

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

KERRY SLONE, a resident of the state of
Washington, GUN OWNERS OF AMERICA,
INC., and GUN OWNERS FOUNDATION,

Plaintiffs,

v.

STATE OF WASHINGTON

Defendant.

NO.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. INTRODUCTION

Plaintiffs Kerry Slone, Gun Owners of America, Inc., and Gun Owners Foundation, by and through counsel, bring this action for declaratory and injunctive relief against Defendant State of Washington pursuant to RCW 7.24 (the Uniform Declaratory Judgment Act). Plaintiffs challenge the constitutionality of Washington State Initiative No. 1639 (“I-1639”), enacted by state voters on November 6, 2018. Plaintiffs allege that certain challenged provisions violate their right to keep and bear arms under Article I, Section 24 of the Washington Constitution. Plaintiffs also challenge I-1639 on its face, as violative of Article II, Section 1(a) (codified at RCW 29A.72.100) (the “full text” requirement) and Section 37.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF-1-

**GOODSTEIN
LAW GROUP** PLLC
501 S. G Street
Tacoma, WA 98405
Fax: (253) 779-4411
Tel: (253) 779-4000

1 **II. JURISDICTION AND VENUE**

- 2 1. This Court has jurisdiction over this action pursuant to RCW 2.08.010.
3 2. Venue is proper in this Court pursuant to RCW 4.92.010.

4 **III. PARTIES**

5 3. Plaintiff Kerry Slone is a United States citizen, resident, and taxpayer of Kitsap
6 County, Washington. She is a law-abiding person, and has no disqualification that would prevent
7 her from keeping and bearing arms. Plaintiff Slone is a member of Plaintiff Gun Owners of
8 America. Plaintiff Slone is a domestic violence survivor.

9 4. Plaintiff Gun Owners of America, Inc. (“GOA”) is a California non-stock corporation
10 with its principal place of business in Virginia, at 8001 Forbes Place, Springfield, VA 22151. GOA
11 is organized and operated as a non-profit membership organization that is exempt from federal
12 income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. GOA was formed in 1975
13 to preserve and defend the Second Amendment rights of gun owners. GOA has thousands of
14 members and supporters in Washington State who, like Plaintiff Slone, are being harmed by the
15 unconstitutional provisions of I-1639.
16

17 5. Plaintiff Gun Owners Foundation (“GOF”) is a Virginia non-stock corporation, with
18 its principal place of business in Virginia, at 8001 Forbes Place, Springfield, VA 22151. GOF is
19 organized and operated as a non-profit legal defense and educational foundation that is exempt from
20 federal income taxes under Section 501(c)(3) of the U.S. Internal Revenue Code. GOF is supported
21 by gun owners across the country, including Washington residents who are being harmed by the
22 unconstitutional provisions of I-1639.
23

24 6. Defendant State of Washington is a sovereign state, and has a duty to preserve and
25 protect the Constitution of the State of Washington.

1 **IV. APPLICABLE LAWS**

2 7. Article I, Section 24 of the Washington Constitution states “[t]he right of the
3 individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing
4 in this section shall be construed as authorizing individuals or corporations to organize, maintain or
5 employ an armed body of men.”

6 8. Article II, Section 1(a) of the Washington Constitution states “[t]he first power
7 reserved by the people is the initiative. Every such petition shall include the full text of the measure
8 so proposed.” RCW 29A.72.100 requires, in pertinent part, “[e]ach petition at the time of
9 circulating, signing, and filing with the secretary of state must consist of not more than one sheet
10 with numbered lines for not more than twenty signatures, with the prescribed warning and title, be in
11 the form required by RCW 29A.72.110, 29A.72.120, or 29A.72.130, and have a readable, full, true,
12 and correct copy of the proposed measure printed on the reverse side of the petition.” WAC 434-
13 379-008(2)(g) also requires the full text of the initiative be printed on its back.

14 9. Article II, Section 37 of the Washington Constitution states “[n]o act shall ever be
15 revised or amended by mere reference to its title, but the act revised or the section amended shall be
16 set forth at full length.” One of the primary purposes of this provision is to ensure that those
17 enacting a law that amends an existing provision understand the effect of the amendment. *See Wash.*
18 *Citizens Action of Wash. v. State*, 162 Wn.2d 142, 151-52 (2007). The Washington Supreme Court
19 has held that this provision “applies equally to the legislative and initiative processes.” *Id.* at 151-
20 52.
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

V. FACTUAL ALLEGATIONS

A. Initiative Measure No. 1639

10. On May 2, 2018, Initiative Measure No. 1639 (“I-1639”) was filed¹ with the Washington Secretary of State by its “citizen sponsor” Paul Kramer.² **Exhibit A.**

11. I-1639 was sponsored and supported primarily by the Alliance for Gun Responsibility.³

12. Proponents of I-1639 raised and spent millions of dollars (the vast majority obtained from large donations by a few ultra-rich left-wing donors) funding the campaign to pass I-1639.⁴

13. Meanwhile, I-1639’s pro-gun opponents raised and spent only a tiny fraction of that amount opposing the initiative.

14. The text of I-1639 as filed amends RCW 9.41.090, 9.41.092, 9.41.094, 9.41.097, 9.41.0975, 9.41.110, 9.41.113, 9.41.124, 9.41.240, 9.41.129, and 9.41.010, while creating new sections within chapter 9.41 RCW.

15. On May 9, 2018, Attorney General Ferguson submitted a proposed ballot title and summary to the Washington Secretary of State.⁵

16. After the proposed title was challenged, on June 7, 2018 the Thurston County Superior Court concluded the title and summary must be changed, and issued an order which established the ballot title for I-1639.⁶

¹ https://www.sos.wa.gov/assets/elections/initiatives/finaltext_1531.pdf.

² <https://gunresponsibility.org/i-1639/>; *see also* <https://www.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2018&t=p>.

³ <https://gunresponsibility.org/press-releases/ballot-initiative-assault-weapon/>.

⁴ <http://archive.kuow.org/post/unusual-move-washington-attorney-general-endorses-gun-related-ballot-measure>.

⁵ <https://www.seattletimes.com/seattle-news/politics/i-1639-the-most-ambitious-effort-at-gun-regulation-in-washington-states-history/>; *see also* [https://ballotpedia.org/Washington_Initiative_1639_Changes_to_Gun_Ownership_and_Purchase_Requirements_Measure_\(2018\)](https://ballotpedia.org/Washington_Initiative_1639_Changes_to_Gun_Ownership_and_Purchase_Requirements_Measure_(2018)); *see also* 990 for Alliance for Gun Responsibility.

1 17. As noted in the court’s order, I-1639 “would require increased background checks,
2 training, age limitations, and waiting periods for sales or delivery of semiautomatic assault rifles;
3 criminalize noncompliant storage upon unauthorized use; allow fees; and enact other provisions.” In
4 other words, I-1639 is a disorganized wish list of a hodgepodge of unrelated gun control proposals,
5 rolled into a single ballot initiative.

6 18. Subsequent to the court order establishing I-1639’s title, the initiative sponsors
7 printed 11-inch by 17-inch petitions to be circulated and signed in an attempt to gain ballot access
8 for I-1639. **Exhibit B.**

9 19. The initiative proponents gathered an estimated 378,085 signatures,⁷ at a cost of
10 nearly \$4 million.⁸

11
12 **B. The I-1639 Petitions Were Unlawful.**

13 20. The I-1639 petitions failed to comply with applicable Washington requirements for
14 initiative petitions, including Article II Section 1(a), RCW 29A.72.100, WAC 434-379-008(2)(g),
15 and Article II Section 37.

16 21. The statutory text on the reverse side of the I-1639 petition is not an exact replica of,
17 and is materially different than, the statutory text in **Exhibit A.**

18 22. As filed with the Secretary of State, I-1639 used the traditional underlining
19 (underlining) to show text and new sections that were proposed to be added, while using
20 strikethrough (~~strikethrough~~) to show proposed deletions.

24 ⁶ https://www.sos.wa.gov/assets/elections/initiatives/ballottitleletter_1531.pdf.

25 ⁷ <https://www.sos.wa.gov/office/news-releases.aspx#/news/1305>.

⁸ https://ballotpedia.org/Washington_Initiative_1639_Changes_to_Gun_Ownership_and_Purchase_Requirements_Measure (2018).

1 23. However, the I-1639 petition that was printed and circulated to voters for signature
2 did not contain the text of I-1639 as it was filed.

3 24. Initiative signers were not presented with a statutorily compliant copy of the relevant
4 language at the time of their signing.

5 25. The I-1639 petition did not contain added text in underline, or deleted text in strikeout
6 and, thus, proves incomprehensible when one attempts to determine I-1639's provisions. Petition
7 signers could not understand the nature of the proposed changes on the I-1639 petition because the
8 additions and subtractions were not indicated.

9 26. As such, the I-1639 petition did not contain the "full text of the measure" as it was
10 proposed, as required by Article II, Section 1(a) and WAC 434-379-008(2)(g).

11 27. The I-1639 petition also contains text that is so small and condensed that it would not
12 have been readable by many of the persons who signed the petition.

13 28. As such, the I-1639 petition did not contain "a readable, full, true, and correct copy of
14 the proposed measure," as required by RCW 29A.72.100.

15 29. In spite of these errors with the I-1639 petition, on July 27, 2018, Washington
16 Secretary of State Wyman certified I-1639 for inclusion on the November 2018 ballot.

17 30. However, Secretary Wyman noted that "concerns remain about whether the format of
18 the I-1639 petition signature sheets complies with constitutional and statutory requirements."⁹

19 31. While the sponsors of I-1639 were gathering signatures, the sponsors were aware that
20 the statutory text on the I-1639 petitions did not comply with applicable law, or the sponsors should
21 have been aware, as they were well-funded and were represented by legal counsel.
22
23
24

25

⁹ <https://www.sos.wa.gov/office/news-releases.aspx#/news/1305>.

1 32. Despite being aware of the legal deficiencies of the I-1639 petitions, the sponsors did
2 not have correct petitions prepared that complied with the law.

3 33. Those collecting signatures for I-1639 also reportedly used “deceptive” tactics to
4 obtain support, including representing that I-1639 sought to eliminate sales tax on groceries.¹⁰

5 34. The I-1639 petition sponsors acted in willful disregard that the statutory text on the
6 petitions was not in compliance with applicable law.

7 **C. Pre-Election Challenge to I-1639**

8 35. In July of 2018, suit was brought in the Superior Court of Washington for Thurston
9 County cause number 18-2-03747-34 challenging the I-1639 petition process as violating
10 Constitution Article II, Section 1 and as well as RCW 29A.72.100 and WAC 434-379-008(2)(g)

11 36. In response, the Washington Secretary of State conceded the serious problems with
12 the I-1639 petition, declined to defend the process, and suggested that the court issue a writ of
13 mandamus ordering her to keep I-1639 off the ballot.

14 37. The proponents of I-1639 intervened in the suit, arguing that the petition’s
15 shortcomings should not result in invalidation of the process.

16 38. At oral argument on August 17, 2018, Judge Dixon found the I-1639 text as printed
17 on the petition was too small to read.¹¹

18 39. Judge Dixon also found the initiative “is not a correct copy of the proposed
19 measure.”¹²

20
21
22
23 ¹⁰ <https://www.kiro7.com/news/local/snohomish-county-voters-say-petitioners-are-using-misleading-signs-to-get-signatures/775300567/>

24 ¹¹ See Transcript of August 17, 2018 hearing in *Ball v. Wyman*, No. 18-2-03747-34 (Wa. Sup. Ct.) at 45, l. 21 - 46 l.
25 1 (“The petitions at issue do not contain, first, a readable copy. Ladies and gentlemen in the courtroom, I’m showing you what the petition looks like. I have 20/20 vision. I can’t read it. And I don’t mean that to be facetious. I simply cannot read it.”)

1 40. Judge Dixon rejected the idea that the appropriate test was “substantial compliance”
2 with the constitutional and statutory requirements, and instead concluded that “the court believes that
3 it has an obligation to require strict compliance with the initiative process.” *Id.* at 48 ll. 18-20.

4 41. Judge Dixon then issued a writ of mandamus to the Secretary of State, **Exhibit C**,
5 halting placement of I-1639 on the ballot, *Id.* at 50, ll. 15-24, incorporating the findings from his oral
6 opinion. **Exhibit D.**

7 42. However, on August 24, 2018, The Supreme Court of Washington reversed the
8 Superior Court, ordering that a Writ of Mandamus was not the proper remedy as the Secretary of
9 State had not failed to discharge a non-discretionary duty. *Ball v. Wyman*, Order No. 96191-3 (Aug.
10 24, 2018).

11 43. On November 6, 2018, I-1639 appeared on the ballot in the Washington general
12 election, garnering approximately 1.8 million votes (59.35%) compared to the approximately 1.3
13 million (40.65%) votes against.¹³

14 **D. Post-Election Reaction**

15 44. Although I-1639 won the popular vote, it was not popular from a geographic
16 perspective. The majority of voters in 25 Washington counties voted “no,” while the majority in
17 only 14 Washington counties voted “yes.”

18 45. Thus, as of February, 2019, it was reported that the sheriffs of as many as 20
19 Washington counties (a majority) had publicly refused to enforce the provisions of I-1639, consistent
20
21

22
23 ¹² *Id.* at 46, ll. 8-15 (“The text of the initiative as filed by the sponsor included proposed deletions via
24 strikethroughs, double bracketed parentheses so as to indicate offsets and underlines. The text on the reverse side of
the petition does not include deletions and underlines. It is not a replica of the text contained in the petition filed
with the Secretary of State.”).

25 ¹³ https://results.vote.wa.gov/results/20181106/State-Measures-Initiative-Measure-No-1639-Initiative-Measure-No-1639-concerns-firearms_ByCounty.html.

1 with their duty to protect the people from unconstitutional laws. Only eight sheriffs had stated their
2 intent to enforce the new provisions.¹⁴

3 **E. Allegations Related to Specific Provisions of I-1639.**

4 46. Section 2 of I-1639, now codified as RCW 9.41.090(2)(a) and (6)(a)(vi), requires
5 that, before purchasing what is termed a “semiautomatic assault rifle,” a person first must “provide[]
6 proof” and a “statement ... under penalty of perjury” “that he [] has completed a recognized firearm
7 safety training program within the last five years....”

8 47. This “firearm safety training program” must be provided by certain approved entities
9 and must cover certain “minimum” required topics, including “[f]irearms and children, including ...
10 talking to children about gun safety” and “[f]irearms and suicide prevention.” RCW 9.41.090(2)(ii)
11 and (iii).

12 48. Similar to the minimum required topics of instruction, Section 2 of I-1639, now
13 codified as RCW 9.41.090(6)(b)(ii), adds a new “warning” on applications for pistols and
14 “semiautomatic assault rifles,” as follows: “CAUTION: The presence of a firearm in the home has
15 been associated with an increased risk of death to self and others, including an increased risk of
16 suicide, death during domestic violence incidents, and unintentional deaths to children and others.”

17 The obvious intent of this Orwellian, big-brother-type language is to discourage a person from
18 exercising his enumerated rights, and to force feed an anti-gun message to anyone who would do
19 so.¹⁵
20
21

22
23 ¹⁴ <https://www.theguardian.com/us-news/2019/feb/22/washington-state-county-sheriffs-refuse-to-enforce-gun-laws>.

24 ¹⁵ The idea that “having a gun in the home was associated with an increased risk of firearm homicide and firearm
25 suicide in the home” (<https://pubmed.ncbi.nlm.nih.gov/15522849/>) is like saying that homes with chainsaws have more chainsaw related deaths. Of course, homes without chainsaws likely have more trees fall on them, and far less firewood come winter.

1 49. Together, I-1639's mandated "training" represents a government mandated
2 indoctrination program placed as a precondition on the exercise of an enumerated right.

3 50. The exercise of no other constitutional right (or even so-called constitutional right) is
4 subject to a similar requirement. Women are not required to watch videos of babies being aborted,
5 and be counseled about the benefits of adoption, before obtaining an abortion on demand.

6 Columnists, Twitter posters, and videographers are not educated by the government as to the
7 maleffects of "fake news," "swatting," and child pornography, before being permitted to engage in
8 protected speech. And pastors are not indoctrinated as to the detriments of religious extremism and
9 violence before being permitted to preach sermons to their congregations. Yet the annual cost to
10 human life resulting from the misuse of each of these First Amendment activities far exceeds the
11 death toll from the misuse of firearms.

12 51. The above requirements of I-1639 amount to a coopting of a constitutional right by
13 those who oppose it, turning the exercise of the right to keep and bear arms into a platform for those
14 who hold anti-gun views, compelling a would-be gun purchaser to listen to an anti-gun message
15 before being able to purchase a "semiautomatic assault rifle."

16 52. Section 4 of I-1639, now codified as RCW 9.41.092(2), prohibits any firearms dealer
17 from transferring "a semiautomatic assault rifle to a purchaser or transferee until ten business days
18 have elapsed from the date of the purchase application or, in the case of a transfer, ten business days
19 have elapsed from the date a background check is initiated."

20 53. For other firearms, current law generally permits transfer at "the earlier of ... The
21 results of all required background checks are known and the purchaser or transferee (i) is not
22 prohibited from owning or possessing a firearm under federal or state law and (ii) does not have a
23
24
25

1 voluntary waiver of firearm rights currently in effect; or ... ten business days have elapsed from the
2 date the licensed dealer requested the background check.” RCW 9.41.092(1).

3 54. The new 10-day waiting period for “semiautomatic assault rifles” must be followed
4 irrespective of whether a background check has been successfully completed (sometimes taking just
5 a few minutes).

6 55. The exercise of no other constitutional right (or so-called constitutional right) is
7 subject to a similar requirement. There is no waiting period or “cooling off” period for abortions or
8 presidential Tweets, even though both can have devastating and/or permanent consequences that a
9 person may later decide he or she would like to undo.

10
11 **F. Operative Facts.**

12 56. Plaintiff Slone needs to acquire a so-called “semiautomatic assault rifle” at a federally
13 licensed firearms dealer in the State of Washington.

14 57. However, I-1639, now codified at 9.41.090(2), (6)(a)(vi), and requires that, before
15 doing so, Plaintiff Slone must “provide[] proof that [s]he [] has completed a recognized firearm
16 safety training program within the last five years,” including that she be instructed as to certain
17 “minimum” topics including “suicide prevention” and “talking to children about gun safety.” that
18 are irrelevant to being a responsible gun owner, but instead operate as a platform for those who hold
19 anti-gun views.

20 58. Plaintiff Slone has no mental health issues, and thus has no need to be counseled
21 about “suicide prevention.” Nor does Plaintiff Slone have young children who need “talking to”
22 about “gun safety.” Because Plaintiff Slone does not wish to participate in government-mandated
23 indoctrination as a condition of exercising her pre-existing, enumerated rights, she is forbidden from
24 obtaining certain commonly owned firearms.
25

1 59. I-1639, now codified at 9.41.092(2) also provides for a new 10-day waiting period for
2 the acquisition of a so-called “semiautomatic assault rifle,” irrespective of whether a background
3 check has been successfully completed previously. For Plaintiff Slone, this would require an
4 additional trip to a dealer to pick up a purchase after the period has passed. During that period,
5 Plaintiff Slone would be unable to defend herself with the firearm(s) of her choosing. Meanwhile,
6 criminals (who by definition do not obey the law) are not subject to waiting periods when they
7 unlawfully obtain their weapons.¹⁶ Plaintiff Slone does not consent to wait for two weeks or more in
8 order to obtain ordinary firearms commonly owned for lawful purposes by tens of millions of law-
9 abiding Americans.

11 60. Plaintiff Slone is being directly and irreparably harmed by the provisions of I-1639,
12 including those identified above and, without this Court’s issuance of injunctive relief enjoining
13 enforcement of I-1639’s provisions, she will continue to be irreparably harmed by being denied the
14 ability to exercise her enumerated right to keep and bear arms.

15 61. Likewise, like Plaintiff Slone, the members and supporters of the associational
16 plaintiffs who reside in Washington State are being harmed by the unconstitutional provisions of I-
17 1639.

18 VI. CAUSES OF ACTION

19 FIRST CAUSE OF ACTION 20 (VIOLATION OF ARTICLE I SECTION 24 RIGHT TO BEAR ARMS) 21 (FIREARM SAFETY TRAINING PROGRAM)

22 62. Plaintiffs reallege the foregoing paragraphs as though fully set forth herein.

24
25 ¹⁶ For example, Carol Bowne of Berlin, New Jersey was stabbed to death by her ex-boyfriend as she waited for permission to obtain a firearm to defend herself from him. <https://www.foxnews.com/us/no-one-helped-her-nj-woman-murdered-by-ex-while-awaiting-gun-permit>.

1 63. RCW 9.41.090(2)(a), (6)(a)(vi), and 9.41.092(2) require government approved
2 education and training before being permitted to exercise an enumerated right.

3 64. These provisions require that a person submit to political indoctrination by those who
4 oppose firearms rights, before being permitted to exercise that very enumerated right.

5 65. These provisions constitute an unconstitutional impairment of Plaintiffs' rights to
6 bear arms under Article 1, Section 24.

7 66. Plaintiffs are entitled to exercise their constitutional rights without first submitting to
8 government indoctrination.

9
10 **SECOND CAUSE OF ACTION**
11 **(VIOLATION OF ARTICLE I SECTION 24 RIGHT TO BEAR ARMS)**
12 **(10-DAY WAITING PERIOD)**

13 67. Plaintiffs reallege the foregoing paragraphs as though fully set forth herein.

14 68. RCW 9.41.092(2) arbitrarily requires a person to wait for weeks before being
15 permitted to exercise his right to keep and bear arms.

16 69. This provision constitutes an unconstitutional impairment of Plaintiffs' rights to bear
17 arms under Article 1, Section 24.

18 70. Plaintiffs are entitled to exercise their enumerated constitutional rights when they
19 decide it is appropriate — not when the government believes it to be appropriate, such as after a
20 “waiting” or “cooling off” period.

21 **THIRD CAUSE OF ACTION**
22 **DECLARATORY JUDGMENT**
23 **(VIOLATION OF WASHINGTON PETITION PROVISIONS)**

24 71. Plaintiffs reallege the foregoing paragraphs as though fully set forth herein.
25

1 72. The I-1639 petition was contrary to law, because it did not “have a readable, full,
2 true, and correct copy of the proposed measure printed on the reverse side of the petition”
3 contrary to Constitution Art. II, Sec. 1 and RCW 29A.72.100.

4 73. The I-1639 petitions violated, among other provisions, RCW 29A.72.100 and
5 RCW 29A.72.120, along with Article II, Sections 1(a) and 37 and WAC 434-379-008(2)(g).

6 74. Plaintiffs are entitled to a judicial declaration¹⁷ that I-1639 was adopted in
7 violation of the Washington State Constitution, the Revised Code of Washington, and the
8 Secretary of State’s Regulations and, as such, is null and void.

9 75. Pursuant to a final judgment entered on August 17, 2018 in Thurston County
10 cause number 18-2-03747-34, the State is collaterally estopped to deny said petition violates
11 RCW 29A.72.100 and other legal provisions.
12

13 **FOURTH CAUSE OF ACTION**
14 **INJUNCTIVE RELIEF**
15 **(VIOLATION OF WASHINGTON PETITION PROVISIONS)**

16 76. Plaintiffs reallege the foregoing paragraphs as though fully set forth herein.

17 77. The I-1639 petition was contrary to law, because the statutory language in the
18 petition was incorrect, misleading, and unreadable, and there is no way to verify that the petition
19 signers had the opportunity to read the full, true, and correct copy of the initiative text.

20 78. Plaintiffs are entitled to have the Court enforce the Washington Constitution and
21 statutory law and grant an injunction from I-1639 being included and enforced as a Washington
22 statute.
23

24 _____
25 ¹⁷ RCW 7.24.020: A person ... whose rights ... are affected by a statute ... may have determined any question of
construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations
thereunder.

1 **VII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs request that the Court grant all appropriate relief, including:

- 3 a. The issuance of a permanent injunction, halting Defendant’s enforcement of the
4 provisions of I-1639;
- 5 b. A declaratory judgment, pursuant to RCW 7.24 or other applicable law, that holds
6 unlawful and sets aside I-1639, and declares that I-1639 violates Article I, Section 24,
7 Article II Sections 1(a) and 37 of the Washington Constitution, along with violating
8 RCW 29A.72.100;
- 9 c. Any other relief that this Court in its discretion deems just and proper.

10 DATED this 14th day of August, 2020.

11
12 GOODSTEIN LAW GROUP PLLC

13 s/Richard B. Sanders

14 s/Carolyn A. Lake

15 Richard B. Sanders, WSBA No. 2813

16 Carolyn A. Lake, WSBA No. 13980

17 Goodstein Law Group, PLLC

18 501 S. G Street

19 Tacoma, WA 98405

20 253-779-4000 (telephone)

21 779-4411 (fax)

22 rsanders@goodsteinlaw.com (e-mail)

23 clake@goodsteinlaw.com (e-mail)

24 *Counsel for Plaintiffs*

Initiative Measure No. 1639, filed May 2, 2018

AN ACT Relating to increasing public safety by implementing firearm safety measures, including requiring enhanced background checks, waiting periods, and increased age requirements for semiautomatic assault rifles and secure gun storage for all firearms; amending RCW 9.41.090, 9.41.092, 9.41.094, 9.41.097, 9.41.0975, 9.41.110, 9.41.113, 9.41.124, 9.41.240, 9.41.129, and 9.41.010; adding new sections to chapter 9.41 RCW; creating new sections; prescribing penalties; and providing effective dates.

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

NEW SECTION. **Sec. 1.** INTENT. Gun violence is far too common in Washington and the United States. In particular, shootings involving the use of semiautomatic assault rifles have resulted in hundreds of lives lost, devastating injuries, and lasting psychological impacts on survivors, their families, and communities. Semiautomatic assault rifles are specifically designed to kill quickly and efficiently and have been used in some of the country's deadliest mass shootings, including in Newtown, Connecticut; Las

Vegas, Nevada; and Parkland and Orlando, Florida, among others. Semiautomatic assault rifles have also been used in deadly shootings in Washington, including in Mukilteo and Tacoma.

The impacts of gun violence by assault weapons fall heavily on children and teenagers. According to one analysis, more than two hundred eight thousand students attending at least two hundred twelve schools have experienced a shooting on campus since the Columbine mass shooting in 1999. Active shooter drills are normal for a generation of American schoolchildren, instilling at a young age the sad and unnecessary realization that a mass shooting can happen in any community, in any school, at any time.

Enough is enough. The people find and declare that it is crucial and urgent to pass laws to increase public safety and reduce gun violence.

Implementing an enhanced background check system for semiautomatic assault rifles that is as strong as the one required to purchase a handgun and requiring safety training and a waiting period will help ensure that we keep these weapons out of dangerous hands. Further, federal law prohibits the sale of pistols to individuals under the age of twenty-one and at least a dozen states further restrict the ownership or possession of firearms by individuals under the age of twenty-one. This makes sense, as studies show that eighteen to twenty year olds commit a disproportionate number of firearm homicides in the United States and research indicates that the brain does not fully mature until a later age. Raising the minimum age to purchase semiautomatic assault rifles to twenty-one is a commonsense step the people wish to take to increase public safety.

Finally, firearms taken from the home by children or other persons prohibited from possessing firearms have been at the heart of several tragic gun violence incidents. One study shows that over eighty-five percent of school shooters obtained the firearm at their home or from a friend or relative. Another study found that more than seventy-five percent of firearms used in youth suicide attempts

and unintentional injuries were stored in the residence of the victim, a relative, or a friend. Secure gun storage requirements for all firearms will increase public safety by helping ensure that children and other prohibited persons do not inappropriately gain access to firearms, and notice requirements will make the potential dangers of firearms clear to purchasers.

Therefore, to increase public safety for all Washingtonians, in particular our children, this measure would, among other things: Create an enhanced background check system applicable to semiautomatic assault rifles similar to what is required for handguns, require that individuals complete a firearm safety training course and be at least twenty-one years of age to purchase or possess such weapons, enact a waiting period for the purchase of such weapons, and establish standards for the responsible storage of all firearms.

NEW SECTION. **Sec. 2.** SHORT TITLE. This act may be known and cited as the public safety and semiautomatic assault rifle act.

Sec. 3. ENHANCED BACKGROUND CHECKS. RCW 9.41.090 and 2018 c 201 s 6003 are each amended to read as follows:

(1) In addition to the other requirements of this chapter, no dealer may deliver a pistol to the purchaser thereof until:

(a) The purchaser produces a valid concealed pistol license and the dealer has recorded the purchaser's name, license number, and issuing agency, such record to be made in triplicate and processed as provided in subsection (~~(5)~~) (6) of this section. For purposes of this subsection (1)(a), a "valid concealed pistol license" does not include a temporary emergency license, and does not include any license issued before July 1, 1996, unless the issuing agency conducted a records search for disqualifying crimes under RCW 9.41.070 at the time of issuance;

(b) The dealer is notified in writing by (i) the chief of police or the sheriff of the jurisdiction in which the purchaser resides

that the purchaser is eligible to possess a pistol under RCW 9.41.040 and that the application to purchase is approved by the chief of police or sheriff; or (ii) the state that the purchaser is eligible to possess a firearm under RCW 9.41.040, as provided in subsection (3)(b) of this section; or

(c) The requirements or time periods in RCW 9.41.092 have been satisfied.

(2) In addition to the other requirements of this chapter, no dealer may deliver a semiautomatic assault rifle to the purchaser thereof until:

(a) The purchaser provides proof that he or she has completed a recognized firearm safety training program within the last five years that, at a minimum, includes instruction on:

- (i) Basic firearms safety rules;
- (ii) Firearms and children, including secure gun storage and talking to children about gun safety;
- (iii) Firearms and suicide prevention;
- (iv) Secure gun storage to prevent unauthorized access and use;
- (v) Safe handling of firearms; and
- (vi) State and federal firearms laws, including prohibited firearms transfers.

The training must be sponsored by a federal, state, county, or municipal law enforcement agency, a college or university, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The proof of training shall be in the form of a certification that states under the penalty of perjury the training included the minimum requirements; and

(b) The dealer is notified in writing by (i) the chief of police or the sheriff of the jurisdiction in which the purchaser resides that the purchaser is eligible to possess a firearm under RCW 9.41.040 and that the application to purchase is approved by the chief of police or sheriff; or (ii) the state that the purchaser is

eligible to possess a firearm under RCW 9.41.040, as provided in subsection (3)(b) of this section; or

(c) The requirements or time periods in RCW 9.41.092 have been satisfied.

(3)(a) Except as provided in (b) of this subsection, in determining whether the purchaser meets the requirements of RCW 9.41.040, the chief of police or sheriff, or the designee of either, shall check with the national crime information center, including the national instant criminal background check system, provided for by the Brady Handgun Violence Prevention Act (18 U.S.C. Sec. 921 et seq.), the Washington state patrol electronic database, the health care authority electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 to possess a firearm.

(b) The state, through the legislature or initiative process, may enact a statewide firearms background check system equivalent to, or more comprehensive than, the check required by (a) of this subsection to determine that a purchaser is eligible to possess a firearm under RCW 9.41.040. Once ((the)) a state system is established, a dealer shall use the state system and national instant criminal background check system, provided for by the Brady Handgun Violence Prevention Act (18 U.S.C. Sec. 921 et seq.), to make criminal background checks of applicants to purchase firearms. ((However, a chief of police or sheriff, or a designee of either, shall continue to check the health care authority's electronic database and with other agencies or resources as appropriate, to determine whether applicants are ineligible under RCW 9.41.040 to possess a firearm.))

~~((3))~~ (4) In any case under this section where the applicant has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor, the dealer shall hold the delivery of the pistol or semiautomatic assault rifle until the warrant for arrest is served and satisfied by appropriate court appearance. The local jurisdiction for purposes of the sale, or the

state pursuant to subsection (3)(b) of this section, shall confirm the existence of outstanding warrants within seventy-two hours after notification of the application to purchase a pistol or semiautomatic assault rifle is received. The local jurisdiction shall also immediately confirm the satisfaction of the warrant on request of the dealer so that the hold may be released if the warrant was for an offense other than an offense making a person ineligible under RCW 9.41.040 to possess a ~~((pistol))~~ firearm.

~~((4))~~ (5) In any case where the chief or sheriff of the local jurisdiction, or the state pursuant to subsection (3)(b) of this section, has reasonable grounds based on the following circumstances: (a) Open criminal charges, (b) pending criminal proceedings, (c) pending commitment proceedings, (d) an outstanding warrant for an offense making a person ineligible under RCW 9.41.040 to possess a ~~((pistol))~~ firearm, or (e) an arrest for an offense making a person ineligible under RCW 9.41.040 to possess a ~~((pistol))~~ firearm, if the records of disposition have not yet been reported or entered sufficiently to determine eligibility to purchase a ~~((pistol))~~ firearm, the local jurisdiction or the state may hold the sale and delivery of the pistol or semiautomatic assault rifle up to thirty days in order to confirm existing records in this state or elsewhere. After thirty days, the hold will be lifted unless an extension of the thirty days is approved by a local district court, superior court, or municipal court for good cause shown. A dealer shall be notified of each hold placed on the sale by local law enforcement or the state and of any application to the court for additional hold period to confirm records or confirm the identity of the applicant.

~~((5))~~ (6)(a) At the time of applying for the purchase of a pistol or semiautomatic assault rifle, the purchaser shall sign in triplicate and deliver to the dealer an application containing:

(i) His or her full name, residential address, date and place of birth, race, and gender;

(ii) The date and hour of the application;

(iii) The applicant's driver's license number or state identification card number;

(iv) A description of the pistol or semiautomatic assault rifle including the make, model, caliber and manufacturer's number if available at the time of applying for the purchase of a pistol or semiautomatic assault rifle. If the manufacturer's number is not available at the time of applying for the purchase of a pistol or semiautomatic assault rifle, the application may be processed, but delivery of the pistol or semiautomatic assault rifle to the purchaser may not occur unless the manufacturer's number is recorded on the application by the dealer and transmitted to the chief of police of the municipality or the sheriff of the county in which the purchaser resides, or the state pursuant to subsection (3) (b) of this section; ((and))

(v) A statement that the purchaser is eligible to purchase and possess a ((pistol)) firearm under ((RCW 9.41.040)) state and federal law; and

(vi) If purchasing a semiautomatic assault rifle, a statement by the applicant under penalty of perjury that the applicant has completed a recognized firearm safety training program within the last five years, as required by subsection (2) of this section.

(b) The application shall contain ((a)) two warnings substantially stated as follows:

(i) CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. State permission to purchase a firearm is not a defense to a federal prosecution; and

(ii) CAUTION: The presence of a firearm in the home has been associated with an increased risk of death to self and others, including an increased risk of suicide, death during domestic violence incidents, and unintentional deaths to children and others.

The purchaser shall be given a copy of the department of fish and wildlife pamphlet on the legal limits of the use of firearms(~~(7)~~) and firearms safety(~~(7, and the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law)~~).

(c) The dealer shall, by the end of the business day, sign and attach his or her address and deliver a copy of the application and such other documentation as required under subsections (1) and (2) of this section to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident, or the state pursuant to subsection (3)(b) of this section. The triplicate shall be retained by the dealer for six years. The dealer shall deliver the pistol or semiautomatic assault rifle to the purchaser following the period of time specified in this chapter unless the dealer is notified of an investigative hold under subsection (~~(4)~~) (5) of this section in writing by the chief of police of the municipality (~~(or)~~), the sheriff of the county, or the state, whichever is applicable, (~~(denying)~~) or of the denial of the purchaser's application to purchase and the grounds thereof. The application shall not be denied unless the purchaser is not eligible to purchase or possess (~~(a pistol)~~) the firearm under (~~(RCW 9.41.040)~~) state or (~~(9.41.045, or)~~) federal law.

(d) The chief of police of the municipality or the sheriff of the county, or the state pursuant to subsection (3)(b) of this section, shall retain or destroy applications to purchase a pistol or semiautomatic assault rifle in accordance with the requirements of 18 U.S.C. Sec. 922.

(~~(6)~~) (7)(a) To help offset the administrative costs of implementing this section as it relates to new requirements for semiautomatic assault rifles, the department of licensing may require the dealer to charge each semiautomatic assault rifle purchaser or transferee a fee not to exceed twenty-five dollars, except that the fee may be adjusted at the beginning of each biennium to levels not to exceed the percentage increase in the

consumer price index for all urban consumers, CPI-W, or a successor index, for the previous biennium as calculated by the United States department of labor.

(b) The fee under (a) of this subsection shall be no more than is necessary to fund the following:

(i) The state for the cost of meeting its obligations under this section;

(ii) The health care authority, mental health institutions, and other health care facilities for state-mandated costs resulting from the reporting requirements imposed by RCW 9.41.097(1); and

(iii) Local law enforcement agencies for state-mandated local costs resulting from the requirements set forth under RCW 9.41.090 and this section.

(8) A person who knowingly makes a false statement regarding identity or eligibility requirements on the application to purchase a ~~((pistol))~~ firearm is guilty of false swearing under RCW 9A.72.040.

~~((7))~~ (9) This section does not apply to sales to licensed dealers for resale or to the sale of antique firearms.

Sec. 4. WAITING PERIOD. RCW 9.41.092 and 2018 c 145 s 4 are each amended to read as follows:

(1) Except as otherwise provided in this chapter and except for semiautomatic assault rifles under subsection (2) of this section, a licensed dealer may not deliver any firearm to a purchaser or transferee until the earlier of:

~~((1))~~ (a) The results of all required background checks are known and the purchaser or transferee ~~((a))~~ (i) is not prohibited from owning or possessing a firearm under federal or state law and ~~((b))~~ (ii) does not have a voluntary waiver of firearm rights currently in effect; or

~~((2))~~ (b) Ten business days have elapsed from the date the licensed dealer requested the background check. However, for sales and transfers of pistols if the purchaser or transferee does not

have a valid permanent Washington driver's license or state identification card or has not been a resident of the state for the previous consecutive ninety days, then the time period in this subsection shall be extended from ten business days to sixty days.

(2) Except as otherwise provided in this chapter, a licensed dealer may not deliver a semiautomatic assault rifle to a purchaser or transferee until ten business days have elapsed from the date of the purchase application or, in the case of a transfer, ten business days have elapsed from the date a background check is initiated.

NEW SECTION. **Sec. 5.** SECURE GUN STORAGE. A new section is added to chapter 9.41 RCW to read as follows:

(1) A person who stores or leaves a firearm in a location where the person knows, or reasonably should know, that a prohibited person may gain access to the firearm:

(a) Is guilty of community endangerment due to unsafe storage of a firearm in the first degree if a prohibited person obtains access and possession of the firearm and causes personal injury or death with the firearm; or

(b) Is guilty of community endangerment due to unsafe storage of a firearm in the second degree if a prohibited person obtains access and possession of the firearm and:

(i) Causes the firearm to discharge;

(ii) Carries, exhibits, or displays the firearm in a public place in a manner that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons; or

(iii) Uses the firearm in the commission of a crime.

(2) (a) Community endangerment due to unsafe storage of a firearm in the first degree is a class C felony punishable according to chapter 9A.20 RCW.

(b) Community endangerment due to unsafe storage of a firearm in the second degree is a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Subsection (1) of this section does not apply if:

(a) The firearm was in secure gun storage, or secured with a trigger lock or similar device that is designed to prevent the unauthorized use or discharge of the firearm;

(b) In the case of a person who is a prohibited person on the basis of the person's age, access to the firearm is with the lawful permission of the prohibited person's parent or guardian and supervised by an adult, or is in accordance with RCW 9.41.042;

(c) The prohibited person obtains, or obtains and discharges, the firearm in a lawful act of self-defense; or

(d) The prohibited person's access to the firearm was obtained as a result of an unlawful entry, provided that the unauthorized access or theft of the firearm is reported to a local law enforcement agency in the jurisdiction in which the unauthorized access or theft occurred within five days of the time the victim of the unlawful entry knew or reasonably should have known that the firearm had been taken.

(4) If a death or serious injury occurs as a result of an alleged violation of subsection (1)(a) of this section, the prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose or would defeat the purpose of the law in question.

(5) For the purposes of this section, "prohibited person" means a person who is prohibited from possessing a firearm under state or federal law.

(6) Nothing in this section mandates how or where a firearm must be stored.

NEW SECTION. **Sec. 6.** AVAILABILITY OF SECURE GUN STORAGE. A new section is added to chapter 9.41 RCW to read as follows:

(1) When selling or transferring any firearm, every dealer shall offer to sell or give the purchaser or transferee a secure gun storage device, or a trigger lock or similar device that is designed to prevent the unauthorized use or discharge of the firearm.

(2) Every store, shop, or sales outlet where firearms are sold, that is registered as a dealer in firearms with the department of licensing, shall conspicuously post, in a prominent location so that all patrons may take notice, the following warning sign, to be provided by the department of licensing, in block letters at least one inch in height:

WARNING: YOU MAY FACE CRIMINAL PROSECUTION IF YOU STORE OR LEAVE AN UNSECURED FIREARM WHERE A PERSON WHO IS PROHIBITED FROM POSSESSING FIREARMS CAN AND DOES OBTAIN POSSESSION.

(3) Every store, shop, or sales outlet where firearms are sold that is registered as a dealer in firearms with the department of licensing, upon the sale or transfer of a firearm, shall deliver a written warning to the purchaser or transferee that states, in block letters not less than one-fourth inch in height:

WARNING: YOU MAY FACE CRIMINAL PROSECUTION IF YOU STORE OR LEAVE AN UNSECURED FIREARM WHERE A PERSON WHO IS PROHIBITED FROM POSSESSING FIREARMS CAN AND DOES OBTAIN POSSESSION.

(4) Every person who violates this section is guilty of a class 1 civil infraction under chapter 7.80 RCW and may be fined up to two hundred fifty dollars. However, no such fines may be levied until thirty days have expired from the time warning signs required under subsection (2) of this section are distributed by the department of licensing.

Sec. 7. RCW 9.41.094 and 2018 c 201 s 6004 are each amended to read as follows:

A signed application to purchase a pistol or semiautomatic assault rifle shall constitute a waiver of confidentiality and written request that the health care authority, mental health institutions, and other health care facilities release, to an inquiring court or law enforcement agency, information relevant to the applicant's eligibility to purchase a pistol or semiautomatic assault rifle to an inquiring court or law enforcement agency.

Sec. 8. RCW 9.41.097 and 2018 c 201 s 6005 are each amended to read as follows:

(1) The health care authority, mental health institutions, and other health care facilities shall, upon request of a court, ~~((or))~~ law enforcement agency, or the state, supply such relevant information as is necessary to determine the eligibility of a person to possess a ~~((pistol))~~ firearm or to be issued a concealed pistol license under RCW 9.41.070 or to purchase a pistol or semiautomatic assault rifle under RCW 9.41.090.

(2) Mental health information received by: (a) The department of licensing pursuant to RCW 9.41.047 or 9.41.173; (b) an issuing authority pursuant to RCW 9.41.047 or 9.41.070; (c) a chief of police or sheriff pursuant to RCW 9.41.090 or 9.41.173; (d) a court or law enforcement agency pursuant to subsection (1) of this section; or (e) the state pursuant to RCW 9.41.090, shall not be disclosed except as provided in RCW 42.56.240(4).

Sec. 9. RCW 9.41.0975 and 2009 c 216 s 7 are each amended to read as follows:

(1) The state, local governmental entities, any public or private agency, and the employees of any state or local governmental entity or public or private agency, acting in good faith, are immune from liability:

(a) For failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful;

(b) For preventing the sale or transfer of a firearm to a person who may lawfully receive or possess a firearm;

(c) For issuing a concealed pistol license or alien firearm license to a person ineligible for such a license;

(d) For failing to issue a concealed pistol license or alien firearm license to a person eligible for such a license;

(e) For revoking or failing to revoke an issued concealed pistol license or alien firearm license;

(f) For errors in preparing or transmitting information as part of determining a person's eligibility to receive or possess a firearm, or eligibility for a concealed pistol license or alien firearm license;

(g) For issuing a dealer's license to a person ineligible for such a license; or

(h) For failing to issue a dealer's license to a person eligible for such a license.

(2) An application may be made to a court of competent jurisdiction for a writ of mandamus:

(a) Directing an issuing agency to issue a concealed pistol license or alien firearm license wrongfully refused;

(b) Directing a law enforcement agency to approve an application to purchase a pistol or semiautomatic assault rifle wrongfully denied;

(c) Directing that erroneous information resulting either in the wrongful refusal to issue a concealed pistol license or alien firearm license or in the wrongful denial of a purchase application for a pistol or semiautomatic assault rifle be corrected; or

(d) Directing a law enforcement agency to approve a dealer's license wrongfully denied.

The application for the writ may be made in the county in which the application for a concealed pistol license or alien firearm license or to purchase a pistol or semiautomatic assault rifle was made, or in Thurston county, at the discretion of the petitioner. A court shall provide an expedited hearing for an application brought under this subsection (2) for a writ of mandamus. A person granted a writ of mandamus under this subsection (2) shall be awarded reasonable attorneys' fees and costs.

Sec. 10. RCW 9.41.110 and 2009 c 479 s 10 are each amended to read as follows:

(1) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell,

or otherwise transfer, any pistol without being licensed as provided in this section.

(2) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any firearm other than a pistol without being licensed as provided in this section.

(3) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any ammunition without being licensed as provided in this section.

(4) The duly constituted licensing authorities of any city, town, or political subdivision of this state shall grant licenses in forms prescribed by the director of licensing effective for not more than one year from the date of issue permitting the licensee to sell firearms within this state subject to the following conditions, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in RCW 9.41.010 through 9.41.810. A licensing authority shall forward a copy of each license granted to the department of licensing. The department of licensing shall notify the department of revenue of the name and address of each dealer licensed under this section.

(5) (a) A licensing authority shall, within thirty days after the filing of an application of any person for a dealer's license, determine whether to grant the license. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card, or has not been a resident of the state for the previous consecutive ninety days, the licensing authority shall have up to sixty days to determine whether to issue a license. No person shall qualify for a license under this section without first receiving a federal firearms license and undergoing fingerprinting and a background check. In addition, no person ineligible to possess a firearm under RCW 9.41.040 or ineligible for a concealed pistol license under RCW 9.41.070 shall qualify for a dealer's license.

(b) A dealer shall require every employee who may sell a firearm in the course of his or her employment to undergo fingerprinting and a background check. An employee must be eligible to possess a firearm, and must not have been convicted of a crime that would make the person ineligible for a concealed pistol license, before being permitted to sell a firearm. Every employee shall comply with requirements concerning purchase applications and restrictions on delivery of pistols or semiautomatic assault rifles that are applicable to dealers.

(6) (a) Except as otherwise provided in (b) of this subsection, the business shall be carried on only in the building designated in the license. For the purpose of this section, advertising firearms for sale shall not be considered the carrying on of business.

(b) A dealer may conduct business temporarily at a location other than the building designated in the license, if the temporary location is within Washington state and is the location of a gun show sponsored by a national, state, or local organization, or an affiliate of any such organization, devoted to the collection, competitive use, or other sporting use of firearms in the community. Nothing in this subsection (6) (b) authorizes a dealer to conduct business in or from a motorized or towed vehicle.

In conducting business temporarily at a location other than the building designated in the license, the dealer shall comply with all other requirements imposed on dealers by RCW 9.41.090, 9.41.100, and ~~((9.41.110))~~ this section. The license of a dealer who fails to comply with the requirements of RCW 9.41.080 and 9.41.090 and subsection (8) of this section while conducting business at a temporary location shall be revoked, and the dealer shall be permanently ineligible for a dealer's license.

(7) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises in the area where firearms are sold, or at the temporary location, where it can easily be read.

(8) (a) No pistol or semiautomatic assault rifle may be sold: (i) In violation of any provisions of RCW 9.41.010 through 9.41.810; nor (ii) may a pistol or semiautomatic assault rifle be sold under any circumstances unless the purchaser is personally known to the dealer or shall present clear evidence of his or her identity.

(b) A dealer who sells or delivers any firearm in violation of RCW 9.41.080 is guilty of a class C felony. In addition to any other penalty provided for by law, the dealer is subject to mandatory permanent revocation of his or her dealer's license and permanent ineligibility for a dealer's license.

(c) The license fee for pistols shall be one hundred twenty-five dollars. The license fee for firearms other than pistols shall be one hundred twenty-five dollars. The license fee for ammunition shall be one hundred twenty-five dollars. Any dealer who obtains any license under subsection (1), (2), or (3) of this section may also obtain the remaining licenses without payment of any fee. The fees received under this section shall be deposited in the state general fund.

(9) (a) A true record in triplicate shall be made of every pistol or semiautomatic assault rifle sold, in a book kept for the purpose, the form of which may be prescribed by the director of licensing and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation, and place of birth of the purchaser, and a statement signed by the purchaser that he or she is not ineligible under (~~RCW 9.41.040~~) state or federal law to possess a firearm.

(b) One copy shall within six hours be sent by certified mail to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident, or the state pursuant to RCW 9.41.090; the duplicate the dealer shall within seven days send to the director of licensing; the triplicate the dealer shall retain for six years.

(10) Subsections (2) through (9) of this section shall not apply to sales at wholesale.

(11) The dealer's licenses authorized to be issued by this section are general licenses covering all sales by the licensee within the effective period of the licenses. The department shall provide a single application form for dealer's licenses and a single license form which shall indicate the type or types of licenses granted.

(12) Except as provided in RCW 9.41.090, every city, town, and political subdivision of this state is prohibited from requiring the purchaser to secure a permit to purchase or from requiring the dealer to secure an individual permit for each sale.

Sec. 11. RCW 9.41.113 and 2017 c 264 s 2 are each amended to read as follows:

(1) All firearm sales or transfers, in whole or part in this state including without limitation a sale or transfer where either the purchaser or seller or transferee or transferor is in Washington, shall be subject to background checks unless specifically exempted by state or federal law. The background check requirement applies to all sales or transfers including, but not limited to, sales and transfers through a licensed dealer, at gun shows, online, and between unlicensed persons.

(2) No person shall sell or transfer a firearm unless:

(a) The person is a licensed dealer;

(b) The purchaser or transferee is a licensed dealer; or

(c) The requirements of subsection (3) of this section are met.

(3) Where neither party to a prospective firearms transaction is a licensed dealer, the parties to the transaction shall complete the sale or transfer through a licensed dealer as follows:

(a) The seller or transferor shall deliver the firearm to a licensed dealer to process the sale or transfer as if it is selling or transferring the firearm from its inventory to the purchaser or transferee, except that the unlicensed seller or transferor may

remove the firearm from the business premises of the licensed dealer while the background check is being conducted. If the seller or transferor removes the firearm from the business premises of the licensed dealer while the background check is being conducted, the purchaser or transferee and the seller or transferor shall return to the business premises of the licensed dealer and the seller or transferor shall again deliver the firearm to the licensed dealer prior to completing the sale or transfer.

(b) Except as provided in (a) of this subsection, the licensed dealer shall comply with all requirements of federal and state law that would apply if the licensed dealer were selling or transferring the firearm from its inventory to the purchaser or transferee, including but not limited to conducting a background check on the prospective purchaser or transferee in accordance with federal and state law requirements ~~((and))~~, fulfilling all federal and state recordkeeping requirements, and complying with the specific requirements and restrictions on semiautomatic assault rifles in this act.

(c) The purchaser or transferee must complete, sign, and submit all federal, state, and local forms necessary to process the required background check to the licensed dealer conducting the background check.

(d) If the results of the background check indicate that the purchaser or transferee is ineligible to possess a firearm, then the licensed dealer shall return the firearm to the seller or transferor.

(e) The licensed dealer may charge a fee that reflects the fair market value of the administrative costs and efforts incurred by the licensed dealer for facilitating the sale or transfer of the firearm.

(4) This section does not apply to:

(a) A transfer between immediate family members, which for this subsection shall be limited to spouses, domestic partners, parents, parents-in-law, children, siblings, siblings-in-law, grandparents,

grandchildren, nieces, nephews, first cousins, aunts, and uncles, that is a bona fide gift or loan;

(b) The sale or transfer of an antique firearm;

(c) A temporary transfer of possession of a firearm if such transfer is necessary to prevent imminent death or great bodily harm to the person to whom the firearm is transferred if:

(i) The temporary transfer only lasts as long as immediately necessary to prevent such imminent death or great bodily harm; and

(ii) The person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law;

(d) A temporary transfer of possession of a firearm if: (i) The transfer is intended to prevent suicide or self-inflicted great bodily harm; (ii) the transfer lasts only as long as reasonably necessary to prevent death or great bodily harm; and (iii) the firearm is not utilized by the transferee for any purpose for the duration of the temporary transfer;

(e) Any law enforcement or corrections agency and, to the extent the person is acting within the course and scope of his or her employment or official duties, any law enforcement or corrections officer, United States marshal, member of the armed forces of the United States or the national guard, or federal official;

(f) A federally licensed gunsmith who receives a firearm solely for the purposes of service or repair, or the return of the firearm to its owner by the federally licensed gunsmith;

(g) The temporary transfer of a firearm (i) between spouses or domestic partners; (ii) if the temporary transfer occurs, and the firearm is kept at all times, at an established shooting range authorized by the governing body of the jurisdiction in which such range is located; (iii) if the temporary transfer occurs and the transferee's possession of the firearm is exclusively at a lawful organized competition involving the use of a firearm, or while participating in or practicing for a performance by an organized group that uses firearms as a part of the performance; (iv) to a person who is under eighteen years of age for lawful hunting,

sporting, or educational purposes while under the direct supervision and control of a responsible adult who is not prohibited from possessing firearms; (v) under circumstances in which the transferee and the firearm remain in the presence of the transferor; or (vi) while hunting if the hunting is legal in all places where the person to whom the firearm is transferred possesses the firearm and the person to whom the firearm is transferred has completed all training and holds all licenses or permits required for such hunting, provided that any temporary transfer allowed by this subsection is permitted only if the person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law;

(h) A person who (i) acquired a firearm other than a pistol by operation of law upon the death of the former owner of the firearm or (ii) acquired a pistol by operation of law upon the death of the former owner of the pistol within the preceding sixty days. At the end of the sixty-day period, the person must either have lawfully transferred the pistol or must have contacted the department of licensing to notify the department that he or she has possession of the pistol and intends to retain possession of the pistol, in compliance with all federal and state laws; or

(i) A sale or transfer when the purchaser or transferee is a licensed collector and the firearm being sold or transferred is a curio or relic.

Sec. 12. RCW 9.41.124 and 2015 c 1 s 7 are each amended to read as follows:

Residents of a state other than Washington may purchase rifles and shotguns, except those firearms defined as semiautomatic assault rifles, in Washington: PROVIDED, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: AND PROVIDED FURTHER, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such persons reside: AND PROVIDED FURTHER, That such

residents are subject to the procedures and background checks required by this chapter.

Sec. 13. RCW 9.41.240 and 1994 sp.s. c 7 s 423 are each amended to read as follows:

(1) A person under twenty-one years of age may not purchase a pistol or semiautomatic assault rifle, and except as otherwise provided in this chapter, no person may sell or transfer a semiautomatic assault rifle to a person under twenty-one years of age.

(2) Unless an exception under RCW 9.41.042, 9.41.050, or 9.41.060 applies, a person at least eighteen years of age, but less than twenty-one years of age, may possess a pistol only:

~~((1))~~ (a) In the person's place of abode;

~~((2))~~ (b) At the person's fixed place of business; or

~~((3))~~ (c) On real property under his or her control.

(3) Except in the places and situations identified in RCW 9.41.042 (1) through (9) and 9.41.060 (1) through (10), a person at least eighteen years of age, but less than twenty-one years of age, may possess a semiautomatic assault rifle only:

(a) In the person's place of abode;

(b) At the person's fixed place of business;

(c) On real property under his or her control; or

(d) For the specific purpose of (i) moving to a new place of abode; (ii) traveling between the person's place of abode and real property under his or her control; or (iii) selling or transferring the firearm in accordance with the requirements of this chapter; provided that in all of these situations the semiautomatic assault rifle is unloaded and either in secure gun storage or secured with a trigger lock or similar device that is designed to prevent the unauthorized use or discharge of the firearm.

Sec. 14. RCW 9.41.129 and 2005 c 274 s 203 are each amended to read as follows:

The department of licensing (~~may~~) shall keep copies or records of applications for concealed pistol licenses provided for in RCW 9.41.070, copies or records of applications for alien firearm licenses, copies or records of applications to purchase pistols or semiautomatic assault rifles provided for in RCW 9.41.090, and copies or records of pistol or semiautomatic assault rifle transfers provided for in RCW 9.41.110. The copies and records shall not be disclosed except as provided in RCW 42.56.240(4).

NEW SECTION. **Sec. 15.** A new section is added to chapter 9.41 RCW to read as follows:

(1) Within twelve months of the effective date of this section, the department of licensing shall, in conjunction with the Washington state patrol and other state and local law enforcement agencies as necessary, develop a cost-effective and efficient process to:

(a) Verify, on an annual or more frequent basis, that persons who acquired pistols or semiautomatic assault rifles pursuant to this chapter remain eligible to possess a firearm under state and federal law; and

(b) If such persons are determined to be ineligible for any reason, (i) notify and provide the relevant information to the chief of police or the sheriff of the jurisdiction in which the purchaser resides and (ii) take steps to ensure such persons are not illegally in possession of firearms.

(2) The department of licensing, where appropriate, may consult with individuals from the public and private sector or ask the individuals to establish a temporary advisory committee to accomplish the purposes in subsection (1) of this section. Members of such an advisory committee are not entitled to expense reimbursement.

Sec. 16. RCW 9.41.010 and 2018 c 7 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(3) "Bump-fire stock" means a butt stock designed to be attached to a semiautomatic firearm with the effect of increasing the rate of fire achievable with the semiautomatic firearm to that of a fully automatic firearm by using the energy from the recoil of the firearm to generate reciprocating action that facilitates repeated activation of the trigger.

(4) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(5) "Curio or relic" has the same meaning as provided in 27 C.F.R. Sec. 478.11.

(6) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(7) "Family or household member" means "family" or "household member" as used in RCW 10.99.020.

(8) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(9) "Felony firearm offender" means a person who has previously been convicted or found not guilty by reason of insanity in this state of any felony firearm offense. A person is not a felony firearm offender under this chapter if any and all qualifying offenses have been the subject of an expungement, pardon, annulment, certificate, or rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(10) "Felony firearm offense" means:

(a) Any felony offense that is a violation of this chapter;

(b) A violation of RCW 9A.36.045;

(c) A violation of RCW 9A.56.300;

(d) A violation of RCW 9A.56.310;

(e) Any felony offense if the offender was armed with a firearm in the commission of the offense.

(11) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes.

(12) "Gun" has the same meaning as firearm.

(13) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

(14) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in 8 U.S.C. Sec. 1101(a)(20).

(15) "Licensed collector" means a person who is federally licensed under 18 U.S.C. Sec. 923(b).

(16) "Licensed dealer" means a person who is federally licensed under 18 U.S.C. Sec. 923(a).

(17) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

(18) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

(19) "Nonimmigrant alien" means a person defined as such in 8 U.S.C. Sec. 1101(a)(15).

(20) "Person" means any individual, corporation, company, association, firm, partnership, club, organization, society, joint stock company, or other legal entity.

(21) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

(22) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(23) "Sale" and "sell" mean the actual approval of the delivery of a firearm in consideration of payment or promise of payment.

(24) "Secure gun storage" means:

(a) A locked box, gun safe, or other secure locked storage space that is designed to prevent unauthorized use or discharge of a firearm; and

(b) The act of keeping an unloaded firearm stored by such means.

(25) "Semiautomatic assault rifle" means any rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

"Semiautomatic assault rifle" does not include antique firearms, any firearm that has been made permanently inoperable, or any

firearm that is manually operated by bolt, pump, lever, or slide action.

(26) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

- (a) Any crime of violence;
- (b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;
- (c) Child molestation in the second degree;
- (d) Incest when committed against a child under age fourteen;
- (e) Indecent liberties;
- (f) Leading organized crime;
- (g) Promoting prostitution in the first degree;
- (h) Rape in the third degree;
- (i) Drive-by shooting;
- (j) Sexual exploitation;
- (k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- (l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
- (m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;
- (n) Any other felony with a deadly weapon verdict under RCW 9.94A.825;
- (o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense; or
- (p) Any felony conviction under RCW 9.41.115.

~~((25))~~ (27) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

~~((26))~~ (28) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

~~((27))~~ (29) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

~~((28))~~ (30) "Transfer" means the intended delivery of a firearm to another person without consideration of payment or promise of payment including, but not limited to, gifts and loans. "Transfer" does not include the delivery of a firearm owned or leased by an entity licensed or qualified to do business in the state of Washington to, or return of such a firearm by, any of that entity's employees or agents, defined to include volunteers participating in an honor guard, for lawful purposes in the ordinary course of business.

~~((29))~~ (31) "Unlicensed person" means any person who is not a licensed dealer under this chapter.

NEW SECTION. **Sec. 17.** This act takes effect July 1, 2019, except for section 13 of this act which takes effect January 1, 2019.

NEW SECTION. **Sec. 18.** The director of the department of licensing may take the necessary steps to ensure that this act is implemented on its effective date.

NEW SECTION. **Sec. 19.** If any provision of this act or its application to any person or circumstance is held invalid or preempted by federal law, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

--- END ---

WA VOTERS: SIGN TO ENSURE SAFE SCHOOLS, SAFE COMMUNITIES & REDUCE ASSAULT WEAPON VIOLENCE



- THE MAJORITY OF WASHINGTON VOTERS--MORE VOTERS THAN EVER BEFORE-- WANT STRONGER GUN LAWS TO HELP KEEP OUR SCHOOLS AND COMMUNITIES SAFE.
- RAISING THE AGE TO PURCHASE FROM 18 TO 21 TO MATCH OUR RULES FOR HANDGUNS JUST MAKES SENSE.
- A 10 DAY WAITING PERIOD TO ENSURE THE LOCAL LAW ENFORCEMENT CHECKS ARE COMPLETE.

BALLOT TITLE

Initiative Measure No. 1639 concerns firearms.

This measure would require enhanced background checks, training, and waiting periods for sales or delivery of semiautomatic assault rifles; criminalize certain storage and unauthorized use; impose age limitations; and enact other firearm-safety requirements.

Should this measure be enacted into law? Yes [] No []

BALLOT MEASURE SUMMARY

This measure would require enhanced background checks, firearm training, and waiting periods before semiautomatic assault rifles may be purchased or delivered. It would impose age limitations on who may purchase or possess certain firearms, including prohibiting firearm purchases by persons under age 21. It would require certain secured firearm storage or trigger-locks, and criminalize certain firearm storage if it results in unauthorized use. It would enact other firearm-related requirements, including certain warnings, recordkeeping, and fees.

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE: To the Honorable Kim Wyman, Secretary of State of the State of Washington: We, the undersigned citizens and legal voters of the State of Washington, respectfully direct that the proposed measure known as Initiative Measure No. 1639, entitled "Initiative Measure No. 1639 concerns firearms. This measure would require enhanced background checks, training, and waiting periods for sales or delivery of semiautomatic assault rifles; criminalize certain storage and unauthorized use; impose age limitations; and enact other firearm-safety requirements. Should this measure be enacted into law? Yes [] No []", a full, true and correct copy of which is printed on the reverse side of this petition, be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the 6th day of November, 2018; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

WARNING REQUIRED BY STATE LAW: Every person who signs this petition with any other than his or her true name, knowingly signs more than one of these petitions, signs this petition when he or she is not a legal voter or makes any false statement on this petition may be punished by fine or imprisonment or both.

1.	PRINT NAME HERE	Signature	DOB	ADDRESS WHERE REGISTERED TO VOTE		
	For positive identification	Please sign as registered to vote	MM-DD-YY	Street or rural route & box number	City	County
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						

EXHIBIT B

2018 AUG 17 AM 11:11

Linda Myhre Enlow
Thurston County Clerk

18-2-03747-34
OR 43
Order
3686697



18-2-03747-34
NO. 18-203748-34

ORDER of writ of
(OR) mandamus

EXPEDITE (if filing within 5 court days of hearing)

Hearing is set:
Date: _____
Time: _____
Judge/Calendar: _____

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

In re Initiative 1639
Ball, et al

Plaintiff/Petitioner,

vs.

Kim Wyman, Secretary of State
and
Safe Schools Safe Communities, Intervenor
Defendant/Respondent.

I. BASIS

- ① all pleadings filed by parties
- ② all Declarations and Exhibits attached including the petition for Initiative 1639
- ③ Oral argument

II. FINDINGS

After reviewing the case record to date, and the basis for the motion, the court finds that:

The Court incorporates the findings made on the record.

III. ORDER

IT IS ORDERED that:

The Court issues a writ of mandamus to Secretary of State Kim Wyman to estop certification of Initiative 1639.

DATED this 17 day of August, 2018.

James Dixon

JUDGE / COURT COMMISSIONER

Presented by:

Plaintiff Ball + NRA

ORDER

Del. Gottlieb + Vessel

Approved:

Callia Cesilio
for Del. Wyman #38217

EXHIBIT C

F:\FORMS\MC\ORDER.DOC, 11/3/09

James #39329
FOR INTERVENOR-DEFENDANT
SAFE SCHOOLS SAFE COMMUNITIES

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

ROBIN BALL, a resident of)
the state of Washington,)
and the NATIONAL RIFLE)
ASSOCIATION and ALAN)
GOTTLIEB and JULIANNE HOY)
VERSNEL,)

Petitioners,)

and)

KIM WYMAN, in her capacity)
as Secretary of State,)

Respondent, and)

SAFE SCHOOLS SAFE)
COMMUNITIES,)

Respondent-Intervenor.)

No. 18-2-03747-34

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 17th day of August,
2018, the above-entitled and numbered cause came on for
hearing before the Honorable James J. Dixon, Judge,
Thurston County Superior Court, Olympia, Washington.

Kathryn A. Beehler, CCR No. 2448
Certified Realtime Reporter
Thurston County Superior Court
2000 Lakeridge Drive S.W.
Building 2, Room 109
Olympia, WA 98502
(360) 754-4370

A P P E A R A N C E S

For the Petitioners
Robin Ball and the
NRA:

Eric A. Lindberg
Attorney at Law
Corr Cronin, LLP
1001 Fourth Avenue
Suite 3900
Seattle, WA 98154
206-652-8655
Elindberg@corrchronin.com

For the Petitioners
Alan Gottlieb and
Julianne Versnel:

Joel Bernard Ard
Attorney at Law
Immix Law Group PC
701 5th Avenue
Suite 4710
Seattle, WA 98104-7074
206-492-7531
Joel.ard@immixlaw.com

For Safe Schools
Safe Communities:

Gregory J. Wong
Attorney at Law
Pacifica Law Group, LLC
1191 Second Avenue
Suite 2000
Seattle, WA 98101-3404
206-245-1700
Greg.wong@pacificallawgroup.com

For Secretary of
State Kim Wyman:

Callie A. Castillo
Deputy Solicitor General
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504-0100
360-664-0869
Calliec@atg.wa.gov

I N D E X

<u>Description</u>	<u>Page Reference</u>
Court Calls Case/Introduction of Parties	4
Court Rules to Allow Video and/or Audio Recording	5
Argument by Mr. Lindberg for Petitioners Ball and NRA	7
Argument by Mr. Ard for Gottlieb and Versnel	15
Argument by Mr. Wong for Safe Schools Safe Communities	20
Argument by Ms. Castillo for Secretary of State Wyman	36
Rebuttal by Mr. Lindberg	38
Rebuttal by Mr. Ard	40
Oral Opinion of the Court	43

1 under that statute, the only authority the
2 Secretary had was to add up what the county
3 officials had already done.

4 So this is a very different structure. The
5 Secretary has much different authority today,
6 because she keeps the voter roles. And so she's
7 now the one stop for taking the petitions, looking
8 to see if they conform to the statute, and then
9 tallying the signatures. So I think the different
10 structure in that case compels a very different
11 result in this one.

12 THE COURT: Thank you.

13 MR. ARD: Thank you.

14 THE COURT: As a finding, this court
15 will find that petitioners have standing. This
16 court recognizes what is at stake here this
17 morning. This court understands that it has an
18 obligation to protect the initiative and
19 referendum process while still hearing, for lack
20 of a better word, the community.

21 Sponsors have submitted a number of
22 declarations. I think Mr. Ard referenced 12. The
23 court hears mister or miss or they or them
24 Schultz, Griffith, Janzen, Hackney, Hurd, O'Grady,
25 Ramey, Rysemus, Johnson, Simpson, Taylor, Shu,

1 Vonhoff. The court has read those declarations,
2 and the court would not be surprised whatsoever if
3 the sponsors were able to supply literally
4 thousands of others.

5 That being said, the court is confident
6 that if the Petitioners in this action had
7 intended to or sought to, they could have and
8 would have submitted declarations and affidavits
9 from voters of this community who have other
10 opinions that might differ from the declarations
11 the court has read. This is not a situation where
12 the court is tasked with the responsibility of
13 deciding how the voters of this state would vote
14 on this very important issue. In other words, how
15 many people would be in favor of the initiative,
16 how many people would be opposed to the
17 initiative. Rather, it is this court's
18 responsibility to make certain that the process is
19 accurate, that the law is being followed.

20 On or about July 6, 2018, the sponsors
21 submitted signed petitions to the Secretary of
22 State. And as I recall Mr. Wong's representation,
23 that was a total of 378,000 signatures, something
24 like that. I apologize if I got the number wrong.
25 The Secretary of State certified the petitions on

1 July 27 for the purpose of placing Initiative 1639
2 on the ballot.

3 At issue this morning is whether those
4 signed petitions, as certified, violate statute
5 and/or the state constitution. Frankly, this
6 court does not struggle with this issue. When I
7 read the initiative when I read the petition, as
8 it was included on the reverse side of the
9 petitions, and then when I read the law, it became
10 apparent to me that the petitions do not comport
11 with RCW 29A.72.100. That statute provides, in
12 part, that each petition at the time of
13 circulating, signing, and filing with the
14 Secretary of State – I'm going to emphasize
15 certain words that cannot be reflected in the
16 transcript when this matter is reviewed by a
17 higher court, but I'll do it nonetheless – must
18 have a readable, full, true, correct copy of the
19 proposed measure on the reverse side of the
20 petition.

21 The petitions at issue do not contain,
22 first, a readable copy. Ladies and gentlemen in
23 the courtroom, I'm showing you what the petition
24 looks like. I have 20/20 vision. I can't read
25 it. And I don't mean that to be facetious. I

1 simply cannot read it. Moreover, it is not a true
2 copy. It is not a correct copy of the proposed
3 measure. For whatever reason or reasons, the
4 sponsors, or whomever they entrusted to put this
5 process together on their behalf, chose to use 11
6 by 17 inch sheets. And that was not the only
7 option available to them.

8 The text of the initiative as filed by the
9 sponsor included proposed deletions via
10 strikethroughs, double bracketed parentheses so as
11 to indicate offsets and underlines. The text on
12 the reverse side of the petition does not include
13 deletions and underlines. It is not a replica of
14 the text contained in the petition filed with the
15 Secretary of State.

16 Yesterday, when I was putting some notes
17 together, I enlarged the text on the back of the
18 petition just for the purpose of determining
19 whether I could see double parentheses. They are
20 in there. I highlighted some of them just to make
21 certain that there are double parentheses in
22 there. It begs the question of, what do those
23 double parentheses mean. There are no
24 strikethroughs or underlines.

25 The court found itself asking,

1 rhetorically, perhaps, why AAP Holding Company
2 and/or others chose to do it this way. Perhaps
3 we'll never know.

4 But what is compelling to the court is that
5 at some point during this process, prior to the
6 27th of July, the Director of Elections of the
7 Office of the Secretary of State brought those
8 concerns to their attention, notwithstanding the
9 fact that she didn't have to, and neither did the
10 Secretary. And that is indicated in the
11 declarations, plural, of Ms. Augino, who is the
12 Director of Elections for the Secretary of State.
13 Her declarations were both compelling to this
14 court and instructive and very helpful for the
15 court to understand the process of the Secretary
16 of State, and perhaps most importantly or more
17 importantly, what the Director of the Office of
18 Elections did in this particular case.

19 Ms. Augino advises that when reviewing the
20 back of the petitions, her staff noted that the
21 text on the back was printed differently from the
22 text as originally submitted to the Secretary of
23 State's Office. Those concerns were raised to the
24 Petitioners. Ms. Augino's declaration notes,
25 where Initiative 1639 amended an existing section

1 of a statute, there was no way for a signer to
2 know what words were ones that the initiative
3 proposed to add in contrast with what the existing
4 law already said. Initiative 1639 proposed to
5 delete some words from existing law. And while
6 those words were contained in double parentheses,
7 there is no notice to the signers about what the
8 double parentheses might mean. Rather than print
9 the petition sheets in large booklet form, in this
10 case, the paper was on 11 by 17 inch, "making the
11 font of the initiative text so small that it was
12 doubtful that the text was readable for most
13 people."

14 It's not readable to me. I don't know
15 whether I'm most people. I can't read it.

16 The court is not persuaded by the argument
17 that substantial compliance is the proper
18 analysis; rather, the court believes that it has
19 an obligation to require strict compliance with
20 the initiative process. Mr. Wong very eloquently
21 and articulately mentioned in his argument, kind
22 of in passing, that the initiative process must be
23 vigilantly protected. This court agrees with
24 that. It is the hope of this court that everyone,
25 not just in this courtroom, but every voter of

1 this state understands that, appreciates it, and
2 believes in it.

3 There is no proof in this record that any
4 of the voters that signed this petition were
5 misled or deceived. That's not the issue. The
6 issue is whether the text is true, accurate,
7 correct, and readable. And it isn't.

8 The argument with respect to the breach of
9 duty, I guess, alleged against the Secretary of
10 State is not persuasive. This court finds that
11 the Secretary of State did exactly what she was
12 supposed to do. RCW 29A.72.170 provides the
13 Secretary of State with very limited authority.

14 "The Secretary of State may . . ." as
15 opposed to "shall" or "must," refuse to file any
16 initiative if it does not include certain
17 information or does not include sufficient amount
18 of signatures or the filing period has expired.

19 Noncompliance with RCW 29A.72.100 is not a
20 basis for the Secretary of State to reject a
21 petition. In fact, there is a long line of cases
22 that clearly stand for the proposition that the
23 Secretary of State would be in violation of the
24 law if she or he did otherwise. The people of
25 this state have a constitutional right to engage

1 in the initiative process. Our state, our
2 communities benefit from that process. There are
3 literally -- not literally, but almost literally
4 countless instances of that process that have
5 benefited our state and our citizens.

6 This court has the duty to ensure that the
7 process complies with the law. Voters have a
8 right to know. Sponsors have a corresponding
9 obligation to provide what the initiative seeks to
10 accomplish. A full, complete, and readable
11 proposed initiative serves those rights and those
12 obligations. Otherwise, there is no assurance
13 that voters would know what the proposed changes
14 were.

15 The text on the back of these petitions do
16 not allow the voters to make informed decisions.
17 For this court to hold otherwise would be to
18 condone noncompliance with the clear provisions of
19 the law. This court will issue a writ of mandamus
20 to the Secretary of State to estop certification
21 of the initiative, and I'll sign that.

22 Declaratory relief is not appropriate, and an
23 injunction is not appropriate. The appropriate
24 remedy is a writ of mandamus. I'll sign a writ.

25 The court is aware that there are avenues

1 of appeal of this court's decision, so it is the
2 hope of this court that the parties can agree on a
3 language of the writ so the court can sign it
4 today and allow the parties to seek review if that
5 is their intention. Thank you. The court is in
6 recess until 11 o'clock.

7 (A recess was taken.)

8 THE COURT: Thank you. Please be
9 seated. The court will sign a writ if one is
10 available for the court's review and signature in
11 Ball versus Wyman, 18-2-3747-34.

12
13 (Conclusion of August 17, 2018, Proceedings.)
14
15
16
17
18
19
20
21
22
23
24
25

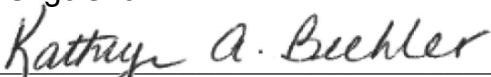
SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

ROBIN BALL, a resident of the)	
state of Washington, and the)	
NATIONAL RIFLE ASSOCIATION and)	
ALAN GOTTLIEB and JULIANNE HOY)	
VERSNEL,)	Case No. 18-2-03747-34
)	
Petitioners,)	REPORTER'S CERTIFICATE
)	
KIM WYMAN, in her capacity as)	
Secretary of State,)	
)	
Respondent, and)	
)	
SAFE SCHOOLS SAFE COMMUNITIES,)	
)	
Respondent-Intervenor.)	

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Kathryn A. Beehler, CCR, Official Reporter of the Superior Court of the State of Washington, in and for the county of Thurston, do hereby certify:

I reported the August 17, 2018, proceedings stenographically. This transcript is a true and correct record of the proceedings to the best of my ability, except any changes made by the trial judge reviewing the transcript. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and I have no financial interest in the litigation.



Kathryn A. Beehler, Reporter
C.C.R. No. 2248