NO. 103260-9

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON CONSERVATION ACTION EDUCATION FUND, TONY USIBELLI, and NANCY HENDERSON,

Petitioners/Affiants,

v.

STEVE HOBBS, in his official capacity as Secretary of State of the State of Washington,

Respondent.

RESPONDENT'S ANSWER TO AFFIDAVITS AND MOTION FOR EXPEDITED CONSIDERATION

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I. INTRODUCTION

This Court should reject Petitioners' invitation to place unnecessary limitations on the People's exercise of the initiative power. Consistent with long-standing practice, the Secretary counts all verified signatures of registered voters when determining whether to certify an initiative to the people. Seeking to obtain a short-term political victory against a specific initiative, Petitioners advance a novel theory that some registered voters should be excluded from participating in the initiative process. If accepted, Petitioners' theory would require the Secretary to reject valid signatures of legal voters, including college students who accidentally list their campus address instead of their voter registration address and voters who, through no fault of their own, were placed in inactive status due to an administrative mistake. Neither the Washington Constitution nor any state law requires this result.

There is also a procedural problem with this original action. Chapter 29A.72 RCW provides the exclusive set of

remedies for challenges to the initiative process. *State ex rel. Donohue v. Coe*, 49 Wn.2d 410, 413-15, 302 P.2d 202 (1956). If Petitioners—or any citizens—have evidence that the Secretary has accepted signatures from persons who are not legal voters, RCW 29A.72.240 provides an expedited opportunity for them to bring that evidence to court. Because the Legislature has adopted a more specific set of remedies for challenges to initiative signature verification determinations, Petitioners cannot proceed under the general election challenge statute, RCW 29A.68.013. This Court can dismiss the petition on this basis alone.

The Secretary agrees that the signature verification process requires a high level of integrity. And under the existing process—used across many administrations—a signature is accepted only if it is matched to the identified registered voter. If this process determines that Initiative Measure No. 2066 has the support of a sufficient number of voters, the People are entitled to vote on the measure at this year's General Election.

This Court should dismiss the petition.

II. STATEMENT OF THE CASE

A. Washington's Initiative Process Only Requires Verification of Signatures of Registered Voters

1. Washington's Constitution and statutes authorize only verification of legal voters' signatures on initiative petitions

To qualify for the ballot, initiatives to the legislature or to the people must include the "valid *signatures* of legal voters" equal to "eight percent of the votes cast for the office of governor at the last gubernatorial election[.]" Const. art. II, § 1(a) (emphasis added). A specific statute—RCW 29A.72.230—governs the Secretary's process for verifying signatures and certifying initiative petitions. Upon the filing of an initiative petition, the Secretary shall "verify and canvass the *names* of the legal voters on the petition." RCW 29A.72.230 (emphasis added). No constitutional provision, state statute, or regulation authorizes or requires the Secretary to verify the addresses of legal voters.

Any appeal of the Secretary's verification and certification of initiative petitions similarly permits review only of the

Secretary's count of legal voters' signatures. Specifically, RCW 29A.72.240 provides that "[a]ny 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" appeal to the Thurston County Superior Court for, among other things, "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." RCW 29A.72.240 (emphasis added).

2. Washington's regulations likewise permit canvassing and verification only of legal voters' signatures

The Secretary has also adopted regulations governing the signature verification process. As part of the Secretary's review process, staff examine each initiative signature line to identify the number of signatures the Secretary will compare against voter rolls and to determine whether there are sufficient signatures to conduct such review through random sampling.

For the initial signature line review, the Secretary will automatically invalidate signature lines that contain "(a) [o]bscenities; (b) [t]ext that is not a name; (c) [d]uplicate names; (d) [l]ines that are crossed out and not readable; (e) [l]ines that include a name and address that both appear to be fictitious; or (f) [l]ines that are blank or unfilled." WAC 434-379-009(7). For this purpose alone, the "following characteristics of a signature line do not, by themselves" prevent the Secretary from attempting to validate the signature against the voter registration files:

> (a) A name that is fictitious with an address that does not appear to be fictitious. Lines that include a name that appears to not be fictitious but an address that does appear to be fictitious, or vice versa;
>
> (b) Lines that are crossed out but still readable;
>
> (c) Lines that are missing a printed name;
>
> (d) Lines that are missing any portion of the address;
>
> (e) Multiple lines that have similar handwriting, as long as the signature handwriting is not similar;

> (f) Lines in which the signature, printed name, or address is written in the wrong field; or
>
> (g) Signatures, printed names, or addresses written in the margin.

WAC 434-379-009(8).

The Secretary will then review the signatures that have not been invalidated pursuant to WAC 434-379-009. The Secretary starts signature verification by determining "if the person who signed a petition is registered to vote." WAC 434-379-012(1). The Secretary may verify registration status from voter registration records using the person's first name, last name, address, or any combination thereof. *Id.* If the Secretary "is unable to locate the person in the voter registration records, the signature shall be rejected[.]" WAC 434-379-012(2).

"If the person is registered to vote, the signature on the petition sheet must be matched to the signature[s] in the person's voter registration record using the standards in WAC 434-379-020." WAC 434-379-012(3). If the signature on the petition "[i]s handwritten and matches the signature[s] in the voter registration

record according to the standards in WAC 434-379-020, the signature must be accepted." WAC 434-379-012(3)(a). If the signature on the petition "[d]oes not match the signature[s] in the voter registration record, the signature must be rejected." WAC 434-379-012(3)(b). If the signature on the petition "[m]atches the signature in the voter registration record but another signature on the petition has already been accepted for that voter, the subsequent signature must be rejected as a duplicate." WAC 434-379-012(3)(c).

The signature verification standard in WAC 434-379-020, in turn, sets forth characteristics to be used in comparing the petition signature to the registered voter's signature on file in the voter records. The comparison focuses on style, lettering, spacing, etc. A signature, however, "may not be rejected" based solely on the following grounds:

> (a) The person signed with a middle name, nickname, or initials instead of the first name in the voter registration records, as long as the handwriting is clearly the same;

> (b) The last name on the petition differs from the last name in the voter registration records, as long as the addresses and the handwriting on the first name are clearly the same;
>
> (c) The last name on the petition or in the voter registration records is hyphenated while the last name in the other source is not;
>
> (d) The first name and last name on the petition are reversed in the voter registration records;
>
> (e) The address on the petition does not match the address in the voter registration records;
>
> (f) The handwriting on the printed name or address does not match the handwriting on the signature; or
>
> (g) The voter is on inactive status.

WAC 434-379-012(1).

The Secretary may canvass initiative petition signatures pursuant to the random sampling procedure set forth in WAC 434-379-010. *See* RCW 29A.72.230. The Secretary may certify an initiative petition based on the random sampling process alone. WAC 434-379-010(9). No petition, however, may be rejected based on statistical sampling. RCW 29A.72.230.

B. Voters Who Change Addresses and Inactive Voters Are Registered Voters Who May Vote in Any Election

Under Washington law, "[r]egistration of a person as a voter is presumptive evidence of his or her right to vote." RCW 29A.08.810(1). State law provides specific processes for canceling a voter's registration, and those processes are subject to numerous protections for the voter. RCW 29A.08.810–.850.

The fact that a registered voter has moved does not automatically deprive the voter of the right to vote. Under Washington law, "[a] registered voter who fails to update his or her residential address by th[e statutory] deadline *may vote according to his or her previous registration address*." RCW 29A.08.140(2)(b) (emphasis added). And in a voter registration challenge, even if a challenger establishes that the voter has moved, the voter may correct the residence address without having their voter registration canceled. RCW 29A.08.840(5).

County auditors will place a voter on inactive status only if (1) they receive change of address information indicating that

the voter has moved from one county to another, or out of the state; or (2) any document mailed by the county auditor to a voter is returned as undeliverable without correct address confirmation. RCW 29A.08.620(3), (4). This information does not necessarily reflect—much less establish—that a voter has moved out of state. County auditors will mail a confirmation notice and voter registration application to all such voters. *Id.*

Voters on inactive status, however, are still registered to vote and can vote in any election. In compliance with the National Voter Registration Act, state law provides that a voter "whose registration has been made inactive . . . and who requests to vote at an ensuing election before two federal general elections have been held must be allowed to vote a regular ballot applicable to the voter's current residence address, and the voter's registration record updated and restored to active status." RCW 29A.08.625(1); *see also* 52 U.S.C. § 20507(d) (limiting circumstances in which states may "remove the name of a registrant from the official list of eligible voters in elections for

Federal office on the ground that the registrant has changed residence").

Additionally, a county auditor shall return an inactive voter to active voter status if, before the passage of two federal general elections, the voter: "(a) [n]otifies the auditor of a change of address; (b) [r]esponds to a confirmation notice with information that he or she continues to reside at the registration address; or (c) [v]otes or attempts to vote in a primary, special election, or general election." RCW 29A.08.630(1).

C. Different Parties Advance Identical Claims in Other Litigation

In January 2024, Secretary Hobbs certified six initiatives to the Legislature. An organization called Defend Washington and two individuals brought an action in Thurston County Superior Court challenging the Secretary's certification of five of those six initiatives. Defend Washington's legal theory turned on its contention that the Secretary should not have counted signatures of voters who (1) did not provide on the petition an address matching the address in their voter registration file or

(2) were on inactive statue. The superior court dismissed the action, and Defend Washington's appeal is pending before this Court. *Defend Washington v. Hobbs*, No. 102996-9.

D. No on 2066 Files this Original Action

On July 16, 2026, the No on I-2066 Committee and two individual voters brought this original action. Mem. in Supp. of Aff. for Prevention & Correction of Election Errors (Mem.). On July 24th, this Court granted Petitioners' unopposed motion to replace the No on I-2066 Committee with Washington Conservation Action Education Fund.

Petitioners are represented by the same counsel as the plaintiffs-appellants in *Defend Washington*. *Id.* The Petitioners seek an order directing the Secretary to not "count[ ] as valid any signatures on petitions for I-2066 that lack an accompanying residence address matching the signer's voter registration address and any signatures from inactive voters." Am. Mem. in Supp. of Aff. for Prevention & Correction of Election Errors (Am. Mem.) at 4-5.

III. ARGUMENT

A. RCW 29A.72 Provides the Exclusive Statutory Remedy for Challenges to the Initiative Process

Petitioners attempt to bring this original action under the statute that allows for general election challenges, RCW 29A.68.013. Am. Mem. at 20. But a more specific statutory scheme—chapter 29A.72 RCW—provides the exclusive set of remedies for challenges to the process of determining whether an initiative will appear on the ballot. This provides an independent basis to dismiss the petition, though this Court certainly has authority to assume that RCW 29A.68.013 applies and dismiss the petition on the merits.

In *State ex rel. Donohue*, this Court held that "[t]here are only three circumstances under which the statute gives the courts any supervision over the manner of the exercise of the legislative power of initiative reserved to the people." 49 Wn.2d at 413-14. The current statutory equivalents to the circumstances identified in *State ex rel. Donohue* are (1) to challenge a ballot title,

RCW 29A.72.080, (2) a sponsor's challenge to a refusal to file ballot measure petitions, RCW 29A.72.180, and (3) a challenge to the Secretary's determination of whether there are sufficient "signatures of legal voters," RCW 29A.72.240. *See State ex rel. Donohue*, 49 Wn.2d 414-15. This Court adopted this holding in *State ex rel. Donohue* despite the existence of an earlier version of the current RCW 29A.68.013, which used the same "wrongful act" and "neglect of duty" language that Petitioners rely on here. *See* Laws of 1907, ch. 209, § 25 (codified as RCW 29.04.030); *see also State ex rel. O'Neil v. Todd*, 45 Wn.2d 206, 207-08, 273 P.2d 665 (1954) (applying RCW 29.04.030 in ballot eligibility challenge). Notably, the analogous cases cited in Petitioners' brief, Am. Mem. at 22, were brought pursuant to these statutes. *Sudduth v. Chapman*, 88 Wn.2d 247, 248-49, 558 P.2d 806 (1977) (bringing challenge under former RCW 29.79.210, a predecessor to RCW 29A.72.240); *Edwards v. Hutchinson*, 178 Wash. 580, 583-84, 35 P.2d 90 (1934) (affirming dismissal

because claims were not cognizable under Rem. Rev. Stat. § 5413, a predecessor to RCW 29A.72.240).

The reason that these are the exclusive mechanisms is that "'questions arising incidental to the submission of an initiative measure to the voters'" present "'political, and not a judicial, question'" unless there is "'express statutory or written constitutional law making the question judicial.'" *Edwards*, 178 Wash. at 586 (quoting *State ex rel. Case v. Superior Court*, 81 Wash. 623, 633, 143 P. 461 (1914)); *see also Cmty. Care Coal. of Wash. v. Reed*, 165 Wn.2d 606, 612, 200 P.3d 701 (2009). The only express statutory language creating a cause of action appears in chapter 29A.72 RCW.

Additionally, Petitioners' interpretation of RCW 29A.68.013 would render RCW 29A.72.240 meaningless. If Petitioners are correct that all "[a]cts by the Secretary in reviewing and certifying initiative petitions . . . fall within the ambit of RCW 29A.68.013," Mem. at 21, then the specific statute governing challenges to the Secretary's determination of the

number of signatures would have no independent scope. As in *Washington State Association of Counties v. State*, 199 Wn.2d 1, 13-14, 502, P.3d 825 (2022), this Court should "respect the Legislature's intent" by recognizing that, here, the more specific statute operates as an exception to the general election challenge statute. Tellingly, Petitioners identify no case—and the Secretary is aware of none—in which a party was permitted to challenge the signature verification process under RCW 29A.68.013 or its predecessors.

This matters here. For one thing, the Legislature has adopted a short five-day deadline after the Secretary's certification of initiative petition signatures for bringing a challenge to the Secretary's signature determination. RCW 29A.72.240. If RCW 29A.68.013 applied, a party would have much longer, until ten days *after certification of the election*. It makes no sense that the Legislature would allow a challenge to the sufficiency of the number of signatures *after* the election has taken place.

Further, under RCW 29A.72.240, a party contending that a voter's signature should be rejected has the burden of presenting evidence that the verified signature is not from a legal voter. *See Sudduth*, 88 Wn.2d at 255 n.3 ("[T]he burden of proof to show [petitions'] invalidity rests upon those protesting against them."). Petitioners here seek to use RCW 29A.68.013 to flip that burden and impose on voters a burden to establish "proof of their underlying qualification." Am. Mem. at 32. But that is not the structure the Legislature has adopted.

Petitioners remain free to bring a timely action under RCW 29A.72.240 if they have evidence that the initiative is not, in fact, supported by the required number of signatures of legal voters. They do not claim to have such proof in this action.

Because Petitioners cannot bring this action under RCW 29A.68.013, it is not properly before this Court and can be dismissed on this basis alone. Alternatively, this Court could assume without deciding that the matter is properly before it and dismiss the petition on the merits.

B. The Secretary Correctly Counts Verified Signatures of Registered Voters

In Washington, "[t]he first power reserved by the people is the initiative." Const. art. II, § 1(a). This initiative power "is self-executing, but legislation may be enacted especially to facilitate its operation." *Id.* at § 1(d).

To facilitate the People's exercise of the initiative power, the Secretary is responsible for verifying that signatures on initiative petitions are those of legal voters. To do so, the Secretary verifies that each name on an initiative petition sheet corresponds to a registered voter and then compares the signature on the petition sheet to the signatures in that voter's registration file. If the signatures match, the Secretary correctly counts the signature when determining whether the initiative has qualified for the ballot. This represents the long-standing practice of the Secretary of State.

Petitioners seek to make it more difficult for initiatives to qualify for the ballot. Specifically, Petitioners advance two novel arguments: (1) the Secretary cannot count matching signatures if

the petition sheet lacks an address that matches the person's voter registration address, Am. Mem. at 30-35, 38-43; and (2) the Secretary cannot count matching signatures from voters who are on inactive status, *id.* at 35-37. Both arguments are deeply flawed and will unnecessarily exclude qualified voters from participating in the initiative process.

1. The Secretary cannot reject valid signatures of legal voters based on address issues

If this Court reaches the merits, it should reject Petitioners' argument that the Secretary has a duty to verify voters' addresses on initiative petitions. Petitioners' argument conflicts with the plain language of the statutes governing the Secretary's verification and certification of initiatives. Petitioners ask this Court to find an implied duty of the Secretary to verify addresses from various inapplicable statutes but barely mention RCW 29A.72.230, the specific statute that governs canvassing of initiative petitions. That statute says nothing whatsoever about verifying legal voters' addresses.

a. The statutes governing the canvassing of initiative petitions do not require address verification

RCW 29A.72.230 requires the Secretary "to verify and canvass the *names* of the legal voters on the petition." RCW 29A.72.230 (emphasis added). It further provides that this "verification and canvass of *signatures on the petition* may be observed," subject to certain limits, and that, "as soon as the *signatures* on the petition have been verified and canvassed," the Secretary then certifies the initiative to the legislature. *Id.* (emphasis added). As this Court made clear in *Sudduth*, 88 Wn.2d at 251, the term "legal voter" simply means *registered voter*. The canvassing statute thus only requires the Secretary to confirm that the voter is registered, and thus a legal voter, and that the signature is genuine and valid by comparing the signature on the petition against the signatures in the voter's registration file. This is entirely consistent with the constitutional requirement that initiatives bear the requisite number of "valid signatures of legal voters" to be certified to the legislature or

qualified for the ballot. Const. art. II, § 1; *see also Sudduth*, 88 Wn.2d at 251 (interpreting article II, section 1 as ensuring that "the requisite number of registered voters sign [the petition]"). Nothing in Washington's Constitution or the canvassing statute says anything about verifying voters' registration addresses.

Additionally, RCW 29A.72.240 similarly focuses on the count of voters' signatures. Specifically, RCW 29A.72.240 authorizes judicial review only of 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[.]" RCW 29A.72.240 (emphasis added). This further reflects legislative intent that the Secretary verify signatures, not addresses.

This Court has previously recognized the limited focus of both the Secretary's canvassing process and this Court's limited review of that process in *Ball v. Wyman*, 435 P.3d 842, 843 (2018). There, this Court held that 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.'" *Id*. (citing *State ex rel. Donohue*, 49 Wn.2d at 415 (interpreting predecessor statute)). This Court further held the mandamus relief available under RCW 29A.72.240 "is limited to enforcing the *number-of-signature* requirements and is not available where . . . there is no actual challenge to the counting of signatures." *Id.* (emphasis added).

Petitioners' argument for grafting an implied duty to verify addresses conflicts with the plain text of both RCW 29A.72.230 and .240. It would require this Court to add words to RCW 29A.72.230, in direct conflict with well-settled rules of statutory interpretation that courts "must not add words [to a statute] where the legislature has chosen not to include them." *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). Courts, instead, must assume that "'the legislature means exactly what it says.'" *Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 963-64, 977 P.2d 554 (quoting *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838

(1995)); *see also Wash. Nat. Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969) ("Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all [other] things or classes of things . . . were intentionally omitted by the legislature[.]").[1]

Here, the Legislature expressly required the Secretary to canvass only the "names" and "signatures" of "legal voters." It only authorized an appeal of the Secretary's count of such signatures. Nothing in RCW 29A.72.230 or .240 authorizes—much less requires—the Secretary to reject a valid signature based on the absence of an address or a mismatch with the voter's registration address.

[1] The Washington Administrative Code likewise does not require the Secretary to verify addresses. Just the opposite. Under longstanding regulations, the absence of an address or the presence of a fictitious address are not sufficient to invalidate a signature. WAC 434-379-009(8)(a), (d); WAC 434-379-012(1)(e).

b. The other statutes relied on by Petitioners also do not require address verification

Instead of focusing on the statutes governing the Secretary's canvassing of initiative petitions, Petitioners ask this Court to find an implied duty by the Secretary to verify addresses from other election related statutes. But none of the statutes cited by Petitioners support their argument.

Petitioners primarily rely on RCW 29A.72.120's requirement that initiative petitions "include a place for" signers' addresses and an acknowledgement that the signer's "residence address is correctly stated," to argue that the Secretary has an implied duty to validate such addresses. But nothing in RCW 29A.72.120 contemplates, authorizes, or requires the Secretary to verify that a voters' "correctly stated" address matches their registration address, or notifies a voter that their signature on an initiative petition will not count if they do not list their registration address. RCW 29A.72.120. And Petitioners are simply wrong that the Secretary's process of canvassing only a voter's signature renders this petition language meaningless. An

address is useful information to identify voters for purposes of signature verification and to distinguish between voters with the same name. *See* WAC 434-379-012(1). By providing an address, a registered voter makes it more likely that the right voter registration file will be located and the voter's signature verified. But that does not mean that the Secretary is required to verify the address or to reject signatures the Secretary is able to verify without such an address.

Petitioners also cite statutes making it a crime to willfully make a false statement regarding the voter's residence on an initiative petition, claiming the law provides clear evidence of an intent by the Legislature for the Secretary to check voters' registration addresses. Am. Mem. at 32, 34. It does no such thing. If the Legislature had such an intent, it would have said so. Its failure to assign any such a duty to the Secretary, even while creating criminal penalties for false statements on initiative petitions, shows that it did *not* intend for the Secretary to verify

addresses. Further, Petitioners' theory would also exclude voters who inadvertently (not willfully) listed an incorrect address.

Petitioners further rely on RCW 29A.08.810, permitting challenges to a voter's registration where the "challenged voter resides at a different address than the residential address provided." Am. Mem. at 29-30. But Petitioners read too much into this statute, which actually undercuts its argument. The very first words of RCW 29A.08.810 state that "[r]egistration of a person as a voter is presumptive evidence of his or her right to vote." *Id*.; *see also Sudduth*, 88 Wn.2d at 255 n.3 ("There is a presumption that petitions that have been circulated, signed, and filed are valid, and the burden of proof to show their invalidity rests upon those protesting against them."). The Secretary's canvassing of registered voters' signatures comports with this statute because the Secretary only counts signatures that can be matched to a registered voter. WAC 434-379-012(1), (2).

Petitioners ignore the presumption of validity established by statute and this Court's decision in *Sudduth*. They present no

evidence to overcome the presumption with respect to any voter. In fact, Petitioners' legal theory would turn this presumption on its head. On Petitioners' theory, petition signatures would be presumed *invalid*, even where the voter's signature on the petition matches the signature in the voter registration file. Similarly, Petitioners would presume registered voters are ineligible to vote unless they list a current address matching their voter registration address.

Aside from this presumption, RCW 29A.08.810 also recognizes that many voters may legitimately have multiple addresses. For example, the Legislature explicitly contemplated that many voters—including students, military voters, overseas voters, voters absent from the state on business, and voters living on a reservation who list a tribal governmental building address as their registration address—could have a street or mailing address that differs from their voter registration address, yet be immune from challenge on that basis. RCW 29A.08.810 (precluding challenge to a voter's registration for such voters as

set forth in RCW 29A.04.151 or RCW 29A.08.112). As the Secretary generally will not know when it canvasses voters' signatures whether such circumstances apply, adopting Petitioners' argument would presume such voters cannot lawfully vote in Washington, in direct conflict with RCW 29A.08.810, and unjustifiably exclude them from participating in the initiative process.

Moreover, even a successful challenge under RCW 29A.08.810 does not mean that a voter cannot vote in Washington. The voter can still remain a registered voter by updating their residential address, and any pending signatures on an initiative would be counted. RCW 29A.08.840(5). This statute simply does not support Petitioners' argument.

c. Under Washington law, a registered voter who moves is able to vote

A key foundation of Petitioners' argument is that a registered voter who no longer resides at the address in their voter registration is not "presently able to lawfully vote." Am. Mem. at 24, 34-35, 42 That argument misunderstands

Washington law and, if accepted, would call into question many registered voters' ability to cast a ballot.

Washington law is clear that "[a] registered voter who fails to update his or her residential address by th[e statutory] deadline *may vote according to his or her previous registration address*." RCW 29A.08.140(2)(b) (emphasis added). Accordingly, a registered voter is "presently able to lawfully vote" when they move within the state.

The rest of the statutory scheme also reflects the Legislature's objective of making it as easy as possible for voters to remain registered and exercise their right to vote. If the county auditor receives change of address information indicating that a voter has moved within the county, the auditor will automatically "transfer the registration of a voter and send an acknowledgment notice to the new address informing the voter of the transfer[.]" RCW 29A.08.620(2). Petitioners' argument that a registered voter is not "presently able to lawfully vote" when they change addresses is contrary to state law.

Petitioners' position is also contrary to federal law. Federal law specifically prohibits states from removing a registered voter "from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence" unless the state takes certain additional steps. 52 U.S.C. § 20507(d).

Petitioners also cite cases and statutes from other states as persuasive authority for the proposition that other states have required address matching. In California, address verification is required by statute. Cal. Elec. Code § 105(a)(1) ("If the addresses are different . . . the affected signature shall not be counted as valid."). Washington has no such statute. And in contrast with Oregon and Ohio, Washington expressly permits inactive voters to vote in any election and allows registered voters to vote from a prior address if they have not had the opportunity to update their voter registration in time for an election. *Compare* RCW 29A.08.140(2)(b) (permitting voters to vote from previous address) and RCW 29A.08.625(1) (permitting inactive voters to

vote in any election), *with Whitehead v. Fagan*, 369 Or. 112, 128, 501 P.3d 1027 (2021) (allowing only active voters with current registration addresses to vote); *In re Protest Filed by Citizens for the Merit Selection of Judges, Inc*., 551 N.E.2d 150, 151, 49 Ohio St. 3d 102 (1990) (requiring voters to update their registration addresses before voting). These out-of-state cases simply do not apply to Washington's election laws.

Petitioners' legal theory is not only wrong as a matter of law, it would also senselessly exclude voters from participating in "the first power reserved by the people"—the power to legislate by initiative. Const. art. II, § 1(a). Initiatives are statewide measures; the fact that a person has moved within the state provides no basis to exclude them from participating in the initiative process. And there are many routine reasons that a person might not include an address or the address might not match the address in the voter registration file. For example, a voter may be a student, temporarily staying away from their residence, and will therefore provide their current mailing

address, or a post office box address. So long as the signature on the petition matches the signature in the voter registration file, there is no legal reason to refuse to count the registered voter's signature. Petitioners' disagreement with the substance of the challenged initiative does not warrant excluding registered voters from participating in the initiative process.

Aside from its legal flaws, Petitioners' argument has serious practical problems as well. Initiative signatures are frequently gathered over a period of many months. The Secretary will not know the date on which a given voter signed the petition. So where a voter has updated their address, the Secretary will not know whether, as of the date the person signed the petition, the address matched the address in the voter registration file.

In short, a person who has moved remains eligible to cast a ballot and is a "legal voter" for purposes of RCW 29A.72.230. The Secretary correctly counted valid signatures of registered voters, even where the address on the petition did not match the

address in the voter registration file or the petition did not include an address.

2. Registered voters on inactive status are "legal voters" whose signatures are properly counted

Petitioners are wrong to suggest that "[p]etition signatures from inactive voters are not valid." Am. Mem. at 35. Petitioners confuse a voter on inactive status with a voter whose registration has been canceled.

A voter on inactive status remains a registered voter and can cast a ballot. State law is clear and unambiguous: "A voter whose registration has been made inactive under this chapter and who requests to vote at an ensuing election before two federal general elections have been held must be allowed to vote a regular ballot applicable to the voter's current residence address . . . ." RCW 29A.08.625(1). This is distinct from a person whose voter registration has been canceled in compliance with state and federal law. When voter registration is canceled, the person must file a new voter application "to vote at the voter's current residence address." RCW 29A.08.625(2). There is no

allegation that the Secretary has counted the signature of any person whose voter registration was canceled at the time that they signed the petition.

Contrary to Petitioners' implication, placement on inactive status does not establish (or even strongly suggest) that a voter has moved out state. Placement on inactive status could be the result of a voter moving to a different county within the state, or simply a mistake by the United States Postal Service or other agency resulting in mail being returned undeliverable. *See* RCW 29A.08.620(3). There is a good reason that federal and state law require notice and prohibit states from automatically canceling voter registration based merely on the receipt of change of address information from a third party. *See* 52 U.S.C. § 20507(d)(1); RCW 29A.08.620(4).

Notably, Montana courts recently rejected an effort to exclude the signatures of voters on the inactive voter list. In Montana, proponents submitted signature petitions in support of three initiatives to amend the Montana Constitution, which

would, among other things, create an express right to abortion. Montana Secretary of State, Proposed 2024 Ballot Issues, Issues Qualified to Gather Signatures for the 2024 General Election Ballot, https://sosmt.gov/elections/ballot_issues/proposed-2024-ballot-issues/ (last visited July 24, 2024) (CI-126, CI-127, and CI-128). The Montana Secretary of State, reversing a "longstanding practice," automatically rejected signatures from voters who appear on the inactive voters list. Order at 1-2, *State of Montana v. Montana First Judicial District Court*, OP 24-0431 (Mont. July 23, 2024), https://juddocumentservice.mt.gov/getDocByCTrackId?DocId=482252.

The trial court issued a temporary restraining order (TRO) prohibiting the Montana Secretary of State from excluding otherwise-valid signatures from electors on the inactive voter list, and the Montana Supreme Court dismissed the Montana Secretary of State's emergency petition seeking to set aside the TRO. As a result, Montana—like Washington—will continue its

long-standing practice of counting signatures of registered voters who are on inactive status.

Because a voter on inactive status remains a registered voter, eligible to cast a ballot in any election, such a voter is a "legal voter," and the Secretary correctly counted their signatures as part of the signature verification process.

3. A voter who moves remains a legal voter

Petitioners make a passing comment that the Secretary's current procedures "fall far short of his . . . constitutional obligations to ensure that petitioners comply with state initiative law . . . ." Am. Mem. at 2. This is insufficient to properly present a constitutional challenge to this Court. *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992) (passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration); *see also* RAP 10.3(a)(5). It is telling that Petitioners do not identify any constitutional provision setting forth the Secretary's obligations in the signature verification process. The Constitution simply requires "valid signatures of

legal voters," Const. art. II, § 1(a), and leaves implementation to the Legislature. As discussed above, existing law does not require address verification.

C. Petitioners' Other Criticisms are Irrelevant and Misplaced

Petitioners spend several pages criticizing the signature verification process, Am. Mem. at 14-18, but those criticisms are irrelevant. To the extent Petitioners criticize the use of signature verification, their remedy is to amend the Washington Constitution, which establishes "valid signatures" as the basis for determining whether an initiative has sufficient support. Const. art. II, § 1(a). To the extent Petitioners would like to see alternative processes, they are welcome to pursue legislation or petition for amendment of the existing processes established by regulation. They do not challenge those regulations in this litigation. And Petitioners' reference to the *Vet Voice v. Hobbs* litigation is particularly unhelpful to their position. In *Vet Voice*, the plaintiffs contend that signature verification is *too* stringent; Petitioners here argue the opposite, suggesting that signature

verification is *not stringent enough*. Irony aside, Petitioners' discussion of signature verification is simply not relevant to their legal claims here.

Petitioners also cast aspersions on the organization supporting Initiative Measure No. 2066 and the source of its funding and express incredulity at the number of signatures gathered by supporters of Initiative Measure No. 2066. Am. Mem. at 1, 5-6. None of this is relevant to the legal issues before this Court.

IV. CONCLUSION

This Court should dismiss the petition. It is not properly before this Court and, in any event, its arguments all lack merit. Whether Initiative 2066 should become law is for the People to decide.

This document contains 6,152 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 25th day of July 2024.

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CERTIFICATE OF SERVICE

I certify under the penalty of perjury under the laws of the State of Washington, that I caused to the foregoing document to be electronically filed with the Washington Supreme Court and electronically served on all parties of record via the Washington State Appellate Courts' Filing Portal, according to the Court's protocols for electronic filing.

DATED this 25th day of July 2024, at Olympia, Washington.

s/ Leena Vanderwood
LEENA VANDERWOOD
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