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The Honorable Catherine Shaffer
Noted for: February 21, 2023
Oral Argument Requested

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Plaintiffs,

v.

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

Defendants.

No. 22-2-19384-1 SEA

AMENDED RESPONSE TO
DEFENDANT HOBBS'S MOTION TO
CHANGE VENUE

AMENDED RESPONSE TO DEFENDANT
HOBBS'S MOTION TO CHANGE VENUE

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I. INTRODUCTION¹

Secretary Hobbs’s motion to change venue should be denied because it is based on a fundamental misconception about the nature of this lawsuit. This case is not a challenge to an “official act,” such as a governor’s proclamation about COVID-19, and it certainly does not contest agency rules under the APA. Rather, this lawsuit challenges the constitutionality of RCW 29A.40.110(3), the statute that requires signature verification in Washington, and Secretary Hobbs is named as a defendant because he is Washington’s Chief Election Officer and is statutorily responsible for signature verification. As a result, the authority Secretary Hobbs relies on—about official proclamations and APA challenges—is simply inapplicable and does not support his request to transfer venue to Thurston County. If that is not already abundantly clear from the Complaint itself and this briefing, then Plaintiffs respectfully submit that the Court should enter an order allowing the Plaintiffs to prepare and file a Second Amended Complaint to make that even more apparent.

Moreover, there is no question that venue lies in King County, as this case involves multiple King County-based Defendants and will involve King County witnesses and evidence. The King County Defendants have not consented to a change of venue, and the severance advocated by Secretary Hobbs makes no sense. To sever this case would require the parties to litigate parallel, identical disputes, creating an enormous waste of judicial and party resources. Even worse, it would create the possibility of conflicting outcomes in the

¹ Secretary Hobbs continued his motion from its original noting date given the parties’ discussion about a potential resolution of the venue issue. Unfortunately, that discussion did not lead to a resolution. Plaintiffs submit this amended response to further clarify the scope of their challenge and to address Defendant Secretary Hobbs’ statements suggesting that Plaintiffs file an amended complaint to make clear that Plaintiffs only raise a statutory challenge. *See* Reply at 1, 3 (“To be sure, the Secretary would welcome an amendment of Plaintiffs’ complaint to challenge only the constitutionality of RCW 29A.40.110(3).”). For the reasons stated throughout this brief, Plaintiffs do not think further amendment is necessary, but should the Court require more clarity, Plaintiffs request an order allowing such an amendment.

1 delicate area of election administration. Accordingly, the Court should deny Secretary
2
3 Hobbs’s motion.
4

5 II. STATEMENT OF FACTS

6 This lawsuit challenges the *statutory* requirement that “[p]ersonnel shall verify that
7
8 the voter’s signature on the ballot declaration is the same as the signature of that voter in the
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10 registration files of the county.” RCW 29A.40.110(3). *See* First Amended Complaint for
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12 Declaratory and Injunctive Relief (First Am. Compl.) at 40, ¶ 47, Dkt. # 10. The Complaint
13
14 discusses King County specifically at various points, *see* First Am. Compl. ¶¶ 4, 75–81, 97,
15
16 but the lawsuit challenges the constitutionality of this law on a statewide level, *see id.* at 40,
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18 ¶ 7. Throughout the First Amended Complaint, Plaintiffs cite to a variety of sources in
19
20 describing how the Signature Matching Procedure is implemented in Washington, including
21
22 the Washington Administrative Code, *id.* ¶¶ 47–49, Washington State Patrol training
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24 materials, *id.* ¶¶ 54–55, and news articles, *id.* ¶ 97. But Plaintiffs’ challenge is to the statute
25
26 itself, as an unconstitutional burden on the fundamental right to vote. Of course, if the
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28 statute itself is stricken as unconstitutional, then the regulations will fall as well, as the
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30 Secretary obviously cannot adopt and enforce regulations where the underlying statute has
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32 been invalidated on constitutional grounds. But to be clear, these Plaintiffs do not
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34 independently challenge the signature verification regulations but rather seek a judgment
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36 from this Court invalidating *the statute* requiring signature verification on constitutional
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38 grounds. Full stop.
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41 There are five individual plaintiffs, in addition to the three institutional plaintiffs: the
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43 Vet Voice Foundation, the Washington Bus, and El Centro de la Raza. *See* First Am.
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45 Compl. ¶¶ 9–25. Each of these individuals—Kaeleene Escalante Martinez, Bethan Cantrell,
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47 Daisha Britt, Gabriel Berson, and Mari Matsumoto (collectively, the “Individual

1 Plaintiffs’)—had their ballot erroneously rejected at least once by officials following the
2 Signature Matching Procedure after attempting to cast a lawful vote in King County. *Id.* ¶¶
3 12–25.
4
5

6 Ms. Escalante Martinez has had her timely, lawfully cast ballot rejected *three times*
7 in King County, including in the 2020 General Election despite completing and returning the
8 required cure paperwork to King County Elections. *Id.* ¶ 12. King County Elections
9 officials have rejected Ms. Britt’s timely, lawfully cast ballot on numerous occasions. *Id.*
10 ¶ 17. Ms. Cantrell and Dr. Berson had their lawfully cast ballots rejected in King County
11 after they attempted to vote in the 2020 General Election as well. *Id.* ¶¶ 16, 19.
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19 Ms. Matsumoto attempted to submit her timely, lawfully cast ballot in the 2022
20 General Election, received conflicting cure guidance from King County Elections officials
21 after it was rejected due to an alleged non-matching signature, and then, despite attempting
22 to comply with all of the conflicting guidance, had her ballot ultimately rejected and not
23 counted in the election. *Id.* ¶¶ 22–24.
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29 Three of the four Defendants, including all who made the decisions relevant to
30 rejecting the Individual Plaintiffs’ specific ballots, are sued in their official capacity as King
31 County officials. *See id.* ¶ 27. Defendant Julie Wise is the Auditor/Director of Elections in
32 King County. *Id.* Susan Slonecker is a Supervising Attorney in the King County
33 Prosecuting Attorney’s Office. *Id.* Stephanie Cirkovich is the Chief of Staff at the King
34 County Council. *Id.* All three King County Defendants are members of the King County
35 Canvassing Board, which has the authority to reject a ballot for a non-matching signature.
36 *Id.*; RCW 29A.60.010. The King County Canvassing Board rejected the Individual
37 Plaintiffs’ ballots, along with the ballots of thousands of King County voters. First Am.
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1 Compl. ¶ 27. The final Defendant, Secretary Hobbs, is named in his capacity as
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3 Washington’s Chief Election Officer. *See id.* ¶ 26; RCW 29A.04.230.
4

5 **III. STATEMENT OF ISSUES**

6 Does either RCW 4.12.020 or RCW 34.05.570 mandate venue in Thurston County
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8 Superior Court where, as here, the Complaint challenges the statewide constitutionality of
9
10 Washington’s signature verification requirement imposed by RCW 29A.40.110(3) and does
11
12 not challenge either an “official act” of the Secretary nor an agency rule pursuant to the
13
14 Administrative Procedures Act, and where venue in King County is indisputably proper
15
16 against the King County Defendants?
17

18 **IV. EVIDENCE RELIED UPON**

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20 This memorandum in opposition to the motion to change venue relies on material in
21
22 the Court file, including the Plaintiffs’ First Amended Complaint.
23

24 **V. AUTHORITY AND ARGUMENT**

25 **A. Secretary Hobbs’ motion misconceives the nature of this case and relies on**
26 **inapt authority.**

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28 Secretary Hobbs’s motion is based on a fundamental misconception about this case
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30 and the relief sought. This lawsuit alleges that Washington’s statutory signature matching
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32 requirement, RCW 29A.40.110(3), unconstitutionally burdens the right to vote, and it seeks
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34 to have the statute permanently enjoined. As such, the authority pertaining to “official acts”
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36 of government officials and challenges to administrative rules under the Administrative
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38 Procedures Act are simply irrelevant. The “official act” at issue here (at the statewide level)
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40 is the adoption of the statute. The First Amended Complaint does not once reference the
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42 APA, and most assuredly does not assert a claim for an alleged violation of the APA.
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1 **1. RCW 4.12.020(2) does not apply because this case is not a challenge to an**
2 **official act by Secretary Hobbs.**

3
4 Secretary Hobbs’s first argument, that he is “entitled” to venue in Thurston County
5 under RCW 4.12.020(2), Defendant Steven Hobbs’ Motion to Change Venue (Mot.) at 4,
6 Dkt. # 37, fails at the very threshold because that statute is simply inapplicable here. As
7
8 even a cursory examination of the First Amended Complaint reveals, Secretary Hobbs is a
9 named defendant not based on rulemaking actions he may have undertaken in Olympia, *see*
10 Mot. at 5, or based on some official proclamation, *cf. Johnson v. Inslee*, 198 Wn.2d 492, 496
11 P.3d 1191 (2021), but because he is the State’s Chief Election Officer. *See* First Am.
12 Compl. ¶ 26. In this role, Secretary Hobbs “is responsible for” the Signature Matching
13 Procedure that Plaintiffs now challenge, and his presence in this litigation allows the Court
14 to provide statewide injunctive relief. RCW 43.07.310; First Am. Compl. ¶ 26.
15
16

17 Secretary Hobbs rests his argument primarily on *Johnson*, but the reliance is rather
18 decidedly misplaced. In *Johnson*, the plaintiff challenged Governor Inslee’s *proclamations*
19 requiring certain individuals to be fully vaccinated against COVID-19 in order to remain
20 employed. *Johnson*, 198 Wn.2d at 497. In contrast, Plaintiffs here challenge the *statutory*
21 requirement for signature matching under RCW 29A.40.110(3). Secretary Hobbs cites no
22 authority suggesting that a constitutional challenge to a Washington statute must be filed in
23 Thurston County because the legislature enacted the law in Olympia or because the lawsuit
24 names as a defendant a government official charged with implementing such statute. And
25 the pages of the Washington Reporter are replete with cases challenging a statute’s
26 constitutionality that were properly filed in other counties.² Surely Secretary Hobbs is not
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45 ² *See, e.g., Quinn v. State*, No. 100769-8 (Wash. 2022) (challenge to RCW 82.87.050(1)
46 filed and heard in Douglas County Superior Court, presently before the Washington Supreme Court);
47 *Kunath v. City of Seattle*, 10 Wn. App. 2d 205, 444 P.3d 1235 (2019) (challenge to RCW ch. 36.65
filed and heard by a King County judge); *Madison v. State*, 161 Wn.2d 85, 163 P.3d 757 (2007)

1 suggesting that every constitutional challenge to a Washington statute would need to be
2 heard in Thurston County merely because a statewide official plays some role in
3 administering it. Such a radical reimagining of the venue rules would find no support in
4 Washington law.
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9 Indeed, Secretary Hobbs’s interpretation of *Johnson* itself and his advocacy for
10 severance flies in the face of the Court’s reasoning. In *Johnson*, the Court noted that
11 keeping proceedings in the county where an official acted is necessary to prevent officials
12 from having to “decid[e] between conflicting orders of courts of different counties.”
13 *Johnson*, 198 Wn.2d at 497. Yet Secretary Hobbs’s solution—severance and parallel cases
14 in King and Thurston Counties—would put him at risk of facing “conflicting orders of
15 courts of different counties”—the very outcome the *Johnson* Court sought to avoid.
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23 Moreover, the plaintiff in *Johnson* sued only statewide officials and brought no
24 claims against any county officials. *Id.* at 493. He also did not allege any harm “unique to
25 him by virtue of being employed in that county, nor [did] he contend that his action . . .
26 ‘arose’ from anything particular to him or to Franklin County so as to justify a different
27 conclusion.” *Id.* at 497. These two points alone distinguish *Johnson*—Plaintiffs have sued
28 county officials, *see* First Am. Compl. ¶ 27, and allege numerous ballot rejections unique to
29 the Individual Plaintiffs’ relationship with King County specifically. *Id.* ¶ 12–25. Even
30 assuming that RCW 4.12.020 was applicable—it’s not—and that Secretary Hobbs’s role
31 here did take place in Thurston County, the statute clearly says that actions shall be tried “in
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41 (challenge to RCW 9.94A.637 filed and heard in King County Superior Court); *Nw. Motorcycle*
42 *Ass’n v. State Interagency Comm. for Outdoor Recreation*, 127 Wn. App. 408, 110 P.3d 1196 (2005)
43 (challenge to RCW 46.09.170 filed and heard in Kittitas County Superior Court); *Dean v. Lehman*,
44 143 Wn.2d 12, 18 P.3d 523 (2001) (challenge to RCW 72.09.480 filed and heard in King County
45 Superior Court); *Ford Mot. Co. v. Barrett*, 115 Wn.2d 556, 800 P.2d 367 (1990) (challenge to RCW
46 19.118.100 filed and heard in King County Superior Court); *Chicago Bridge & Iron Co. v. State*, 98
47 Wn.2d 814, 659 P.2d 463 (1983) (challenge to RCW 82.04.220 filed and heard in Mason County).

1 the county where the cause, *or some part thereof*, arose.”³ RCW 4.12.020 (emphasis
2 added). Secretary Hobbs can hardly argue that at least some part of Plaintiffs’ cause did not
3 arise in King County.
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6 This case is properly in King County, and neither *Johnson* nor RCW 4.12.020
7 mandates otherwise.
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11 **2. Plaintiffs do not bring an APA rules challenge, so RCW 34.05.570(2)**
12 **does not apply.**
13

14 Secretary Hobbs’s second argument, that a challenge to a regulation under the APA
15 must be brought in Thurston County, fails for a similarly simple reason: Plaintiffs do not
16 independently challenge the validity of the rules or agency action under the APA, as even a
17 quick glance at the First Amended Complaint reveals. Rather, they challenge the
18 *constitutionality* of RCW 29A.40.110(3), the statute that requires verification of identity on
19 mail in ballots by signature. The Secretary’s argument, which is based on this fundamental
20 misunderstanding of the claim before the Court, necessarily fails as a result.
21

22 Although Plaintiffs discuss administrative rules implementing the statute, it is to
23 exemplify and explain the overall signature matching procedure, not to separately challenge
24 the regulations under RCW 34.05.570. If the Court declares the statute unconstitutional, the
25 regulations fall with the statute, but that assuredly does not mean that Plaintiffs are somehow
26 silently suing under the APA—a statute never even cited in the First Amended Complaint,
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39 ³ There is a far stronger argument that venue in King County is mandatory for the King
40 County Defendants under RCW 4.12.020. Even assuming Secretary Hobbs is correct about venue
41 being mandatory in Thurston County—and he is not—there are two mandatory applications of RCW
42 4.12.020 that are in conflict, and under such circumstances, Plaintiffs ought to be permitted to choose
43 between the appropriate venues. *See Ralph v. Weyerhaeuser Co.*, 187 Wn.2d 326, 338, 386 P.3d 721
44 (2016) (“[W]hen confronted with two equally applicable venue statutes, we have held that they may
45 be interpreted as ‘complementary,’ giving plaintiffs the option of which statute to proceed under.”);
46 *see also Marshall v. Mahaffey*, 974 S.W.2d 942, 947 (Tex. App. 1998) (where mandatory venue
47 provisions conflict, plaintiffs may choose between proper venues).

1 much less relied upon as a cause of action. To the contrary, Plaintiffs bring no claim under
2 the APA. Consequently, Secretary Hobbs’s argument about the required venue for APA
3 challenges is inapplicable to this constitutional challenge to RCW 29A.40.110(3).
4
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6
7 **B. Severance is impractical and unnecessary, and this case should stay in King**
8 **County.**
9

10 Even if Secretary Hobbs’ arguments for his preferred venue were somehow
11 supported by Washington law as applied to the claims in this lawsuit (and they are not), his
12 proposal to sever the claims here should be rejected out of hand. Secretary Hobbs describes
13 severing this case as the “straightforward solution,” Mot. at 7, but it is clearly anything but.
14 Severance would require duplicative litigation, forcing the parties and the judicial system to
15 expend unnecessarily time and money. Witnesses, who will likely overlap substantially,
16 would need to take the time to testify in two cases instead of one. It would be a glaring
17 example of judicial inefficiency for two judges in two different courts to hear what will
18 likely amount to the same claims, supported by the same or similar evidence. And, worst of
19 all, it would raise the possibility of inconsistent decisions, raising the potential of
20 considerable confusion in the delicate area of election administration.
21
22

23
24 King County is a proper venue for *all* claims against *all* Defendants. All Individual
25 Plaintiffs and three of four Defendants are located in King County, just like much of the
26 evidence and witnesses. The Individual Plaintiffs voted their ballots in King County, and
27 King County officials rejected them there. Washington law already permits courts to
28 consider “the convenience of witnesses [and] the ends of justice” when evaluating the
29 appropriate venue. RCW 4.12.030. Both these important goals are served by litigating this
30 case in King County without severance.
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VI. CONCLUSION

It was and is Plaintiffs' position that, even if the Amended Complaint itself was not clear on its face that it asserts only a constitutional challenge to the statutory requirement for signature verification, the briefing over this very motion makes that plain and indisputable. That said, if the Court thinks it necessary, Plaintiffs respectfully request that the Court enter an order allowing the Plaintiffs leave to file a motion for leave to amend the Complaint to clarify the claim before the Court. In either event, Secretary Hobbs' motion should be denied.

Dated: February 14, 2023

s/ Kevin J. Hamilton

I certify that this motion/memorandum contains 2686 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

On February 14, 2023, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

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

3
4 EXECUTED at Seattle, Washington, on February 14, 2023.

5
6 /s/ Hannah E.M. Parman
7 _____
8 Hannah Parman
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The Honorable Catherine Shaffer

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Plaintiffs,

v.

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

Defendants.

No. 22-2-19384-1 SEA

[PROPOSED] ORDER
DENYING DEFENDANT
HOBBS' MOTION TO
CHANGE VENUE

1 The Court, having considered Defendant Secretary of State Steve Hobbs's Motion to
2 Change Venue, the papers filed in support of and in opposition to the motion, and being
3 fully advised, now, therefore, ORDERS as follows:
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5

6 Secretary Hobbs's Motion is DENIED.
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12 DATED this __ day of _____, 2023.
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19 _____
20 The Honorable Catherine Shaffer
21 King County Superior Court Judge
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Dated: February 14, 2023

Presented by:

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CERTIFICATE OF SERVICE

On February 14, 2023, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

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

EXECUTED at Seattle, Washington, on February 14, 2023.

s/ Hannah E.M. Parman
Hannah Parman