Complaint Description

Glen Morgan (Fri, 21 Jun 2019 at 10:50 AM)

To whom it may concern,

It has come to my attention that One Washington Equality Campaign PAC has committed significant and serious violations of Washington States Campaign Finance laws (**RCW 42.17A**). The Specific violations are identified as follows:

1. Failure to report expenditures made in support or opposition to a ballot proposition (Violation of RCW 42.17A.240 (6))

Specifically, One Washington Equality Campaign PAC has failed to report significant legal services engaged during the promotion of I-1000 and their opposition to R-88. In the attached multiple examples (likely there are more), One Washington Equality Campaign PAC's Co-Chair Nathanial Jackson and Campaign Manager Jesse Wineberry (see C-1PC (amended) filed on 12/18/2018 **PDC Tracking #100877754**) filed multiple legal actions using Foster Pepper LLC as legal counsel. At no time since these legal actions were taken were any of these expenditures reported either as a paid vendor or in-kind contributions. Due to both the complexity of these legal documents and the litigation involved, and the hourly rate of the various attorneys involved in this litigation, these legal expenditures clearly were required to be reported by the One Washington Equality Campaign PAC.

2. Failure to properly report independent expenditures totaling $100 or more in support (or opposition) of a ballot proposition (Violation of RCW 42.17A.255(2))

It is possible the One Washington Equality Campaign PAC might try to argue these expenditures are not required to be reported under **RCW 42.17A**, however I will point out the Recent Washington State Supreme Court Decision (see attached) which clearly refutes any argument that One Washington Equality Campaign PAC might try to produce in order to justify their failure to comply with the law.

"According to Washington State's Fair Campaign Practices Act (FCPA) (**RCW 42.17A**) , more specifically **RCW 42.17A.255**, requires a person (organization) to file a report with the PDC disclosing all "independent expenditures" totaling $ 100 or more during the same election campaign. RCW **42.17A.255(2).** Subsection (1) of that statue defines "independent expenditure" as "any expenditure that is made in support of or in opposition to any candidate or ballot proposition." **RCW 42.17A.255(1).** "Ballot proposition" is defined in **RCW 42.17A.005(4)**as any "measure" as defined by **RCW 29A.04.091** [i.e., "any proposition or question submitted to the voters"], or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures."

Since Nathanial Jackson is a listed co-chair of the One Washington Equality Campaign PAC, his legal actions, on behalf of and in support of the political goals of both the I-1000 initiative to the legislature campaign and in opposition to R-88 clearly fall within the scope of Washington State's Fair Campaign Practices Act. Campaign Manager Jesse Wineberry's legal documents would also fall within the scope of the FCPA reporting requirements. Neither individual filed these documents Pro Se.

This PAC also has highlighted an unusual campaign finance loophole which I've mentioned on a few occasions over the past few years in regards to the use of unpaid debt to hide (or delay the identity) of campaign donors). There is exceptional debt incurred by this campaign which has, as of this complaint, not yet been paid. It seems likely that, unless these vendors forgive this debt (and therefore the debt becomes in-kind contributions), the payment of this debt in the future by an as-yet unidentified contributor to this PAC is a significant and effective method for campaigns to obscure and hide multi-million dollar campaign contributions from the public until the revelation of these shadow contributors are revealed long after the political initiative campaign itself is over and the public knowledge can no longer make an impact on the political initiative or referendum being sponsored.

Regardless, this political action committee has clearly violated the law and the PDC should take steps to ensure the law is followed in this matter.

Please feel free to contact me if you need further information.

Best Regards,

Glen Morgan

What impact does the alleged violation(s) have on the public?

The public has almost no idea who is really funding this campaign (due to the massive debt as yet unpaid). The public also doesn't truly know how much this campaign has spent, and this complaint only details one obvious deficiency in the reporting requirements of this political committee

List of attached evidence or contact information where evidence may be found.

All documents attached, possibly additional legal documents which have unreported expenditures in these matters do exist.

List of potential witnesses with contact information to reach them.

All officers of the PAC and their legal counsel referenced at Foster Pepper LLP

Complaint Certification:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.

PUBLIC DISCLOSURE COMMISSION

711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
Toll Free 1-877-601-2828

Political Committee Registration

C1PC (1/12)

100877754
AMENDS
~~100877466~~
~~12-18-2018~~

Committee Name (Include sponsor in committee name. See next page for definition of "sponsor." Show entire official name. Do not use abbreviations or acronyms in this box.)
ONE WASHINGTON EQUALITY CAMPAIGN

Acronym:

Telephone: 206-701-4188

Mailing Address
PO BOX 27113

Fax:

City: SEATTLE | County: KING | Zip + 4: 98165

E-mail: INFO@YESON1000.COM

NEW OR AMENDED REGISTRATION?
- [X] NEW. Complete entire form.
- [ ] AMENDS previous report. Complete entire form.

COMMITTEE STATUS
- [ ] Continuing (On-going; not established in anticipation of any particular campaign election.)
- [X] 2019 (Year) election year only. Date of general or special election: 11/05/2019

1. What is the purpose or description of the committee?

- [ ] **Bona Fide Political Party Committee** - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list of the names of the candidates you support.
- [X] **Ballot Committee** - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: **AFFIRMATIVE ACTION**

Ballot Number: 1000 FOR [X] AGAINST [ ]

- [ ] **Other Political Committee** - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name:

For single election-year only committees (not continuing committees): Is the committee supporting or opposing
(a) one or more candidates? [ ] Yes [ ] No If yes, attach a list of each candidate's name, office sought and political party affiliation.
(b) the entire ticket of a political party? [ ] Yes [ ] No If yes, identify the party:

2. Related or affiliated committees. List name, address and relationship.
[ ] Continued on attached sheet.

3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.)

If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.

[ ] **MINI REPORTING**
Mini Reporting is selected. No more than $5,000 will be raised or spent and no more than $500 in the aggregate will be accepted from any one contributor.

[X] **FULL REPORTING**
Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.

4. Campaign Manager's or Media Contact's Name and Address
JESSE WINEBERRY
3511 E COLUMBIA ST, SEATTLE WA 98122

Telephone Number: 206-701-4188

5. Treasurer's Name and Address. Does treasurer perform only ministerial functions? Yes [X] No [ ]. See WAC 390-05-243 and next page for details. List deputy treasurers on attached sheet. [ ] Continued on attached sheet.
ANDY LO
PO BOX 27113, SEATTLE WA 98165

Daytime Telephone Number: 206-335-8815

6. Persons who perform only ministerial functions on behalf of this committee and on behalf of candidates or other political committees. List name, title, and address of these persons. See WAC 390-05-243 and next page for details. [ ] Continued on attached sheet.

7. Committee Officers and other persons who authorize expenditures or make decisions for committee. List name, title, and address. See next page for definition of "officer." [X] Continued on attached sheet.

JESSE WINEBERRY, CO-CHAIR, 3511 E COLUMBIA ST, SEATTLE WA 98122
GERALD HANKERSON, CO-CHAIR, 3511 E COLUMBIA ST, SEATTLE WA 98122
GROVER JOHNSON, CO-CHAIR, 3511 E COLUMBIA ST, SEATTLE WA 98122

8. Campaign Bank or Depository: **BECU** | Branch: **LAKE CITY** | City: **SEATTLE**

9. Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address.

Street Address, Room Number, City where campaign books will be available for inspection
10517 35TH AVE NE, SEATTLE

In order to make an appointment, contact the campaign at (telephone, fax, e-mail): **(206) 335-8815 TREASURER@ANDY-LO.COM**

10. **Eligibility to Give to Political Committees and State Office Candidates:** A committee must receive $10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of $10 or more each from at least ten Washington State registered voters.

[X] A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.

11. **Signature and Certification**. I certify that this statement is true, complete and correct to the best of my knowledge.

Committee Treasurer's Signature: ANDY LO
Date: 12-18-2018

Attachment to C1PC – Political Committee Registration

Name **ONE WASHINGTON EQUALITY CAMPAIGN**

2. Related or affiliated committees

5. Deputy Treasurers Name and Address.

6. Persons who perform only ministerial functions, Name, Title and Address.

7. Committee Officers, List Name, Title and Address.

NATHANIEL JACKSON **CO-CHAIR** **3511 E COLUMBIA ST, SEATTLE WA 98122**

☐ EXPEDITE
☒ No Hearing set
☐ Hearing is set:
Date:
Time:
Judge/Calendar: Honorable Carol Murphy

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

IN THE MATTER OF:

A CHALLENGE TO THE PROPOSED BALLOT TITLE & MEASURE SUMMARY FOR REFERENDUM MEASURE NO. 88

No. 19-2-02372-34

OPENING BRIEF SUPPORTING NATHANIEL JACKSON'S PETITION APPEALING PROPOSED BALLOT TITLE & MEASURE SUMMARY

[filed May 17 pursuant to Court's Notice Of Assignment And Notice Of Ballot Title Appeal Deadlines in this case]

Table of Contents

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I. SUMMARY OF THIS BRIEF

This case involves three measures:

(1) the recently enacted legislative measure entitled "Initiative 1000" *[this brief's Tab A]*

(2) the previously filed Initiative Measure No. 1000 *[Petition Exhibit 1]*

(3) the currently filed Referendum Measure No. 88. *[Petition Exhibit 2]*

Part II of this brief outlines the basic (and undisputed) facts concerning these three measures – including the fact that all three measures have the exact same text.

Part III of this brief addresses the **ballot title** proposed for Referendum Measure No. 88:

Since Referendum Measure No. 88 and Initiative Measure No. 1000 have the exact same text, they necessarily have the exact same subject. The subject stated to voters in the *referendum* measure's ballot title should therefore be the exact same as the subject previously stated to voters in the *initiative* measure's ballot title. But it's not. Petitioner asks that this discrepancy be corrected so no voter is misled into thinking that since the subject of these two measures is worded differently the text of these two measures is worded differently too. *Infra, Part III.A.*

The proposed ballot title for Referendum Measure No. 88 ultimately asks the voter to approve or reject "this measure" without clearly telling that voter which "measure" the voter is being asked to approve or reject: (1) the *legislative* measure entitled "Initiative 1000", (2) the *initiative* measure entitled "Initiative Measure No. 1000", or (3) the *referendum* measure entitled "Referendum Measure No. 88". Petitioner asks that this ambiguity be eliminated so the ballot title unambiguously informs voters which "measure" the ballot is asking them to approve or reject. *Infra, Part III.B.*

Part IV of this brief addresses the **measure summary** proposed for Referendum Measure No. 88. That summary states the measure being approved or rejected would "require" a commission to "draft implement legislation" – but all three measures instead say the commission "may propose or oppose legislation". Petitioner asks that the measure summary's false statement be corrected so no voter is misled. *Infra, Part IV.*

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II. THE THREE "MEASURES" INVOLVED

1. The Legislative Measure at Issue: "Initiative 1000"

A copy of the Certificate Of Enrollment for the legislative measure at issue in this case is attached at Tab A of this brief. This measure, as passed by the legislature, is repeatedly and consistently entitled "Initiative 1000".

This legislative measure's Certification Of Enrollment is titled in bold font "**INITIATIVE 1000**":

CERTIFICATION OF ENROLLMENT

INITIATIVE 1000

Chapter 160, Laws of 2019

66th Legislature
2019 Regular Session

Tab A at first page.

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The Senate and House Certificates confirming this legislative measure's enactment into law "certify that the attached is **INITIATIVE 1000**" as passed into law (bold font in original):

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **INITIATIVE 1000** as passed by the Senate and the House of Representatives on the dates hereon set forth.

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **INITIATIVE 1000** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Tab A at first page.

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And the legislative measure so enacted is then unequivocally entitled "**INITIATIVE 1000**" in bold font:

> INITIATIVE 1000
>
> Passed Legislature - 2019 Regular Session
>
> **State of Washington** **66th Legislature** **2019 Regular Session**
>
> **By** People of the State of Washington

Tab A at second page.

2. The Precipitating Initiative Measure: "Initiative Measure No. 1000"

A copy of Initiative Measure No. 1000 was attached to the Petition as Exhibit 1.

Its first page lists its title as "Initiative Measure No. 1000" and its filing date as "filed August 15, 2018". Its text is the exact same as the above legislative measure entitled "INITIATIVE 1000".

The Attorney General drafted the following Ballot Title for that text:

> **BALLOT TITLE**
>
> Statement of Subject: Initiative Measure No. 1000 concerns remedying discrimination and affirmative action.
>
> Concise Description: This measure would allow the state to remedy discrimination for certain groups and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.
>
> Should this measure be enacted into law? Yes [ ] No [ ]

A person dissatisfied with that ballot title filed a ballot title appeal in this Thurston County Superior Court on August 29, 2018. This court issued a Case Scheduling Order on September 6, which set the hearing date for that appeal six weeks after the appeal Petition was filed (October 9). This court dismissed the ballot title appeal at that October 9 hearing.

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3. The Ensuing Referendum Measure: "Referendum Measure No. 88"

A copy of the third measure in this case, Referendum Measure No. 88, was attached to the Petition as Exhibit 2.

Its first page lists its title as "Referendum Measure No. 88" and its filing date as "Filed April 29, 2019". Its text is the exact same as the above legislative measure entitled "INITIATIVE 1000".

The Attorney General drafted the following Ballot Title for that text (*if the sponsor files referendum petitions with a sufficient number of valid voter signatures*):

> **BALLOT TITLE**
>
> Statement of Subject: The legislature passed laws of 2019 chapter 160 (Initiative Measure No. 1000) concerning affirmative action and remedying discrimination and voters have filed a sufficient referendum petition on this act.
>
> Concise Description: This measure would allow the state to remedy discrimination for certain groups and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.
>
> Should this measure be _____ Approved _____ Rejected

The Attorney General also drafted the following Measure Summary for that text:

> **BALLOT MEASURE SUMMARY**
>
> This measure would allow the state to remedy documented or proven discrimination against, or underrepresentation of, certain disadvantaged groups. It would allow the state to implement affirmative action in public education, employment, and contracting if the action does not use quotas or preferential treatment. It would define affirmative action and preferential treatment. The measure would establish a Governor's commission on diversity, equity, and inclusion, and require the commission to draft implementing legislation and publish reports.

Persons dissatisfied with the above ballot title and ballot measure summary filed two separate appeals in this Thurston County Superior Court on May 14, 2019. In this appeal

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(No. 19-2-02372-34), the court issued a Notice Of Assignment And Notice Of Ballot Title Appeal Deadlines setting today (May 17) as the deadline for the opening brief of this appeal's petitioner (the Initiative Measure No. 1000 sponsor, Nathaniel Jackson).

III. BALLOT TITLE DEFECTS

Washington law mandates that the ballot title for ballot measures "consists of: (a) a statement of the subject of the measure; (b) a concise description of the measure; and (c) a question in the form prescribed in this section for the ballot measure in question." RCW 29A.72.050(1).

Washington law further mandates that once the ballot title is finalized (after appeal, if any), that ballot title "shall be the title of the measure in all petitions, ballots, and other proceedings in relation thereto." RCW 29A.72.090.

A. Proposed Ballot Title's Statement of the Subject

Washington law mandates that: "The statement of the subject of a measure must be sufficiently broad to reflect the subject of the measure, sufficiently precise to give notice of the measure's subject matter, and not exceed ten words." RCW 29A.72.050(1).

This precisely worded statement of the subject for Initiative Measure No. 1000 told voters the text at issue in this case "concerns remedying discrimination and affirmative action". *Supra, Part II.2.*

This precise "remedying discrimination and affirmative action" statement of the text's subject was on the Initiative Measure No. 1000 signature petitions signed by almost 400,000 voters last Fall.[1]

Since Referendum Measure No. 88 has the exact same ***text*** as Initiative Measure No. 1000, consistency requires the precisely worded statement of the subject for Referendum

[1] *See, e.g., April 11, 2019 Brief Of Initiative 1000 Sponsor Nat Jackson in Kan Qui, et al. v. Kim Wyman (Washington Supreme Court No. 97020-3) at p.4, n.5 (395,938 signatures on the Initiative 1000 petitions submitted to Secretary of State).*

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Measure No. 88 to tell voters (and signature petition readers) the exact same ***subject***. Specifically, that the subject of the text in these measures "concerns remedying discrimination and affirmative action".

Doing otherwise unnecessarily invites a voter (or signature petition reader) to be misled by the logical conclusion that since the Attorney General worded the ***subject*** of these two measures differently, the ***text*** of these two measures is worded differently.

Petitioner recognizes that some might dismiss as irrelevant the fact that voters and signature petition readers were told the subject of Initiative Measure No. 1000's text was "remedying discrimination and affirmative action", while the Attorney General proposes that those same voters and signature petition readers now be told that the subject of Referendum Measure No. 88's text is "affirmative action and remedying discrimination".

But that difference is not irrelevant. The first subject statement told voters and signature petition readers that the measure's first priority is "remedying discrimination". And the second subject statement tells voters and signature petition readers that the measure's first priority is "affirmative action".

But it's the exact same text. No lawful or legitimate purpose is served by having the precise statement of the subject for these two measures tell voters and signature petition readers that these two measures have a difference in priorities. Petitioner respectfully submits that this discrepancy be corrected by having the Referendum Measure No. 88 ballot title tell voters and signature petition signers the same subject that the Initiative Measure No. 1000 ballot title told voters and signature petition signers: "remedying discrimination and affirmative action".

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B. Proposed Ballot Title's Statement of What the Voter is Voting to Approve or Reject

This case involves three measures:

(1) the recently enacted legislative measure entitled "Initiative 1000" *[this brief's Tab A]*

(2) the previously filed Initiative Measure No. 1000 *[Petition Exhibit 1]*

(3) the currently filed Referendum Measure No. 88. *[Petition Exhibit 2]*

Supra, Parts II.1-3 of this brief.

And the Ballot Title proposed for the November ballot on the third of those measures (Referendum Measure No. 88) would state (bold added):

> **BALLOT TITLE** [attorney general proposal]
>
> Statement of Subject: The legislature passed laws of 2019 chapter 160 (Initiative Measure No. 1000) concerning affirmative action and remedying discrimination and voters have filed a sufficient referendum petition on this act.
>
> Concise Description: **This measure** would allow the state to remedy discrimination for certain groups and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.
>
> Should **this measure** be _____ Approved _____ Rejected

Supra, Part II.3 of this brief.

That proposed ballot title fails to clearly inform the voter voting on the Referendum Measure No. 88 ballot which of the three measures involved is the "this measure" being approved or rejected. That proposed ballot title also fails to clearly inform the voter reading a signature petition to put Referendum Measure No. 88 on the ballot which of the three measures involved is the "this measure" being referenced.

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Washington law mandates that:

> For a referendum measure by state voters on **a bill the legislature has passed**, the ballot issue must be displayed on the ballot substantially as follows:
>
> > **The legislature passed . . . Bill No. . . .** concerning (statement of subject) and voters have filed a sufficient referendum petition on this bill. This bill would (concise description). Should **this bill** be:
> >
> > Approved ..... □
> >
> > Rejected ..... □

RCW 29A.72.050(5) (bold added).

The law passed by the legislature in this case was not a typical legislative bill enacted under a typical bill number (e.g., HB 4222). Instead, as previously shown in Part II.1 of this brief, the law passed by the legislature in this case was a certified initiative to the legislature and was enacted under its initiative number ("INITIATIVE 1000").

The ballot title mandated by Washington law – and the ballot title that eliminates the previously noted "this measure" ambiguity – accordingly states:

> > **The legislature passed Initiative 1000** concerning (statement of subject) and voters have filed a sufficient referendum petition on this bill. This bill would (concise description). Should **Initiative 1000** be:
> >
> > Approved ..... □
> >
> > Rejected ..... □

Petitioner respectfully submits that the "this measure" ambiguity in the currently proposed Referendum Measure No. 88 ballot title be removed by amending it to use the above language pursuant to RCW 29A.72.050(5).

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C. Ballot Title Conclusion

To remove the defects discussed above, Petitioner requests that this court amend the currently proposed Ballot Title for Referendum Measure No. 88 to state as follows:

> **BALLOT TITLE** [petitioner proposal]
>
> Statement of Subject: The legislature passed Initiative 1000 concerning remedying discrimination and affirmative action, and voters have filed a sufficient referendum petition on this act.
>
> Concise Description: This bill would allow the state to remedy discrimination for certain groups and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.
>
> Should Initiative 1000 be _____ Approved _____ Rejected

IV. BALLOT MEASURE SUMMARY DEFECTS

In addition to the referendum measure ballot title required by RCW 29A.72.050, Washington law also requires the attorney general to formulate a Measure Summary that does not exceed 75 words. RCW 29A.72.060.

Washington law requires this Measure Summary to be printed on the referendum measure's signature petitions directly after the referendum measure's ballot title. RCW 29A.72.090 (the measure summary "shall appear on all petitions directly following the ballot title").

The Measure Summary currently proposed for Referendum Measure No. 88 is (italic font added) states in full:

> **BALLOT MEASURE SUMMARY** [attorney general proposal]
>
> *This measure would* allow the state to remedy documented or proven discrimination against, or underrepresentation of, certain disadvantaged groups. It would allow the state to implement affirmative action in public education, employment, and contracting if the action does not use quotas or preferential treatment. It would define affirmative action and preferential treatment. *The measure would establish a Governor's commission on diversity, equity, and inclusion, and require the commission to draft implementing legislation and publish reports.*

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This Measure Summary tells every voter considering whether or not to sign a referendum signature petition that "This measure would ... establish a Governor's commission on diversity, equity, and inclusion, and require the commission to draft implementing legislation and publish reports."

But part of what the proposed Measure Summary says is false. The legislative measure that this referendum measure asks voters to approve or reject does not "require the commission to draft implementing legislation". Instead, the legislative measure at issue says "The commission may propose and oppose legislation". Section 5(1).

The proposed Measure Summary is also ambiguous in that it does not tell a voter reading the signature petition which of the three measures involved is the measure being summarized: (1) the legislative measure entitled "Initiative 1000", (2) the initiative measure entitled "Initiative Measure No. 1000", or (3) the referendum measure entitled "Referendum Measure No. 88".

To remove these defects, Petitioner requests that this court clarify and correct the Ballot Measure Summary language italicized above to instead state as follows:

> **BALLOT MEASURE SUMMARY** [petitioner proposal]
> Initiative 1000 would allow the state to remedy documented or proven discrimination against, or underrepresentation of, certain disadvantaged groups. It would allow the state to implement affirmative action in public education, employment, and contracting if the action does not use quotas or preferential treatment. It would define affirmative action and preferential treatment. Initiative 1000 would establish a Governor's commission on diversity, equity, and inclusion, which may propose and oppose legislation and shall publish reports.

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V. CONCLUSION

Washington law recognizes that the purpose of the ballot language appeal statute is to assure that an improperly worded title or summary do not remain on signature petitions so as to mislead signers, or on ballots to mislead voters. See *State v. Broadaway*, 133 Wn.2d 118, 125-126, 942 P.2d 363 (1997). Petitioner respectfully requests that this court order the Ballot Title and Ballot Measure Summary for Referendum Measure No. 88 be clarified and corrected as explained in Parts III & IV of this brief so they read as follows:

BALLOT TITLE [petitioner proposal]

Statement of Subject: The legislature passed Initiative 1000 concerning remedying discrimination and affirmative action, and voters have filed a sufficient referendum petition on this act.

Concise Description: This bill would allow the state to remedy discrimination for certain groups and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.

Should Initiative 1000 be _____ Approved _____ Rejected

BALLOT MEASURE SUMMARY [petitioner proposal]

Initiative 1000 would allow the state to remedy documented or proven discrimination against, or underrepresentation of, certain disadvantaged groups. It would allow the state to implement affirmative action in public education, employment, and contracting if the action does not use quotas or preferential treatment. It would define affirmative action and preferential treatment. Initiative 1000 would establish a Governor's commission on diversity, equity, and inclusion, which may propose and oppose legislation and shall publish reports.

For the court's convenience, a redline showing petitioner's above revisions for this referendum measure's ballot title and measure summary is attached to this brief at Tab B.

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RESPECTFULLY SUBMITTED this 17th day of May, 2019.

s/ Thomas F. Ahearne
Thomas F. Ahearne, WSBA #14844
Andrea L. Bradford, WSBA #45748
FOSTER PEPPER PLLC
1111 Third Avenue, Suite 3000
Seattle, Washington 98101-3296
Telephone: (206) 447-4400
Email: ahearne@foster.com
andrea.bradford@foster.com
Attorneys for Nathaniel Jackson
(the Initiative Measure No. 1000 Sponsor)

CERTIFICATE OF SERVICE

The undersigned certifies that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty-one years, I am not a party to this action, and I am competent to be a witness herein.

The undersigned declares that on May 17, 2019, I caused the attached OPENING BRIEF OF INITIATIVE MEASURE NO. 1000 SPONSOR to be served on:

Callie A. Castillo, WSBA #38214 Washington State Attorney General 125 Washington St SE Olympia, WA 98504-0100 Telephone: (360) 664-0869 Email: callie.castillo@atg.wa.gov kristin.jensen@atg.wa.gov ***Counsel for Washington State Attorney General and Secretary of State***	☐ via hand delivery ☐ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Dmitri Iglitzin Melissa Greeberg Jennifer Woodward Barnard Iglitzin & Lavitt 18 West Mercer Street, Suite 400 Seattle, WA 98119 Telephone: (206) 257-6003 Email: iglitzin@workerlaw.com greenberg@workerlaw.com woodward@workerlaw.com ***Counsel for Petitioner Washington State Labor Council***	☐ via hand delivery ☐ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Joel B. Ard Ard Law Group PLLC PO Box 11633 Bainbridge Island, WA 98110-5633 Telephone: (206) 701-9243 Email: joel@ard.law ***Counsel for Let the People Vote***	☐ via hand delivery ☐ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Kan Qiu 15600 NE 8th St. Ste B1-309 Bellevue, WA 98008 Telephone: (425) 998-7199 Email: ACEUSWA@gmail.com ***Referendum No. 88 Sponsor***	☐ via hand delivery ☐ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF

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

DATED this 17th day of May, 2019, at Seattle, Washington.

s/ Alyssa Jaskot
Alyssa Jaskot

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Tab A

(the legislatitve bill at issue)

INITIATIVE 1000

Certificate of Enrollment

CERTIFICATION OF ENROLLMENT

INITIATIVE 1000

Chapter 160, Laws of 2019

66th Legislature
2019 Regular Session

Effective date: July 28, 2019

Passed by the House April 28, 2019
Yeas 56 Nays 42

Speaker of the House of Representatives

Passed by the Senate April 28, 2019
Yeas 26 Nays 22

President of the Senate

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **INITIATIVE 1000** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **INITIATIVE 1000** as passed by the Senate and the House of Representatives on the dates hereon set forth.

FILED

APR 2 9 2019

Secretary of State
State of Washington

INITIATIVE 1000

Passed Legislature - 2019 Regular Session

State of Washington **66th Legislature** **2019 Regular Session**

By People of the State of Washington

AN ACT Relating to diversity, equity, and inclusion; amending RCW 49.60.400 and 43.43.015; adding a new section to chapter 43.06 RCW; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

PART I
TITLE AND INTENT

NEW SECTION. **Sec. 1.** This act may be known and cited as the Washington state diversity, equity, and inclusion act.

NEW SECTION. **Sec. 2.** The intent of the people in enacting this act is to guarantee every resident of Washington state equal opportunity and access to public education, public employment, and public contracting without discrimination based on their race, sex, color, ethnicity, national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military status. This is accomplished by: Restoring affirmative action into state law without the use of quotas or preferential treatment; defining the meaning of preferential treatment and its exceptions; and establishing a governor's commission on diversity, equity, and inclusion.

PART II

PROHIBITION OF DISCRIMINATION AND PREFERENTIAL TREATMENT

Sec. 3. RCW 49.60.400 and 2013 c 242 s 7 are each amended to read as follows:

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, ((~~or~~)) national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military status in the operation of public employment, public education, or public contracting.

(2) This section applies only to action taken after December 3, 1998.

(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, ((~~or~~)) national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military status.

(4) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

(5) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.

(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if the director of the office of financial management, in consultation with the attorney general and the governor's commission on diversity, equity, and inclusion, determines that ineligibility ((~~would~~)) will result in a material loss of federal funds to the state.

(7) Nothing in this section prohibits schools established under chapter 28A.715 RCW from:

(a) Implementing a policy of Indian preference in employment; or

(b) Prioritizing the admission of tribal members where capacity of the school's programs or facilities is not as large as demand.

(8) Nothing in this section prohibits the state from remedying discrimination against, or underrepresentation of, disadvantaged groups as documented in a valid disparity study or proven in a court of law.

(9) Nothing in this section prohibits the state from implementing affirmative action laws, regulations, policies, or procedures such as participation goals or outreach efforts that do not utilize quotas and that do not constitute preferential treatment as defined in this section.

(10) Nothing in this section prohibits the state from implementing affirmative action laws, regulations, policies, or procedures which are not in violation of a state or federal statute, final regulation, or court order.

11 For the purposes of this section((~~,~~)):

(a) "State" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state;

(b) "State agency" means the same as defined in RCW 42.56.010;

(c) "Affirmative action" means a policy in which an individual's race, sex, ethnicity, national origin, age, the presence of any sensory, mental, or physical disability, and honorably discharged veteran or military status are factors considered in the selection of qualified women, honorably discharged military veterans, persons in protected age categories, persons with disabilities, and minorities for opportunities in public education, public employment, and public contracting. Affirmative action includes, but shall not be limited to, recruitment, hiring, training, promotion, outreach, setting and achieving goals and timetables, and other measures designed to increase Washington's diversity in public education, public employment, and public contracting; and

(d) "Preferential treatment" means the act of using race, sex, color, ethnicity, national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability, and honorably discharged veteran or military status as the sole qualifying factor to select a lesser qualified candidate over a more qualified candidate for a public education, public employment, or public contracting opportunity.

((~~(9)~~)) (12) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

((~~(10)~~)) (13) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

Sec. 4. RCW 43.43.015 and 1985 c 365 s 4 are each amended to read as follows:

For the purposes of this chapter, "affirmative action" means, in addition to and consistent with the definition in section 3 of this act, a policy or procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, honorably discharged military veterans, and ((~~disabled~~)) veterans with disabilities are provided with increased employment opportunities. It shall not mean any ((~~sort~~)) form of quota system.

PART III
CREATION OF THE GOVERNOR'S COMMISSION ON DIVERSITY, EQUITY, AND INCLUSION

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.06 RCW to read as follows:

(1) There is created the governor's commission on diversity, equity, and inclusion. The commission is responsible for planning, directing, monitoring, and enforcing each state agency's compliance with this act. The commission may propose and oppose legislation and shall publish an annual report on the progress of all state agencies in achieving diversity, equity, and inclusion in public education, public employment, and public contracting.

(2) The governor's commission on diversity, equity, and inclusion shall be staffed and funded within the governor's biennial budget. The executive commission members shall be appointed by the governor and serve four-year terms:

(a) Lieutenant governor;

(b) Attorney general;

(c) Superintendent of public instruction;

(d) Commissioner of the department of employment security;

(e) Secretary of the department of transportation;

(f) Director of the department of enterprise services;

(g) Director of the office of minority and women's business enterprises;

(h) Director of the department of commerce;

(i) Director of the department of veterans affairs;

(j) Executive director of the human rights commission;

(k) Director of the office of financial management;

(l) Director of the department of labor and industries;

(m) Executive director of the governor's office of Indian affairs;

(n) Executive director of the Washington state women's commission;

(o) Executive director of the commission on African-American affairs;

(p) Executive director of the commission on Asian Pacific American affairs;

(q) Executive director of the commission on Hispanic affairs;

(r) Chair of the governor's committee on disability issues and employment;

(s) Chair of the council of presidents;

(t) Chair of the board for community and technical colleges;

(u) Chair of the workforce training and education coordinating board;

(v) Executive director of the board of education;

(w) Chair of the board of Washington STEM;

(x) Chair, officer, or director of a state agency or nonprofit organization representing the legal immigrant and refugee community;

(y) Chair, officer, or director of a state agency or nonprofit organization representing the lesbian, gay, bisexual, transgender, and queer community;

(z) Any other agencies or community representatives the governor deems necessary to carry out the objectives of the commission.

(3)(a) The commission shall also consist of the following legislatively appointed members:

(i) Two state senators, one from each of the two largest caucuses, appointed by the president of the senate;

(ii) Two members of the state house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives.

(b) Legislative members shall serve two-year terms, from the date of their appointment.

(4) Each commission member shall serve for the term of his or her appointment and until his or her successor is appointed. Any commission member listed in subsection (2) of this section, who serves by virtue of his or her office, shall be immediately replaced by his or her duly elected or appointed successor.

(5) A vacancy on the commission shall be filled within thirty days of the vacancy in the same manner as the original appointment.

PART IV
MISCELLANEOUS

NEW SECTION. **Sec. 6.** Within three months following the effective date of this section, the office of program research and senate committee services shall prepare a joint memorandum and draft legislation to present to the appropriate committees of the legislature regarding any necessary changes to the Revised Code of Washington to bring nomenclature and processes in line with this act so as to fully effectuate and not interfere in any way with its intent. In preparing the memorandum and draft legislation, the office of program research and senate committee services shall consult with the sponsors of this initiative, the governor's committee on diversity, equity, and inclusion and the state human rights commission.

NEW SECTION. **Sec. 7.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 8.** For constitutional purposes, the subject of this act is "Diversity, Equity, and Inclusion."

--- END ---

TAB B

[referendum measure 88 proposed language]

(underlines show added language; strikethroughs show deleted language)

BALLOT TITLE

Statement of Subject: The legislature passed Initiative 1000 ~~laws of 2019 chapter 160 (Initiative Measure No. 1000)~~ concerning ~~affirmative action and~~ remedying discrimination and affirmative action, and voters have filed a sufficient referendum petition on this act.

Concise Description: ~~This measure~~ Initiative 1000 would allow the state to remedy discrimination for certain groups and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.

Should Initiative 1000 ~~this measure~~ be _____ Approved _____ Rejected

BALLOT MEASURE SUMMARY

~~This measure~~ Initiative 1000 would allow the state to remedy documented or proven discrimination against, or underrepresentation of, certain disadvantaged groups. It would allow the state to implement affirmative action in public education, employment, and contracting if the action does not use quotas or preferential treatment. It would define affirmative action and preferential treatment. ~~The measure~~ Initiative 1000 would establish a Governor's commission on diversity, equity, and inclusion, which may propose and oppose legislation, and shall ~~and require the commission to draft implementing legislation and~~ publish reports.

☐ EXPEDITE
☐ No Hearing set
☒ Hearing is set:
Date: May 29, 2019
Time: 10:00 a.m.
Judge/Calendar: Honorable Carol Murphy

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

IN THE MATTER OF:

A CHALLENGE TO THE PROPOSED BALLOT TITLE & MEASURE SUMMARY FOR REFERENDUM MEASURE NO. 88

No. 19-2-023**46**-34
*[consolidated with No. 19-2-023**72**-34]*

REPLY BRIEF SUPPORTING NATHANIEL JACKSON'S PETITION APPEALING PROPOSED BALLOT TITLE & MEASURE SUMMARY

[filed by noon May 28 pursuant to Court's May 21 Case Schedule Order in this consolidated case]

Table of Contents

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I. INTRODUCTION

Referendum 88 would put the legislature's enactment of Initiative 1000 on the November ballot for voters to either approve or reject. The sponsor of Initiative 1000 (Nat Jackson) filed the appeal in case no. 19-2-02372-34, requesting that this court correct and clarify the referendum's Ballot Title and Ballot Measure Summary. Tab B of his Opening Brief provided a redline of his request.

Mr. Jackson's appeal was consolidated with an appeal filed by the Washington State Labor Council ("WSLC"). Referendum 88 proponent Let People Vote ("LPV") intervened in both appeals. And the Washington Attorney General ("AG") is responding to both appeals.

This Court's May 21 Case Schedule Order requires Mr. Jackson's Reply to the other parties' briefing to be filed by noon today (May 28). This is Mr. Jackson's Reply.

II. REPLY REGARDING BALLOT TITLE DEFECTS

A. Identifying the "Bill No." and "bill" specified in RCW 29A.72.050(5)

No party disputes that the governing ballot title statute in this case states:

> For a referendum measure by state voters on **a bill the legislature has passed**, the ballot issue must be displayed on the ballot substantially as follows:
>
> > **The legislature passed . . . Bill No. . . .** concerning (statement of subject) and voters have filed a sufficient referendum petition on this bill. This bill would (concise description). Should **this bill** be:
> >
> > Approved ..... □
> >
> > Rejected ..... □

RCW 29A.72.050(5) (bold added).

Nor does any party's response dispute that the bill passed by the legislature in this case (a certified initiative to the legislature) was enacted by the Legislature using its initiative number ("INITIATIVE 1000") instead of a traditional bill number (e.g., "HB 4222"). Opening Brief

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Supporting Nathaniel Jackson's Petition Appealing Proposed Ballot Title & Measure Summary ("Mr. Jackson's Opening Brief") at 3-5.

The other parties' responses accordingly do not refute Mr. Jackson's point that the "bill" and "bill number" consistent with the above-quoted RCW 29A.72.050(5) produces the following when inserted into this case's ballot title:

> **The legislature passed Initiative 1000** concerning (statement of subject) and voters have filed a sufficient referendum petition on this bill. This bill would (concise description). Should **Initiative 1000** be:
>
> Approved ..... □
>
> Rejected ..... □

Mr. Jackson's Opening Brief at 10; Attorney General's Combined Response To Petitions Challenging Ballot Title And Summary For Referendum Measure No. 88 ("AG's Response") at 5 (the AG "does not take a position on whether the Court should adopt Petitioner Jackson's proposal"); Brief Of Intervenor Let People Vote ("LPV Brief") at 2nd page (LPV "would not object to the alternative proposed by Nate *[sic]* Jackson") & at 4th page ("This Court should adopt this proposed change"); cf. Washington State Labor Council, AFL-CIO Reply Brief ("WSLC Reply") at 2 (stating "WSLC does not oppose replacing 'laws of 2019 chapter 160 (Initiative Measure No. 1000)' with "Initiative 1000", but also believes saying "Initiative 1000" after that "risks confusing voters").

In short: no party's response to Mr. Jackson refutes his Opening Brief's showing that the ballot title consistent with RCW 29A.72.050(5) states "**The legislature passed Initiative 1000**" and "**Initiative 1000**".

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B. The ballot title's "statement of subject" under RCW 29A.72.050(1)

No party disputes that the ballot title statute provision governing the "statement of subject" for Referendum 88 is the same provision that governed the "statement of subject" for Initiative 1000. RCW 29A.72.050(1). And no party disputes that Referendum 88 and Initiative 1000 have the exact same text. Mr. Jackson's Opening Brief at Exhibit 1 (Initiative 1000 text) and Exhibit 2 (Referendum 88 text).

The other parties' responses do not refute Mr. Jackson's straightforward point that the Referendum 88 ballot title should accordingly tell petition signors and voters the same subject that the Initiative 1000 ballot title told petition signors and voters: namely, "remedying discrimination and affirmative action". Mr. Jackson's Opening Brief at 7-8 (noting the AG's "remedying discrimination and affirmative action" statement of subject for Initiative 1000, that was on the signature petitions signed by almost 400,000 Washington voters last Fall); AG's Response at 6 (the AG "takes no position on whether this Court should adopt Petitioner Jackson's proposal that the statement of subject for Referendum be identical to that of Initiative 1000's"); LPV Brief at 2nd page (LPV "would not object to the alternative proposed by Nate *[sic]* Jackson") & at 3rd page (noting Mr. Jackson's request "hews more closely to the exact I-1000 ballot title", and thus his requested version "satisfies Let People Vote"); but see WSLC Reply at 3 (noting that "having two gerunds next to each other is grammatically awkward" and thus it "prefers" the AG's using a different subject statement to separate the two gerunds).

In short: no party's response to Mr. Jackson refutes his Opening Brief's showing that the statement of subject under RCW 29A.72.050(1) for these two identically worded measures (Referendum 88 & Initiative 1000) should be identically worded to avoid any misperception by petition readers or voters that these two identically worded measures are not worded the same. And the subject of these two identically worded measures is the subject that the Initiative 1000 ballot title stated: "remedying discrimination and affirmative action".

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III. BALLOT MEASURE SUMMARY DEFECTS

All parties agree that the ballot measure summary initially proposed by the AG is defective and must be changed – but they disagree on what the changed wording should be. Mr. Jackson's Opening Brief at 11-12; AG's Response at 7; LPV Brief at 4th page; WSLC Reply at 1-2.

In an attempt to compromise the various parties' differing suggestions, Mr. Jackson offers the following compromise to satisfy the requirement under RCW 29A.72.060 for a summary not to exceed 75 words:

> This measure would allow the state to remedy documented or proven discrimination against, or underrepresentation of, women, veterans, persons with disabilities, and minorities. It would allow the state to implement affirmative action in public education, employment, and contracting without using quotas or preferential treatment. It would define affirmative action and preferential treatment. The measure would establish a Governor's commission on diversity, equity, and inclusion, which may propose and oppose legislation, and shall publish annual reports.

(For consistency, the above summary's "women, veterans, persons with disabilities, and minorities" disclosure could likewise be included in the ballot title's concise description by saying: "Initiative 1000 would allow the state to remedy discrimination against women, veterans, persons with disabilities, and minorities, using affirmative action, without quotas or preferential treatment (as defined), in public education, public employment and public contracting.")

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IV. CONCLUSION

Part II above confirmed that the other parties' responses to Mr. Jackson's Opening Brief do not refute the propriety of the ballot title language requested in his Opening Brief. A proposed Order establishing that ballot title is therefore attached at Tab 1.

Part III above offered a compromise resolution to the various responses' wording requests for the ballot measure summary. A proposed Order establishing that compromise ballot measure summary (and correspondingly consistent ballot title concise description) is therefore attached at Tab 2.

RESPECTFULLY SUBMITTED this 28th day of May, 2019.

s/ Thomas F. Ahearne
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Andrea L. Bradford, WSBA #45748
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Attorneys for Nathaniel Jackson
(the Initiative Measure No. 1000 Sponsor)

☐ EXPEDITE
☐ No Hearing set
☒ Hearing is set:
Date: May 29, 2019
Time: 10:00 a.m.
Judge/Calendar: Honorable Carol Murphy

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

IN THE MATTER OF: A CHALLENGE TO THE PROPOSED BALLOT TITLE & MEASURE SUMMARY FOR REFERENDUM MEASURE NO. 88	No. 19-2-02346-34 *(with No. 19-2-02372-34 consolidated per May 20, 2019 Order)* ORDER ESTABLISHING BALLOT TITLE

The Court having considered the petitions in this consolidated appeal of the proposed ballot title and measure summary for Referendum Measure No. 88, and all pleadings filed in support and opposition thereto, and having heard the arguments presented by counsel, and being fully advised, IT IS HEREBY ORDERED that the ballot title shall read as follows:

BALLOT TITLE

Statement of Subject: The legislature passed Initiative 1000 concerning remedying discrimination and affirmative action, and voters have filed a sufficient referendum petition on this act.

Concise Description: This bill would allow the state to remedy discrimination for certain groups and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.

Should Initiative 1000 be _____ Approved _____ Rejected

DATED this ____ day of May, 2019.

_____
HONORABLE CAROL MURPHY
Superior Court Judge

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TAB 1 *[proposed order]*

Presented by:

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By: *s/ Thomas F. Ahearne*
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Andrea L. Bradford, WSBA #45748
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☐ EXPEDITE
☐ No Hearing set
☒ Hearing is set:
Date: May 29, 2019
Time: 10:00 a.m.
Judge/Calendar: Honorable Carol Murphy

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

IN THE MATTER OF:

A CHALLENGE TO THE PROPOSED BALLOT TITLE & MEASURE SUMMARY FOR REFERENDUM MEASURE NO. 88

No. 19-2-02346-34
(with No. 19-2-02372-34 consolidated per May 20, 2019 Order)

ORDER ESTABLISHING MEASURE SUMMARY & BALLOT TITLE

The Court having considered the petitions in this consolidated appeal of the proposed ballot title and measure summary for Referendum Measure No. 88, and all pleadings filed in support and opposition thereto, and having heard the arguments presented by counsel, and being fully advised, IT IS HEREBY ORDERED that

(1) the ballot measure summary shall read as follows:

BALLOT MEASURE SUMMARY

This measure would allow the state to remedy documented or proven discrimination against, or underrepresentation of, women, veterans, persons with disabilities, and minorities. It would allow the state to implement affirmative action in public education, employment, and contracting without using quotas or preferential treatment. It would define affirmative action and preferential treatment. The measure would establish a Governor's commission on diversity, equity, and inclusion, which may propose and oppose legislation, and shall publish annual reports.

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TAB 2 *[proposed order]*

(2) the corresponding ballot title shall read as follows:

BALLOT TITLE

Statement of Subject: The legislature passed Initiative 1000 concerning remedying discrimination and affirmative action, and voters have filed a sufficient referendum petition on this act.

Concise Description: Initiative 1000 would allow the state to remedy discrimination against women, veterans, persons with disabilities, and minorities, using affirmative action, without quotas or preferential treatment (as defined), in public education, public employment and public contracting.

Should Initiative 1000 be _____ Approved _____ Rejected

DATED this ____ day of May, 2019.

_____
HONORABLE CAROL MURPHY
Superior Court Judge

Presented by:

FOSTER PEPPER PLLC
By: *s/ Thomas F. Ahearne*
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CERTIFICATE OF SERVICE

The undersigned certifies that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty-one years, I am not a party to this action, and I am competent to be a witness herein.

The undersigned declares that on May 28, 2019, I caused the attached REPLY BRIEF SUPPORTING NATHANIEL JACKSON'S PETITION APPEALING PROPOSED BALLOT TITLE & MEASURE SUMMARY to be served on:

Callie A. Castillo, WSBA #38214 Washington State Attorney General 125 Washington St SE Olympia, WA 98504-0100 Telephone: (360) 664-0869 Email: callie.castillo@atg.wa.gov kristin.jensen@atg.wa.gov ***Counsel for Washington State Attorney General and Secretary of State***	☐ via hand delivery ☐ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Dmitri Iglitzin Melissa Greeberg Jennifer Woodward Barnard Iglitzin & Lavitt 18 West Mercer Street, Suite 400 Seattle, WA 98119 Telephone: (206) 257-6003 Email: iglitzin@workerlaw.com greenberg@workerlaw.com woodward@workerlaw.com ***Counsel for Petitioner Washington State Labor Council***	☐ via hand delivery ☐ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Joel B. Ard Ard Law Group PLLC PO Box 11633 Bainbridge Island, WA 98110-5633 Telephone: (206) 701-9243 Email: joel@ard.law ***Counsel for Let the People Vote***	☐ via hand delivery ☐ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Kan Qiu 15600 NE 8th St. Ste B1-309 Bellevue, WA 98008 Telephone: (425) 998-7199 Email: ACEUSWA@gmail.com ***Referendum No. 88 Sponsor***	☐ via hand delivery ☐ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF

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

DATED this 28th day of May, 2019, at Seattle, Washington.

s/ Alyssa Jaskot
Alyssa Jaskot

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No. 97020-3

SUPREME COURT OF THE STATE OF WASHINGTON

KAN QIU, ZHIMING YU, and GANG CHENG,

Plaintiffs/Appellants,

v.

KIM WYMAN, in her official capacity as Washington Secretary of State,

Defendant/Respondent.

AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NAT JACKSON

Thomas F. Ahearne, WSBA No. 14844
Adrian Urquhart Winder, WSBA No. 38071
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I. SUMMARY

This is the amicus brief that the Court's April 4 letter granted the Initiative Sponsor (Nat Jackson) permission to file.

Mr. Jackson's brief is brief. It confirms that the facts material to this appeal's dismissal are few:

- The Initiative Sponsor turned in 395,938 signatures to the Secretary of State.
- That's 136,316 more than required for certification.
- The Secretary of State submitted sworn testimony to the trial court evidencing her conclusion that there were not enough invalid signatures to eliminate that 136,316 surplus.
- Plaintiffs filed a person's unsworn statements alleging that he thinks the Secretary of State's conclusion might have been wrong.

Infra, Part III below. One reason this appeal must be dismissed as a matter of law is that unsworn allegations do not create a genuine issue of fact to evade summary judgment. *Infra*, Part III below.

This brief also notes why this Court's dismissal should be issued promptly:

- Initiative 1000 is an Initiative to the 2019 Legislature.
- The 2019 Legislature adjourns April 28, 2019.
- Initiative 1000's Legislative hearing is set for 8:00 a.m. on April 18, 2019.

Infra, Part IV below. The Initiative 1000 Sponsor believes that citizens' constitutional right under Article II, §1 to submit a certified Initiative to

the Legislature should not be hamstrung by delay. The Initiative 1000 Sponsor respectfully submits that this Court must therefore act with all deliberate speed to terminate any uncertainty with respect to whether Initiative 1000 is or is not a validly certified Initiative for the 2019 Legislature's upcoming hearing and vote pursuant to Article II, §1 of our State Constitution. *Infra*, Part IV below.

II. ISSUES PLAINTIFFS NOW CONCEDE ON APPEAL

A. Plaintiffs' Decision to Omit the Initiative Sponsor as a Party Deprived the Court of Jurisdiction to Issue the Declaratory Judgments their Complaint Sought

Plaintiffs chose to omit the Initiative 1000 sponsor as a party to their Initiative 1000 suit.[1] As the briefing below explained, the court therefore lacked subject matter jurisdiction to grant any of plaintiffs' demands for declaratory relief.[2]

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[1] *Identifying an Initiative's Sponsor is easy – for the Washington Secretary of State website publicly posts every Initiative sponsor's name and contact information. E.g., https://www.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2018&t=I (listing the Initiative 1000 sponsor as follows: "Nathaniel Jackson. Public Contact Information: 6335 Pacific Ave SE, Olympia, WA 98503, Phone: 360-888-7004, natjackson1@comcast.net". App. 147 of 184.*

[2] *App. 149-150 of 184 (noting Washington's Declaratory Judgment Act mandates that "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration"(RCW 7.24.110), and that a plaintiff's failure to do so therefore "deprive[s] the court of jurisdiction to grant declaratory relief." Kendall v. Douglas, Grant, Lincoln and Okanogan Counties Public Hospital District No. 6, 118 Wn.2d 1, 10-11, 820 P.2d 497 (1991)). This was dispositive to any request by plaintiffs for declaratory relief because plaintiffs based their Complaint on RCW 29A.72.240. Feb. 11 Complaint at ¶¶10-11 (bringing their action "pursuant to RCW 29A.72.240"). But RCW 29A.72.240 does not provide for declaratory relief.*

Plaintiffs' opening brief did not dispute plaintiffs' failure to invoke any declaratory judgment jurisdiction in this case.

B. Plaintiffs' Lack Evidence for their Complaint's Allegations about Petition Sheets With Stickers

Plaintiffs' February 11 Complaint alleged the Secretary of State "wrongly counted" the signatures on 218 Initiative petition sheets that had a sticker on the front side of the sheet.[3] The Initiative Sponsor submitted sworn testimony rebutting plaintiffs' unsworn allegations about those stickers.[4]

Plaintiffs' opening brief did not dispute plaintiffs' failure to have any evidence to support their allegations about those petition sheets.

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[3] *February 11, 2019 Complaint For Writ Of Mandate, Declaratory And Injunctive Relief, And Application For Citation ("Feb. 11 Complaint") at ¶¶18-21 (alleging "on information and belief" that the sponsors of I-1000 attached a sticker altering the front of those petitions "after the petitions were signed and before turning them in", and that the "Secretary of State wrongly counted" the signatures on those petitions "as valid signatures in support of I-1000").*

[4] *App. 154-155 & 147-148 of 184 (establishing that the timing of that sticker's placement on those petition sheets was simple: One of the print runs for the Initiative 1000 signature petitions mistakenly printed sheets without the correct Initiative 1000 ballot title and ballot summary on the front; a sticker stating the correct Initiative 1000 ballot title and ballot summary was therefore put on those petition sheets before they were distributed to signature gatherers for signature gathering; and the sticker with the correct ballot title and ballot summary was accordingly on those 218 petition sheets before anyone signed those petition sheets).*

III. PLAINTIFFS' APPEAL FAILS ON THE MERITS

Plaintiffs' opening brief did not dispute the following facts:

- The Initiative Sponsor turned in 395,938 signatures to the Secretary of State.[5]
- That's 136,316 more than required for certification.[6]
- The Secretary of State submitted sworn testimony to the trial court evidencing her conclusion that there were not enough invalid signatures to eliminate that 136,316 surplus.[7]
- *After* the Initiative Sponsor filed his amicus brief in the trial court, plaintiffs filed a person's unsworn statements alleging that that person thinks the Secretary of State's conclusion might have been wrong.[8]

The first reason plaintiffs' appeal must be dismissed as a matter of law is very direct and straightforward: unsworn allegations do not create a genuine issue of fact to evade summary judgment.[9] Plaintiffs' unsworn allegations accordingly did not create a genuine issue of fact to defeat the summary judgment the Secretary of State's sworn testimony showed she was entitled to as a matter of Washington law. This one reason alone

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[5] *App. 62 of 184 at ¶19(a).*

[6] *The number of signatures required under Article II, §1 of the Washington Constitution is 259,622. App. 62 of 184 at ¶18. 395,938 - 259,622 =136,316.*

[7] *App. 57-63 of 184.*

[8] *App. 123-139 of 184. That person's unsworn allegations are also premised on his personal legal conclusions about the interpretation of Washington law.*

[9] *E.g., CR 56(e) ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.").*

establishes that the trial court's dismissal based on plaintiffs' failure to create a genuine issue of material fact was not erroneous.[10]

IV. PLAINTIFFS ARE NOT ENTITLED TO MORE DELAY

Article II, §1 of our State Constitution grants citizens the right to submit an Initiative to the Legislature to force legislators to address legislation that legislators find politically convenient to procrastinate on and put off until "maybe next year".

Initiative 1000 is such an Initiative.

It has now been over 3 months since the January 4 date this Initiative's sponsor turned in 136,316 signatures more than required for certification to the 2019 Legislature. And as noted in Part III above, plaintiffs' appeal fails on the merits as a matter of law. Washington law – and the underlying purpose of citizens' Constitutional right to submit Initiatives to the Legislature – require this Court to dismiss plaintiffs' appeal forthwith in order to terminate any current uncertainty over whether or not Initiative 1000 is a validly certified Initiative that the 2019 Legislature must put through its legislative course before the

[10] *The Initiative Sponsor also agrees with the additional reasons thus far briefed by the Secretary of State, but does not repeat them in order to avoid unnecessary repetition.*

impending April 28 adjournment (e.g., the legislative hearing currently set for 8:00 a.m. on April 18 if this Initiative's certification is resolved [11]).

V. CONCLUSION

The Secretary of State's Response will undoubtedly provide additional reasons why Washington law requires plaintiffs' appeal to be promptly dismissed. But additional reasons are not necessary. For the Secretary of State's reasons, as well as the straightforward reasons noted above, this Court must promptly dismiss plaintiffs' appeal without further delay. Then this Initiative to the 2019 Legislature can proceed in the little legislative time left (mere 17 days from today) without more stalling or uncertainty over whether Initiative 1000 is or is not a validly certified Initiative to the 2019 Legislature.

RESPECTFULLY SUBMITTED this 11th day of April, 2019.

Foster Pepper PLLC

s/ Thomas F. Ahearne
Thomas F. Ahearne, WSBA No. 14844
Adrian Urquhart Winder, WSBA No. 38071

Attorneys for the Initiative 1000 Sponsor, Nat Jackson

[11] *Initiative 1000 is set for public hearing in the Legislature April 18, 2019 at 8:00 a.m., but "subject to change" depending upon how events unfold. https://app.leg.wa.gov/billsummary?BillNumber=1000&Year=2019&Initiative=True ; https://app.leg.wa.gov/committeeschedules/Home/Documents/25803?/House/902/04-08-2019/04-19-2019/Schedule///Bill/ . (It is the Sponsor's understanding that the time was set to allow former Governors Evans, Locke, and Gregoire to testify while they are available in State.)*

FOSTER PEPPER PLLC

April 11, 2019 - 8:46 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	97020-3
Appellate Court Case Title:	Kan Qiu, et al. v. Kim Wyman
Superior Court Case Number:	19-2-00829-3

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☐ EXPEDITE
☐ No Hearing set
☒ Hearing is set:
Date: March 29, 2018
Time: 9:00a.m.
Judge/Calendar: Honorable Chris Lanese

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

KAN QIU, ZHIMING YU, and GANG CHENG,

Plaintiffs,

v.

KIM WYMAN, in her official capacity as Secretary of State of the State of Washington,

Defendant.

No. 19-2-00829-34

AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NATHANIEL JACKSON

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I. INTRODUCTION

Plaintiffs' suit challenges the certification of Initiative 1000. Yesterday, the parties in this suit stipulated and consented to the Initiative 1000 sponsor (Nathaniel Jackson) filing an amicus brief before the March 29 hearing set in this case. Their stipulation was filed in this Court yesterday. Today, the Initiative sponsor is accordingly filing this concise amicus brief and accompanying declaration.

II. AMICUS INITIATIVE 1000 SPONSOR

Nathaniel Jackson is the Initiative 1000 sponsor – a fact confirmed by the Washington Secretary of State website that publicly posts every Initiative sponsor's name and contact information.[1] Mr. Jackson accordingly has an interest in, and familiarity with the underlying issues involved in, this Initiative 1000 lawsuit.

Since none of this lawsuit's parties are the Initiative 1000 sponsor, Mr. Jackson submits this amicus filing to concisely present the Initiative sponsor's perspective directed to the following issues referenced by the parties in this case:

(1) timing with respect to the 218 petition sheets with a sticker on the front;

(2) relevance with respect to those 218 petition sheets; and

(3) appropriate judicial relief with respect to the Initiative sponsor's Initiative.

III. DISCUSSION

1. Timing With Respect To The 218 Petition Sheets With A Sticker On The Front.

The Complaint and Answer reference the 218 petition sheets that had a sticker on the front side of the sheet that accurately stated the Initiative 1000 ballot title and ballot summary.[2]

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[1] *https://www.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2018&t=I (listing the Initiative 1000 sponsor as follows: "Nathaniel Jackson. Public Contact Information: 6335 Pacific Ave SE, Olympia, WA 98503, Phone: 360-888-7004, natjackson1@comcast.net") (last viewed 3/18/2019). Accord, Declaration Of Former Representative Jesse Wineberry Regarding Amicus Brief Of Initiative 1000 Sponsor Nathaniel Jackson at ¶2.*

[2] *February 11, 2019 Complaint For Writ Of Mandate, Declaratory And Injunctive Relief, And Application For Citation ("Feb. 11 Complaint") at ¶¶18-20 (alleging "on information and*

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The timing of that sticker's placement on those petition sheets is simple: One of the print runs for the Initiative 1000 signature petitions mistakenly printed sheets without the correct Initiative 1000 ballot title and ballot summary on the front.[3] A sticker stating the correct Initiative 1000 ballot title and ballot summary was therefore put on those petition sheets before they were distributed to signature gatherers for signature gathering.[4] The sticker with the correct ballot title and ballot summary was accordingly on the 218 petition sheets at issue in this case before anyone signed those petition sheets.[5]

2. Relevance With Respect To Those 218 Petition Sheets.

Plaintiffs' February 11 Complaint alleges that the Secretary of State "wrongly counted" the signatures on the petitions with that sticker on the front side of the sheet.[6] The defendant Secretary of State's Answer denies the signatures on those sheets were wrongly counted.[7]

Dispositively, however, the Initiative 1000 sponsor notes that the 218 petition sheets with the sticker on the front are legally irrelevant in this certification suit. That's because a total of 21,540 petition sheets were submitted with 395,938 signatures – which is over 136,000 more signatures than the 259,622 required for certification.[8] And the 218 petition sheets with the sticker had only 4,158 signatures.[9]

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belief" that the sponsors of I-1000 attached a sticker altering the front of some petitions "after the petitions were signed and before turning them in".); Answer To Complaint By Defendant Kim Wyman, Secretary Of State For The State Of Washington ("Secretary Of State Answer") at ¶¶18-20 (admitting that "218 petition sheets for I-1000 contained a sticker with the established ballot title and ballot summary for I-1000 on the front side of the petition sheet, but with the text of a different measure on the backside of the petition."); accord, Declaration Of Lori Augino, Director Of Elections at ¶¶13-18 & Exhibit 1.

[3] *Declaration Of Former Representative Jesse Wineberry Regarding Amicus Brief Of Initiative 1000 Sponsor Nathaniel Jackson at ¶3.*

[4] *Id.*

[5] *Id.*

[6] *Feb. 11 Complaint at ¶¶18-21 (alleging the "Secretary of State wrongly counted" the signatures on those petitions "as valid signatures in support of I-1000.")*

[7] *Secretary Of State Answer at ¶21.*

[8] *Declaration Of Lori Augino, Director Of Elections at ¶¶13, 17, & 18.*

[9] *Declaration Of Lori Augino, Director Of Elections at ¶15.*

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The Initiative 1000 sponsor accordingly notes that the 218 petition sheets with a sticker on the front could be entirely excluded from the signature count, and that would still leave over 132,000 signatures more than the 259,622 threshold for certification. Since those 218 petition sheets would not change the result, plaintiffs' speculation about the timing of the sticker's placement does not raise any genuine issue of material fact in this suit.

3. Appropriate Judicial Relief With Respect To The Sponsor's Initiative.

Plaintiffs' demands for judicial relief are not proper under the statute they base their Complaint upon (RCW 29A.72.240)[10] – for as the Secretary of State's prior briefing confirmed, the relief plaintiffs' demand falls outside the narrow scope permitted under the statute they invoke.[11]

With respect to plaintiffs' declaratory judgment demands, the Initiative sponsor also notes that the statute upon which plaintiffs base their Complaint does not provide for declaratory relief.[12] And this Court cannot apply the Washington statute that does provide for declaratory

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[10] *Feb. 11 Complaint at ¶¶10-11 (bringing their action "pursuant to RCW 29A.72.240".)*

[11] *Even if RCW 29A.72.240 were amended to grant this Court a broader scope of review, plaintiffs' suit would still fail because plaintiffs do not establish the clear right required for an injunction under Washington law. See Defendant Kim Wyman's CR 56 Motion For Summary Judgment And Supporting Memorandum at n.3 (citing the long established Tyler Pipe prerequisites for injunctive relief under Washington law).*

[12] *RCW 29A.72.240 states in full: "Any citizen dissatisfied with the determination of the secretary of state that an initiative or referendum petition contains or does not contain the requisite number of signatures of legal voters may, within five days after such determination, apply to the superior court of Thurston county for a citation requiring the secretary of state to submit the petition to said court for examination, and for a writ of mandate compelling the certification of the measure and petition, or for an injunction to prevent the certification thereof to the legislature, as the case may be. Such application and all proceedings had thereunder shall take precedence over other cases and shall be speedily heard and determined. The decision of the superior court granting or refusing to grant the writ of mandate or injunction may be reviewed by the supreme court within five days after the decision of the superior court, and if the supreme court decides that a writ of mandate or injunction, as the case may be, should issue, it shall issue the writ directed to the secretary of state; otherwise, it shall dismiss the proceedings. The clerk of the supreme court shall forthwith notify the secretary of state of the decision of the supreme court."*

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relief (Declaratory Judgement Act, RCW 7.24) because plaintiffs' Complaint precludes this Court's exercise of declaratory judgment jurisdiction as a matter of law.[13]

IV. CONCLUSION

Over 2½ months ago (January 4), the Initiative 1000 sponsor turned in over 136,000 signatures more than required for that Initiative's certification to the 2019 Legislature.

Six weeks ago (February 6), the Secretary of State certified Initiative 1000 to the 2019 Legislature for the 2019 Legislature's action before its impending April 2019 adjournment.

And over five weeks ago (February 11), plaintiffs filed this Initiative certification suit's Complaint pursuant to the narrow limitations of RCW 29A.72.240.

Despite the above passage of time, plaintiffs' suit fails to raise any issue – genuine or otherwise – on the one and only question material to this certification lawsuit under RCW 29A.72.240: are over 136,000 of the 395,938 Initiative 1000 signatures invalid? *Ball v. Wyman*, --P.3d--, 2018 WL 7585612 at p. 2-3 (Aug. 24, 2018) ("The purpose of this statute [RCW 29A.72.240] is narrow.... The plain language of RCW 29A.72.240 limits the court to examining whether the petitions 'contain the requisite number of signatures of legal voters.'") (citing *Donohue v. Coe*, 49 Wn.2d 410, 415, 302 P.2d 202 (1956)).

For the reasons noted above, Washington law requires this Court to render judgment forthwith dismissing plaintiffs' February 11 Complaint under RCW 29A.72.240 with prejudice so this certified Initiative to the 2019 Legislature can proceed with taking its legislative course through the 2019 Legislature before the 2019 Legislature's impending April adjournment.

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[13] *Washington's Declaratory Judgment Act mandates that "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration"(RCW 7.24.110), and a plaintiff's failure to do so therefore "deprive[s] the court of jurisdiction to grant declaratory relief." Kendall v. Douglas, Grant, Lincoln and Okanogan Counties Public Hospital District No. 6, 118 Wn.2d 1, 10-11, 820 P.2d 497 (1991). Since plaintiffs' February 11 Complaint did not make the Initiative 1000 sponsor a party to this Initiative 1000 suit, this court lacks subject matter jurisdiction to grant that Complaint's demands for declaratory relief. Id.*

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RESPECTFULLY SUBMITTED this 19th day of March, 2019.

s/ Thomas F. Ahearne
Thomas F. Ahearne, WSBA #14844
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1111 Third Avenue, Suite 3000
Seattle, Washington 98101-3296
Telephone: (206) 447-4400
Email: ahearne@foster.com
Attorneys for amicus Nathaniel Jackson
(the Initiative 1000 Sponsor)

CERTIFICATE OF SERVICE

The undersigned certifies that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty-one years, I am not a party to this action, and I am competent to be a witness herein.

The undersigned declares that on March 19, 2019, I caused to be served the attached AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NATHANIEL JACKSON on the following as follows:

Joel B. Ard, WSBA #40104 P.O. Box 11633 Bainbridge Island, WA 98110 Telephone: (206) 701-9243 Email: joel@ard.law *Attorneys for plaintiffs KAN QIU, ZHIMING YU, and GANG CHENG*	☐ via hand delivery ☒ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Callie A. Castillo, WSBA #38214 Washington State Attorney General 125 Washington St SE Olympia, WA 98504-0100 Telephone: (360) 664-0869 Email: CallieC@ATG.WA.GOV *Attorneys for defendant KIM WYMAN, in her official capacity as Secretary of State of the State of Washington*	☐ via hand delivery ☒ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF

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

DATED this 19th day of March, 2019, Seattle, Washington.

/s/ Alyssa Jaskot
Alyssa Jaskot

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☐ EXPEDITE
☐ No Hearing set
☒ Hearing is set:
Date: March 29, 2018
Time: 9:00a.m.
Judge/Calendar: Honorable Chris Lanese

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

KAN QIU, ZHIMING YU, and GANG CHENG,

Plaintiffs,

v.

KIM WYMAN, in her official capacity as Secretary of State of the State of Washington,

Defendant.

No. 19-2-00829-34

DECLARATION OF FORMER REPRESENTATIVE JESSE WINEBERRY REGARDING AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NATHANIEL JACKSON

JESSE WINEBERRY DECLARES:

1. I am one of the Initiative 1000 personnel involved in resolving the petition printing error with the stickers described in paragraph 3 of this declaration. I am over the age of 18 and am competent to testify herein. I have personal knowledge of the facts contained in this declaration.

2. I am a licensed attorney, was a member of the Washington State House of Representatives for ten years (1985-1995), and served in positions including (but not limited to) Majority Whip and senior ranking member of the House Judiciary Committee. Nathaniel Jackson is the sponsor of Initiative 1000, and over the past year I have been actively involved

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with the Initiative 1000 efforts. The honorary co-chairs of our Initiative 1000 campaign are former Governors Evans, Locke, and Gregoire.

3. One of the print runs for the Initiative 1000 signature petitions mistakenly printed sheets without the correct Initiative 1000 ballot title and ballot summary on the front. We therefore put a sticker stating the correct Initiative 1000 ballot title and ballot summary on those petition sheets before they were distributed to signature gatherers for signature gathering. The sticker with the correct ballot title and ballot summary was accordingly on the 218 petition sheets at issue in this case before anyone signed those petition sheets.

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

DATED this 19th day of March, 2019, at Olympia, Washington.

Jesse Wineberry

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CERTIFICATE OF SERVICE

The undersigned certifies that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty-one years, I am not a party to this action, and I am competent to be a witness herein.

The undersigned declares that on March 19, 2019, I caused to be served the attached DECLARATION OF FORMER REPRESENTATIVE JESSE WINEBERRY REGARDING AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NATHANIEL JACKSON on the following as follows:

Joel B. Ard, WSBA #40104 P.O. Box 11633 Bainbridge Island, WA 98110 Telephone: (206) 701-9243 Email: joel@ard.law *Attorneys for plaintiffs KAN QIU, ZHIMING YU, and GANG CHENG*	☐ via hand delivery ☒ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Callie A. Castillo, WSBA #38214 Washington State Attorney General 125 Washington St SE Olympia, WA 98504-0100 Telephone: (360) 664-0869 Email: CallieC@ATG.WA.GOV *Attorneys for defendant KIM WYMAN, in her official capacity as Secretary of State of the State of Washington*	☐ via hand delivery ☒ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF

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

DATED this 19th day of March, 2019, Seattle, Washington.

/s/ Alyssa Jaskot
Alyssa Jaskot

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PUBLIC DISCLOSURE COMMISSION

711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
Toll Free 1-877-601-2828

Political Committee Registration

C1PC (1/12)

100877754
AMENDS
~~100877466~~
~~12-18-2018~~

Committee Name (Include sponsor in committee name. See next page for definition of "sponsor." Show entire official name. Do not use abbreviations or acronyms in this box.)
ONE WASHINGTON EQUALITY CAMPAIGN

Acronym:

Telephone: 206-701-4188

Mailing Address
PO BOX 27113

Fax:

City: SEATTLE | County: KING | Zip + 4: 98165

E-mail: INFO@YESON1000.COM

NEW OR AMENDED REGISTRATION?
- [X] NEW. Complete entire form.
- [ ] AMENDS previous report. Complete entire form.

COMMITTEE STATUS
- [ ] Continuing (On-going; not established in anticipation of any particular campaign election.)
- [X] 2019 (Year) election year only. Date of general or special election: 11/05/2019

1. What is the purpose or description of the committee?

- [ ] **Bona Fide Political Party Committee** - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list of the names of the candidates you support.
- [X] **Ballot Committee** - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: **AFFIRMATIVE ACTION**

Ballot Number: 1000 FOR [X] AGAINST [ ]

- [ ] **Other Political Committee** - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name:

For single election-year only committees (not continuing committees): Is the committee supporting or opposing
(a) one or more candidates? [ ] Yes [ ] No If yes, attach a list of each candidate's name, office sought and political party affiliation.
(b) the entire ticket of a political party? [ ] Yes [ ] No If yes, identify the party:

2. Related or affiliated committees. List name, address and relationship.
[ ] Continued on attached sheet.

3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.)

If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.

[ ] **MINI REPORTING**
Mini Reporting is selected. No more than $5,000 will be raised or spent and no more than $500 in the aggregate will be accepted from any one contributor.

[X] **FULL REPORTING**
Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.

4. Campaign Manager's or Media Contact's Name and Address
JESSE WINEBERRY
3511 E COLUMBIA ST, SEATTLE WA 98122

Telephone Number: 206-701-4188

5. Treasurer's Name and Address. Does treasurer perform only ministerial functions? Yes [X] No [ ]. See WAC 390-05-243 and next page for details. List deputy treasurers on attached sheet. [ ] Continued on attached sheet.
ANDY LO
PO BOX 27113, SEATTLE WA 98165

Daytime Telephone Number: 206-335-8815

6. Persons who perform only ministerial functions on behalf of this committee and on behalf of candidates or other political committees. List name, title, and address of these persons. See WAC 390-05-243 and next page for details. [ ] Continued on attached sheet.

7. Committee Officers and other persons who authorize expenditures or make decisions for committee. List name, title, and address. See next page for definition of "officer." [X] Continued on attached sheet.

JESSE WINEBERRY, CO-CHAIR, 3511 E COLUMBIA ST, SEATTLE WA 98122
GERALD HANKERSON, CO-CHAIR, 3511 E COLUMBIA ST, SEATTLE WA 98122
GROVER JOHNSON, CO-CHAIR, 3511 E COLUMBIA ST, SEATTLE WA 98122

8. Campaign Bank or Depository: **BECU** | Branch: **LAKE CITY** | City: **SEATTLE**

9. Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address.

Street Address, Room Number, City where campaign books will be available for inspection
10517 35TH AVE NE, SEATTLE

In order to make an appointment, contact the campaign at (telephone, fax, e-mail): **(206) 335-8815 TREASURER@ANDY-LO.COM**

10. **Eligibility to Give to Political Committees and State Office Candidates:** A committee must receive $10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of $10 or more each from at least ten Washington State registered voters.

[X] A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.

11. **Signature and Certification**. I certify that this statement is true, complete and correct to the best of my knowledge.

Committee Treasurer's Signature: ANDY LO
Date: 12-18-2018

Attachment to C1PC – Political Committee Registration

Name **ONE WASHINGTON EQUALITY CAMPAIGN**

2. Related or affiliated committees

5. Deputy Treasurers Name and Address.

6. Persons who perform only ministerial functions, Name, Title and Address.

7. Committee Officers, List Name, Title and Address.

NATHANIEL JACKSON **CO-CHAIR** **3511 E COLUMBIA ST, SEATTLE WA 98122**

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. EVERGREEN FREEDOM FOUNDATION d/b/a FREEDOM FOUNDATION, Petitioner.	)	No. 95281-7 En Banc Filed JAN 10 2019

MADSEN, J.—This case involves statutory interpretation concerning application of the reporting requirements contained in the Fair Campaign Practices Act (FCPA), chapter 42.17A RCW. The specific issue is how the FCPA reporting requirements in RCW 42.17A.255 and the definition in RCW 42.17A.005(4) ("ballot proposition")[1] are to be applied in the context of local initiatives. For the reasons explained below, we hold

[1] The FCPA was amended twice in the recent legislative session. Laws of 2018, chapter 111 does not take effect until January 1, 2019. Laws of 2018, chapter 304 took effect June 7, 2018, but the amendments to RCW 42.17A.255 in that bill were vetoed. The amendments otherwise added a definition unrelated to this case, but resulted in the "ballot proposition" definition at issue here to be renumbered as RCW 42.17A.005(5). To avoid confusion, and to remain consistent with the parties' briefing, we refer to the relevant definitional subsection addressing "ballot proposition" by its former designation as RCW 42.17A.005(4).

that under the circumstances of this case, pro bono legal services, which Evergreen Freedom Foundation provided to initiative proponents, were reportable to the Public Disclosure Commission (PDC) under the above noted statutes. We affirm the Court of Appeals' reversal of the trial court's CR 12(b)(6) dismissal of the State's FCPA regulatory enforcement action and remand to the trial court for further proceedings.

FACTS

In 2014, Evergreen Freedom Foundation (EFF) staff created sample municipal ordinances and ballot propositions for citizens to use to advance certain causes to their local city councils or commissions. Local residents in the cities of Sequim, Chelan, and Shelton utilized those samples in filing two ballot propositions in each city, one to require collective bargaining negotiation sessions to be publicly conducted and the second to prohibit union security clauses in city collective bargaining agreements.

The proponents submitted the proposed measures to their local city clerks along with signatures they had gathered in support of the measures. They asked their respective city councils or commissions either to pass the measures as local ordinances or, if the councils or commissions did not agree, to alternatively place each measure on the local ballot for a vote. None of the cities passed the measures as ordinances or placed the ballot propositions on the local ballots.[2]

[2] The cities of Chelan and Shelton voted to neither adopt the propositions nor place them on the ballot. The city of Sequim concluded that it would table the issue until a later meeting but never acted further.

In response, EFF employees, who are attorneys, participated in lawsuits against each jurisdiction on behalf of the local resident proponents. Each suit sought a judicial directive to the respective city to put each measure on the local ballot. Each lawsuit ended in a superior court dismissing the case, and those decisions were not appealed.

EFF did not file any campaign finance disclosure reports with the PDC identifying the value of the legal services it provided to the resident proponents in support of the local ballot propositions.[3] In February 2015, the attorney general received a citizen action complaint about EFF's failure to report the value of legal services it provided in support of these local ballot measures.[4] The State conducted an investigation and then filed a civil regulatory enforcement action against EFF in Thurston County Superior Court, alleging that EFF failed to report independent expenditures it made in support of the noted local ballot propositions.[5]

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[3] As discussed below, the FCPA, RCW 42.17A.255, requires a person (organization) to file a report with the PDC disclosing all "independent expenditures" totaling $100 or more during the same election campaign. RCW 42.17A.255(2). Subsection (1) of that statue defines "independent expenditure" as "any expenditure that is made in support of or in opposition to any candidate or ballot proposition." RCW 42.17A.255(1). "Ballot proposition" is defined in RCW 42.17A.005(4) as

> any "measure" as defined by RCW 29A.04.091 [i.e., "any proposition or question submitted to the voters"], or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and *after the time when the proposition has been initially filed with the appropriate election officer* of that constituency *before its circulation for signatures.*

(Emphasis added.)

[4] The letter was filed on behalf of the Committee for Transparency in Elections and contained notice that if the State did not take action within 45 days, the complainant intended to file a citizen's action against EFF "as authorized under [RCW] 42.17A.765(4)." Clerk's Papers at 65.

[5] No other citizen action complaints related to these local ballot propositions have been filed with the Attorney General's Office.

EFF moved to dismiss the State's enforcement action, asserting that the local propositions were not "ballot propositions" as defined in RCW 42.17A.005(4). Clerk's Papers at 24. EFF argued that because the local initiative process generally requires signatures to be gathered and submitted before the ballot propositions are filed with the local elections official, the local propositions were not "ballot propositions" under RCW 42.17A.005(4) and, therefore, no disclosure was required unless and until the proposition became a "measure" placed on a ballot. *Id.* at 19-33.

The State opposed the motion and the statutory interpretation asserted by EFF. The State argued that EFF's reading of the statute would effectively exclude from public disclosure all funds raised and spent on local ballot propositions until they advanced to the ballot, contrary to the stated purpose and intent of the FCPA.

The superior court granted EFF's motion for dismissal under CR 12(b)(6) (failure to state a claim). It found the statutes at issue here to be "ambiguous and vague." Verbatim Report of Proceedings at 23. The superior court further found that the State had not "sufficiently established that this situation involved a ballot measure that gave them the opportunity to require that such be reported," explaining that "such" meant "legal services that were provided on a pro bono basis before the matter ever went to any kind of vote." *Id.* at 23-24.

The State sought direct review and this court transferred the case to Division Two of the Court of Appeals. Order, *State v. Evergreen Freedom Found.*, No. 93232-8 (Wash. Mar. 29, 2017). The Court of Appeals reversed, holding in a partially published opinion that "under the only reasonable interpretation" of the definition of "ballot

proposition" in the FCPA, the local initiatives qualified as ballot propositions at the time EFF provided legal services because the initiatives had been filed with local election officials. *State v. Evergreen Freedom Found.*, 1 Wn. App. 2d 288, 293, 404 P.3d 618 (2017) (published in part). The Court of Appeals also rejected EFF's argument that reporting requirements could apply only to electioneering that occurs once a proposition has been placed on the ballot. *Id.* at 306. The court concluded that RCW 42.17A.255 does not violate EFF's First Amendment rights. *Id.* at 307. In the unpublished portion of the opinion, the Court of Appeals rejected EFF's other arguments, including that the statute is unconstitutionally vague. *Evergreen Freedom Found.*, No. 50224-1-II, slip op. (unpublished portion) at 22-24, http://www.courts.wa.gov/opinions/pdf/D2%2050224-1-II%20Published%20Opinion.pdf. EFF petitioned for review, which this court granted. *State v. Evergreen Freedom Found.*, 190 Wn.2d 1002 (2018).

ANALYSIS

Standard of Review

This court reviews issues of statutory construction and constitutionality de novo. *State v. Evans*, 177 Wn.2d 186, 191, 298 P.3d 724 (2013); *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 432, 395 P.3d 1031 (2017). When possible, this court derives legislative intent from the plain language enacted by the legislature; "[p]lain language that is not ambiguous does not require construction." *Evans*, 177 Wn.2d at 192. However, if more than one interpretation of the plain language is reasonable, the statute is ambiguous, and the court must then engage in statutory construction. *Id.* at 192-93. The

court may then look to legislative history for assistance in discerning legislative intent. *Id.* at 193.

In construing a statute, the fundamental objective is to ascertain and carry out the people's or the legislature's intent. *See Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). This court looks to the entire "'context of the statute in which the provision is found, [as well as] related provisions, amendments to the provision, and the statutory scheme as a whole.'" *State v. Conover*, 183 Wn.2d 706, 711, 355 P.3d 1093 (2015) (quoting *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 350, 340 P.3d 849 (2015)); *see also G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 310, 237 P.3d 256 (2010) ("enacted statement of legislative purpose is included in a plain reading of a statute").

> The meaning of words in a statute is not gleaned from [the] words alone but from "all the terms and provisions of the act in relation to the subject of the legislation, the nature of the act, the general object to be accomplished and consequences that would result from construing the particular statute in one way or another."

Burns v. City of Seattle, 161 Wn.2d 129, 146, 164 P.3d 475 (2007) (internal quotation marks omitted) (quoting *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994)); *see also Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002) (clarifying "plain meaning" is "discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question").

FCPA Background and Application

In 1972, voters in Washington adopted Initiative 276 (I-276), which established the PDC and formed the basis of Washington's campaign finance laws. *Voters Educ. Comm. v. Pub. Disclosure Comm'n*, 161 Wn.2d 470, 479, 166 P.3d 1174 (2007). I-276 is codified in portions of chapter 42.17A RCW, which is now known as the FCPA. RCW 42.17A.909. I-276 was designed, in part, to provide the public with full disclosure of information about who funds initiative campaigns and who seeks to influence the initiative process. *See* LAWS OF 1973, ch. 1, § 1. In I-276, the people declared that it would be

> the public policy of the State of Washington:
> (1) That political campaign and lobbying contributions and expenditures *be fully disclosed* to the public and that secrecy is to be avoided.
> . . . .
> (10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.
> (11) . . . The provisions of this act shall be *liberally construed to promote complete disclosure* of all information respecting the financing of political campaigns and lobbying.

LAWS OF 1973, ch. 1, § 1 (emphasis added); *see also* RCW 42.17A.001(1), (10), (11). With a 72 percent supporting vote, Washington voters adopted I-276 and required financial disclosure for campaigns, including those related to initiatives, referenda, and ballot measures. *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 996 (9th Cir. 2010).

I-276 established reporting requirements for anyone supporting or opposing a "ballot proposition." LAWS OF 1973, ch. 1, §§ 2(2), 10(1); *see also id.* §§ 3-11 (I-276 provisions establishing reporting requirements); RCW 42.17A.255. For example, an "'independent expenditure' [is] any expenditure that is made *in support of or in opposition to any* candidate or *ballot proposition* and is not otherwise required to be reported." RCW 42.17A.255(1) (emphasis added). Reporting requirements are triggered once an expenditure amount crosses a threshold of $100. RCW 42.17A.255(2).[6]

I-276 defined "ballot proposition" to mean "any 'measure' as defined by [former] R.C.W. 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of any specific constituency *which has been filed with the appropriate election officer of that constituency.*" LAWS OF 1973, ch. 1, § 2(2) (emphasis added). When I-276 was adopted in 1972, "measure" meant "any proposition or question submitted to the voters of any specific constituency." LAWS OF 1965, ch. 9, § 29.01.110; former RCW 29.01.110 (1972).[7]

In 1975, soon after the adoption of I-276, the legislature made adjustments to the definition of "ballot proposition" to clarify that the term applied to both statewide and local initiatives, recalls, and referenda:

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[6] As originally adopted in I-276, this provision was worded differently, but it reflected the same intent: "Any person who makes an expenditure in support of or in opposition to any candidate or proposition (except to the extent that a contribution is made directly to a candidate or political committee), in the aggregate amount of one hundred dollars or more during an election campaign, shall file with the [PDC] a report." LAWS OF 1973, ch. 1, § 10(1).

[7] In 2003, the legislature removed the last phrase of the definition of "measure," so that the term now includes "any proposition or question submitted to the voters." LAWS OF 2003, ch. 111, § 117. Former RCW 29.01.110 is now codified as RCW 29A.04.091.

> "Ballot proposition" means any "measure" as defined by [former] RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of ((~~any specific~~)) the state or any municipal corporation, political subdivision or other voting constituency ((~~which~~)) from and after the time when such proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

LAWS OF 1975, 1st Ex. Sess., ch. 294, § 2(2). Thus, the 1975 legislature clarified that "ballot proposition" includes local propositions "from and after the time when such proposition has been initially filed with the appropriate election officer . . . prior to its circulation for signatures."[8] *Id.*

As noted, the 1975 legislature added the language in the definition that refers specifically to "any municipal corporation, political subdivision or other voting constituency." *Id.* It simultaneously added "prior to its circulation for signatures." *Id.*

The issue here is that the procedures for statewide and local initiatives differ. For a statewide initiative, many steps have to be navigated *before* the signature gathering stage is reached: the proponent files the proposed initiative with the secretary of state (RCW 29A.72.010), the code reviser reviews and then certifies that (s)he has reviewed the proposed measure and suggested revisions to the proponent (RCW 29A.72.020), then the secretary of state gives the proposed measure a serial number (RCW 29A.72.040), then the attorney general formulates a ballot title and summary (RCW 29A.72.060), and any person dissatisfied with the title or summary may appeal to the superior court (RCW

[8] The definition of "ballot proposition" has since been updated to reflect the current codification of the definition of "measure" and to replace "prior to" with "before," but it otherwise remains the same today. RCW 42.17A.005(4); *see* LAWS OF 2010, ch. 204, § 101(4).

29A.72.080); after all that, the proponent then begins gathering signatures (RCW 29A.72.090-.150). *See generally* RCW 29A.72.010-.150. If an initiative to the people has sufficient valid signatures, it goes on the ballot at the next general election. CONST. art. II, § 1. If an initiative to the legislature has sufficient valid signatures, it is presented to the legislature first, but if the legislature declines to adopt it, the initiative appears on the following general election ballot. *Id.* § 1(a).

For a local initiative, the proponent generally gathers signatures and submits them along with the proposed ballot measure to the local election official. *See* RCW 35.17.260. If the petition contains the required number of valid signatures, the city's or the town's council or commission must either pass the proposed ordinance or submit the proposition to a vote of the people.[9] *Id.*

Thus, RCW 42.17A.005(4)'s language fits neatly with the statewide initiative procedures, but it creates tension as to the noted local initiative procedures in that the second prong of RCW 42.17A.005(4) expressly applies to both state and local initiatives, but its final phrase, "before its circulation for signatures," seems at odds with the local initiative procedures noted above.

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[9] *See also* RCW 35.17.240-.360 (authorizing cities using the commission form of government to adopt the initiative and referendum processes); RCW 35A.11.100 (authorizing same processes for noncharter code cities); SEQUIM MUNICIPAL CODE 1.15 (adopting the initiative and referendum processes set forth in RCW 35A.11.080-.100); SHELTON CITY CODE 1.24.010 (adopting the initiative and referendum processes in chapter 35.17 RCW, via adoption of chapter 35A.11 RCW); *cf.* CHELAN MUNICIPAL CODE 2.48.050-.210 (providing for the initiative process), .080 (providing sponsors with an extended 90-day window within which to gather sufficient valid signatures after the initiative is initially submitted).

The State argues that "[p]re-amendment, the definition already incorporated propositions as soon as they were filed and it already incorporated signature gathering for state initiatives, so there was no need to add the phrase 'prior to circulation for signatures' unless the legislature intended to clarify that the definition also covers the signature-gathering period for local propositions."[10] State of Washington's Suppl. Br. at 9. In the State's view, the amendment "ensured the statute would be applied according to the people's purpose: full and complete public disclosure of expenditures related to ballot propositions, including those made before a proposition appears on the ballot." *Id.* This is a fair and plain reading of the above statute, giving effect to all its parts. And, as importantly, the State's reading of the statute comports with the FCPA's stated policy and express directive that its provisions be "liberally construed to promote complete disclosure of all information respecting the financing of political campaigns." RCW 42.17A.001(11); *see Campbell & Gwinn*, 146 Wn.2d at 11 (plain meaning is discerned from all that the legislature has said in the statute and related statutes); *see also Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 792-93, 357 P.3d 1040 (2015) (this court assumes the legislature does not intend to create inconsistency and, thus, reads statutes together to achieve a harmonious total statutory scheme that maintains each statute's integrity).

[10] As noted, the original definition of "ballot proposition" in the FCPA included "any initiative . . . proposed to be submitted to the voters of any specific constituency which has been filed with the appropriate election officer of that constituency." LAWS OF 1973, ch. 1, § 2(2). For statewide initiatives, this definition already incorporated the signature-gathering phase because, for a statewide initiative, the sponsor must file the proposed initiative before circulating it for signatures. *See* RCW 29A.72.010-.150 (discussed above).

EFF counters that the plain language of the statute controls, arguing that because the signatures were already gathered when the proposed initiatives were filed with the local election officials, the definition of "ballot proposition" is not met and no reporting requirement is triggered. But this reading not only undermines the stated purpose of the FCPA, it also ignores the language added to RCW 42.17A.005(4) in 1975 that expressly applies that provision to local initiatives.

EFF further contends that RCW 42.17A.005(4) and RCW 42.17A.255(1) "apply only to electioneering," which EFF contends never occurred here because the local initiatives were never placed on the ballot. EFF Suppl. Br. at 11 (emphasis omitted). First, EFF's reliance on *Brumsickle* as supporting EFF's contention is misplaced. That case did not so hold. *See id.* (misquoting *Brumsickle*, 624 F.3d at 998). Further, as noted, both statutes at issue here broadly impose reporting requirements concerning "*any expenditure* that is made in support of or in opposition to *any* candidate or *ballot proposition*," RCW 42.17A.255(1) (emphasis added), with "ballot proposition" defined to include "*any initiative* . . . proposed to be submitted to the voters." RCW 42.17A.005(4) (emphasis added). The noted language is simply not restricted to electioneering, as EFF asserts. Moreover, where litigation is being employed as a tool to block adoption of an initiative or to force an initiative onto the ballot, as was attempted here, the finances enabling such support (or opposition) would indeed appear to fall within the "any expenditure," triggering the reporting obligation noted above. The contention that litigation support does not qualify as a reportable independent expenditure ignores the express purpose of the FCPA in the context of modern politics. *See, e.g.*,

Huff v. Wyman, 184 Wn.2d 643, 645, 361 P.3d 727 (2015) (litigation brought by initiative opponents seeking to enjoin placement of initiative on the ballot); *Filo Foods, LLC v. City of SeaTac*, 179 Wn. App. 401, 403, 319 P.3d 817 (2014) (litigation over whether a local minimum wage initiative qualified for the ballot).[11]

In sum, giving meaning to *all* of the language in RCW 42.17A.005(4) and complying with the FCPA's directive for liberal construction, we determine that the amended language in RCW 42.17A.005(4) was intended to pick up the expenditures prior to signature gathering, regardless of when they are gathered, but only if the measure is actually filed with an election official. Applying this holding here, and in light of the FCPA's history, purpose, and the particular facts of this case, EFF's pro bono legal services were reportable to the PDC under RCW 42.17A.255 and RCW 42.17A.005(4).

The FCPA Provisions Are Not Unconstitutionally Vague

EFF contends that RCW 42.17A.255(1) and RCW 42.17A.005(4) are unconstitutionally vague because "[n]o reasonable person can know how to conform to the applicable statutory requirements." EFF Suppl. Br. at 16-17. We disagree.

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[11] EFF cites *Coloradans for a Better Future v. Campaign Integrity Watchdog*, 2018 CO 6, 409 P.3d 350, as supporting its viewpoint, but that case is inapposite. The court there held that uncompensated legal services to a political organization were "not 'contributions' to a political organization under Colorado's campaign-finance laws." *Id.* at ¶ 41. But that determination turned on application of specific statutory language that is not present here. *Id.* at ¶¶ 28-40.

EFF also cites to *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012), but that case is also inapposite. There, the Ninth Circuit Court of Appeals affirmed the grant of a preliminary injunction barring enforcement of a statute that imposed contribution limits regarding a political (recall) committee. But that case applied a different standard in the contributions limitations context (i.e., applying "closely drawn" scrutiny to contribution *limits* based on a First Amendment challenge). *Id.* at 865 n.6. As discussed below, that is not the appropriate standard here.

Statutes are presumed to be constitutional, and the party asserting that a statute is unconstitutionally vague must prove its vagueness beyond a reasonable doubt. *Voters Educ. Comm.*, 161 Wn.2d at 481. In the First Amendment context, the asserting party may allege that a statute is either facially invalid or invalid as applied. *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 612, 192 P.3d 306 (2008). A facial challenge asserts that the statute cannot be properly applied in any context. *City of Spokane v. Douglass*, 115 Wn.2d 171, 182 n.7, 795 P.2d 693 (1990). In an as applied challenge, the statute must be considered in light of the facts of the specific case before the court. *Am. Legion Post*, 164 Wn.2d at 612.

"'A statute is void for vagueness if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. The purpose of the vagueness doctrine is to ensure that citizens receive fair notice as to what conduct is proscribed, and to prevent the law from being arbitrarily enforced.'" *In re Contested Election of Schoessler*, 140 Wn.2d 368, 388, 998 P.2d 818 (2000) (internal quotation marks omitted) (quoting *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 739-40, 818 P.2d 1062 (1991)). However, vagueness is not simply uncertainty as to the meaning of a statute. *Am. Legion Post*, 164 Wn.2d at 613. In determining whether a statute is sufficiently definite, the provision in question must be considered within the context of the entire enactment and the language used must be afforded a sensible, meaningful, and practical interpretation. *Id.* "A court should not invalidate a statute simply because it could have been drafted with greater precision." *Id.* Moreover, "'a statute is not unconstitutionally vague merely because a person cannot

predict with complete certainty the exact point at which [that person's] actions would be classified as prohibited conduct.'" *Schoessler*, 140 Wn.2d at 389 (alteration in original) (quoting *City of Seattle v. Eze*, 111 Wn.2d 22, 27, 759 P.2d 366 (1988)).

A statute's language is sufficiently clear when it provides explicit standards for those who apply them and provides a person of ordinary intelligence a reasonable opportunity to know what is prohibited. *Voters Educ. Comm.*, 161 Wn.2d at 489. Here, EFF contends that the definition of "ballot proposition" cannot apply to local initiatives and the obligation to report independent expenditures cannot apply to activities beyond electioneering. But those assertions are refuted by the statutory language as discussed herein. As explained above, a local initiative becomes a ballot proposition when it is filed with local elections officials, and here all of the initiatives in question were filed before EFF expended resources to support them. RCW 42.17A.005(4). Accordingly, the portions of the FCPA at issue here (RCW 42.17A.255 and .005(4)) are not unconstitutionally vague as applied. Likewise, there is no facial invalidity because the statutes at issue establish a clear course of conduct, requiring persons to report their independent expenditures. *Any* nonexempt independent expenditures in support of a ballot proposition must be reported under RCW 42.17A.255. EFF has not shown that there is no set of facts, including the circumstances here, in which the statute could not be constitutionally applied. *Douglass*, 115 Wn.2d at 182 n.7. We hold that RCW 42.17A.005(4) and RCW 42.17A.255 are not unconstitutionally vague.

The FCPA Provisions Do Not Violate the First Amendment

EFF contends that the "State's enforcement action impermissibly infringes on the Foundation's [First Amendment] free speech and privacy of association rights." EFF Suppl. Br. at 21; U.S. CONST. amend. I. We disagree.

In addressing a First Amendment challenge to the "independent expenditure" provision of the FCPA at issue here, the Ninth Circuit Court of Appeals concluded in *Brumsickle*, 624 F.3d at 994-95, that "Washington State's disclosure requirements do not violate the First Amendment." The Ninth Circuit court noted that the Supreme Court had concluded that "the government 'may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.'" *Id.* at 994 (quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 319, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)). "[A] campaign finance disclosure requirement is constitutional if it survives *exacting scrutiny*, meaning that it is substantially related to a sufficiently important governmental interest." *Id.* at 1005 (emphasis added). As the *Citizens United* Court held, "'[D]isclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities and do not prevent anyone from speaking.'" *Id.* (internal quotation marks and citation omitted) (quoting *Citizens United*, 558 U.S. at 366). Accordingly, "exacting scrutiny applies in the campaign finance disclosure context." *Id.* (citing *Citizens United*, 588 U.S. at 366-67; *Doe v. Reed*, 561 U.S. 186, 196, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010); *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 728-30, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008)).

In explaining the governmental interest at stake, the *Brumsickle* court noted that providing information to the electorate is "vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment." *Id.* Such vital provision of information has been repeatedly recognized as "a sufficiently important, if not compelling, governmental interest." *Id.* at 1005-06. The Ninth Circuit expounded on the importance of disclosure regarding candidates, and then drew parallels regarding ballot measures.

> [D]isclosure provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate" in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Id. at 1006 (alteration in original) (quoting *Buckley v. Valeo*, 424 U.S. 1, 66-67, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)).

Relevant here, the court observed that such considerations apply equally for voter-decided ballot measures. *Id.* "In the ballot initiative context, where voters are responsible for taking positions on some of the day's most contentious and technical issues, '[v]oters act as legislators,' while 'interest groups and individuals advocating a measure's defeat or passage act as lobbyists.'" *Id.* (quoting *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1106 (9th Cir. 2003)). The "high stakes of the ballot context only amplify the crucial need to inform the electorate that is well recognized in the context of candidate elections." *Id.*

> Campaign finance disclosure requirements . . . advance the important and well-recognized governmental interest of providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas. An appeal to cast one's vote a particular way might prove persuasive when made or financed by one source, but the same argument might fall on deaf ears when made or financed by another. The increased "transparency" engendered by disclosure laws "enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United*, [558 U.S. at 371]. As the Supreme Court has stated: "[T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate." [*First Nat'l Bank v. Bellotti*, 435 U.S. 765, 791-92, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978)]. Disclosure requirements, like those in Washington's Disclosure Law, allow the people in our democracy to do just that.

Id. at 1008 (third alteration in original). The *Brumsickle* court concluded that "[t]here is a substantial relationship between Washington State's interest in informing the electorate and the definitions and disclosure requirements it employs to advance that interest." *Id.* at 1023; *see also Voters Educ. Comm.*, 161 Wn.2d at 483 (the right to free speech held by organizations that engage in political speech includes a "fundamental counterpart" that is the public's right to receive information); *State ex rel. Pub. Disclosure Comm'n v. Permanent Offense*, 136 Wn. App. 277, 284, 150 P.3d 568 (2006) ("Washington State has a substantial interest in providing the electorate with valuable information about who is promoting ballot measures and why they are doing so[;] . . . it is particularly important . . . that voters know whether other influences—particularly money—are affecting those who are otherwise known as grass-roots organizers.").

Given the State's important governmental interest in informing the public about the influence and money behind ballot measures, as noted above, and the FPCA's vital

role (via application of RCW 42.17A.255 and RCW 42.17A.005(4)) in advancing that interest, the disclosure requirement that operates under these statutes satisfies the exacting scrutiny standard. Accordingly, there is no impermissible infringement of EFF's First Amendment rights, and we so hold.

CONCLUSION

We affirm the Court of Appeals' reversal of the trial court's CR 12(b)(6) dismissal of the State's regulatory enforcement action under the FCPA. Under the circumstances of this case, EFF's pro bono legal services were reportable to the PDC under RCW 42.17A.255 and RCW 42.17A.005(4). Those statutes are not unconstitutionally vague, nor does their application here violate EFF's First Amendment rights. We remand to the trial court for further proceedings.

Madsen, J.

WE CONCUR:

Fairhurst, C.J.

Wiggins, J.

No. 95281-7

GORDON McCLOUD, J. (dissenting)—The Fair Campaign Practices Act (FCPA), chapter 42.17A RCW, establishes requirements for political spending and reporting. One FCPA statute requires people and organizations that make certain political expenditures to report those expenditures to the Public Disclosure Commission. It is well established that such a reporting requirement implicates the First Amendment right to free speech. U.S. CONST. amend. I; *Utter v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 341 P.3d 953 (2015); *Voters Educ. Comm. v. Public Disclosure Comm'n*, 161 Wn.2d 470, 166 P.3d 1174 (2007); *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010).

In this case, both the trial court and the Court of Appeals expressly acknowledged that the FCPA is ambiguous with respect to whether it compels reporting of independent expenditures in support of initiatives not yet on the ballot in noncharter cities. Clerk's Papers (CP) at 102 (order); Verbatim Report of Proceedings (May 13, 2016) (VRP) at 23; *State v. Evergreen Freedom Found.*, 1 Wn. App. 2d 288, 303, 404 P.3d 618 (2017) (published in part). The majority implicitly acknowledges the same thing. Majority at 10. The majority resolves

that ambiguity against the speaker and in favor of the government. But resolving an ambiguity in a statute implicating free speech against the speaker and in favor of the government violates controlling precedent of this court and of the United States Supreme Court.

I therefore respectfully dissent.

BACKGROUND

The State brought a civil enforcement action against Evergreen Freedom Foundation (Foundation) for failing to report independent expenditures in support of several "ballot propositions." CP at 5-10 (State's complaint); *see also* RCW 42.17A.255(3) (requiring reporting of independent expenditures in support of ballot propositions). Under the FCPA, a "ballot proposition" is

> any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency *before its circulation for signatures*.[1]

Former RCW 42.17A.005(4) (2014), *recodified as* RCW 42.17A.005(5) (LAWS OF 2018, ch. 304, § 2) (emphasis added).

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[1] Under RCW 29A.04.091, a "'[m]easure' includes any proposition or question submitted to the voters."

The Foundation admits that it did not report the expenditures at issue here—free legal representation for citizens attempting to place initiatives on the ballot in their municipalities. CP at 14-18 (Foundation's answer). The Foundation defends itself on the ground that its expenditures were not reportable. It argues that the FCPA's RCW 42.17A.255 requires a person or organization to report expenditures for "ballot propositions" "after" the submission to the election officer, which is "before its circulation for signatures." But the initiatives at issue here were not submitted to the election officer before circulation for signatures. The Foundation therefore concludes that those initiatives did not constitute ballot propositions within the meaning of former RCW 42.17A.005(4). CP at 22-28 (Foundation's motion to dismiss).

The Foundation continues that even if the initiatives did constitute ballot propositions within the meaning of former RCW 42.17A.005(4), that definition—particularly the language italicized above—is unconstitutionally vague as applied in this case. VRP at 8-9; Foundation's Suppl. Br. 13-17; Wash. Supreme Court oral argument, *State v. Evergreen Freedom Found.*, No. 95281-7 (June 28, 2018), at 9 min., 18 sec. through 10 min., 32 sec., *video recording by* TVW, Wash. State's Public Affairs Network, https://www.tvw.org/watch/?eventID=2018061095.

The language of the statute defining "ballot proposition" is certainly confusing as applied to this case as the trial court, appellate court, and majority all note. The reason is that in this case, citizens were attempting to place initiatives on the ballot in three noncharter cities: Sequim, Shelton, and Chelan.[2] CP at 7. The initiative process in noncharter cities differs from the initiative process for statewide measures and the initiative process for certain charter cities. In noncharter cities, an initiative's proponent gathers signatures first and officially files the initiative with the city after. By contrast, at the statewide level and in certain charter cities, the proponent files first and gathers signatures after. *Compare* RCW 35.17.260 (establishing procedures for initiatives in cities with the commission form of government) *and* RCW 35A.11.100 (generally adopting for code cities the initiative procedures used in cities with the commission form of government), *with* chapter 29A.72 RCW (establishing procedures for statewide initiatives). *See also* RCW 35.22.200 (recognizing that charter cities "may provide for direct legislation by the people through the initiative"); *e.g.*, SEATTLE CITY

[2] *See* SEQUIM MUNICIPAL CODE 1.16.010 (identifying Sequim as a code city); SHELTON MUNICIPAL CODE 1.24.010 (identifying Shelton as a code city); CHELAN MUNICIPAL CODE 1.08.010 (identifying Chelan as a code city).

CHARTER art. IV, § 1.B; SEATTLE MUNICIPAL CODE ch. 2.08; TACOMA CITY CHARTER art. II, § 2.19.

There is no dispute that former RCW 42.17A.005(4) would have covered the Sequim, Shelton, and Chelan initiatives if they had made it onto the ballot, because at that point they would have fallen within the definition of reportable "measures" in cross-referenced RCW 29A.04.091. The issue in this case is whether former RCW 42.17A.005(4) encompasses initiatives not yet on the ballot in such noncharter cities.[3]

The trial court concluded that the tension between the statute's language and the initiative process in noncharter cities could not be resolved. It noted that it had "difficulty working through [the statutes] and understanding the position of the parties[] because there is not a clearly stated policy regarding this kind of a situation . . . ." VRP at 23. It therefore held that former RCW 42.17A.005(4) was "ambiguous and vague." *Id.* Accordingly, it granted the Foundation's CR 12(b)(6)

[3] I assume for the purposes of this opinion that the Foundation's provision of free legal representation to the citizens trying to place the initiatives on their local ballots qualifies as "independent expenditures" under RCW 42.17A.255(1). The majority makes the same assumption. As the Court of Appeals noted, the Foundation has not argued otherwise. *Evergreen Freedom Found.*, 1 Wn. App. 2d at 306 n.5.

motion to dismiss for failure to state a claim on which relief could be granted. CP at 102 (order).

The Court of Appeals agreed that former RCW 42.17A.005(4) was "ambiguous" and added that the statute was "confusing." 1 Wn. App. 2d at 302-03. But it reversed the trial court's decision to dismiss on the ground that former RCW 42.17A.005(4) encompassed initiatives not yet on the ballot in noncharter cities. The Court of Appeals acknowledged that its interpretation of former RCW 42.17A.005(4) disregarded the "literal interpretation" of the statute's text. *Id.* at 304. That court explicitly stated that it "can and must ignore statutory language." *Id.* at 305.

The Foundation petitioned for review, which we granted. *State v. Evergreen Freedom Found.*, 190 Wn.2d 1002 (2018).

ANALYSIS

I. Standard of Review

We review a trial court's grant of a CR 12(b)(6) motion to dismiss de novo. *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014) (citing *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007)).

II. The Plain Language of Former RCW 42.17A.005(4) Is Ambiguous as Applied to Ballot Propositions Not Yet on the Ballot in Noncharter Cities

In interpreting a statute such as former RCW 42.17A.005(4), "[t]he court's fundamental objective is to ascertain and carry out the Legislature's intent . . . ." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The court discerns the legislature's intent by conducting a plain-meaning analysis—that is, by examining the statute's text and context. *Id.* at 11-12. "Of course, if, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history." *Id.* at 12 (citing *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001); *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994)).

The language of former RCW 42.17A.005(4) perfectly tracks the initiative process for statewide measures and the initiative process for certain charter cities. It states that a "ballot proposition" is "any initiative . . . proposed to be submitted to the voters of the state or any . . . other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures." Former RCW

42.17A.005(4). A statewide measure or an initiative in a charter city following the statewide process *is* "filed . . . before its circulation for signatures." *Id.*

But the language of former RCW 42.17A.005(4) does not perfectly track the initiative process in noncharter cities. An initiative in a noncharter city *is not* "filed . . . before its circulation for signatures." *Id.* It is filed *after* its circulation for signatures. Thus, as the majority recognizes, the text of former RCW 42.17A.005(4) is "at odds" and in "tension" with the initiative process in noncharter cities. Majority at 10.

III. The Majority Impermissibly Relies on Legislative History To Interpret Former RCW 42.17A.005(4)'s Plain Meaning

A. The Majority Relies on Former RCW 42.17A.005(4)'s Underlying History To Interpret the Statute

The majority resolves that tension by relying on the statute's underlying history. It compares the definition of "ballot proposition" as enacted by the voters in 1972 with the definition of "ballot proposition" as amended by the legislature in 1975.[4] The 1975 amendment made the following changes:

[4] The legislature amended the definition of "ballot proposition" again in 2005 and 2010. But those amendments made technical, nonsubstantive changes only. LAWS OF 2005, ch. 445, § 6; LAWS OF 2010, ch. 204, § 101.

> "Ballot proposition" means any "measure" as defined by [RCW 29A.04.091], or any initiative, recall, or referendum proposition proposed to be submitted to the voters of ((~~any specific~~)) the state or any municipal corporation, political subdivision or other voting constituency ((~~which~~)) from and after the time when such proposition has been initially filed with the appropriate election officer of that constituency [before] its circulation for signatures.

LAWS OF 1975, 1st Ex. Sess., ch. 294, § 2(2).

The State argues—and the majority accepts—that because the 1972 "'definition already incorporated propositions as soon as they were filed and [because the 1972 definition] already incorporated signature gathering for state initiatives . . . there was no need to add the phrase "[before] its circulation for signatures" unless the legislature intended to clarify that the definition also covers the signature-gathering period for local propositions.'" Majority at 10-11 (quoting State of Washington's Suppl. Br. at 9). I agree.

B. Underlying History Is Legislative History, Not Context

I disagree, however, with the majority that that conclusion is plain. The majority characterizes the changes that the legislature makes to a statute from one session to the next as part of the statute's context. That information is not the sort of context that this court had in mind, however, when it incorporated context into our plain-meaning analysis in *Campbell & Gwinn*.

In *Campbell & Gwinn*, we were concerned about a line of a cases that—in the name of plain meaning—had employed a method of interpretation that effectively isolated statutory text from its surrounding scheme. 146 Wn.2d at 9; *see also Habitat Watch v. Skagit County*, 155 Wn.2d 397, 417, 120 P.3d 56 (2005) (Chambers, J., concurring) ("[W]e . . . often interpreted the plain meaning of the statute section by section, without appropriate consideration for the legislature's overall plan contained within the four corners of the act."). We disavowed that line of cases and held that text's meaning must be derived from its words as well as its context. *Campbell & Gwinn*, 146 Wn.2d at 11-12. Instead of scrutinizing a particular term in a vacuum, a court must consider "all that the Legislature has said in the statute and related statutes." *Id.* at 11.

The majority goes beyond that, however. It relies on historical information that is not even part of the FCPA as it existed in 2014 when the Foundation provided the free legal representation at issue here. Hence, no reader would have consulted it to figure out whether expenditures were reportable in this context.

Instead, an initiative proponent in 2014 would have read former RCW 42.17A.005(4) and found it ambiguous—even in context with the rest of the FCPA—with respect to initiatives not yet on the ballot in noncharter cities. A person could not be faulted for reading the latter portion of the statute that begins

with "from and after the time [of filing]" and ends with "before its circulation for signatures" as modifying and limiting the text "any municipal corporation, political subdivision, or other voting constituency." In fact, that is arguably the more grammatical reading. The statute's unambiguous application to statewide measures and initiatives in certain charter cities—places like Seattle and Tacoma—only reinforces its ambiguity as to initiatives not yet on the ballot in noncharter cities. That is so because the statute still has a purpose, even if one concludes that it does not apply to initiatives not yet on the ballot in noncharter cities. Indeed, the legislature might reasonably have intended the statute to apply in the pre-ballot stage only at the statewide level and in the big cities where the political stakes, moneyed interests, and potential for mischief might be considered greatest. A plausible reading is that the statute does not apply to noncharter cities like Sequim, Shelton, and Chelan. The liberal construction mandate of RCW 42.17.001(11) would not alter that reading.

Thus, the majority's interpretation of the "plain meaning" of former RCW 42.17A.005(4) is really based on a comparison with a prior, historical, version of the statute—the 1972 version that the 1975 legislature amended. But while the legislative history can help courts resolve ambiguity in a statute, it cannot

make ambiguous language any less ambiguous to the reader. As applied to the circumstances of this case, former RCW 42.17A.005(4) is ambiguous.[5]

IV. Controlling Rules of Constitutional Law Bar This Court from Enforcing an Ambiguous Statute That Implicates Free Speech Rights

Under controlling decisions of this court and of the United States Supreme Court, an ambiguity is fatal to a statute implicating constitutional rights. "Under the Fourteenth Amendment, a statute may be void for vagueness 'if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Voters Educ. Comm.*, 161 Wn.2d at 484 (2007) (quoting *O'Day v. King County*, 109 Wn.2d 796, 810, 749 P.2d 142 (1988)); U.S. CONST. amend. XIV. That standard is particularly strict when, as in this case, the First Amendment right to free speech is implicated. *Id.* at 485 ("[T]he Supreme Court has 'repeatedly emphasized that where First Amendment freedoms are at stake a greater degree of specificity and clarity of purpose is essential.'" (quoting *O'Day*, 109 Wn.2d at 810)); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) (treating disclosure requirements as burdens on the First Amendment). "Because First Amendment freedoms need breathing space to survive, government may regulate

[5] RCW 42.17A.005 has been amended 20 times since voters enacted it in 1972.

in the area only with narrow specificity." *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 433, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 311, 60 S. Ct. 900, 84 L. Ed. 1213 (1940)). "If the line drawn . . . is an ambiguous one, [the court] will not presume" that the statute is constitutional. *Id.* at 432. Rather, an ambiguous statute bearing on such an important right must not be given effect. *Id.*

The majority states that the Foundation has the burden of proving that former RCW 42.17A.005(4) is unconstitutionally vague. Majority at 13, 15. The Court of Appeals took the same position in the unpublished portion of its opinion. *Evergreen Freedom Found.*, No. 50224-1-II, slip op. (unpublished portion) at 23, http://www.courts.wa.gov/opinions/pdf/D2%2050224-1-II%20Published%20Opinion.pdf. Like the Court of Appeals, the majority cites *Voters Education Committee* in support of its position. But *Voters Education Committee* says just the opposite. 161 Wn.2d at 481-82. The court in that case did recognize that a statute is ordinarily presumed constitutional. But it also noted that that presumption is not extended to statutes regulating speech. *Id.* at 482. That case, like this case, involved a constitutional vagueness challenge to the FCPA, and because the FCPA regulates speech, we placed the burden of demonstrating the

statute's clarity *on the State*. *Id.* Thus, to the extent that a burden exists in this case, *Voters Education Committee* indicates that the State must bear it.

CONCLUSION

Because former RCW 42.17A.005(4) is ambiguous as applied to the circumstances of this case, the statute cannot be given effect in these circumstances. It is unconstitutionally vague as applied.[6]

I respectfully dissent.

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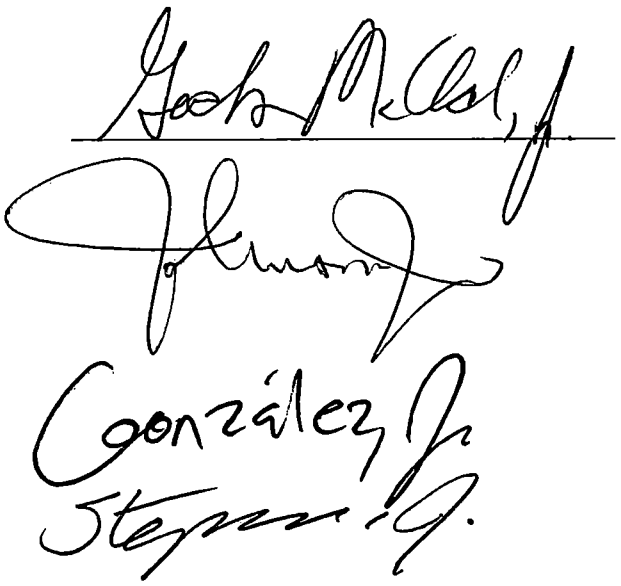
[6] Recognizing that former RCW 42.17A.005(4) is unconstitutionally vague as applied to the circumstances of this case does not conflict with the holdings of our previous cases addressing the FCPA. *See Utter*, 182 Wn.2d 398; *Voters Educ. Comm.*, 161 Wn.2d 470. Nor does it conflict with the Ninth Circuit's holdings in *Brumsickle*, 624 F.3d 990. The questions in those cases, as well as their underlying facts, were all very different than the ones before the court today. The circumstances of this case—initiatives not yet on the ballot in noncharter cities—stand on their own, and the challenge—to former RCW 42.17A.005(4) in the aforementioned circumstances—is narrow.



No. 97020-3

SUPREME COURT OF THE STATE OF WASHINGTON

KAN QIU, ZHIMING YU, and GANG CHENG,

Plaintiffs/Appellants,

v.

KIM WYMAN, in her official capacity as Washington Secretary of State,

Defendant/Respondent.

AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NAT JACKSON

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I. SUMMARY

This is the amicus brief that the Court's April 4 letter granted the Initiative Sponsor (Nat Jackson) permission to file.

Mr. Jackson's brief is brief. It confirms that the facts material to this appeal's dismissal are few:

- The Initiative Sponsor turned in 395,938 signatures to the Secretary of State.
- That's 136,316 more than required for certification.
- The Secretary of State submitted sworn testimony to the trial court evidencing her conclusion that there were not enough invalid signatures to eliminate that 136,316 surplus.
- Plaintiffs filed a person's unsworn statements alleging that he thinks the Secretary of State's conclusion might have been wrong.

Infra, Part III below. One reason this appeal must be dismissed as a matter of law is that unsworn allegations do not create a genuine issue of fact to evade summary judgment. *Infra*, Part III below.

This brief also notes why this Court's dismissal should be issued promptly:

- Initiative 1000 is an Initiative to the 2019 Legislature.
- The 2019 Legislature adjourns April 28, 2019.
- Initiative 1000's Legislative hearing is set for 8:00 a.m. on April 18, 2019.

Infra, Part IV below. The Initiative 1000 Sponsor believes that citizens' constitutional right under Article II, §1 to submit a certified Initiative to

the Legislature should not be hamstrung by delay. The Initiative 1000 Sponsor respectfully submits that this Court must therefore act with all deliberate speed to terminate any uncertainty with respect to whether Initiative 1000 is or is not a validly certified Initiative for the 2019 Legislature's upcoming hearing and vote pursuant to Article II, §1 of our State Constitution. *Infra*, Part IV below.

II. ISSUES PLAINTIFFS NOW CONCEDE ON APPEAL

A. Plaintiffs' Decision to Omit the Initiative Sponsor as a Party Deprived the Court of Jurisdiction to Issue the Declaratory Judgments their Complaint Sought

Plaintiffs chose to omit the Initiative 1000 sponsor as a party to their Initiative 1000 suit.[1] As the briefing below explained, the court therefore lacked subject matter jurisdiction to grant any of plaintiffs' demands for declaratory relief.[2]

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[1] *Identifying an Initiative's Sponsor is easy – for the Washington Secretary of State website publicly posts every Initiative sponsor's name and contact information. E.g., https://www.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2018&t=I (listing the Initiative 1000 sponsor as follows: "Nathaniel Jackson. Public Contact Information: 6335 Pacific Ave SE, Olympia, WA 98503, Phone: 360-888-7004, natjackson1@comcast.net". App. 147 of 184.*

[2] *App. 149-150 of 184 (noting Washington's Declaratory Judgment Act mandates that "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration"(RCW 7.24.110), and that a plaintiff's failure to do so therefore "deprive[s] the court of jurisdiction to grant declaratory relief." Kendall v. Douglas, Grant, Lincoln and Okanogan Counties Public Hospital District No. 6, 118 Wn.2d 1, 10-11, 820 P.2d 497 (1991)). This was dispositive to any request by plaintiffs for declaratory relief because plaintiffs based their Complaint on RCW 29A.72.240. Feb. 11 Complaint at ¶¶10-11 (bringing their action "pursuant to RCW 29A.72.240"). But RCW 29A.72.240 does not provide for declaratory relief.*

Plaintiffs' opening brief did not dispute plaintiffs' failure to invoke any declaratory judgment jurisdiction in this case.

B. Plaintiffs' Lack Evidence for their Complaint's Allegations about Petition Sheets With Stickers

Plaintiffs' February 11 Complaint alleged the Secretary of State "wrongly counted" the signatures on 218 Initiative petition sheets that had a sticker on the front side of the sheet.[3] The Initiative Sponsor submitted sworn testimony rebutting plaintiffs' unsworn allegations about those stickers.[4]

Plaintiffs' opening brief did not dispute plaintiffs' failure to have any evidence to support their allegations about those petition sheets.

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[3] *February 11, 2019 Complaint For Writ Of Mandate, Declaratory And Injunctive Relief, And Application For Citation ("Feb. 11 Complaint") at ¶¶18-21 (alleging "on information and belief" that the sponsors of I-1000 attached a sticker altering the front of those petitions "after the petitions were signed and before turning them in", and that the "Secretary of State wrongly counted" the signatures on those petitions "as valid signatures in support of I-1000").*

[4] *App. 154-155 & 147-148 of 184 (establishing that the timing of that sticker's placement on those petition sheets was simple: One of the print runs for the Initiative 1000 signature petitions mistakenly printed sheets without the correct Initiative 1000 ballot title and ballot summary on the front; a sticker stating the correct Initiative 1000 ballot title and ballot summary was therefore put on those petition sheets before they were distributed to signature gatherers for signature gathering; and the sticker with the correct ballot title and ballot summary was accordingly on those 218 petition sheets before anyone signed those petition sheets).*

III. PLAINTIFFS' APPEAL FAILS ON THE MERITS

Plaintiffs' opening brief did not dispute the following facts:

- The Initiative Sponsor turned in 395,938 signatures to the Secretary of State.[5]
- That's 136,316 more than required for certification.[6]
- The Secretary of State submitted sworn testimony to the trial court evidencing her conclusion that there were not enough invalid signatures to eliminate that 136,316 surplus.[7]
- *After* the Initiative Sponsor filed his amicus brief in the trial court, plaintiffs filed a person's unsworn statements alleging that that person thinks the Secretary of State's conclusion might have been wrong.[8]

The first reason plaintiffs' appeal must be dismissed as a matter of law is very direct and straightforward: unsworn allegations do not create a genuine issue of fact to evade summary judgment.[9] Plaintiffs' unsworn allegations accordingly did not create a genuine issue of fact to defeat the summary judgment the Secretary of State's sworn testimony showed she was entitled to as a matter of Washington law. This one reason alone

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[5] *App. 62 of 184 at ¶19(a).*

[6] *The number of signatures required under Article II, §1 of the Washington Constitution is 259,622. App. 62 of 184 at ¶18. 395,938 - 259,622 =136,316.*

[7] *App. 57-63 of 184.*

[8] *App. 123-139 of 184. That person's unsworn allegations are also premised on his personal legal conclusions about the interpretation of Washington law.*

[9] *E.g., CR 56(e) ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.").*

establishes that the trial court's dismissal based on plaintiffs' failure to create a genuine issue of material fact was not erroneous.[10]

IV. PLAINTIFFS ARE NOT ENTITLED TO MORE DELAY

Article II, §1 of our State Constitution grants citizens the right to submit an Initiative to the Legislature to force legislators to address legislation that legislators find politically convenient to procrastinate on and put off until "maybe next year".

Initiative 1000 is such an Initiative.

It has now been over 3 months since the January 4 date this Initiative's sponsor turned in 136,316 signatures more than required for certification to the 2019 Legislature. And as noted in Part III above, plaintiffs' appeal fails on the merits as a matter of law. Washington law – and the underlying purpose of citizens' Constitutional right to submit Initiatives to the Legislature – require this Court to dismiss plaintiffs' appeal forthwith in order to terminate any current uncertainty over whether or not Initiative 1000 is a validly certified Initiative that the 2019 Legislature must put through its legislative course before the

[10] *The Initiative Sponsor also agrees with the additional reasons thus far briefed by the Secretary of State, but does not repeat them in order to avoid unnecessary repetition.*

impending April 28 adjournment (e.g., the legislative hearing currently set for 8:00 a.m. on April 18 if this Initiative's certification is resolved [11]).

V. CONCLUSION

The Secretary of State's Response will undoubtedly provide additional reasons why Washington law requires plaintiffs' appeal to be promptly dismissed. But additional reasons are not necessary. For the Secretary of State's reasons, as well as the straightforward reasons noted above, this Court must promptly dismiss plaintiffs' appeal without further delay. Then this Initiative to the 2019 Legislature can proceed in the little legislative time left (mere 17 days from today) without more stalling or uncertainty over whether Initiative 1000 is or is not a validly certified Initiative to the 2019 Legislature.

RESPECTFULLY SUBMITTED this 11th day of April, 2019.

Foster Pepper PLLC

s/ Thomas F. Ahearne
Thomas F. Ahearne, WSBA No. 14844
Adrian Urquhart Winder, WSBA No. 38071

Attorneys for the Initiative 1000 Sponsor, Nat Jackson

[11] *Initiative 1000 is set for public hearing in the Legislature April 18, 2019 at 8:00 a.m., but "subject to change" depending upon how events unfold. https://app.leg.wa.gov/billsummary?BillNumber=1000&Year=2019&Initiative=True ; https://app.leg.wa.gov/committeeschedules/Home/Documents/25803?/House/902/04-08-2019/04-19-2019/Schedule///Bill/ . (It is the Sponsor's understanding that the time was set to allow former Governors Evans, Locke, and Gregoire to testify while they are available in State.)*

FOSTER PEPPER PLLC

April 11, 2019 - 8:46 AM

Transmittal Information

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☐ EXPEDITE
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Date: March 29, 2018
Time: 9:00a.m.
Judge/Calendar: Honorable Chris Lanese

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

KAN QIU, ZHIMING YU, and GANG CHENG,

Plaintiffs,

v.

KIM WYMAN, in her official capacity as Secretary of State of the State of Washington,

Defendant.

No. 19-2-00829-34

AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NATHANIEL JACKSON

Table of Contents

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I. INTRODUCTION

Plaintiffs' suit challenges the certification of Initiative 1000. Yesterday, the parties in this suit stipulated and consented to the Initiative 1000 sponsor (Nathaniel Jackson) filing an amicus brief before the March 29 hearing set in this case. Their stipulation was filed in this Court yesterday. Today, the Initiative sponsor is accordingly filing this concise amicus brief and accompanying declaration.

II. AMICUS INITIATIVE 1000 SPONSOR

Nathaniel Jackson is the Initiative 1000 sponsor – a fact confirmed by the Washington Secretary of State website that publicly posts every Initiative sponsor's name and contact information.[1] Mr. Jackson accordingly has an interest in, and familiarity with the underlying issues involved in, this Initiative 1000 lawsuit.

Since none of this lawsuit's parties are the Initiative 1000 sponsor, Mr. Jackson submits this amicus filing to concisely present the Initiative sponsor's perspective directed to the following issues referenced by the parties in this case:

(1) timing with respect to the 218 petition sheets with a sticker on the front;

(2) relevance with respect to those 218 petition sheets; and

(3) appropriate judicial relief with respect to the Initiative sponsor's Initiative.

III. DISCUSSION

1. Timing With Respect To The 218 Petition Sheets With A Sticker On The Front.

The Complaint and Answer reference the 218 petition sheets that had a sticker on the front side of the sheet that accurately stated the Initiative 1000 ballot title and ballot summary.[2]

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[1] *https://www.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2018&t=I (listing the Initiative 1000 sponsor as follows: "Nathaniel Jackson. Public Contact Information: 6335 Pacific Ave SE, Olympia, WA 98503, Phone: 360-888-7004, natjackson1@comcast.net") (last viewed 3/18/2019). Accord, Declaration Of Former Representative Jesse Wineberry Regarding Amicus Brief Of Initiative 1000 Sponsor Nathaniel Jackson at ¶2.*

[2] *February 11, 2019 Complaint For Writ Of Mandate, Declaratory And Injunctive Relief, And Application For Citation ("Feb. 11 Complaint") at ¶¶18-20 (alleging "on information and*

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The timing of that sticker's placement on those petition sheets is simple: One of the print runs for the Initiative 1000 signature petitions mistakenly printed sheets without the correct Initiative 1000 ballot title and ballot summary on the front.[3] A sticker stating the correct Initiative 1000 ballot title and ballot summary was therefore put on those petition sheets before they were distributed to signature gatherers for signature gathering.[4] The sticker with the correct ballot title and ballot summary was accordingly on the 218 petition sheets at issue in this case before anyone signed those petition sheets.[5]

2. Relevance With Respect To Those 218 Petition Sheets.

Plaintiffs' February 11 Complaint alleges that the Secretary of State "wrongly counted" the signatures on the petitions with that sticker on the front side of the sheet.[6] The defendant Secretary of State's Answer denies the signatures on those sheets were wrongly counted.[7]

Dispositively, however, the Initiative 1000 sponsor notes that the 218 petition sheets with the sticker on the front are legally irrelevant in this certification suit. That's because a total of 21,540 petition sheets were submitted with 395,938 signatures – which is over 136,000 more signatures than the 259,622 required for certification.[8] And the 218 petition sheets with the sticker had only 4,158 signatures.[9]

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belief" that the sponsors of I-1000 attached a sticker altering the front of some petitions "after the petitions were signed and before turning them in".); Answer To Complaint By Defendant Kim Wyman, Secretary Of State For The State Of Washington ("Secretary Of State Answer") at ¶¶18-20 (admitting that "218 petition sheets for I-1000 contained a sticker with the established ballot title and ballot summary for I-1000 on the front side of the petition sheet, but with the text of a different measure on the backside of the petition."); accord, Declaration Of Lori Augino, Director Of Elections at ¶¶13-18 & Exhibit 1.

[3] *Declaration Of Former Representative Jesse Wineberry Regarding Amicus Brief Of Initiative 1000 Sponsor Nathaniel Jackson at ¶3.*

[4] *Id.*

[5] *Id.*

[6] *Feb. 11 Complaint at ¶¶18-21 (alleging the "Secretary of State wrongly counted" the signatures on those petitions "as valid signatures in support of I-1000.")*

[7] *Secretary Of State Answer at ¶21.*

[8] *Declaration Of Lori Augino, Director Of Elections at ¶¶13, 17, & 18.*

[9] *Declaration Of Lori Augino, Director Of Elections at ¶15.*

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The Initiative 1000 sponsor accordingly notes that the 218 petition sheets with a sticker on the front could be entirely excluded from the signature count, and that would still leave over 132,000 signatures more than the 259,622 threshold for certification. Since those 218 petition sheets would not change the result, plaintiffs' speculation about the timing of the sticker's placement does not raise any genuine issue of material fact in this suit.

3. Appropriate Judicial Relief With Respect To The Sponsor's Initiative.

Plaintiffs' demands for judicial relief are not proper under the statute they base their Complaint upon (RCW 29A.72.240)[10] – for as the Secretary of State's prior briefing confirmed, the relief plaintiffs' demand falls outside the narrow scope permitted under the statute they invoke.[11]

With respect to plaintiffs' declaratory judgment demands, the Initiative sponsor also notes that the statute upon which plaintiffs base their Complaint does not provide for declaratory relief.[12] And this Court cannot apply the Washington statute that does provide for declaratory

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[10] *Feb. 11 Complaint at ¶¶10-11 (bringing their action "pursuant to RCW 29A.72.240".)*

[11] *Even if RCW 29A.72.240 were amended to grant this Court a broader scope of review, plaintiffs' suit would still fail because plaintiffs do not establish the clear right required for an injunction under Washington law. See Defendant Kim Wyman's CR 56 Motion For Summary Judgment And Supporting Memorandum at n.3 (citing the long established Tyler Pipe prerequisites for injunctive relief under Washington law).*

[12] *RCW 29A.72.240 states in full: "Any citizen dissatisfied with the determination of the secretary of state that an initiative or referendum petition contains or does not contain the requisite number of signatures of legal voters may, within five days after such determination, apply to the superior court of Thurston county for a citation requiring the secretary of state to submit the petition to said court for examination, and for a writ of mandate compelling the certification of the measure and petition, or for an injunction to prevent the certification thereof to the legislature, as the case may be. Such application and all proceedings had thereunder shall take precedence over other cases and shall be speedily heard and determined. The decision of the superior court granting or refusing to grant the writ of mandate or injunction may be reviewed by the supreme court within five days after the decision of the superior court, and if the supreme court decides that a writ of mandate or injunction, as the case may be, should issue, it shall issue the writ directed to the secretary of state; otherwise, it shall dismiss the proceedings. The clerk of the supreme court shall forthwith notify the secretary of state of the decision of the supreme court."*

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relief (Declaratory Judgement Act, RCW 7.24) because plaintiffs' Complaint precludes this Court's exercise of declaratory judgment jurisdiction as a matter of law.[13]

IV. CONCLUSION

Over 2½ months ago (January 4), the Initiative 1000 sponsor turned in over 136,000 signatures more than required for that Initiative's certification to the 2019 Legislature.

Six weeks ago (February 6), the Secretary of State certified Initiative 1000 to the 2019 Legislature for the 2019 Legislature's action before its impending April 2019 adjournment.

And over five weeks ago (February 11), plaintiffs filed this Initiative certification suit's Complaint pursuant to the narrow limitations of RCW 29A.72.240.

Despite the above passage of time, plaintiffs' suit fails to raise any issue – genuine or otherwise – on the one and only question material to this certification lawsuit under RCW 29A.72.240: are over 136,000 of the 395,938 Initiative 1000 signatures invalid? *Ball v. Wyman*, --P.3d--, 2018 WL 7585612 at p. 2-3 (Aug. 24, 2018) ("The purpose of this statute [RCW 29A.72.240] is narrow.... The plain language of RCW 29A.72.240 limits the court to examining whether the petitions 'contain the requisite number of signatures of legal voters.'") (citing *Donohue v. Coe*, 49 Wn.2d 410, 415, 302 P.2d 202 (1956)).

For the reasons noted above, Washington law requires this Court to render judgment forthwith dismissing plaintiffs' February 11 Complaint under RCW 29A.72.240 with prejudice so this certified Initiative to the 2019 Legislature can proceed with taking its legislative course through the 2019 Legislature before the 2019 Legislature's impending April adjournment.

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[13] *Washington's Declaratory Judgment Act mandates that "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration"(RCW 7.24.110), and a plaintiff's failure to do so therefore "deprive[s] the court of jurisdiction to grant declaratory relief." Kendall v. Douglas, Grant, Lincoln and Okanogan Counties Public Hospital District No. 6, 118 Wn.2d 1, 10-11, 820 P.2d 497 (1991). Since plaintiffs' February 11 Complaint did not make the Initiative 1000 sponsor a party to this Initiative 1000 suit, this court lacks subject matter jurisdiction to grant that Complaint's demands for declaratory relief. Id.*

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RESPECTFULLY SUBMITTED this 19th day of March, 2019.

s/ Thomas F. Ahearne
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Email: ahearne@foster.com
Attorneys for amicus Nathaniel Jackson
(the Initiative 1000 Sponsor)

CERTIFICATE OF SERVICE

The undersigned certifies that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty-one years, I am not a party to this action, and I am competent to be a witness herein.

The undersigned declares that on March 19, 2019, I caused to be served the attached AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NATHANIEL JACKSON on the following as follows:

Joel B. Ard, WSBA #40104 P.O. Box 11633 Bainbridge Island, WA 98110 Telephone: (206) 701-9243 Email: joel@ard.law *Attorneys for plaintiffs KAN QIU, ZHIMING YU, and GANG CHENG*	☐ via hand delivery ☒ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Callie A. Castillo, WSBA #38214 Washington State Attorney General 125 Washington St SE Olympia, WA 98504-0100 Telephone: (360) 664-0869 Email: CallieC@ATG.WA.GOV *Attorneys for defendant KIM WYMAN, in her official capacity as Secretary of State of the State of Washington*	☐ via hand delivery ☒ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF

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

DATED this 19th day of March, 2019, Seattle, Washington.

/s/ Alyssa Jaskot
Alyssa Jaskot

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☐ EXPEDITE
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☒ Hearing is set:
Date: March 29, 2018
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Judge/Calendar: Honorable Chris Lanese

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

KAN QIU, ZHIMING YU, and GANG CHENG,

Plaintiffs,

v.

KIM WYMAN, in her official capacity as Secretary of State of the State of Washington,

Defendant.

No. 19-2-00829-34

DECLARATION OF FORMER REPRESENTATIVE JESSE WINEBERRY REGARDING AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NATHANIEL JACKSON

JESSE WINEBERRY DECLARES:

1. I am one of the Initiative 1000 personnel involved in resolving the petition printing error with the stickers described in paragraph 3 of this declaration. I am over the age of 18 and am competent to testify herein. I have personal knowledge of the facts contained in this declaration.

2. I am a licensed attorney, was a member of the Washington State House of Representatives for ten years (1985-1995), and served in positions including (but not limited to) Majority Whip and senior ranking member of the House Judiciary Committee. Nathaniel Jackson is the sponsor of Initiative 1000, and over the past year I have been actively involved

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with the Initiative 1000 efforts. The honorary co-chairs of our Initiative 1000 campaign are former Governors Evans, Locke, and Gregoire.

3. One of the print runs for the Initiative 1000 signature petitions mistakenly printed sheets without the correct Initiative 1000 ballot title and ballot summary on the front. We therefore put a sticker stating the correct Initiative 1000 ballot title and ballot summary on those petition sheets before they were distributed to signature gatherers for signature gathering. The sticker with the correct ballot title and ballot summary was accordingly on the 218 petition sheets at issue in this case before anyone signed those petition sheets.

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

DATED this 19th day of March, 2019, at Olympia, Washington.

Jesse Wineberry

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CERTIFICATE OF SERVICE

The undersigned certifies that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty-one years, I am not a party to this action, and I am competent to be a witness herein.

The undersigned declares that on March 19, 2019, I caused to be served the attached DECLARATION OF FORMER REPRESENTATIVE JESSE WINEBERRY REGARDING AMICUS BRIEF OF INITIATIVE 1000 SPONSOR NATHANIEL JACKSON on the following as follows:

Joel B. Ard, WSBA #40104 P.O. Box 11633 Bainbridge Island, WA 98110 Telephone: (206) 701-9243 Email: joel@ard.law *Attorneys for plaintiffs KAN QIU, ZHIMING YU, and GANG CHENG*	☐ via hand delivery ☒ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF
Callie A. Castillo, WSBA #38214 Washington State Attorney General 125 Washington St SE Olympia, WA 98504-0100 Telephone: (360) 664-0869 Email: CallieC@ATG.WA.GOV *Attorneys for defendant KIM WYMAN, in her official capacity as Secretary of State of the State of Washington*	☐ via hand delivery ☒ via first class mail, postage prepaid ☐ via facsimile ☒ via e-mail ☐ via ECF

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

DATED this 19th day of March, 2019, Seattle, Washington.

/s/ Alyssa Jaskot
Alyssa Jaskot

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. EVERGREEN FREEDOM FOUNDATION d/b/a FREEDOM FOUNDATION, Petitioner.	)	No. 95281-7 En Banc Filed JAN 10 2019

MADSEN, J.—This case involves statutory interpretation concerning application of the reporting requirements contained in the Fair Campaign Practices Act (FCPA), chapter 42.17A RCW. The specific issue is how the FCPA reporting requirements in RCW 42.17A.255 and the definition in RCW 42.17A.005(4) ("ballot proposition")[1] are to be applied in the context of local initiatives. For the reasons explained below, we hold

[1] The FCPA was amended twice in the recent legislative session. Laws of 2018, chapter 111 does not take effect until January 1, 2019. Laws of 2018, chapter 304 took effect June 7, 2018, but the amendments to RCW 42.17A.255 in that bill were vetoed. The amendments otherwise added a definition unrelated to this case, but resulted in the "ballot proposition" definition at issue here to be renumbered as RCW 42.17A.005(5). To avoid confusion, and to remain consistent with the parties' briefing, we refer to the relevant definitional subsection addressing "ballot proposition" by its former designation as RCW 42.17A.005(4).

that under the circumstances of this case, pro bono legal services, which Evergreen Freedom Foundation provided to initiative proponents, were reportable to the Public Disclosure Commission (PDC) under the above noted statutes. We affirm the Court of Appeals' reversal of the trial court's CR 12(b)(6) dismissal of the State's FCPA regulatory enforcement action and remand to the trial court for further proceedings.

FACTS

In 2014, Evergreen Freedom Foundation (EFF) staff created sample municipal ordinances and ballot propositions for citizens to use to advance certain causes to their local city councils or commissions. Local residents in the cities of Sequim, Chelan, and Shelton utilized those samples in filing two ballot propositions in each city, one to require collective bargaining negotiation sessions to be publicly conducted and the second to prohibit union security clauses in city collective bargaining agreements.

The proponents submitted the proposed measures to their local city clerks along with signatures they had gathered in support of the measures. They asked their respective city councils or commissions either to pass the measures as local ordinances or, if the councils or commissions did not agree, to alternatively place each measure on the local ballot for a vote. None of the cities passed the measures as ordinances or placed the ballot propositions on the local ballots.[2]

[2] The cities of Chelan and Shelton voted to neither adopt the propositions nor place them on the ballot. The city of Sequim concluded that it would table the issue until a later meeting but never acted further.

In response, EFF employees, who are attorneys, participated in lawsuits against each jurisdiction on behalf of the local resident proponents. Each suit sought a judicial directive to the respective city to put each measure on the local ballot. Each lawsuit ended in a superior court dismissing the case, and those decisions were not appealed.

EFF did not file any campaign finance disclosure reports with the PDC identifying the value of the legal services it provided to the resident proponents in support of the local ballot propositions.[3] In February 2015, the attorney general received a citizen action complaint about EFF's failure to report the value of legal services it provided in support of these local ballot measures.[4] The State conducted an investigation and then filed a civil regulatory enforcement action against EFF in Thurston County Superior Court, alleging that EFF failed to report independent expenditures it made in support of the noted local ballot propositions.[5]

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[3] As discussed below, the FCPA, RCW 42.17A.255, requires a person (organization) to file a report with the PDC disclosing all "independent expenditures" totaling $100 or more during the same election campaign. RCW 42.17A.255(2). Subsection (1) of that statue defines "independent expenditure" as "any expenditure that is made in support of or in opposition to any candidate or ballot proposition." RCW 42.17A.255(1). "Ballot proposition" is defined in RCW 42.17A.005(4) as

> any "measure" as defined by RCW 29A.04.091 [i.e., "any proposition or question submitted to the voters"], or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and *after the time when the proposition has been initially filed with the appropriate election officer* of that constituency *before its circulation for signatures.*

(Emphasis added.)

[4] The letter was filed on behalf of the Committee for Transparency in Elections and contained notice that if the State did not take action within 45 days, the complainant intended to file a citizen's action against EFF "as authorized under [RCW] 42.17A.765(4)." Clerk's Papers at 65.

[5] No other citizen action complaints related to these local ballot propositions have been filed with the Attorney General's Office.

EFF moved to dismiss the State's enforcement action, asserting that the local propositions were not "ballot propositions" as defined in RCW 42.17A.005(4). Clerk's Papers at 24. EFF argued that because the local initiative process generally requires signatures to be gathered and submitted before the ballot propositions are filed with the local elections official, the local propositions were not "ballot propositions" under RCW 42.17A.005(4) and, therefore, no disclosure was required unless and until the proposition became a "measure" placed on a ballot. *Id.* at 19-33.

The State opposed the motion and the statutory interpretation asserted by EFF. The State argued that EFF's reading of the statute would effectively exclude from public disclosure all funds raised and spent on local ballot propositions until they advanced to the ballot, contrary to the stated purpose and intent of the FCPA.

The superior court granted EFF's motion for dismissal under CR 12(b)(6) (failure to state a claim). It found the statutes at issue here to be "ambiguous and vague." Verbatim Report of Proceedings at 23. The superior court further found that the State had not "sufficiently established that this situation involved a ballot measure that gave them the opportunity to require that such be reported," explaining that "such" meant "legal services that were provided on a pro bono basis before the matter ever went to any kind of vote." *Id.* at 23-24.

The State sought direct review and this court transferred the case to Division Two of the Court of Appeals. Order, *State v. Evergreen Freedom Found.*, No. 93232-8 (Wash. Mar. 29, 2017). The Court of Appeals reversed, holding in a partially published opinion that "under the only reasonable interpretation" of the definition of "ballot

proposition" in the FCPA, the local initiatives qualified as ballot propositions at the time EFF provided legal services because the initiatives had been filed with local election officials. *State v. Evergreen Freedom Found.*, 1 Wn. App. 2d 288, 293, 404 P.3d 618 (2017) (published in part). The Court of Appeals also rejected EFF's argument that reporting requirements could apply only to electioneering that occurs once a proposition has been placed on the ballot. *Id.* at 306. The court concluded that RCW 42.17A.255 does not violate EFF's First Amendment rights. *Id.* at 307. In the unpublished portion of the opinion, the Court of Appeals rejected EFF's other arguments, including that the statute is unconstitutionally vague. *Evergreen Freedom Found.*, No. 50224-1-II, slip op. (unpublished portion) at 22-24, http://www.courts.wa.gov/opinions/pdf/D2%2050224-1-II%20Published%20Opinion.pdf. EFF petitioned for review, which this court granted. *State v. Evergreen Freedom Found.*, 190 Wn.2d 1002 (2018).

ANALYSIS

Standard of Review

This court reviews issues of statutory construction and constitutionality de novo. *State v. Evans*, 177 Wn.2d 186, 191, 298 P.3d 724 (2013); *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 432, 395 P.3d 1031 (2017). When possible, this court derives legislative intent from the plain language enacted by the legislature; "[p]lain language that is not ambiguous does not require construction." *Evans*, 177 Wn.2d at 192. However, if more than one interpretation of the plain language is reasonable, the statute is ambiguous, and the court must then engage in statutory construction. *Id.* at 192-93. The

court may then look to legislative history for assistance in discerning legislative intent. *Id.* at 193.

In construing a statute, the fundamental objective is to ascertain and carry out the people's or the legislature's intent. *See Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). This court looks to the entire "'context of the statute in which the provision is found, [as well as] related provisions, amendments to the provision, and the statutory scheme as a whole.'" *State v. Conover*, 183 Wn.2d 706, 711, 355 P.3d 1093 (2015) (quoting *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 350, 340 P.3d 849 (2015)); *see also G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 310, 237 P.3d 256 (2010) ("enacted statement of legislative purpose is included in a plain reading of a statute").

> The meaning of words in a statute is not gleaned from [the] words alone but from "all the terms and provisions of the act in relation to the subject of the legislation, the nature of the act, the general object to be accomplished and consequences that would result from construing the particular statute in one way or another."

Burns v. City of Seattle, 161 Wn.2d 129, 146, 164 P.3d 475 (2007) (internal quotation marks omitted) (quoting *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994)); *see also Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002) (clarifying "plain meaning" is "discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question").

FCPA Background and Application

In 1972, voters in Washington adopted Initiative 276 (I-276), which established the PDC and formed the basis of Washington's campaign finance laws. *Voters Educ. Comm. v. Pub. Disclosure Comm'n*, 161 Wn.2d 470, 479, 166 P.3d 1174 (2007). I-276 is codified in portions of chapter 42.17A RCW, which is now known as the FCPA. RCW 42.17A.909. I-276 was designed, in part, to provide the public with full disclosure of information about who funds initiative campaigns and who seeks to influence the initiative process. *See* LAWS OF 1973, ch. 1, § 1. In I-276, the people declared that it would be

> the public policy of the State of Washington:
> (1) That political campaign and lobbying contributions and expenditures *be fully disclosed* to the public and that secrecy is to be avoided.
> . . . .
> (10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.
> (11) . . . The provisions of this act shall be *liberally construed to promote complete disclosure* of all information respecting the financing of political campaigns and lobbying.

LAWS OF 1973, ch. 1, § 1 (emphasis added); *see also* RCW 42.17A.001(1), (10), (11). With a 72 percent supporting vote, Washington voters adopted I-276 and required financial disclosure for campaigns, including those related to initiatives, referenda, and ballot measures. *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 996 (9th Cir. 2010).

I-276 established reporting requirements for anyone supporting or opposing a "ballot proposition." LAWS OF 1973, ch. 1, §§ 2(2), 10(1); *see also id.* §§ 3-11 (I-276 provisions establishing reporting requirements); RCW 42.17A.255. For example, an "'independent expenditure' [is] any expenditure that is made *in support of or in opposition to any* candidate or *ballot proposition* and is not otherwise required to be reported." RCW 42.17A.255(1) (emphasis added). Reporting requirements are triggered once an expenditure amount crosses a threshold of $100. RCW 42.17A.255(2).[6]

I-276 defined "ballot proposition" to mean "any 'measure' as defined by [former] R.C.W. 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of any specific constituency *which has been filed with the appropriate election officer of that constituency.*" LAWS OF 1973, ch. 1, § 2(2) (emphasis added). When I-276 was adopted in 1972, "measure" meant "any proposition or question submitted to the voters of any specific constituency." LAWS OF 1965, ch. 9, § 29.01.110; former RCW 29.01.110 (1972).[7]

In 1975, soon after the adoption of I-276, the legislature made adjustments to the definition of "ballot proposition" to clarify that the term applied to both statewide and local initiatives, recalls, and referenda:

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[6] As originally adopted in I-276, this provision was worded differently, but it reflected the same intent: "Any person who makes an expenditure in support of or in opposition to any candidate or proposition (except to the extent that a contribution is made directly to a candidate or political committee), in the aggregate amount of one hundred dollars or more during an election campaign, shall file with the [PDC] a report." LAWS OF 1973, ch. 1, § 10(1).

[7] In 2003, the legislature removed the last phrase of the definition of "measure," so that the term now includes "any proposition or question submitted to the voters." LAWS OF 2003, ch. 111, § 117. Former RCW 29.01.110 is now codified as RCW 29A.04.091.

> "Ballot proposition" means any "measure" as defined by [former] RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of ((~~any specific~~)) the state or any municipal corporation, political subdivision or other voting constituency ((~~which~~)) from and after the time when such proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

LAWS OF 1975, 1st Ex. Sess., ch. 294, § 2(2). Thus, the 1975 legislature clarified that "ballot proposition" includes local propositions "from and after the time when such proposition has been initially filed with the appropriate election officer . . . prior to its circulation for signatures."[8] *Id.*

As noted, the 1975 legislature added the language in the definition that refers specifically to "any municipal corporation, political subdivision or other voting constituency." *Id.* It simultaneously added "prior to its circulation for signatures." *Id.*

The issue here is that the procedures for statewide and local initiatives differ. For a statewide initiative, many steps have to be navigated *before* the signature gathering stage is reached: the proponent files the proposed initiative with the secretary of state (RCW 29A.72.010), the code reviser reviews and then certifies that (s)he has reviewed the proposed measure and suggested revisions to the proponent (RCW 29A.72.020), then the secretary of state gives the proposed measure a serial number (RCW 29A.72.040), then the attorney general formulates a ballot title and summary (RCW 29A.72.060), and any person dissatisfied with the title or summary may appeal to the superior court (RCW

[8] The definition of "ballot proposition" has since been updated to reflect the current codification of the definition of "measure" and to replace "prior to" with "before," but it otherwise remains the same today. RCW 42.17A.005(4); *see* LAWS OF 2010, ch. 204, § 101(4).

29A.72.080); after all that, the proponent then begins gathering signatures (RCW 29A.72.090-.150). *See generally* RCW 29A.72.010-.150. If an initiative to the people has sufficient valid signatures, it goes on the ballot at the next general election. CONST. art. II, § 1. If an initiative to the legislature has sufficient valid signatures, it is presented to the legislature first, but if the legislature declines to adopt it, the initiative appears on the following general election ballot. *Id.* § 1(a).

For a local initiative, the proponent generally gathers signatures and submits them along with the proposed ballot measure to the local election official. *See* RCW 35.17.260. If the petition contains the required number of valid signatures, the city's or the town's council or commission must either pass the proposed ordinance or submit the proposition to a vote of the people.[9] *Id.*

Thus, RCW 42.17A.005(4)'s language fits neatly with the statewide initiative procedures, but it creates tension as to the noted local initiative procedures in that the second prong of RCW 42.17A.005(4) expressly applies to both state and local initiatives, but its final phrase, "before its circulation for signatures," seems at odds with the local initiative procedures noted above.

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[9] *See also* RCW 35.17.240-.360 (authorizing cities using the commission form of government to adopt the initiative and referendum processes); RCW 35A.11.100 (authorizing same processes for noncharter code cities); SEQUIM MUNICIPAL CODE 1.15 (adopting the initiative and referendum processes set forth in RCW 35A.11.080-.100); SHELTON CITY CODE 1.24.010 (adopting the initiative and referendum processes in chapter 35.17 RCW, via adoption of chapter 35A.11 RCW); *cf.* CHELAN MUNICIPAL CODE 2.48.050-.210 (providing for the initiative process), .080 (providing sponsors with an extended 90-day window within which to gather sufficient valid signatures after the initiative is initially submitted).

The State argues that "[p]re-amendment, the definition already incorporated propositions as soon as they were filed and it already incorporated signature gathering for state initiatives, so there was no need to add the phrase 'prior to circulation for signatures' unless the legislature intended to clarify that the definition also covers the signature-gathering period for local propositions."[10] State of Washington's Suppl. Br. at 9. In the State's view, the amendment "ensured the statute would be applied according to the people's purpose: full and complete public disclosure of expenditures related to ballot propositions, including those made before a proposition appears on the ballot." *Id.* This is a fair and plain reading of the above statute, giving effect to all its parts. And, as importantly, the State's reading of the statute comports with the FCPA's stated policy and express directive that its provisions be "liberally construed to promote complete disclosure of all information respecting the financing of political campaigns." RCW 42.17A.001(11); *see Campbell & Gwinn*, 146 Wn.2d at 11 (plain meaning is discerned from all that the legislature has said in the statute and related statutes); *see also Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 792-93, 357 P.3d 1040 (2015) (this court assumes the legislature does not intend to create inconsistency and, thus, reads statutes together to achieve a harmonious total statutory scheme that maintains each statute's integrity).

[10] As noted, the original definition of "ballot proposition" in the FCPA included "any initiative . . . proposed to be submitted to the voters of any specific constituency which has been filed with the appropriate election officer of that constituency." LAWS OF 1973, ch. 1, § 2(2). For statewide initiatives, this definition already incorporated the signature-gathering phase because, for a statewide initiative, the sponsor must file the proposed initiative before circulating it for signatures. *See* RCW 29A.72.010-.150 (discussed above).

EFF counters that the plain language of the statute controls, arguing that because the signatures were already gathered when the proposed initiatives were filed with the local election officials, the definition of "ballot proposition" is not met and no reporting requirement is triggered. But this reading not only undermines the stated purpose of the FCPA, it also ignores the language added to RCW 42.17A.005(4) in 1975 that expressly applies that provision to local initiatives.

EFF further contends that RCW 42.17A.005(4) and RCW 42.17A.255(1) "apply only to electioneering," which EFF contends never occurred here because the local initiatives were never placed on the ballot. EFF Suppl. Br. at 11 (emphasis omitted). First, EFF's reliance on *Brumsickle* as supporting EFF's contention is misplaced. That case did not so hold. *See id.* (misquoting *Brumsickle*, 624 F.3d at 998). Further, as noted, both statutes at issue here broadly impose reporting requirements concerning "*any expenditure* that is made in support of or in opposition to *any* candidate or *ballot proposition*," RCW 42.17A.255(1) (emphasis added), with "ballot proposition" defined to include "*any initiative* . . . proposed to be submitted to the voters." RCW 42.17A.005(4) (emphasis added). The noted language is simply not restricted to electioneering, as EFF asserts. Moreover, where litigation is being employed as a tool to block adoption of an initiative or to force an initiative onto the ballot, as was attempted here, the finances enabling such support (or opposition) would indeed appear to fall within the "any expenditure," triggering the reporting obligation noted above. The contention that litigation support does not qualify as a reportable independent expenditure ignores the express purpose of the FCPA in the context of modern politics. *See, e.g.*,

Huff v. Wyman, 184 Wn.2d 643, 645, 361 P.3d 727 (2015) (litigation brought by initiative opponents seeking to enjoin placement of initiative on the ballot); *Filo Foods, LLC v. City of SeaTac*, 179 Wn. App. 401, 403, 319 P.3d 817 (2014) (litigation over whether a local minimum wage initiative qualified for the ballot).[11]

In sum, giving meaning to *all* of the language in RCW 42.17A.005(4) and complying with the FCPA's directive for liberal construction, we determine that the amended language in RCW 42.17A.005(4) was intended to pick up the expenditures prior to signature gathering, regardless of when they are gathered, but only if the measure is actually filed with an election official. Applying this holding here, and in light of the FCPA's history, purpose, and the particular facts of this case, EFF's pro bono legal services were reportable to the PDC under RCW 42.17A.255 and RCW 42.17A.005(4).

The FCPA Provisions Are Not Unconstitutionally Vague

EFF contends that RCW 42.17A.255(1) and RCW 42.17A.005(4) are unconstitutionally vague because "[n]o reasonable person can know how to conform to the applicable statutory requirements." EFF Suppl. Br. at 16-17. We disagree.

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[11] EFF cites *Coloradans for a Better Future v. Campaign Integrity Watchdog*, 2018 CO 6, 409 P.3d 350, as supporting its viewpoint, but that case is inapposite. The court there held that uncompensated legal services to a political organization were "not 'contributions' to a political organization under Colorado's campaign-finance laws." *Id.* at ¶ 41. But that determination turned on application of specific statutory language that is not present here. *Id.* at ¶¶ 28-40.

EFF also cites to *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012), but that case is also inapposite. There, the Ninth Circuit Court of Appeals affirmed the grant of a preliminary injunction barring enforcement of a statute that imposed contribution limits regarding a political (recall) committee. But that case applied a different standard in the contributions limitations context (i.e., applying "closely drawn" scrutiny to contribution *limits* based on a First Amendment challenge). *Id.* at 865 n.6. As discussed below, that is not the appropriate standard here.

Statutes are presumed to be constitutional, and the party asserting that a statute is unconstitutionally vague must prove its vagueness beyond a reasonable doubt. *Voters Educ. Comm.*, 161 Wn.2d at 481. In the First Amendment context, the asserting party may allege that a statute is either facially invalid or invalid as applied. *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 612, 192 P.3d 306 (2008). A facial challenge asserts that the statute cannot be properly applied in any context. *City of Spokane v. Douglass*, 115 Wn.2d 171, 182 n.7, 795 P.2d 693 (1990). In an as applied challenge, the statute must be considered in light of the facts of the specific case before the court. *Am. Legion Post*, 164 Wn.2d at 612.

"'A statute is void for vagueness if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. The purpose of the vagueness doctrine is to ensure that citizens receive fair notice as to what conduct is proscribed, and to prevent the law from being arbitrarily enforced.'" *In re Contested Election of Schoessler*, 140 Wn.2d 368, 388, 998 P.2d 818 (2000) (internal quotation marks omitted) (quoting *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 739-40, 818 P.2d 1062 (1991)). However, vagueness is not simply uncertainty as to the meaning of a statute. *Am. Legion Post*, 164 Wn.2d at 613. In determining whether a statute is sufficiently definite, the provision in question must be considered within the context of the entire enactment and the language used must be afforded a sensible, meaningful, and practical interpretation. *Id.* "A court should not invalidate a statute simply because it could have been drafted with greater precision." *Id.* Moreover, "'a statute is not unconstitutionally vague merely because a person cannot

predict with complete certainty the exact point at which [that person's] actions would be classified as prohibited conduct.'" *Schoessler*, 140 Wn.2d at 389 (alteration in original) (quoting *City of Seattle v. Eze*, 111 Wn.2d 22, 27, 759 P.2d 366 (1988)).

A statute's language is sufficiently clear when it provides explicit standards for those who apply them and provides a person of ordinary intelligence a reasonable opportunity to know what is prohibited. *Voters Educ. Comm.*, 161 Wn.2d at 489. Here, EFF contends that the definition of "ballot proposition" cannot apply to local initiatives and the obligation to report independent expenditures cannot apply to activities beyond electioneering. But those assertions are refuted by the statutory language as discussed herein. As explained above, a local initiative becomes a ballot proposition when it is filed with local elections officials, and here all of the initiatives in question were filed before EFF expended resources to support them. RCW 42.17A.005(4). Accordingly, the portions of the FCPA at issue here (RCW 42.17A.255 and .005(4)) are not unconstitutionally vague as applied. Likewise, there is no facial invalidity because the statutes at issue establish a clear course of conduct, requiring persons to report their independent expenditures. *Any* nonexempt independent expenditures in support of a ballot proposition must be reported under RCW 42.17A.255. EFF has not shown that there is no set of facts, including the circumstances here, in which the statute could not be constitutionally applied. *Douglass*, 115 Wn.2d at 182 n.7. We hold that RCW 42.17A.005(4) and RCW 42.17A.255 are not unconstitutionally vague.

The FCPA Provisions Do Not Violate the First Amendment

EFF contends that the "State's enforcement action impermissibly infringes on the Foundation's [First Amendment] free speech and privacy of association rights." EFF Suppl. Br. at 21; U.S. CONST. amend. I. We disagree.

In addressing a First Amendment challenge to the "independent expenditure" provision of the FCPA at issue here, the Ninth Circuit Court of Appeals concluded in *Brumsickle*, 624 F.3d at 994-95, that "Washington State's disclosure requirements do not violate the First Amendment." The Ninth Circuit court noted that the Supreme Court had concluded that "the government 'may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.'" *Id.* at 994 (quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 319, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)). "[A] campaign finance disclosure requirement is constitutional if it survives *exacting scrutiny*, meaning that it is substantially related to a sufficiently important governmental interest." *Id.* at 1005 (emphasis added). As the *Citizens United* Court held, "'[D]isclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities and do not prevent anyone from speaking.'" *Id.* (internal quotation marks and citation omitted) (quoting *Citizens United*, 558 U.S. at 366). Accordingly, "exacting scrutiny applies in the campaign finance disclosure context." *Id.* (citing *Citizens United*, 588 U.S. at 366-67; *Doe v. Reed*, 561 U.S. 186, 196, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010); *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 728-30, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008)).

In explaining the governmental interest at stake, the *Brumsickle* court noted that providing information to the electorate is "vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment." *Id.* Such vital provision of information has been repeatedly recognized as "a sufficiently important, if not compelling, governmental interest." *Id.* at 1005-06. The Ninth Circuit expounded on the importance of disclosure regarding candidates, and then drew parallels regarding ballot measures.

> [D]isclosure provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate" in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Id. at 1006 (alteration in original) (quoting *Buckley v. Valeo*, 424 U.S. 1, 66-67, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)).

Relevant here, the court observed that such considerations apply equally for voter-decided ballot measures. *Id.* "In the ballot initiative context, where voters are responsible for taking positions on some of the day's most contentious and technical issues, '[v]oters act as legislators,' while 'interest groups and individuals advocating a measure's defeat or passage act as lobbyists.'" *Id.* (quoting *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1106 (9th Cir. 2003)). The "high stakes of the ballot context only amplify the crucial need to inform the electorate that is well recognized in the context of candidate elections." *Id.*

> Campaign finance disclosure requirements . . . advance the important and well-recognized governmental interest of providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas. An appeal to cast one's vote a particular way might prove persuasive when made or financed by one source, but the same argument might fall on deaf ears when made or financed by another. The increased "transparency" engendered by disclosure laws "enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United*, [558 U.S. at 371]. As the Supreme Court has stated: "[T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate." [*First Nat'l Bank v. Bellotti*, 435 U.S. 765, 791-92, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978)]. Disclosure requirements, like those in Washington's Disclosure Law, allow the people in our democracy to do just that.

Id. at 1008 (third alteration in original). The *Brumsickle* court concluded that "[t]here is a substantial relationship between Washington State's interest in informing the electorate and the definitions and disclosure requirements it employs to advance that interest." *Id.* at 1023; *see also Voters Educ. Comm.*, 161 Wn.2d at 483 (the right to free speech held by organizations that engage in political speech includes a "fundamental counterpart" that is the public's right to receive information); *State ex rel. Pub. Disclosure Comm'n v. Permanent Offense*, 136 Wn. App. 277, 284, 150 P.3d 568 (2006) ("Washington State has a substantial interest in providing the electorate with valuable information about who is promoting ballot measures and why they are doing so[;] . . . it is particularly important . . . that voters know whether other influences—particularly money—are affecting those who are otherwise known as grass-roots organizers.").

Given the State's important governmental interest in informing the public about the influence and money behind ballot measures, as noted above, and the FPCA's vital

role (via application of RCW 42.17A.255 and RCW 42.17A.005(4)) in advancing that interest, the disclosure requirement that operates under these statutes satisfies the exacting scrutiny standard. Accordingly, there is no impermissible infringement of EFF's First Amendment rights, and we so hold.

CONCLUSION

We affirm the Court of Appeals' reversal of the trial court's CR 12(b)(6) dismissal of the State's regulatory enforcement action under the FCPA. Under the circumstances of this case, EFF's pro bono legal services were reportable to the PDC under RCW 42.17A.255 and RCW 42.17A.005(4). Those statutes are not unconstitutionally vague, nor does their application here violate EFF's First Amendment rights. We remand to the trial court for further proceedings.

Madsen, J.

WE CONCUR:

Fairhurst, C.J.

Wiggins, J.

No. 95281-7

GORDON McCLOUD, J. (dissenting)—The Fair Campaign Practices Act (FCPA), chapter 42.17A RCW, establishes requirements for political spending and reporting. One FCPA statute requires people and organizations that make certain political expenditures to report those expenditures to the Public Disclosure Commission. It is well established that such a reporting requirement implicates the First Amendment right to free speech. U.S. CONST. amend. I; *Utter v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 341 P.3d 953 (2015); *Voters Educ. Comm. v. Public Disclosure Comm'n*, 161 Wn.2d 470, 166 P.3d 1174 (2007); *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010).

In this case, both the trial court and the Court of Appeals expressly acknowledged that the FCPA is ambiguous with respect to whether it compels reporting of independent expenditures in support of initiatives not yet on the ballot in noncharter cities. Clerk's Papers (CP) at 102 (order); Verbatim Report of Proceedings (May 13, 2016) (VRP) at 23; *State v. Evergreen Freedom Found.*, 1 Wn. App. 2d 288, 303, 404 P.3d 618 (2017) (published in part). The majority implicitly acknowledges the same thing. Majority at 10. The majority resolves

that ambiguity against the speaker and in favor of the government. But resolving an ambiguity in a statute implicating free speech against the speaker and in favor of the government violates controlling precedent of this court and of the United States Supreme Court.

I therefore respectfully dissent.

BACKGROUND

The State brought a civil enforcement action against Evergreen Freedom Foundation (Foundation) for failing to report independent expenditures in support of several "ballot propositions." CP at 5-10 (State's complaint); *see also* RCW 42.17A.255(3) (requiring reporting of independent expenditures in support of ballot propositions). Under the FCPA, a "ballot proposition" is

> any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency *before its circulation for signatures*.[1]

Former RCW 42.17A.005(4) (2014), *recodified as* RCW 42.17A.005(5) (LAWS OF 2018, ch. 304, § 2) (emphasis added).

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[1] Under RCW 29A.04.091, a "'[m]easure' includes any proposition or question submitted to the voters."

The Foundation admits that it did not report the expenditures at issue here—free legal representation for citizens attempting to place initiatives on the ballot in their municipalities. CP at 14-18 (Foundation's answer). The Foundation defends itself on the ground that its expenditures were not reportable. It argues that the FCPA's RCW 42.17A.255 requires a person or organization to report expenditures for "ballot propositions" "after" the submission to the election officer, which is "before its circulation for signatures." But the initiatives at issue here were not submitted to the election officer before circulation for signatures. The Foundation therefore concludes that those initiatives did not constitute ballot propositions within the meaning of former RCW 42.17A.005(4). CP at 22-28 (Foundation's motion to dismiss).

The Foundation continues that even if the initiatives did constitute ballot propositions within the meaning of former RCW 42.17A.005(4), that definition—particularly the language italicized above—is unconstitutionally vague as applied in this case. VRP at 8-9; Foundation's Suppl. Br. 13-17; Wash. Supreme Court oral argument, *State v. Evergreen Freedom Found.*, No. 95281-7 (June 28, 2018), at 9 min., 18 sec. through 10 min., 32 sec., *video recording by* TVW, Wash. State's Public Affairs Network, https://www.tvw.org/watch/?eventID=2018061095.

The language of the statute defining "ballot proposition" is certainly confusing as applied to this case as the trial court, appellate court, and majority all note. The reason is that in this case, citizens were attempting to place initiatives on the ballot in three noncharter cities: Sequim, Shelton, and Chelan.[2] CP at 7. The initiative process in noncharter cities differs from the initiative process for statewide measures and the initiative process for certain charter cities. In noncharter cities, an initiative's proponent gathers signatures first and officially files the initiative with the city after. By contrast, at the statewide level and in certain charter cities, the proponent files first and gathers signatures after. *Compare* RCW 35.17.260 (establishing procedures for initiatives in cities with the commission form of government) *and* RCW 35A.11.100 (generally adopting for code cities the initiative procedures used in cities with the commission form of government), *with* chapter 29A.72 RCW (establishing procedures for statewide initiatives). *See also* RCW 35.22.200 (recognizing that charter cities "may provide for direct legislation by the people through the initiative"); *e.g.*, SEATTLE CITY

[2] *See* SEQUIM MUNICIPAL CODE 1.16.010 (identifying Sequim as a code city); SHELTON MUNICIPAL CODE 1.24.010 (identifying Shelton as a code city); CHELAN MUNICIPAL CODE 1.08.010 (identifying Chelan as a code city).

CHARTER art. IV, § 1.B; SEATTLE MUNICIPAL CODE ch. 2.08; TACOMA CITY CHARTER art. II, § 2.19.

There is no dispute that former RCW 42.17A.005(4) would have covered the Sequim, Shelton, and Chelan initiatives if they had made it onto the ballot, because at that point they would have fallen within the definition of reportable "measures" in cross-referenced RCW 29A.04.091. The issue in this case is whether former RCW 42.17A.005(4) encompasses initiatives not yet on the ballot in such noncharter cities.[3]

The trial court concluded that the tension between the statute's language and the initiative process in noncharter cities could not be resolved. It noted that it had "difficulty working through [the statutes] and understanding the position of the parties[] because there is not a clearly stated policy regarding this kind of a situation . . . ." VRP at 23. It therefore held that former RCW 42.17A.005(4) was "ambiguous and vague." *Id.* Accordingly, it granted the Foundation's CR 12(b)(6)

[3] I assume for the purposes of this opinion that the Foundation's provision of free legal representation to the citizens trying to place the initiatives on their local ballots qualifies as "independent expenditures" under RCW 42.17A.255(1). The majority makes the same assumption. As the Court of Appeals noted, the Foundation has not argued otherwise. *Evergreen Freedom Found.*, 1 Wn. App. 2d at 306 n.5.

motion to dismiss for failure to state a claim on which relief could be granted. CP at 102 (order).

The Court of Appeals agreed that former RCW 42.17A.005(4) was "ambiguous" and added that the statute was "confusing." 1 Wn. App. 2d at 302-03. But it reversed the trial court's decision to dismiss on the ground that former RCW 42.17A.005(4) encompassed initiatives not yet on the ballot in noncharter cities. The Court of Appeals acknowledged that its interpretation of former RCW 42.17A.005(4) disregarded the "literal interpretation" of the statute's text. *Id.* at 304. That court explicitly stated that it "can and must ignore statutory language." *Id.* at 305.

The Foundation petitioned for review, which we granted. *State v. Evergreen Freedom Found.*, 190 Wn.2d 1002 (2018).

ANALYSIS

I. Standard of Review

We review a trial court's grant of a CR 12(b)(6) motion to dismiss de novo. *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014) (citing *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007)).

II. The Plain Language of Former RCW 42.17A.005(4) Is Ambiguous as Applied to Ballot Propositions Not Yet on the Ballot in Noncharter Cities

In interpreting a statute such as former RCW 42.17A.005(4), "[t]he court's fundamental objective is to ascertain and carry out the Legislature's intent . . . ." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The court discerns the legislature's intent by conducting a plain-meaning analysis—that is, by examining the statute's text and context. *Id.* at 11-12. "Of course, if, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history." *Id.* at 12 (citing *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001); *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 312, 884 P.2d 920 (1994)).

The language of former RCW 42.17A.005(4) perfectly tracks the initiative process for statewide measures and the initiative process for certain charter cities. It states that a "ballot proposition" is "any initiative . . . proposed to be submitted to the voters of the state or any . . . other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures." Former RCW

42.17A.005(4). A statewide measure or an initiative in a charter city following the statewide process *is* "filed . . . before its circulation for signatures." *Id.*

But the language of former RCW 42.17A.005(4) does not perfectly track the initiative process in noncharter cities. An initiative in a noncharter city *is not* "filed . . . before its circulation for signatures." *Id.* It is filed *after* its circulation for signatures. Thus, as the majority recognizes, the text of former RCW 42.17A.005(4) is "at odds" and in "tension" with the initiative process in noncharter cities. Majority at 10.

III. The Majority Impermissibly Relies on Legislative History To Interpret Former RCW 42.17A.005(4)'s Plain Meaning

A. The Majority Relies on Former RCW 42.17A.005(4)'s Underlying History To Interpret the Statute

The majority resolves that tension by relying on the statute's underlying history. It compares the definition of "ballot proposition" as enacted by the voters in 1972 with the definition of "ballot proposition" as amended by the legislature in 1975.[4] The 1975 amendment made the following changes:

[4] The legislature amended the definition of "ballot proposition" again in 2005 and 2010. But those amendments made technical, nonsubstantive changes only. LAWS OF 2005, ch. 445, § 6; LAWS OF 2010, ch. 204, § 101.

> "Ballot proposition" means any "measure" as defined by [RCW 29A.04.091], or any initiative, recall, or referendum proposition proposed to be submitted to the voters of ((~~any specific~~)) the state or any municipal corporation, political subdivision or other voting constituency ((~~which~~)) from and after the time when such proposition has been initially filed with the appropriate election officer of that constituency [before] its circulation for signatures.

LAWS OF 1975, 1st Ex. Sess., ch. 294, § 2(2).

The State argues—and the majority accepts—that because the 1972 "'definition already incorporated propositions as soon as they were filed and [because the 1972 definition] already incorporated signature gathering for state initiatives . . . there was no need to add the phrase "[before] its circulation for signatures" unless the legislature intended to clarify that the definition also covers the signature-gathering period for local propositions.'" Majority at 10-11 (quoting State of Washington's Suppl. Br. at 9). I agree.

B. Underlying History Is Legislative History, Not Context

I disagree, however, with the majority that that conclusion is plain. The majority characterizes the changes that the legislature makes to a statute from one session to the next as part of the statute's context. That information is not the sort of context that this court had in mind, however, when it incorporated context into our plain-meaning analysis in *Campbell & Gwinn*.

In *Campbell & Gwinn*, we were concerned about a line of a cases that—in the name of plain meaning—had employed a method of interpretation that effectively isolated statutory text from its surrounding scheme. 146 Wn.2d at 9; *see also Habitat Watch v. Skagit County*, 155 Wn.2d 397, 417, 120 P.3d 56 (2005) (Chambers, J., concurring) ("[W]e . . . often interpreted the plain meaning of the statute section by section, without appropriate consideration for the legislature's overall plan contained within the four corners of the act."). We disavowed that line of cases and held that text's meaning must be derived from its words as well as its context. *Campbell & Gwinn*, 146 Wn.2d at 11-12. Instead of scrutinizing a particular term in a vacuum, a court must consider "all that the Legislature has said in the statute and related statutes." *Id.* at 11.

The majority goes beyond that, however. It relies on historical information that is not even part of the FCPA as it existed in 2014 when the Foundation provided the free legal representation at issue here. Hence, no reader would have consulted it to figure out whether expenditures were reportable in this context.

Instead, an initiative proponent in 2014 would have read former RCW 42.17A.005(4) and found it ambiguous—even in context with the rest of the FCPA—with respect to initiatives not yet on the ballot in noncharter cities. A person could not be faulted for reading the latter portion of the statute that begins

with "from and after the time [of filing]" and ends with "before its circulation for signatures" as modifying and limiting the text "any municipal corporation, political subdivision, or other voting constituency." In fact, that is arguably the more grammatical reading. The statute's unambiguous application to statewide measures and initiatives in certain charter cities—places like Seattle and Tacoma—only reinforces its ambiguity as to initiatives not yet on the ballot in noncharter cities. That is so because the statute still has a purpose, even if one concludes that it does not apply to initiatives not yet on the ballot in noncharter cities. Indeed, the legislature might reasonably have intended the statute to apply in the pre-ballot stage only at the statewide level and in the big cities where the political stakes, moneyed interests, and potential for mischief might be considered greatest. A plausible reading is that the statute does not apply to noncharter cities like Sequim, Shelton, and Chelan. The liberal construction mandate of RCW 42.17.001(11) would not alter that reading.

Thus, the majority's interpretation of the "plain meaning" of former RCW 42.17A.005(4) is really based on a comparison with a prior, historical, version of the statute—the 1972 version that the 1975 legislature amended. But while the legislative history can help courts resolve ambiguity in a statute, it cannot

make ambiguous language any less ambiguous to the reader. As applied to the circumstances of this case, former RCW 42.17A.005(4) is ambiguous.[5]

IV. Controlling Rules of Constitutional Law Bar This Court from Enforcing an Ambiguous Statute That Implicates Free Speech Rights

Under controlling decisions of this court and of the United States Supreme Court, an ambiguity is fatal to a statute implicating constitutional rights. "Under the Fourteenth Amendment, a statute may be void for vagueness 'if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Voters Educ. Comm.*, 161 Wn.2d at 484 (2007) (quoting *O'Day v. King County*, 109 Wn.2d 796, 810, 749 P.2d 142 (1988)); U.S. CONST. amend. XIV. That standard is particularly strict when, as in this case, the First Amendment right to free speech is implicated. *Id.* at 485 ("[T]he Supreme Court has 'repeatedly emphasized that where First Amendment freedoms are at stake a greater degree of specificity and clarity of purpose is essential.'" (quoting *O'Day*, 109 Wn.2d at 810)); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) (treating disclosure requirements as burdens on the First Amendment). "Because First Amendment freedoms need breathing space to survive, government may regulate

[5] RCW 42.17A.005 has been amended 20 times since voters enacted it in 1972.

in the area only with narrow specificity." *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 433, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 311, 60 S. Ct. 900, 84 L. Ed. 1213 (1940)). "If the line drawn . . . is an ambiguous one, [the court] will not presume" that the statute is constitutional. *Id.* at 432. Rather, an ambiguous statute bearing on such an important right must not be given effect. *Id.*

The majority states that the Foundation has the burden of proving that former RCW 42.17A.005(4) is unconstitutionally vague. Majority at 13, 15. The Court of Appeals took the same position in the unpublished portion of its opinion. *Evergreen Freedom Found.*, No. 50224-1-II, slip op. (unpublished portion) at 23, http://www.courts.wa.gov/opinions/pdf/D2%2050224-1-II%20Published%20Opinion.pdf. Like the Court of Appeals, the majority cites *Voters Education Committee* in support of its position. But *Voters Education Committee* says just the opposite. 161 Wn.2d at 481-82. The court in that case did recognize that a statute is ordinarily presumed constitutional. But it also noted that that presumption is not extended to statutes regulating speech. *Id.* at 482. That case, like this case, involved a constitutional vagueness challenge to the FCPA, and because the FCPA regulates speech, we placed the burden of demonstrating the

statute's clarity *on the State*. *Id.* Thus, to the extent that a burden exists in this case, *Voters Education Committee* indicates that the State must bear it.

CONCLUSION

Because former RCW 42.17A.005(4) is ambiguous as applied to the circumstances of this case, the statute cannot be given effect in these circumstances. It is unconstitutionally vague as applied.[6]

I respectfully dissent.

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[6] Recognizing that former RCW 42.17A.005(4) is unconstitutionally vague as applied to the circumstances of this case does not conflict with the holdings of our previous cases addressing the FCPA. *See Utter*, 182 Wn.2d 398; *Voters Educ. Comm.*, 161 Wn.2d 470. Nor does it conflict with the Ninth Circuit's holdings in *Brumsickle*, 624 F.3d 990. The questions in those cases, as well as their underlying facts, were all very different than the ones before the court today. The circumstances of this case—initiatives not yet on the ballot in noncharter cities—stand on their own, and the challenge—to former RCW 42.17A.005(4) in the aforementioned circumstances—is narrow.