursuant to RCW 29A.40.110(3) and the

standards set forth in WAC 434-379-020. *Id.* When the signature verification work group is verifying signatures, the display contains no information about the voters' race, ethnicity, or military status. CP 1224.

If the verifier determines that the signature from the envelope does not share characteristics with any of the signatures in the voter's registration file, the verifier flags the signature for further review. *Id.* Another staff person from the envelope review work group conducts the second review. *Id.* If the envelope review staff person determines that the signature from the envelope matches any of the signatures in the voter's registration file, the ballot will be accepted without further review. *Id.* If the envelope review staff person agrees that the signature from the envelope does not share characteristics with any of the signatures in the voter's registration file, the ballot is challenged. *Id.*

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

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. CP 1223-24, 1275-77. The form provides three spaces for a voter to provide three separate versions of their signature. *Id.*

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. CP 1225. 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. *Id.* 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 cure form. CP 1225-26. Alternatively, a King County voter may return the form by taking a picture of it with their phone and sending it via email, or by fax. *Id.* Starting in November 2023, King County voters are able to access an online portal and electronically resolve their signature issue. *Id.* A King County voter may also return the form in person at any vote center. *Id.* At a vote center, the voter may view the signatures that are in their voter registration file 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 to print the signature resolution form from the KCE website. *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. CP 1226. If so, the ballot is accepted. *Id.* If not, the ballot is rejected. *Id.* 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 cure form are added to voter registration file in VoteWA for future elections. CP 1227.

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

The instruction sheet enclosed in the King County ballot materials highlights the importance of the voter's signature on the ballot return envelope. CP 1144. The instruction sheet for the August 2023 primary election 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. CP 1147. This includes educating voters about the signature verification process and the importance of providing updated signatures to KCE. *Id.*

KCE is in the process of mailing signature update forms to all registered voters in King County to ask for updated signatures. CP 1147. 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. CP 1300.

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

The rate of challenge for non-matching signatures in King County has varied between 0.55% (November 2021 general election) and 1.84% (November 2022 general election) in the

elections between 2018 and 2022. CP 1148, 1150; Appendix A.⁴ The rate that ballots that were challenged for non-matching signatures and not cured has varied between 0.35% (August 2019 primary election) and 1.14% (November 2022 primary election) in the elections between 2018 and 2022. *Id.* In contrast, the rate of challenge for *missing* signatures in King County has varied between 0.23% (November 2018 general election) and 0.92% (August 2020 primary election) in the elections between 2018 and 2022.⁵ *Id.* The rate that ballots were challenged for missing signatures and not cured in King County has varied between 0.10% (November 2019 general election) and 0.41% (August 2020 primary election) for those elections.⁶ *Id.* Consistently then, the vast majority of King County voters succeed in either submitting matching ballot signatures or curing their ballots.

⁴ The table found at CP 1150 is attached hereto as Appendix A with percentages calculated for this Court's convenience.

⁵ Excluding the March 2020 Presidential Primary Election.

⁶ Again, excluding the March 2020 Presidential Primary Election.

The percentages are high not only for the population as a whole, but for the racial subgroups. The lowest rate of acceptance in King County identified by Vet Voice's expert was for Hispanic voters in 2020 General Election, an acceptance rate of 98.16 %. CP 603.

7. The Declarations Submitted by Vet Voice Do Not Show That The Signature Verification Process is Unworkable For King County Voters.

Vet Voice submitted anecdotal evidence of ballot rejections in the form of declarations from voters. However, the declarations undercut the claim that the signature verification process as administered by King County is unworkable. The declarations reveal that a majority of those voters did not utilize the cure process. Of 32 declarations provided from King County voters, over half admit they were notified that their signatures did not match but did not attempt to cure their ballots. CP 874-76, 883-85, 952-62, 979-1000, 1004-06, 1010-15, 1021-23, 1031-36, 1040-42, 1049-52. An additional eight successfully cured their ballots. CP 890-99, 903-05, 926-28, 973-75, 1001-03, 1028-30.

Five claimed they were not notified. CP 910-21, 1013-15. However, King County records showed that they received timely notification by mail. CP 1230-32, 1279-97. Vet Voice presented anecdotal evidence of only one King County voter, in addition to three of the plaintiffs, who timely returned a cure form but was unsuccessful in curing the ballot. CP 906-09. These declarations illustrate that many voters whose signatures are challenged likely choose not to utilize the cure process, probably because the outcome of the election became clear before they received notification.

As for the named plaintiffs, Ms. Cantrell has successfully voted in five elections since 2020. CP 1228-29. Dr. Berson has successfully voted in eight elections since 2020. CP 1229. And Ms. Matsumoto has successfully voted in seven elections since 2020. CP 1229-30.⁷

⁷ Ms. Escalante Martinez's signature on file in VoteWA bears no similarities to the signatures she submitted on her ballot envelopes or on her declaration to the trial court. CP 3063 (sealed); CP 873. She made no attempt to update her signature

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

KCE is committed to increasing both accessibility and security in King County elections. CP 1143. If a voter's ballot is lost or damaged, King County's Online Ballot Marking Program is available to all registered voters and allows voters who have access to the internet and a printer to access and print a replacement ballot. CP 1143-44.

Because of King County's racial and ethnic diversity, KCE makes complete voting materials available in English, Chinese, Vietnamese, Spanish, Korean, Russian and Somali. CP 1143. Voters may sign up to receive their voting materials in any one of these languages. *Id.*

While fully committed to increasing voter access, Director Julie Wise, the non-partisan head of KCE, believes that the

with KCE, although the form to do so is easily accessible online. CP 871-73;
<https://kingcounty.gov/en/legacy/depts/elections/how-to-vote/register-to-vote/update-my-signature>

signature verification requirement remains a key security aspect of Washington's vote by mail system. CP 1148. In her opinion, without the signature verification requirement, there is no mechanism to verify that a ballot has been returned by the registered voter. *Id.* Washington elections would be vulnerable to widespread voter fraud without the signature verification requirement, and as a result, public trust in elections would decline. *Id.* Other non-partisan election administrators in Washington agree with Director Wise. CP 1555, 1811, 1821, 1939-41.

Director Wise believes that public trust and confidence in elections are critical. *Id.* Democracy is only as strong as voters' belief in the electoral system. *Id.* At a time when trust in elections seems tenuous, the signature verification requirement provides an important checkpoint to ensure that ballots are cast by the intended voter. *Id.* And it provides a tangible process to point to when skeptics and bad actors attempt to sow doubt in elections with stories of stolen mail or mass-printed ballots. *Id.*

G. The Legislature Mandated an Audit of Ballot Rejection Rates in Washington in 2020; The State Auditor Concluded That Disparities in Rejection Rates Exist But Are Not the Result of Bias.

In 2020, the legislature mandated a performance audit of ballot rejection rates in the 2020 general election to be conducted by the state auditor's office. CP 528, 538. King County was one of the counties included in the audit. CP 552. While the auditor's report found disparities in rejection rates for young voters, male voters and certain racial and ethnic groups, they found no evidence of explicit or unconscious bias. CP 550 (stating "We specifically looked for evidence of [unconscious bias]" but "found no evidence of bias when counties accepted or rejected ballots."). They were unable to identify any one policy or practice that led to disparities. CP 548 (stating "The lack of one identifiable cause suggests that multiple factors affect the rate and no one practice is responsible."). Trained auditors reviewed 7,200 signatures and "overwhelmingly concurred with counties' decisions about which ballots to accept and reject." CP 542, 564.

The report, dated February 1, 2022, was reviewed by the Joint Legislative Audit and Review Committee. CP 533.

H. Recent Legislative Enactments Continue to Improve the Signature Verification Process While Demonstrating the Legislature’s Judgment That Verification of Voter Identity Is Necessary.

Recently, the legislature passed two bills that affect the signature verification process and demonstrate that the legislature continues to improve the process but also views voter identify verification as a necessary safeguard. ESSB 5890, which passed both houses of the legislature unanimously,⁸ makes improvements to the cure process by amending RCW 29A.60.165 to mandate that voters be contacted by phone or email as well as first class mail, and extends the time to cure. ESSB 5890, § 1. It also enacts a new statute that requires community outreach regarding the signature verification process. ESSB 5890, § 5.

⁸ See <https://app.leg.wa.gov/billssummary?BillNumber=5890&Initiative=false&Year=2023>

SSB 6269 allows the Secretary of State to establish an alternative verification pilot project. The purpose of the pilot project is to explore supplemental methods other than signature verification “to verify that a ballot was filled out and returned by the intended voter.” SSB 6269, § 1, (1); Laws of 2024, Ch. 138. However, any alternative verification method must “allow the voter to submit clear evidence which can be verified by the county auditor indicating that *the intended voter was the one who filled out the returned ballot.*” SSB 6269, § 1, (2)(b)(i) (emphasis added). Moreover, the alternative verification method “may not entirely replace signature verification.” *Id.*, § 1, (3)(b). Thus, while the legislature continues to improve the signature verification process, there can be no doubt that it views verification that a ballot has not been fraudulently intercepted as a necessary component of the universal mail voting system.

I. The Trial Court Denied Cross Motions for Summary Judgment on Vet Voice’s Facial Constitutional Challenge to the Signature Verification Process.

Vet Voice brought suit in King County Superior Court against Secretary of State Steve Hobbs, and the members of the King County Canvassing Board. CP 71. Vet Voice sought declaratory and injunctive relief that would end signature verification of returned ballot envelopes for future elections. CP 110. After Secretary Hobbs moved to change venue to Thurston County, Vet Voice clarified that the lawsuit involved only a *facial* constitutional challenge to RCW 29A.40.110(3). CP 41-59, 68-71, 2911, 3179-89.

The parties filed cross-motions for summary judgment. CP 164, 1092, 1304. The trial court denied summary judgment to all parties. CP 2903-27. The trial court concluded that Washington law provided little guidance on the applicable standard of constitutional scrutiny for voting regulations, with no cases being very analogous. CP 2916-18. The trial court decided to apply a federal framework to determine the proper level of constitutional scrutiny. CP 2919. The trial court concluded that in light of the competing expert declarations, genuine issues of material fact

needed to be resolved to apply that framework. CP 2923-24. The trial court deferred ruling on whether the signature verification requirement is severable. CP 2924-25.

All parties sought interlocutory discretionary review. CP 2949, 2979, 2985.

V. ARGUMENT

A. The Signature Verification Requirement Has Long Been an Integral Safeguard Against Fraudulent Voting for Mail Voting and Is Not Severable from Washington's Universal Mail Voting System.

Vet Voice's request that the signature verification requirement be declared facially unconstitutional necessarily raises the question of whether it is severable from the universal mail voting system. It is not. And thus invalidation of signature verification would invalidate the universal mail voting system.

An act of the legislature is not unconstitutional in its entirety because one or more of its provisions is unconstitutional, except where the invalid provision is not severable because it cannot reasonably be believed that the legislature would have

passed the legislation without the unconstitutional provision. *State v. Anderson*, 81 Wn.2d 234, 236, 501 P.2d 184 (1972). A severability clause usually supplies the necessary assurance that the legislature would have enacted the remaining legislation despite the unconstitutional section. *El Centro De La Raza v. State*, 192 Wn.2d 103, 132, 428 P.3d 1143 (2018). The presence of severability clause offers the courts assurance that the remaining provisions would have been enacted without the portions that are later deemed unconstitutional. *Anderson*, 81 Wn.2d at 236. But when there is no severability clause, a legislative action is generally considered as a unit. *State ex rel. Evans v. Brotherhood of Friends*, 41 Wn.2d 133, 153, 247 P.2d 787 (1952).

The legislation that enacted universal mail voting contained no severability clause. *See* Laws of 2011, Ch. 10.

In order for this Court to find a provision to be severable, “[t]he invalid provision must be grammatically, functionally, and volitionally severable.” *State v. Abrams*, 163 Wn.2d 277, 287,

178 P.3d 1021 (2008) (quoting *McGowan v. State*, 148 Wn.2d 278, 295, 60 P.3d 67 (2002)). When an unconstitutional provision is fundamental to the legislation's efficacy, it is not severable. *League of Women Voters of Washington v. State*, 184 Wn.2d 393, 412, 355 P.3d 1131 (2015) (concluding Charter School Act was not severable); *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 68-70, 109 P.3d 405 (2005) (finding unconstitutional provision not severable because central to "the legislative compromise"); *City of Seattle v. State*, 103 Wn.2d 663, 678, 694 P.2d 641 (1985) (finding unconstitutional provision was an important limit in legislation and not severable).

The inquiry for this Court is whether the legislature would have enacted universal mail voting in 2011 without the signature verification requirement. Legislative history conclusively shows that the answer is no.

In enacting any election system, the legislature must carefully balance ballot accessibility with election security. In enacting universal mail voting, that balancing necessarily

included signature verification. The unanimous opinion of the non-partisan Washington election officials and administrators presented in this case is that signature verification is a necessary safeguard to detect ballots that have been fraudulently intercepted. CP 1148, 1555, 1811, 1821, 1939-41 (“Without a way to verify that a ballot is returned by the registered voter, Washington elections would be much more vulnerable to widespread voter fraud and public trust in elections would undoubtedly decline.” (Wise⁹); “The linchpin that enables Washington to make it so easy to get and submit ballots is the signature verification process.” (Holmes¹⁰); “Signature verification is a necessary step to make sure that registered voters are casting ballots and only voting once.” (Fell¹¹); “At this time, signature verification is the only way that election offices in

⁹ Julie Wise is the elected director of King County Elections, a non-partisan office. CP 1141-42.

¹⁰ Stuart Holmes is the Director of Elections for the Secretary of State. CP 1551.

¹¹ Garth Fell is the elected auditor of Snohomish County. CP 1807.

Washington can tell that a ballot was submitted by a registered voter and not by someone who intercepted a registered voter's ballot." (Haugh¹²); "I believe that signature verification is an essential part of Washington's election system." (Comastro¹³)). In contrast, Vet Voice presented no declarations from any Washington election officials who believe that deterring the fraudulent interception of ballots is not a legitimate concern or that signature verification is unnecessary to deter election fraud.¹⁴

While Vet Voice believes the legislature should be unconcerned about the potential for election fraud, this Court's experience shows otherwise. A number of election fraud cases

¹² Kyle Haugh is the Elections Manager for the Pierce County Auditor's Office. CP 1817.

¹³ Sharla Comastro is the signature verification lead for the Clark County Elections Office. CP 1933.

¹⁴ Vet Voice relied on the opinions of a California forensic document examiner, a New Hampshire social science college professor and a Massachusetts political science college professor, none of which have any experience administering elections in Washington, or anywhere. CP 234, 239, 260, 334.

have come before this Court. *Gold Bar Citizens for Good Government v. Whalen*, 99 Wn.2d 724, 665 P.2d 393 (1983) (election contest alleging illegal votes); *Foulkes v. Hays*, 85 Wn.2d 629, 537 P.2d 777 (1975) (election contest alleging illegal votes); *State v. Patric*, 63 Wn.2d 821, 389 P.2d 292 (1964) (prosecution for initiative fraud); *State ex rel. Pemberton v. Superior Court of Whatcom County*, 196 Wash. 468, 83 P.2d 345 (1938) (election contest alleging fraud); *State ex rel. Maurer v. Superior Court of Cowlitz County*, 122 Wash. 555, 211 P. 764 (1922) (dispute over fraudulent votes). Moreover, this Court has recognized election fraud as a serious concern. In *Sudduth v. Chapman*, 88 Wn.2d 247, 251, 558 P.2d 806 (1977), this Court noted that constitutional provisions regarding the initiative process are construed so as “to fairly guard against fraud.” This Court has repeatedly also noted the importance of preserving the integrity of the electoral process. *State v. Grocery Manufacturers Association*, 198 Wn.2d 888, 900, 502 P.3d 806 (2022); *Heavey v. Chapman*, 93 Wn.2d 700, 703, 611 P.2d 1256 (1980); *Swanson*

v. Kramer, 82 Wn.2d 511, 518, 512 P.2d 721 (1973). Deterring election fraud and maintaining public confidence in the integrity of the electoral process, are not only legitimate state interests, but compelling ones. *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 197, 128 S.Ct. 1610 (2008).

There can be no doubt that the legislature is appropriately and legitimately concerned about election fraud. RCW 29A.04.205 unambiguously proclaims the legislature's interest in protecting against election fraud. That statement of policy reads: "It is the policy of the state of Washington to encourage every eligible person to register to vote and to participate fully in all elections, *and to protect the integrity of the electoral process by providing equal access to the process while guarding against discrimination and fraud.*" (Emphasis added.) Similarly, RCW 29A.04.611(33) authorizes the Secretary of State to make election-related rules governing "standards and procedures to prevent fraud." And recently, the legislature amended the Public Records Act to protect against election fraud. RCW 42.56.425,

entitled “Election Security,” was enacted in 2023 to exempt certain records from public disclosure. The exemptions include security audits and risk assessments, technical details about election infrastructure that would “increase risk to the integrity of election operations or infrastructure,” and, significantly, “voters’ signatures on ballot return envelopes, ballot declarations, and signature correction forms, including the original documents, copies, and electronic images.” RCW 42.56.425(1). The obvious reason for exempting images of voters signatures on ballot envelopes from public disclosure is to protect against election fraud, specifically fraudulently intercepted ballots and the use of signatures by bad actors.¹⁵

Moreover, the legislature has just enacted ESSB 5890 and SSB 6269 this year. These bills improve the cure process but *maintain* the signature verification requirement and authorize

¹⁵ Groups pushing baseless election conspiracy theories have attempted to gain public access to ballot envelopes containing voters’ signatures. *See WEICU v. Schumacher*, 28 Wn. App. 2d 176, 537 P.3d 1058 (2023).

pilot programs to explore alternative verification methods that “verify that a ballot was filled out and returned by the intended voter.” SSB 6269, § 1, (1). This new legislation is conclusive evidence that the legislature views the signature verification requirement as necessary to prevent the fraudulent interception of ballots.

Interestingly, Vet Voice details many other security measures that the legislature has adopted to prevent election fraud in its brief. Brief of Petitioners, at 8-11. Vet Voice also acknowledges the legislature’s interest in “ensuring that only the intended voter casts the submitted ballot.” *Id.* at 8. But none of the other election security measures that Vet Voice touts prevent tabulation of a fraudulently intercepted ballot signed by someone other than the intended voter.

Unfortunately, the type of election fraud that the signature verification requirement protects against has happened in other

jurisdictions recently. As Dr. Robert Stein¹⁶ recounted in his report, vote-by-mail systems present unique vulnerabilities in regard to election fraud. CP 1776. In a recent high-profile case in North Carolina, four people were convicted of absentee ballot fraud. CP 1776-77. Their scheme involved collecting hundreds of absentee ballots from voters and forging voters' signatures on behalf of a candidate. CP 1777. A congressional election was tainted by the fraud and had to be conducted again. *Id.* Similarly, in November of 2023, the wife of an Iowa candidate was convicted of multiple counts of fraudulent voting for a scheme that involved approaching numerous voters of Vietnamese heritage with limited English comprehension and filling out and signing ballots for them. "Iowa official's wife convicted of 52 counts of voter fraud," AP News, Nov. 21, 2023, <https://apnews.com/article/iowa-ballot-box-stuffing-18432099d65be5e95aa5e5cd83b589e1>. It would be dangerously

¹⁶ Dr. Stein is an expert on voting and elections and a professor of political science at Rice University. CP 1769.

naïve for this Court to accept Vet Voice’s invitation to be cavalier about the potential for election fraud in general, or the risk of fraudulently intercepted ballots in particular, at this moment in history.¹⁷ *See also* “Fake Biden robocalls urge Democrats not to vote in New Hampshire Primary,” Washington Post, Jan. 22, 2024,

<https://www.washingtonpost.com/politics/2024/01/22/biden-robocall-new-hampshire-primary/>; “24 for ’24: Urgent Recommendations in Law, Media, Politics, and Tech for Fair and Legitimate 2024 U.S. Elections,” Ad Hoc Committee for Election Fairness and Legitimacy, at 3, September 2023,¹⁸ (noting that the electoral process is “under great stress” and recommending that “States should promote transparency and security in the electoral process,” “reduce opportunities for

¹⁷ Leaving Washington elections open to widespread fraud could have dire national consequences.

¹⁸ The report can be accessed at https://law.ucla.edu/sites/default/files/PDFs/Safeguarding_Democracy/24_for_24-REPORT-FINAL.pdf

baseless conspiracy theories,” and “honor the principle of allowing all and only eligible voters to vote freely and fairly.”)

In light of the above, this Court cannot conclude that the legislature would have enacted a universal mail voting system without the key safeguard against fraudulently intercepted ballots: the signature verification requirement. Signature verification has always been a key security aspect of mail voting in Washington to protect against fraudulently intercepted ballots. It is not severable.

B. Vet Voice’s Facial Challenge To RCW 29A.40.110(3) Fails Because They Have Failed to Show That The Signature Verification Requirement and Cure Process Are Unworkable.

All parties agree that Vet Voice makes only a facial challenge to the signature verification requirement. Brief of Petitioners, at 3. 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, 128 S.Ct. 1184 (2008) (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095 (1987)); *City of Redmond v. Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004).

The facial constitutionality of the signature verification requirement must be viewed in light of the cure process. Washington has provided voters with an accommodating cure process that is workable for voters. As of November 2023, King County voters could cure signature challenges by returning a signed resolution form using a prepaid return envelope, taking a picture of the form and sending it via email, returning the form in person to a vote center, or accessing an online portal. CP 1225-26. The Secretary of State is authorized to enact regulations to improve the cure process. *See* RCW 29A.04.611. Recent regulations make the cure process even more workable. Newly adopted WAC 434-261-053 allows voters to cure a nonmatching

signature challenge by providing valid secondary identity verification as follows:

(i) The last four digits of the voter's Social Security number or the voter's full driver's license number or state identity card number;

(ii) Photo identification, valid enrollment card of a federally recognized Indian tribe in Washington state, copy of a current utility bill or current bank statement, copy of a current government check, copy of a current paycheck, or a government document, other than a voter registration card, that shows both the name and address of the voter; or

(iii) A multifactor authentication code, from a system approved by the secretary of state, the county auditor sent to the voter's phone number or email address that has previously been provided by the voter.

CP 1634. WAC 434-261-053 was adopted on March 8, 2023, and becomes effective May 4, 2024. *See*

https://leg.wa.gov/CodeReviser/Pages/Washington_State_Register.aspx.

Significantly, although Vet Voice repeatedly states that 170,000 ballots were rejected between 2016 and 2023 for nonmatching signatures (out of over 37 million votes cast), that figure includes voters who did not utilize the cure process. See CP 2514. Vet Voice has provided no evidence of the number of

voters whose ballots were rejected after timely utilizing the cure process. In determining the constitutionality of signature verification this Court must consider all steps in the process, including the ability to cure a challenged signature. Because Vet Voice has failed to present any information about the number of voters who were unable to successfully utilize the cure process, their facial challenge necessarily fails.

C. 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 the state constitution set the qualifications for voting. 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], section 3 of this Constitution, shall be entitled to vote at all elections.”

The framers then granted broad authority to the legislature to regulate the method of voting. Article 6, § 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.” The method of voting includes the way in which voters prove that they are qualified to vote. Signature verification, which ensures the identity of electors who cast ballots, is one example of regulating the method of voting.

Thus, 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 the right is not destroyed or made so inconvenient that it is impossible to exercise it.” *Id.* at 372.

Vet Voice mistakenly relies on Article 1, § 19, which 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.” 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 [1], 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).

Article 1, § 19 must be harmonized with article 6, § 6, and thus it does not deprive the legislature of its broad discretion to provide for the method of voting. Art. 1, § 19 cannot be interpreted to prohibit reasonable voting regulations that protect

the security of the election.

In addition, 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*, 600 U.S. 1, 28, 143 S.Ct. 2065 (2023). “Every voting rule imposes a burden of some sort.” *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. ___, 141 S. Ct. 2321, 2339 (2021). While the Elections Clause does not insulate state legislatures from ordinary state judicial review, “state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Moore*, 600 U.S. at 23, 36. This Court should reject

Vet Voice's invitation to wholly reject the legislature's legitimate role in balancing ballot access with election security in regulating the method of voting.

2. Legislative Regulation of the Manner of Elections Is Not Subject to Heightened Scrutiny Absent Evidence of Discriminatory Intent.

Regulations related to the proof necessary to register and vote fall within the legislature's authority under article 6, § 6. 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 the proof of citizenship required by statute, in particular, naturalization papers. *Id.*¹⁹ This Court concluded the legislature had not exceeded its powers by enacting a law that required naturalization papers for registration.

¹⁹ Washington no longer requires naturalization papers to register to vote, but requires an affirmation of citizenship. RCW 29A.08.010.

Id. This 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. This 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.*

This Court has 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, supra, 196 Wash. at 479 (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, supra*, 60 Wash. at 372. It should be subject to only rational basis review.

Vet Voice conceded below that some regulations of the manner of voting, such as requiring a voter to vote at their assigned precinct, requiring ballots to be mailed by a certain day, requiring specific ink colors, and requiring the ballot to be signed, would not be subject to strict scrutiny. CP 2121-22. But

they do not explain why. Vet Voice offers no principled distinction as to why some voting regulations that burden voters are subject to strict scrutiny and others are not. Every election law imposes some burden on voters. *Burdick v. Takushi*, 504 U.S. 428, 433, 112 S.Ct. 2059 (1992). All voting regulations result in some voters being unable to vote if they do not comply with the regulation. For this reason, the U.S. Supreme Court long ago rejected the idea that all voting regulations are subject to strict scrutiny under the federal constitution. *Id.*

Indeed, Vet Voice continues to point to the “ballot affirmation” requirement, which requires voters to sign the ballot envelope affirming their eligibility to vote, as an important safeguard. Brief of Petitioners, at 9-10. But this raises a crucial question that Vet Voice cannot answer. Wouldn’t the ballot affirmation requirement, which also results in the rejection of

thousands of ballots statewide each election,²⁰ be subject to strict scrutiny under their reasoning? And without any verification process, how is it narrowly tailored to serve a compelling state interest? This highlights a fundamental flaw in Vet Voice's argument: they provide this Court with no workable standard for determining the level of scrutiny.

Importantly, if there was evidence that the signature verification requirement was enacted with discriminatory intent, both the Fourteenth and Fifteenth Amendments of the U.S. Constitution would require heightened scrutiny. Pursuant to the Fourteenth Amendment, race-neutral laws are subject to heightened scrutiny when a discriminatory purpose is shown to be a motivating factor. *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 265-67, 97 S.Ct. 555 (1977). *See also Macias v. Dept of Labor*,

²⁰ See Appendix A, attached. Between 2018 and 2022, 14,441 ballots were rejected in King County because voters failed to sign the ballot envelope.

100 Wn.2d 263, 270, 668 P.2d 1278 (1983). Similarly, pursuant to the Fifteenth Amendment, a race-neutral voting regulation is unconstitutional if motivated by a discriminatory purpose. *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 62, 100 S.Ct. 1490 (1980). Notably however, Vet Voice have made no Fourteenth or Fifteenth Amendment claim and have not alleged that the long-standing signature verification requirement was enacted by the legislature with any discriminatory purpose. Thus, applying rational basis review to the signature verification requirement is appropriate. Should future facially neutral voting regulations be motivated by a discriminatory intent, strict scrutiny would apply to those regulations.

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 and clear intent to protect against fraudulently intercepted ballots. 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, 112 S.Ct. 1846 (1992).

Dr. Herron's opinion is not admissible as the King County Canvassing Board argued below. CP 1124. Unreliable expert

testimony does not assist the trier of fact and is properly excluded under ER 702. *Lahey v. Puget Sound Energy*, 176 Wn.2d 909, 921, 296 P.3d 860 (2013). Measuring the efficacy of the signature verification requirement in preventing voter fraud only by the number of successful voter fraud prosecutions is obviously flawed and unreliable. As the U.S. Supreme Court has noted, election fraud is difficult to detect. *Burson*, 504 U.S. at 208. *See also* CP 1778 (explaining difficulty in detecting and prosecuting voter fraud). Dr. Herron's methodology and his conclusion that the signature verification requirement is unnecessary to prevent voter fraud because there have been few successful prosecutions for voter fraud in Washington cannot assist the Court, and should have been excluded pursuant to ER 702. CP 2925-26.

More fundamentally, in arguing that the number of voter fraud convictions should be the sole measure of the state interest, Vet Voice disregards any consideration that signature verification deters election fraud, especially widespread,

coordinated efforts. Signature verification protects against both individual fraud and widespread coordinated efforts. If the signature verification requirement was invalidated, there would be no mechanism that would detect fraudulently intercepted ballots, and alarmingly, no mechanism to detect the type of coordinated effort to submit fraudulent ballots that has occurred recently in other states, 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 tainting the election, as happened in North Carolina. The fact that the current system has effectively prevented such coordinated efforts to date is not an argument for abandoning the signature verification requirement.

4. The Signature Verification Requirement Would Survive Strict Scrutiny.

Vet Voice acknowledges that protecting the integrity and security of elections is a compelling state interest. Brief of Petitioners, at 70. “A State indisputably has a compelling interest

in preserving the integrity of its election process.” *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231, 109 S.Ct. 1013 (1989). As explained by the U.S. Supreme Court:

Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their 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.’

Purcell v. Gonzalez, 549 U.S. 1, 4, 127 S.Ct. 5 (2006) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S.Ct. 1362 (1964)). Both election security and public confidence present separate compelling state interests. While the interest in public confidence “is closely related to the State's interest in preventing voter fraud, public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” *Crawford*, 553 U.S. at

197. *See also Burson*, 504 U.S. at 199 (holding “a State has a compelling interest in ensuring that an individual's right to vote is not undermined by fraud in the election process”).

To survive strict scrutiny, the government must “demonstrate that its law is necessary to serve the asserted interest.” *Burson*, 504 U.S. at 200. However, the State need not provide empirical studies conclusively demonstrating how much fraud would occur without the signature verification requirement. As explained by the United States Supreme Court in *Burson, supra*, “[B]ecause a government has such a compelling interest in securing the right to vote freely and effectively, this Court never has held a State ‘to the burden of demonstrating empirically the objective effects on political stability that [are] produced’ by the voting regulation in question.” *Burson*, 504 U.S. at 208-09 (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 195, 107 S.Ct. 533 (1986)). Requiring empirical proof of the amount of voter fraud deterred by the signature verification requirement:

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

Id.

Burson provides an instructive example of how a voting regulation can survive strict scrutiny. At issue in that case was a Tennessee statute prohibiting solicitation of votes and display of campaign materials within 100 feet of a polling place on election day. *Id.* at 193-94. The Court applied strict scrutiny. *Id.* at 198. It also upheld the statute as constitutional. *Id.* at 206. The Court upheld the statute despite the fact that it was “difficult to isolate the exact effect of these laws on voter intimidation and election fraud. Voter intimidation and election fraud are successful precisely because they are difficult to detect.” *Id.* at 208. As in *Burson*, the State need not conclusively establish how much voter fraud has been deterred by Washington’s long-standing

signature verification requirement to pass strict scrutiny. A statute is narrowly tailored as long as the means chosen are not substantially broader than necessary to achieve the state's interest. *OneAmericaVotes v. State*, 23 Wn. App. 2d 951, 987, 518 P.3d 230 (2022). The signature verification requirement serves to prevent fraudulently intercepted ballots and it is the only safeguard that does so. The risk of fraudulently intercepted ballots is obvious in a universal mail voting system. CP 1779. In the opinion of the experienced non-partisan election officials and experts presented in this case, fraudulently intercepted ballots could not be effectively deterred without the signature verification requirement. CP 1148, 1555, 1779, 1811, 1821, 1939-41.

Vet Voice has never proposed an alternative voter identity verification method that is even *arguably* more workable. See CP 1787-1790 (explaining how alternative means of verification could harm voter access and decrease turnout). Although

heightened scrutiny is not warranted, the signature verification requirement would survive strict scrutiny.

D. Washington’s Signature Verification Requirement Comports with the Privileges and Immunities Clause of Article 1, § 12.²¹

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 1, § 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.*

²¹ Vet Voice has not argued to this Court that the signature verification requirement violates the art. 1, §§ 3 or 12. But the Secretary and the King County Canvassing Board sought review of these issues, and they are properly before this Court. RAP 2.4.

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, 163 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, or to vote without establishing the eligibility to vote.

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.

Even when a challenged law does grant a privilege for purposes of the state constitution, this Court analyzes whether there are reasonable grounds for granting that privilege. *Martinez-Cuevas*, 196 Wn.2d at 519. In applying the reasonable grounds test, “the legislature is not required to satisfy an evidentiary burden before exercising its broad authority to legislate.” *Bennett v. United States*, 2 Wn.3d 430, 449, 539 P.3d 361 (2023). Courts look for a nexus between the stated purpose and the challenged statute. *Id.* Courts may rely on the “statutory language to ascertain and carry out legislative goals when construing statutory and constitutional provisions.” *Woods v. Seattle's Union Gospel Mission*, 197 Wn.2d 231, 244, 481 P.3d 1060 (2021) (holding that the provision of the WLAD exempting religious nonprofits met the reasonable grounds test). Preventing election fraud is a compelling state interest and

Washington has long employed signature verification as a safeguard against fraudulently intercepted mail ballots. As do many other states. The signature verification requirement easily meets the reasonable grounds. There is a clear nexus between the legislature's stated intent to protect the integrity of the electoral process by guarding against fraud and utilizing the signature verification requirement to prevent the fraudulent interception of ballots. *See* RCW 29A.04.205.

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

Article 1, § 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*, 504 U.S. at 433 (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

method of voting, it is subject to rational basis review. *In re J.R.*, 156 Wn. App. 9, 19, 230 P.3d 1087 (2010) (rational basis review applies when state action does not infringe a fundamental right).

Vet Voice cannot show that the signature verification requirement is “wholly unrelated to the achievement of a legitimate state purpose.” *Id.* In fact, the signature verification requirement serves the compelling state interests of election security, integrity and voter confidence. And even if strict scrutiny were required, the signature verification requirement would pass, as argued above.

F. Utilizing the *Anderson-Burdick* Framework, Vet Voice’s Challenge Fails; The Signature Verification Requirement Does Not Impose a Severe Burden on Voters But Is Nonetheless Justified by Compelling State Interests.

The trial court concluded that it would apply the framework set forth in *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 P.3d 571 (1983), and *Burdick v. Takushi*, *supra*, 504 U.S. at 432, to the signature verification requirement. CP 2919.

This Court has never utilized that framework.²² However, other states have adopted it for state law election claims. *See Democratic Senatorial Campaign Committee v. Pate*, 950 N.W.2d 1, 7 (Iowa 2020); *Milwaukee Branch of NAACP v. Walker*, 357 Wis.2d 469, 489 (2014); *Democratic Party of Georgia, Inc. v. Perdue*, 288 Ga. 720, 707 S.E.2d 67 (2011); *Kahn v. Griffin*, 701 N.W.2d 815, 833 (Minn. 2005). The framework is consistent with this Court’s past cases, which accords deference to the legislature’s role in regulating the manner of voting unless a regulation operates to makes voting “so inconvenient that it is impossible to exercise [the right to vote].” *State ex rel. Shepard*, 60 Wash. at 372. Thus, this Court has previously endorsed measuring the burden of a voting regulation in order to determine the level of scrutiny. *See also State ex rel. Carroll*, 113 Wash. at 63 (upholding regulation because it was “not so difficult to comply with”).

²²The Court of Appeals utilized the framework in *Carlson v. San Juan County*, 183 Wn. App. 354, 376, 333 P.3d 511 (2014).

The framework recognizes that all elections laws impose a burden. *Burdick*, 504 U.S. at 433. Subjecting every voting regulation to strict scrutiny would improperly tie the hands of state legislatures who are constitutionally tasked with providing for the method of voting. *Id.* Under the *Anderson/Burdick* framework a flexible standard applies. If a voting regulation imposes a severe burden on the right to vote, it must be narrowly drawn to advance an interest of compelling importance. *Id.* If the voting regulation imposes only a reasonable, nondiscriminatory restriction, important regulatory interests will be sufficient to justify the restriction unless it is wholly unrelated to voter qualifications. *Id.*; *Crawford*, 553 U.S. at 189. “[E]venhanded restrictions that protect the integrity and reliability of the electoral process itself” are generally not considered “invidious.” *Crawford*, 553 U.S. at 189–90 (quoting *Anderson*, 460 U.S. at 788, n.9).

In a facial challenge, only the statute’s broad application to all voters is considered in determining the severity of the

burden. *Crawford*, 553 U.S. at 202-03. A restriction is not severe when it is “generally applicable, even-handed, politically neutral, and ... protect[s] the reliability and integrity of the election process.” *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1014 (9th Cir. 2002). In judging whether the burden imposed on all voters is severe, courts focus on the time, inconvenience or cost of the burden. *Milwaukee Branch of NAACP*, 357 Wis.2d at 490-91. By this measure, the signature verification requirement does not impose a severe burden. Signing the ballot is simple and the vast majority of Washington voters successfully submit their ballots. The small number of voters whose signatures are challenged are notified of the challenge, in multiple ways if the contact information is provided. There are multiple convenient ways to submit the signature correction form, which only requires a signature. The process is convenient, quick and costs nothing.²³ A voter who is incapable of signing the ballot

²³ Vet Voice acknowledges that the cure rate is usually over 50% of ballots challenged for non-matching signatures. Brief of

declaration may submit the ballot with the signature of two witnesses. While it is true that signatures may change over time, voters may update their signatures at any time. If voters want to see the signatures in their registration records, they can view them at any vote center as long as they show their identification. Given the cure process, Washington's signature verification requirement is a reasonable, nondiscriminatory restriction that does not severely burden the right to vote on its face. *See Arizona Democratic Party v. Hobbs*, 18 F.4th 1179, 1189 (9th Cir. 2021) (noting that signature verification does not impose a severe burden). Such reasonable, nondiscriminatory regulations that require voters to establish their identity are "amply justified" by the State's interest in protecting the integrity and reliability of the election. *Crawford*, 553 U.S. at 204.²⁴

Petitioner, at 18. And notably, the rejected rate presented includes voters who did not utilize the cure process.

²⁴ Vet Voice's argument that *Anderson-Burdick* leads to inconsistent results is specious. Brief of Petitioners, at 55. The cases cited involved different statutory schemes. For example, in *Democratic Exec. Comm. Of Fla. v. Lee*, 915 F.3d 1312, 1320-

As the Ninth Circuit has noted,

If the burden imposed by a challenged law were measured by the consequence of noncompliance, then every voting prerequisite would impose the same burden and therefore would be subject to the same degree of scrutiny (presumably strict if the burden is disenfranchisement).

Arizona Democratic Party v. Hobbs, supra, 18 F.4th at 1188 (quoting *Arizona Democratic Party v. Hobbs*, 485 F.Supp.3d 1073, 1087-88). As explained earlier, Vet Voice's reliance on the number of ballots rejected does not accurately measure the burden, as it necessarily includes many voters who chose not to utilize the cure process. Vet Voice has failed to show that the signature verification requirement imposes a severe burden.

21 (11th Cir. 2019), the burden of signature matching was deemed to be more severe because the cure process was unworkable: the deadline to cure ballots was the day *before* the election. However, the Eleventh Circuit indicated that signature matching with a workable cure process would pass scrutiny. *Id.* at 1322. In *League of Women Voters of Ohio v. LaRose*, 489 F.Supp.3d 719, 726-27, 735 (S.D. Ohio 2020), the court found the burden of signature matching not to be severe due to a workable cure process that allowed ballots to be cured up to seven days after the election. These cases illustrate the importance of the cure process in evaluating the burden.

Indeed, Vet Voice does not even attempt to argue that the burden is severe. Brief of Petitioners, at 83-84.

Voting regulations are rarely subjected to strict scrutiny. *See Lemons v. Bradbury*, 538 F.3d 1098, 1104 (9th Cir. 2008). However, even if strict scrutiny applied under *Anderson/Burdick*, the signature verification requirement is narrowly tailored to serve a compelling state interest, as argued above. Strict scrutiny should not apply because the burden on voters is not severe, but even if it did, the signature verification requirement survives strict scrutiny.

VI. CONCLUSION

Vet Voice's facial challenge to the signature verification requirement fails as a matter of law. Summary judgment for the King County Canvassing Board and the Secretary of State should have been granted. The trial court's order should be reversed and the case remanded for entry of summary judgment in favor of the defendants and dismissal.

I certify that this brief contains 11,951 words in compliance with RAP 18.17(c)(2).

DATED this 26th day of March, 2024.

Respectfully submitted,

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FILED
SUPREME COURT
STATE OF WASHINGTON
3/27/2024 8:00 AM
BY ERIN L. LENNON
CLERK

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;

Petitioners,

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;

Respondents.

APPENDIX TO KING COUNTY CANVASSING BOARD'S
BRIEF OF RESPONDENT

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APPENDIX TO KING COUNTY CANVASSING
BOARD'S BRIEF OF RESPONDENT

Number	Description	Bates Stamp Numbers
1.	The table found at CP 1150 with percentages calculated for this Court's convenience.	001

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Election	Number of King County Ballots Returned	Number of voters initially challenged for no signature *	Number of King County Ballots Challenged for No Signature at Certification	# of ballots resolved for no signature	Number of voters initially challenged for non-matching signature *	Number of King County Ballots Challenged for Non-Matching Signatures at Certification	# of ballots resolved for non-matching signature
August 2018 Primary	557,604	1,448 0.26%	531 0.10%	917 0.16%	4,820 0.86%	3,731 0.67%	1,089 0.19%
November 2018 General	981,060	2,256 0.23%	1,058 0.11%	1,198 0.12%	11,018 1.12%	7,582 0.77%	3,436 0.35%
August 2019 Primary	463,144	1,483 0.32%	554 0.12%	929 0.20%	2,597 0.56%	1,616 0.35%	981 0.21%
November 2019 General	653,645	1,807 0.28%	653 0.10%	1,154 0.18%	3,758 0.57%	2,372 0.36%	1,386 0.21%
August 2020 Primary	764,512	6,996 0.92%	3,164 0.41%	3,832 0.50%	5,279 0.69%	3,657 0.48%	1,622 0.21%
November 2020 General	1,231,504	5,494 0.45%	2,293 0.19%	3,201 0.26%	15,974 1.30%	8,000 0.65%	7,974 0.65%
August 2021 Primary	493,554	3,353 0.68%	1,333 0.27%	2,020 0.41%	3,731 0.76%	2,250 0.46%	1,481 0.30%
November 2021 General	616,084	3,904 0.63%	1,602 0.26%	2,302 0.37%	3,380 0.55%	2,235 0.36%	1,145 0.19%
August 2022 Primary	547,605	2,765 0.50%	1,122 0.20%	1,643 0.30%	6,384 1.17%	3,523 0.64%	2,861 0.52%
November 2022 General	911,641	4,029 0.44%	2,131 0.23%	1,898 0.21%	16,784 1.84%	10,438 1.14%	6,346 0.70%

**These numbers are based on the number of challenge letters sent which is typically just one for each voter. However, there are instances in which the challenge reason can change which would generate another letter for a voter.*

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

March 27, 2024 - 7:16 AM

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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.

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Comments:

KING COUNTY CANVASSING BOARD'S BRIEF OF RESPONDENT

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