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

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

Plaintiffs,

v.

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

Defendants.

No. 22-2-19384-1SEA

ORDER RE: PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT; DEFENDANT  
HOBBS' CROSS MOTION FOR  
SUMMARY JUDGMENT; AND  
DEFENDANT KING COUNTY  
CANVASSING BOARD MEMBERS'  
CROSS MOTION FOR SUMMARY  
JUDGMENT

1           **I.       INTRODUCTION**

2           “[V]oting is of the most fundamental significance under our constitutional structure.”

3 *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, (1979). “Other rights, even  
4 the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S.  
5 1, 17 (1964). “It does not follow, however, that the right to vote in any manner ... [is] absolute.”  
6 *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). The Constitution explicitly provides State  
7 legislatures with authority to regulate the “Times, Places and Manner of holding Elections[.]”  
8 U.S. Const. art. I, § 4, cl. 1. Stated slightly different:

9           Restrictions on voting can burden equal protection rights as well as  
10 interwoven strands of liberty protected by the First and Fourteenth  
11 Amendments—namely, the right of individuals to associate for the  
12 advancement of political beliefs, and the right of qualified voters,  
13 regardless of their political persuasion, to cast their votes  
14 effectively.

15           At the same time, and even though voting is of the most  
16 fundamental significance under our constitutional structure, States  
17 retain the power to regulate their own elections. Each available  
18 election system, whether it governs the registration and  
19 qualifications of voters, the selection and eligibility of candidates,  
20 or the voting process itself, inevitably affects—at least to some  
21 degree—the individual's right to vote.<sup>1</sup>

22           Here, Plaintiffs<sup>2</sup> claim Washington’s statutory signature-verification requirement  
23 unconstitutionally infringes on the right to vote because it arbitrarily rejects ballots for  
24 purportedly non-matching signatures resulting in the disproportionate disenfranchising of

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20           <sup>1</sup>       *Dudum v. Arntz*, 640 F.3d 1098, 1106 (9th Cir. 2011) (internal quotations and citations omitted).

21           <sup>2</sup>       Plaintiffs include Vet Voice Foundation, a non-profit, non-partisan organization dedicated to  
22 empowering active-duty service members, veterans, and military families; The Washington Bus (“Bus”), a non-  
23 profit organization dedicated to increasing political access and participation in young people across Washington  
24 State; El Centro de la Raza (“El Centro”), a non-profit, non-partisan organization grounded in the Latino  
community of Washington State; and three eligible Washington voters. Dkt. 1, pg. 5-9.

1 voters of color, young voters, uniformed service-members serving outside of Washington, first-  
2 time voters, and voters who speak a language other than English.

3 On the other hand, Defendants<sup>3</sup> dispute Plaintiffs' premise and argue that signature  
4 verification is the linchpin and a necessary safeguard of the vote-by-mail system by affording  
5 the broadest possible access to voting while simultaneously promoting public confidence in a  
6 safe and secure voting process by ensuring only ballots from registered voters are counted.

7 While States can undoubtedly regulate elections, they must be careful not to unduly  
8 burden the right to vote when doing so. It is this tension that's at the core of the issues here.

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10 **II. WASHINGTON STATE'S VOTING BY MAIL SYSTEM:  
BACKGROUND AND PROCEDURE**

11 In 1915, Washington began allowing absentee ballots for voters at least 25 miles away  
12 from their precinct on Election Day.<sup>4</sup> Absentee voters had to appear in-person at their home  
13 precinct and sign a certificate.<sup>5</sup> On Election Day, absentee voters presented the signed  
14 certificate in-person at another precinct and signed an affidavit.<sup>6</sup> Vote-by-mail allowances  
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18 <sup>3</sup> Defendants named in the Complaint are Secretary of State of Washington, Steve Hobbs, in his official  
19 capacity as the "chief election officer for all federal, state, county, city, town, and district elections" RCW  
20 29A.04.230; Auditor/Director of Elections in King County (Julie Wise), Supervising Attorney at the King County  
Prosecuting Attorney's Office (Susan Slonecker), and Chief of Staff at the King County Council (Stephanie  
Cirkovich), all in their official capacities as members of the King County Canvassing Board ("Canvassing  
Board"). Dkt. 1, pg. 9-10.

21 <sup>4</sup> Laws of 1915, ch. 189.

22 <sup>5</sup> *Id.*, § 2.

23 <sup>6</sup> *Id.*, § 6.

1 expanded to include disability, religion, illness, and counties with fewer than 100 registered  
2 voters.<sup>7</sup>

3 In 1974, Washington became the first state to allow no-excuse absentee voting –  
4 permitting anyone to request a mail in-ballot without a reason.<sup>8</sup> In 2011, Washington became  
5 the second state, after Oregon, to require that all elections be conducted by mail.<sup>9</sup> As of 2021,  
6 Washington is one of eight states allowing all voters to vote by mail, although other states use  
7 mail-in voting to varying degrees.<sup>10</sup>

8 There are several advantages to voting by mail - ease of casting a ballot; convenient  
9 and flexible way for voters to cast their vote; reduce or eliminate long wait times in polling  
10 places; and in some circumstances an increase in voter turnout.

11 In Washington, the county auditor sends each registered voter a ballot, a security  
12 envelope in which to conceal the ballot after voting, a larger envelope in which to return the  
13 security envelope, a declaration that the voter must sign, and instructions on how to obtain  
14 information about the election, how to mark the ballot, and how to return the ballot to the  
15 county auditor. RCW 29A.40.091(1). The voter must swear under penalty of perjury that he  
16 or she meets the qualifications to vote and has not voted in any other jurisdiction at this election.  
17 RCW 29A.40.091(2). Furthermore, the declaration must clearly inform the voter that it is  
18 illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she is serving  
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20 <sup>7</sup> Dkt. 78, Exh. G, pg. 7 (“Evaluating Washington’s Ballot Rejection Rate”, Office of the Washington State  
Auditor Pat McCarthy, Feb. 1, 2022 (the “Audit)).

21 <sup>8</sup> *Id.*

22 <sup>9</sup> *Id.*; Laws of 2011, Ch. 10, §41(3).

23 <sup>10</sup> Dkt. 78, Exh. G, pg. 7.

1 confinement under the jurisdiction of the Department of Corrections for a felony conviction or  
2 incarcerated for federal our out-of-state felony conviction; and it is illegal to cast a ballot or  
3 sign a ballot declaration on behalf of another voter. *Id.* The ballot materials must provide a  
4 space for the voter to sign the declaration, indicate the date on which the ballot was voted, and  
5 include a telephone number.<sup>11</sup> *Id.*

6 Ballots must be received no later than 8:00 p.m. on the day of the primary or election,  
7 or must be postmarked no later than the day of the primary or election. RCW 29A.40.110(3).<sup>12</sup>  
8 All received return envelopes are placed in a secure location from the time of delivery to the  
9 county auditor until their subsequent opening. RCW 29A.40.110(2). After opening the return  
10 envelopes, the county canvassing board places the ballots in secure storage until processing.  
11 *Id.* Either the canvassing board or its designated representative must examine the postmark on  
12 the return envelope and signature on the declaration before processing the ballot. *Id.*

13 Personnel shall verify that the “voter’s signature on the ballot declaration is the same  
14 as the signature of that voter in the registration files of the county.” *Id.* All personnel assigned  
15 to verify signature must receive training on statewide standards for signature verification. *Id.*<sup>13</sup>

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17 <sup>11</sup> RCW 29A.40.091(3) sets out protocols and procedures for overseas and service voters.

18 <sup>12</sup> Dkt. 160, pg. 3, ¶4 (Decl. of Stuart Holmes).

19 <sup>13</sup> As currently drafted, the signature verification standard reads:

20 A signature on a petition sheet must be matched to the signature on file in the voter  
21 registration records. The following characteristics must be utilized to evaluate signatures  
22 to determine whether they are by the same writer:

- 21 (1) The signature is handwritten.
- 22 (2) Agreement in style and general appearance, including basic construction, skill,  
23 alignment, fluency, and a general uniformity and consistency between signatures;
- 23 (3) Agreement in the proportions of individual letters, height to width, and heights of the  
24 upper to lower case letters;
- (4) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;

1 If the signatures “match”, the ballot is marked “accepted”, the security envelope is removed,  
2 and the ballot is added to the counting stream.<sup>14</sup>

3 A different process occurs when the signature on a ballot declaration is not the same as  
4 the signature on the registration file. If an initial signature reviewer has concerns, the reviewer  
5 can perform a closer examination.<sup>15</sup> Further signature review by a second examiner may also  
6 take place.<sup>16</sup> If confirmation of the match remains questionable, the ballot is designated as  
7 “challenged.”<sup>17</sup> When a ballot is “challenged”, the auditor must notify the voter by first-class  
8 mail, enclose a copy of the declaration, and advise the voter of the correct procedure for  
9 updating his or signature on the voter registration file. RCW 29A.60.155. That is, if the voter’s  
10 signature does not match the signature on file, the ballot is rejected and not counted until the  
11 voter is notified and completes the correct procedure to cure the ballot.

12 To cure a rejected ballot, a voter is sent another registration declaration to sign and  
13 return before the election is certified. The county election official follows a similar signature  
14 verification procedure by comparing the “cured” form signature with the challenged ballot

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17 (5) After considering the general traits, agreement of the most distinctive, unusual traits  
of the signatures.

18 A single distinctive trait is insufficient to conclude that the signatures are by the same  
19 writer. There must be a combination or cluster of shared characteristics. Likewise, there  
must be a cluster of differences to conclude that the signatures are by different writers.

20 WAC 434-379-020.

21 <sup>14</sup> Dkt. 158, Holmes Decl. ¶11.Exh.1.

22 <sup>15</sup> Dkt. 158, pg. 6, McGinty Decl., Ex. 1 at 41.

23 <sup>16</sup> Dkt. 158, pg. 6, Haugh Decl. ¶¶5-7.

24 <sup>17</sup> Dkt. 158, pg. 6, Haugh Decl. ¶4.

1 declaration to determine whether there is a match to count the ballot.<sup>18</sup> If the signature does  
2 not match, the ballot is rejected and not counted.

### 3 **III. PROCEDURAL HISTORY**

4 In its original Complaint filed on November 22, 2022, Plaintiffs challenged  
5 Washington's Signature Matching Procedure claiming it unconstitutionally disenfranchises  
6 voters' right to vote in violation of Article I, Section 19, the right to equal treatment protected  
7 by Article, I, Section 12, the rights to due process protected by Article I, Section 3, and RCW  
8 29A.04.206.<sup>19</sup> According to Plaintiffs, every Washington State voter's fundamental right to  
9 vote is contingent on an arbitrary, fundamentally flawed, and unlawful signature matching  
10 procedure that has from 2018 Primary Election through the 2022 Primary Election resulted in  
11 more than 113,000 ballots of Washington voters being rejected.<sup>20</sup>

12 Defendants dispute Plaintiffs' constitutional challenges to the voter's signature  
13 verification review.<sup>21</sup> Not in dispute is that voter's signature verification is a means to verify  
14 that the ballot was cast by the person to whom it was issued; election officials conducting  
15 signature verification reviews are human; and a ballot is not counted if it is determined that the  
16 signatures do not match.<sup>22</sup> Secretary Hobbs notes, however, that from the 2018 Primary  
17 Election through the 2022 Primary Election, tens of thousands of voters whose ballots were  
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19 <sup>18</sup> Dkt. 158, pg. 6, McLoughlin Decl. ¶9.

20 <sup>19</sup> Dkt. 1 (Complaint).

21 <sup>20</sup> *Id.*

22 <sup>21</sup> Dkt. 22 (Answer).

23 <sup>22</sup> *See* Dkt. 22, pg. 2, ¶3.

1 initially rejected for mismatched signatures were later able to cure their ballots resulting in  
2 those ballots being counted.<sup>23</sup>

3 Defendants also set forth a variety of defenses, pertinent here the assertion that Plaintiffs  
4 failed to join necessary and indispensable parties.<sup>24</sup>

5 On January 17, 2023, the Republic National Committee and Washington State  
6 Republican Party filed a Motion to Intervene.<sup>25</sup> Plaintiffs opposed.<sup>26</sup> On February 1, 2023, the  
7 Court denied the Republic National Committee and Washington State Republican Party's  
8 Motion to Intervene but permitted filing of amicus briefing for any dispositive motions.<sup>27</sup>

9 Defendant Hobbs requested the matter be transferred from King County Superior Court  
10 to Thurston County Superior Court because RCW 4.12.020<sup>28</sup> and 34.05.570<sup>29</sup> require venue be  
11 in Thurston County since Secretary Hobbs is sued entirely for his official duties that he  
12 undertook in Thurston County.<sup>30</sup> Plaintiffs claimed the authority Defendant Hobbs relied upon  
13 was inapplicable since Plaintiffs were not challenging an "official act" but the constitutionality  
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15 <sup>23</sup> *Id.*

16 <sup>24</sup> *Id.*, pg. 19.

17 <sup>25</sup> Dkt. 11 (Motion to Intervene).

18 <sup>26</sup> Dkt. 34 (Plaintiff's Opposition to Motion to Intervene).

19 <sup>27</sup> Dkt 40 (Order on Motion to Intervene).

20 <sup>28</sup> RCW 4.12.020 states actions for causes shall be tried in the county where the cause arose "against a  
21 public officer, or person specially appointed to execute his or her duties, for an act done by him or her in virtue of  
22 his or her officer, or against a person who, by his or her command or in his or her aid, shall do anything touching  
23 the duties of such officer.

24 <sup>29</sup> RCW 34.05.570(2) notes, in part, that in an action challenging the validity of a rule should be addressed  
to the superior court of Thurston County.

<sup>30</sup> Dkt. 37 (Defendant Hobbs Motion for Change of Venue).



1 of RCW 29A.40.110(3) and Secretary Hobbs is a named defendant because he is Washington's  
2 Chief Election Officer.<sup>31</sup> The Court denied Defendant Hobbs' motion to change venue on  
3 condition that Plaintiffs amend its complaint to clarify its intent to bring a constitutional  
4 challenge to RCW 29A.40.110(3).<sup>32</sup>

5 Over Defendants' objection, Plaintiffs were granted leave to file its Second Amended  
6 Complaint that reflected its constitutional facial challenge to the statutory requirement for  
7 ballot declaration signature verification.<sup>33</sup>

8 When the parties informed the Court that various cross motions for summary judgment  
9 were forthcoming, the Court issued a briefing and oral argument.<sup>34</sup> The following documents  
10 related to the current issues have been filed:

- 11 - July 27, 2023: Plaintiffs' Motion for Summary Judgment  
12 (w/exhibits).<sup>35</sup>
- 13 - August 16, 2023: Amicus Curiae Brief of The Republican National  
14 Committee And Washington State Republican Party  
15 in Support of Defendants.<sup>36</sup>
- 16 - August 16, 2023: King County Canvassing Board Members'  
17 Opposition to Plaintiffs' Motion for Summary  
18 Judgment and Cross Motion for Summary Judgment  
19 (w/exhibits).<sup>37</sup>

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18 <sup>31</sup> Dkt. 41 (Plaintiff's Opposition to Motion for Change of Venue).

19 <sup>32</sup> Dkt. 48 (Order on Motion for Change of Venue).

20 <sup>33</sup> Dkt. 53, 54, 57, 59, 60, 61.

21 <sup>34</sup> Dkt. 76. The Order also granted additional words to the word count.

22 <sup>35</sup> Dkt. 77-146.

23 <sup>36</sup> Dkt. 147.

24 <sup>37</sup> Dkt. 150-153, 156-157, 181.

- 1           - August 16, 2023:           Defendant Steve Hobbs’ Opposition to Plaintiffs’  
2    Motion for Summary Judgment and Cross Motion  
  for Summary Judgments (w/exhibits).<sup>38</sup>
- 3           - August 28, 2023:           Plaintiffs’ Omnibus Opposition to Defendants’  
4    Cross Motions for Summary Judgment and Reply in  
  Support of Plaintiffs Motion for Summary  
5    Judgment; Response to Amici (w/exhibits).<sup>39</sup>
- 6           - September 6, 2023:        Defendant Steve Hobbs’ Reply in Support of His  
  Motion for Summary Judgment (w/exhibits).<sup>40</sup>
- 7           - September 6, 2023:        King County Canvassing Board Members’ Reply in  
8    Support of Cross Motion for Summary Judgment  
  (w/exhibits).<sup>41</sup>

9           Given the number of parties, multiple cross-motions, voluminous record, and nature of  
10           the issues, three hours on September 12, 2023, were dedicated to oral argument.

11           On October 4, 2023, after argument and while the matter was pending, Defendant  
12           Hobbs filed a notice of supplemental authority bringing to the Court’s attention a recent  
13           decision: *League of Women Voters of Arkansas, et al., v. Thurston et al.*, No. 5:20-CV-05175-  
14           PKH (W.D. Ark. Sept. 2023).<sup>42</sup> The parties had an opportunity to file a limited brief to address  
15           how (if at all) the supplemental authority applies to the issues at hand.<sup>43</sup>

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18           <sup>38</sup>       Dkt. 158– 170.

19           <sup>39</sup>       Dkt. 175-176.

20           <sup>40</sup>       Dkt. 184-187.

21           <sup>41</sup>       Dkt. 188,190.

22           <sup>42</sup>       Dkt. 193.

23           <sup>43</sup>       Dkt. 194, 195 (Plaintiffs’ Brief Regarding Notice of Supplemental Authority); Dkt. 196 (Defendants’  
                  Join Brief Relating to Submitted Supplemental Authority).

1       **IV.    ISSUES**

2           A. County Canvassing Boards are not Indispensable Parties

3           Defendants seek to dismiss Plaintiffs’ action for failure to join indispensable parties,  
4 namely the thirty-eight (38) other counties that conduct elections.<sup>44</sup> Plaintiffs disagree,  
5 claiming since it is bringing a facial constitutional challenge to a state-wide election statute,  
6 and the Secretary is the Chief Elections Officer for Washington State with rulemaking authority  
7 to implement the Signature Verification Requirement (RCW 29A.04.611(54), it is unnecessary  
8 and nonsensical to have to sue each county.<sup>45</sup>

9           Under Civil Rule (CR) 19, the Court first determines whether absent persons are  
10 *necessary* for a just adjudication. If the absentees are ‘necessary,’ the court determines whether  
11 it is *feasible* to order the absentees' joinder.” *Auto. United Trades Org. v. State*, 175 Wn.2d  
12 214, 221–22, 285 P.3d 52, 55 (2012) (emphasis added). “If joining a necessary party is not  
13 feasible, the Court then considers whether, *in equity and good conscience*, the action should  
14 still proceed without the absentees under CR 19(b).” *Id.* (quoting CR 19(b)) (emphasis added).  
15 If the Court determines that ‘in equity and good conscience’ the matter should not proceed, CR  
16 19(b) and CR 12(b)(7) grant the Court the authority to dismiss. However, “[d]ismissal . . . for  
17 failure to join an indispensable party is a ‘drastic remedy’ and should be ordered only when the  
18 defect cannot be cured and significant prejudice to the absentees will result.” *Auto. United*  
19 *Trades Org.*, 175 Wn.2d at 222–23 (quoting *Gildon v. Simon Prop. Grp., Inc.*, 158 Wn.2d 483,

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22       <sup>44</sup>       Dkt. 150, pg. 19-21; Dkt. 158, pg. 1, n.1.

23       <sup>45</sup>       Dkt. 175, pg. 50-51.

1 493, 145 P.3d 1196 (2006)). “The burden of proof for establishing indispensability is on the  
2 party urging dismissal.” *Gildon*, 158 Wn.2d at 495.

3 Finally, if the Court finds that the party is necessary, but joinder is not feasible, the rule  
4 requires the Court to consider the following factors:

5 (1) to what extent a judgment rendered in the person's absence might be prejudicial  
6 to the person or those already parties; (2) the extent to which, by protective  
7 provisions in the judgment, by the shaping of relief, or other measures, the  
8 prejudice can be lessened or avoided; (3) whether a judgment rendered in the  
9 person's absence will be adequate; (4) whether the plaintiff will have an adequate  
10 remedy if the action is dismissed for nonjoinder.

11 CR 19(b). “In examining each of the four factors, as well as any other relevant considerations,  
12 the Court determines how heavily the factor weighs in favor of, or against, dismissal. The Court  
13 then determines whether the case can proceed ‘in equity and good conscience’ without the  
14 absentee in light of these factors.” *Auto. United Trades Org.*, 175 Wn. 2d at 229.

15 Citing *Donald J. Trump for President, Inc v. Boockvar*, 493 F.Supp.3d 331 (W.D. Pa.  
16 2020), Defendants assert the failure to name all county election boards preclude the requested  
17 relief.<sup>46</sup> *Boockvar* is distinguishable. *Boockvar*’s focus was not on state-wide application of a  
18 statute, but instead on various procedures in place amongst several counties. *Boockvar*, 493  
19 F.Supp.3d, at 343 - 44. Additionally, several defendants in *Bookvar* were seeking to be  
20 dismissed from the case, not to dismiss an action for failure to join necessary parties. *Id.*, at  
21 374.

22 On the other hand, numerous courts have concluded local election and county level  
23 canvassing boards are not necessary parties in actions challenging election statutes.<sup>47</sup>

24 <sup>46</sup> Dkt. 150, pg. 20.

<sup>47</sup> Dkt. 175, pg. 51, citing *See Texas Democratic Party v. Abbott*, 961 F.3d 389, 399 (5th Cir. 2020) (finding that the voting-related injuries were fairly traceable to and redressable by the Secretary of State); *Harding v.*

1 The other 38 county canvassing boards are not “necessary” parties. A party is  
2 “necessary” if they claim a legally protected interest that will be impaired or impeded by the  
3 action. CR 19(a); *see also Auto. United Trades Org.*, 175 Wn.2d at 223. A “well-recognized”  
4 exception to this necessity standard exists where the absent party’s “interest will be adequately  
5 represented by existing parties to the suit.” *Id.* at 225 (quoting *Washington v. Daley*, 173 F.3d  
6 1158, 1167 (9th Cir.1999)). It is debatable whether county canvassing boards even have a legal  
7 interest in the signature verification requirement since the Secretary of State, who is a party to  
8 this action, is the chief state elections officer (RCW 29A.04.230) and therefore tasked with  
9 promulgating state-wide rules relating to signature verification (RCW 29A.04.611(54)).  
10 Nevertheless, assuming county canvassing boards do have a legally protected interest in  
11 administering signature verification, the Secretary of State in defending the statute against a  
12 facial challenge is able to adequately represent the interests of the county canvassing boards as  
13 those interests relate to the *facial* validity of the statute.

14 B. Applicable Scrutiny Standard

15 The parties strenuously disagree as to the applicable standard of scrutiny the Court  
16 should use to decide constitutional challenges to the signature verification requirement. The  
17 proper standard turns on whether the signature verification requirement is an unconstitutional  
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19 \_\_\_\_\_  
20 *Edwards*, 484 F. Supp. 3d 299, 321 (M.D. La. 2020) (analyzing standing precedent to hold that local election  
21 officials were not indispensable parties in election-related litigation against the Louisiana Secretary of State);  
22 *Acosta v. Democratic City Comm.*, 288 F. Supp. 3d 597, 649 (E.D. Pa. 2018) (declining to find election boards  
23 indispensable merely because the defendants may need to direct them to hold a new election based on the outcome  
of the litigation); *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1284 (N.D. Ga. 2019)  
(determining county elections official were not indispensable because “defendants have the statutory oversight  
ability to enforce uniform and state-wide election standards and processes.”); *Self Advocacy Solutions N.D. v.*  
*Jaeger*, 464 F.Supp.3d 1039, 1050 (D.N.D. 2020) (finding that suing only the Secretary of State was sufficient  
because the local election officials were “subordinate to the Secretary in election matters.”).

1 restriction on the right to vote, or a constitutionally permitted law regulating the election  
2 process.

3 Washington courts have not had many occasions to review voting law challenges under  
4 its constitution. When it has, courts distinguish between restrictions on *who* may vote and  
5 restrictions on the *manner* in which eligible voters may vote. In the former situation,  
6 Washington courts have generally applied a strict scrutiny standard, requiring the restriction  
7 on the right to vote be narrowly tailored to further a compelling state interest. *See e.g.*,  
8 *Madison*, 161 Wn.2d at 99; *City of Seattle v. State*, 103 Wn.2d 663, 670, 694 P.2d 641 (1985);  
9 *Foster v. Sunnyside Valley Irr. Dist.*, 102 Wn.2d at 410. The latter - manner of voting - has  
10 been treated differently with a lower rational basis review being applied. *See e.g.*, *Eugster v.*  
11 *State*, 171 Wn.2d 839, 844-846, 259 P.3d 146 (2011); *State ex rel. Shepard v. Superior Court*  
12 *of King Cnty*, 60 Wash. 370, 111 P.233 (1910).

13 Neither approach provides a solid framework to address the constitutionality of  
14 signature verification requirement. For instance, Washington courts have generally applied  
15 strict scrutiny standard dealing with restrictions on the right to vote. *See e.g.*, *City of Seattle v.*  
16 *State*, 103 W.2d 663, 670, 694 P.2d 641 (1985) (any statute which infringes upon or burdens  
17 the right to vote is subject to strict scrutiny) (citations omitted); *Portugal v. Franklin County*,  
18 530 P.3d 994, 999 (2023) (finding voting rights act did not trigger strict scrutiny by . . .  
19 abridging voting rights). But not always. *See Madison*, 161 Wn.2d at 99 (restrictions on the  
20 right to vote generally subject to strict scrutiny, but because felons are constitutionally excluded  
21 from voting, laws relating to felon enfranchisement are not subject to strict scrutiny).

1 The much lower rational basis standard doesn't fare much better. Defendants cite  
2 *Eugster*, *In re Coday*<sup>48</sup>, and *Shepard* as examples of when Washington courts have employed  
3 the lower standard<sup>49</sup>; however, none of those cases provide much guidance as to the applicable  
4 standard to analogous facts presented here.

5 In *Eugster*, the Court was asked whether unequal apportionment of districts for electing  
6 Court of Appeals judges violated "one person, one vote" principle and article I, section 19.  
7 *Eugster*, 171 Wn.2d at 844. The Court rejected the challenge, noting that Washington cases  
8 have never held that article I, section 19 requires substantial numerical equality between voting  
9 districts. Rather article I, section 19 historically was interpreted to prohibit the complete denial  
10 of the right to vote to a group of affected citizens. *Id.*, at 845. The Court did not employ a strict  
11 scrutiny standard but acknowledged that "[o]ther provisions of the Washington Constitution .  
12 . . . dealt explicitly with the issue of apportionment of voting districts, strongly suggesting the  
13 framers considered numerical apportionment to be a separate issue from whether an election  
14 was 'free and equal.'" *Id.*, at 845.

15 *In re Coday* also doesn't shed much light. *In re Coday* involved various challenges to  
16 the results of the 2006 governor election. More specifically, the contestants challenged the  
17 election contest statute, chapter 29A.68 RCW, that permitted an election be contested for  
18 specific reasons. *In re Coday*, 156 Wn.2d at 495. While dismissing some claims on procedural  
19 res judicata grounds, the Washington State Supreme Court concluded the contestants did not  
20 state a cognizable claim that provisions of the contested election statute - the statutory

21  
22 <sup>48</sup> *In re Coday*, 156 Wn.2d 485, 130 P.3d 809 (2006).

23 <sup>49</sup> Dkt. 158, pg. 19-20.

1 requirement that a deposit be made to cover the costs of a recount, counting certain ballots in  
2 recount that were not previously counted, or the practice of ballot enhancement - ran afoul of  
3 Washington's constitutional requirement for an "equal" election. *Id.*, at 498-501. The facts  
4 and constitutional challenges in *In re Coday* are significantly different than those presented  
5 here.

6 Finally, in *Shepard*, a century old case, the Washington Supreme Court rejected a  
7 challenge to a law establishing how candidates appear on the ballot. *Shepard*, 60 Wash. 370  
8 (1910). The Court was not faced with whether any constitutional right of a voter was violated,  
9 but whether a political party was being denied a constitutional right. *Id.*, at 373 ("In this case it  
10 is not contested that any constitutional right of the voter is violated, but it is insisted that the  
11 candidate and the political party which is his sponsor is denied a constitutional right. . ."). The  
12 Court found the regulation establishing how candidates appear on the ballot reasonable since  
13 it afforded a voter the ability to vote for the candidate of his or her choice. *Id.* Thus, the *Shepard*  
14 court was not faced with restrictions to a voter but rather restrictions on a party. *Id.*, at 382  
15 ("Finding no guaranty, express or implied, in favor of either a candidate or a party in the  
16 Constitution, it follows that he (or she) or his (her) party can claim no greater rights than the  
17 voter him(her)self.").

18 Under current Washington case law, the applicable standard to analyze any challenge  
19 to voting restrictions appears limited to either strict scrutiny or rational basis. Unfortunately,  
20 this rigid approach fails to appreciate the different degrees and types of tension between the  
21 right to vote and restrictions to that right.



1 The hybrid *Anderson-Burdick*<sup>50</sup> framework taken by federal courts provides useful  
2 guidance.<sup>51</sup> Instead of applying any “litmus test”<sup>52</sup> to separate valid from invalid restrictions,  
3 federal courts, “to assure that elections are operated equitably and efficiently”, apply a “flexible  
4 standard” when considering constitutional challenges to election regulations.

5 A court considering a challenge to a state election law must weigh “the character  
6 and magnitude of the asserted injury to the rights protected by the First and  
7 Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise  
8 interests put forward by the State as justifications for the burden imposed by its  
9 rule,” taking into consideration “the extent to which those interests make it  
10 necessary to burden the plaintiff’s rights.”

11 *Dudum v. Arntz*, 640 F.3d 1098, 1106 (9th Cir. 2011) (quoting *Anderson*, 460 U.S. at 789).

12 The more flexible *Anderson-Burdick* has a two step-inquiry. First, courts determine the  
13 magnitude of the burden. *Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 789. The second  
14 step requires the courts “identify and evaluate the precise interests put forward by the State as  
15 justification for the burden imposed by its rule,” weighing “the legitimacy and strength of each  
16 of those interests.” *Anderson*, 460 U.S. at 789. Under this two-step analysis, when the burdens  
17 on voting imposed by the government are “severe,” strict scrutiny applies, and the “regulation  
18 must be ‘narrowly drawn to advance a state interest of compelling importance.’ ” *Id.* (quoting  
19 *Norman v. Reed*, 502 U.S. 279, 289, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992)). But where non-  
20 severe, “[l]esser burdens” on voting are at stake, we apply “less exacting review, and a State’s  
21 important regulatory interests will usually be enough to justify reasonable, nondiscriminatory

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22 <sup>50</sup> *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick. Takushi*, 504 U.S. 428 (1992).

23 <sup>51</sup> Although question to varying degrees whether the federal approach is applicable to Washington, the  
24 parties agree that federal jurisprudence may be instructive. Dkt. 158, pg. 30-33; Dkt. 150, pg. 29-30; Dkt. 175, pg.  
35-37.

<sup>52</sup> *Crawford v. Marion County Election Bd.*, 533 U.S. 181, 190, 170 L.Ed.2d 574 (2008).

1 restrictions. ”*Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364, 137  
2 L.Ed.2d 589 (1997) (internal quotations omitted); *see also Caruso v. Yamhill County ex rel.*  
3 *Cnty. Comm'r*, 422 F.3d 848, 859 (9th Cir.2005).

4 This Court is cognizant that no Washington court has examined the *Anderson-Burdick*  
5 framework but given a paucity of Washington cases evaluating constitutional challenges to  
6 manner of voting statutes with analogous facts<sup>53</sup>, the federal hybrid-approach is a reasonable  
7 alternative.

8 And there is support for this proposition.

9 First, Washington courts have long held that Washington’s right to vote is more  
10 protective than the federal counterpart. The right to vote is fundamental under both the United  
11 States and Washington Constitutions. *Reynolds v. Sims*, 377 U.S. 533, (1964); *Malim v.*  
12 *Benthien*, 114 Wash. 533, 196 P.7 (1921). The Washington Constitution, unlike the federal  
13 constitution, specifically confers upon its citizens the right to “free and equal” elections. Const.  
14 art. 1, § 19; *Foster v. Sunnyside Valley Irr. Dist.*, 102 Wn.2d 395, 404, 687 P.2d 841, 846  
15 (1984); *see also, Madison*, 161 Wn.2d at 97 (“The Washington Constitution grants the right to  
16 vote to all Washington citizens on equal terms.”). It would therefore appear logically  
17 inconsistent and at odds with Washington authority to apply a lower rational basis test to  
18 challenges to right to vote under Washington State Constitution when federal courts apply a  
19 higher standard when analyzing similar type challenges under the Federal Constitution.

20  
21  
22 <sup>53</sup> Dkt. 158, pg. 20: Acknowledging there “are not directly analogous cases involving article I, section 19  
23 challenges to verification of voter’s identity.”

1 Second, courts have concluded Washington state due process clause is similar to its  
2 federal counterpart. *See, e.g., In re Pers. Restraint of Dyer*, 143 Wn.2d 384, 394, 20 P.3d 907  
3 (2001) (“Washington's due process clause does not afford a broader due process protection than  
4 the Fourteenth Amendment.”); *In re Pers. Restraint of Matteson*, 142 Wn.2d 298, 310, 12 P.3d  
5 585 (2000) (rejecting the claim that state due process rights are greater than federal due process  
6 rights because “there are no material differences between the ‘nearly identical’ federal and state  
7 [due process clauses]). As such, Washington courts have reasoned that “[a]lthough not  
8 controlling, federal decisions regarding due process are afforded great weight due to the  
9 similarity of the language.” *Rozner v. City of Bellevue*, 116 Wn.2d 342, 351, 804 P.2d 24  
10 (1991); *Petstel, Inc. v. County of King*, 77 Wn.2d 144, 153, 459 P.2d 937 (1969); *Bowman v.*  
11 *Waldt*, 9 Wn.App. 562, 570, 513 P.2d 559 (1973).

12 And federal courts have engaged in *Anderson-Burdick* two step-inquiry when analyzing  
13 the federal Due Process Clause of the Fourteenth Amendment. *See e.g., Richardson v. Texas*  
14 *Sec'y of State*, 978 F.3d 220, 233–34 (5th Cir. 2020) (For several reasons, the *Anderson/Burdick*  
15 framework provides the appropriate test for the plaintiffs’ due process claims); *Anderson*, 460  
16 U.S. at 789 (Supreme Court prescribed for “[c]onstitutional challenges to specific provisions  
17 of a State's election laws” under “the First and Fourteenth Amendments,”); and *Crawford v.*  
18 *Marion County Election Bd.*, 553 U.S. 181, 204 (2008) (Scalia, J., concurring) (emphasis  
19 added) (As several Justices have noted, “[t]o evaluate a law respecting the right to vote—  
20 whether it governs voter qualifications, candidate selection, *or the voting process*—we use the  
21 approach set out in *Burdick v. Takushi*.”).

22 For the reasons discussed below, the implementation of the *Anderson/Burdick* standard  
23 and conclusions therefrom can only be determined after the factual development is completed.

1 C. Summary Judgment - Constitutional Challenges

2 Each party has filed a motion for summary judgment requesting the Court to find, as a  
3 matter of law, the signature verification provision violates (or does not) Article I, Section 19  
4 (Right to Vote)<sup>54</sup>, Article I, Section 12 (Privileges and Immunities)<sup>55</sup>, and/or Article I, Section  
5 3 (Due Process)<sup>56</sup>.

6 1. Summary Judgment: Standard of Review

7 Summary judgment is properly granted when “the pleadings, depositions, answers to  
8 interrogatories, and admissions on file, together with the affidavits, if any, show that there is  
9 no genuine issue as to any material fact and that the moving party is entitled to a judgment as  
10 a matter of law.” CR 56(c). “A ‘material fact’ is a fact upon which the outcome of the litigation  
11 depends, in whole or in part.” *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974)  
12 (quoting CR 56(c)).

13 The party moving for summary judgment bears the initial burden of showing that there  
14 is no disputed issue of material fact. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770  
15 P.2d 182 (1989). The burden then shifts to the nonmoving party to present evidence that an  
16 issue of material fact remains. *Young*, 112 Wn.2d at 225. The party may accomplish this by  
17 submitting affidavits setting forth any facts that would be admissible as evidence and attaching  
18

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19 <sup>54</sup> Dkt. 77, pg. 30-41 (Plaintiff’s Motion for Summary Judgment); Dkt. 158, pg. 18-35 (Defendant Hobbs’  
20 Cross Motion for Summary Judgment); Dkt. 150, pg. 24-36 (Defendant King County Canvassing Board Members’  
Cross Motion for Summary Judgment).

21 <sup>55</sup> Dkt. 77, pg. 41-44 (Plaintiff’s Motion for Summary Judgment); Dkt. 158, pg. 35-38 (Defendant Hobbs’  
Cross Motion for Summary Judgment); Dkt. 150, pg. 36-40 (Defendant King County Canvassing Board Members’  
Cross Motion for Summary Judgment).

22 <sup>56</sup> Dkt. 77, pg. 44-47 (Plaintiff’s Motion for Summary Judgment); Dkt. 158 pg. 38-39 (Defendant Hobbs’  
23 Cross Motion for Summary Judgment); Dkt. 150, pg. 40-42 (Defendant King County Canvassing Board Members’  
Cross Motion for Summary Judgment).

1 any documents that would be similarly admissible. CR 56(e). The party may also support its  
2 position by submitting depositions, answers to interrogatories, and admissions. CR 56(e).

### 3 2. Constitutional Challenges

4 The parties have presented conflicting evidence about the efficacy of signature  
5 verification - a critical component, and a genuine issue of material fact in any analysis of the  
6 constitutional issues before the Court. Indeed, other than basic agreements as to Washington's  
7 voting procedure; generally, the parties hotly contest nearly all other aspects of this litigation.<sup>57</sup>  
8 To name just a few, there are competing affidavits and evidence as to alleged adverse impact  
9 of signature verification<sup>58</sup>; whether signature verification promotes election security, greater  
10 access to elections and voter confidence<sup>59</sup>; efficacy of the Secretary's proposed regulations<sup>60</sup>;  
11 and even expert opinions and methodology.<sup>61</sup>

12 The level of conflicting and antagonistic evidence demonstrates there are genuine issues  
13 as to material facts upon which the outcome of the litigation depends, in whole or in part.  
14 Consequently, regardless of the applicable standard of scrutiny, summary judgment in favor of

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16 <sup>57</sup> See e.g., Dkt. 158, pg. 11 (Defendant Hobbs' Opposition) ("Contrary to Plaintiffs' assertion, the State  
disputes virtually all of the evidence cited in their summary judgment motion regarding the alleged effects of  
signature verification.

17 <sup>58</sup> Compare declaration and evidence at Dkt. 77, pg. 11-16 (Plaintiff's Motion for Summary Judgment),  
18 Dkt. 175, pg. 13-14 (Plaintiffs' Reply) with Dkt. 158, pg. 11-14 (Defendant Hobbs' Opposition).

19 <sup>59</sup> Compare declaration and evidence at Dkt. 158, pg. 7-11 (Defendant Hobbs' Opposition), Dkt. 184, pg. 3  
(Defendant Hobbs' Reply), Dkt. 150, pg. 16 (Defendant King County Canvassing Board Members' Opposition)  
20 with Dkt. 77, pg. 23-26, 32-38 (Plaintiffs' Motion for Summary Judgment), Dkt. 175, pg. 4-10 (Plaintiffs' Reply).

21 <sup>60</sup> Compare declarations and evidence at Dkt. 158, pg. 11-16 (Defendant Hobbs' Opposition), Dkt. 184, pg.  
4 (Defendant Hobbs' Reply) with Dkt. 175, pg. 48 (Plaintiffs' Reply).

22 <sup>61</sup> Compare declarations and evidence at Dkt. 158, pg. 11-16 (Defendant Hobbs' Opposition), Dkt. 150, pg.  
33 (Defendant King County Canvassing Board Members' Cross Motion for Summary Judgment), Dkt. 158, pg.  
18, n.1 (Defendant King County Canvassing Board Members' Reply), Dkt. 184, pg. 4-6 (Defendant Hobbs' Reply)  
23 with Dkt. 175, pg. 12, 15-18 (Plaintiffs' Reply).

1 any party as to the constitutional issues of whether the signature verification provision violates  
2 the Washington constitution to vote is **DENIED**.

3 D. Severability

4 Whether the signature verification provision can be severed from Washington's entire  
5 vote-by-mail system if found to be unconstitutional is debatable.<sup>62</sup> Defendants claim it cannot  
6 because the constitutional and unconstitutional provisions are so connected that the legislature  
7 would not have passed one without the other and severing the unconstitutional provision would  
8 make it useless to accomplish the purpose of the legislature.<sup>63</sup> Defendants further point out that  
9 2011 legislation does not contain a severability clause.<sup>64</sup>

10 Plaintiffs counter that the absence of a severability clause is not dispositive, that courts  
11 have retained valid substantive sections of statutes where the statute's procedural provisions  
12 have been held in whole, or in part unconstitutional, and that striking down the portion of the  
13 statute requiring signature verification would not render the entire vote-by-mail system unable  
14 to accomplish its legislative purpose.<sup>65</sup>

15 The ripeness doctrine will aid in identifying where review would be premature. *State*  
16 *v. Bahl*, 164 Wn.2d 739, 751, 193 P.3d 678 (2008). A claim is fit for judicial determination if  
17 the issues raised are primarily legal, do not require further factual development, and the

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18 <sup>62</sup> Dkt. 158, pg. 39-40 (Defendant Hobbs' Cross Motion for Summary Judgment); Dkt. 150, pg. 42-43  
19 (Defendant King County Canvassing Board Members' Cross Motion for Summary Judgment); Dkt. 175, pg. 49-  
20 50 (Plaintiff's Omnibus Response to Cross Motions for Summary Judgment and Reply in Support of Motion for  
20 Summary Judgment).

21 <sup>63</sup> Dkt. 158, pg. 39-40 (citations omitted), Dkt. 175, pg. 175, pg. 42-43 (also arguing signature verification  
21 has been an integral part of absentee voting since 1921 and of universal mail voting since its adoption in 2011).

22 <sup>64</sup> Dkt. 158, pg. 40.

23 <sup>65</sup> Dkt. 175, pg. 49-50 (citations omitted).

1 challenged action is final. *First United Methodist Church v. Hr’g Exam’r*, 129 Wn.2d 238,  
2 255-56, 916 P.2d 374 (1996). The Court must also consider “the hardship to the parties of  
3 withholding court consideration.” *Id.*, at 255 (internal quotation marks omitted).

4 Here, the issue of severance is not primarily legal – it only becomes ripe if the signature  
5 verification provision is deemed unconstitutional, which, as noted above, can only be  
6 determined after further factual development. Nor does reserving the issue of severability  
7 create a hardship to the parties. Therefore, whether the signature verification requirement can  
8 be severed is not ripe and is **RESERVED**.

9 E. Motion to Exclude Plaintiffs’ Expert – ER 702

10 Defendant King County Canvassing Board, joined by Defendant Hobbs, moves to  
11 exclude the opinions of Dr. Herron and Dr. Mohammed under Evidence Rule (ER) 702.<sup>66</sup>  
12 Expert testimony in the form of an opinion is permitted if “scientific, technical, or other  
13 specialized knowledge will assist the trier of fact to understand the evidence or to determine a  
14 fact in issue” and “a witness qualified as an expert by knowledge, skill, experience, training,  
15 or education.” ER 702. Both Dr. Herron and Dr. Mohammed possess the expertise, training,  
16 and education to testify as experts. Moreover, their respective specialized knowledge will assist  
17 the trier of fact to understand the evidence or determine a fact. *See e.g., Donald J. Trump for*  
18 *President, Inc. v. Bullock*, 491 F. Supp. 3d 814, 835 (D. Mont. 2020) (The record is replete  
19 with evidence that Montana's elections and the use of mail ballots present no significant risk of  
20 fraud. The Declaration of Dr. Michael Herron is particularly enlightening.).<sup>67</sup> Challenges to

21 \_\_\_\_\_  
22 <sup>66</sup> Dkt. 150, pg. 33; Dkt. 158, pg. 18, n.1.

23 <sup>67</sup> See also *C.L. v. Dep’t of Soc. & Health Servs.*, 200 Wn. App. 189, 200, 402 P.3d 346 (2017) (In general,  
24 summary judgment is not appropriate when experts offer competing, apparently competent evidence That is

1 findings and the adequacy of methodology are potential fodder for cross-examination and goes  
2 to weight, not admissibility.

3 For the reasons stated above, IT IS HEREBY ORDERED:

- 4 1. Defendants' Motion to Dismiss for failure to join indispensable partis is **DENIED**.
- 5 2. The *Anderson-Burdick* standard of scrutiny will be used to analyze the constitutional  
6 challenges to the Signature Verification statute.
- 7 3. Plaintiffs' Motion for Summary Judgment is **DENIED**.
- 8 4. Defendant Hobbs' Motion for Summary Judgement is **DENIED**.
- 9 5. Defendant King County Canvassing Board Members' Motion for Summary Judgment  
10 is **Denied**.
- 11 6. Whether signature verification provision can be severed is **RESERVED**.
- 12 7. Defendants' Motion to Exclude opinions of Dr. Herron and Dr. Mohammed is  
13 **DENIED**.

14 IT IS SO ORDERED.

15 Dated this 12<sup>th</sup> day of October, 2023.

16 Mark A. Larrañaga  
17 JUDGE MARK A. LARRAÑAGA

18  
19  
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21  
22 because resolving competing opinions involves a credibility determination best left to the finder of fact. *Larson*  
23 *v. Nelson*, 118 Wn.App. 797, 810, 77 P.3d 671 (2003)).

24 ORDER RE: PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT; DEFENDANT  
HOBBS' CROSS MOTION FOR SUMMARY  
JUDGMENT; AND DEFENDANT KING  
COUNTY CANVASSING BOARD MEMBERS  
CROSS MOTION FOR SUMMARY JUDGMENT- 24

HON. MARK A. LARRAÑAGA  
KING COUNTY SUPERIOR COURT  
516 THIRD AVENUE  
COURTROOM W-739  
SEATTLE, WASHINGTON 98104  
(206) 447-1525



King County Superior Court  
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Case Number: 22-2-19384-1  
Case Title: VET VOICE FOUNDATION ET AL VS HOBBS ET AL  
Document Title: ORDER RE MTNS FOR SUMMARY JUDGMENT  
Signed By: Mark Larranaga  
Date: October 12, 2023



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Judge: Mark Larranaga

This document is signed in accordance with the provisions in GR 30.

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