No. 100921-6

SUPREME COURT OF THE STATE OF WASHINGTON

GERALD HANKERSON,

Appellant,

v.

STEVE HOBBS,[1] in his official capacity as Secretary of State of Washington,

Respondent.

APPELLANT'S ANSWER TO MEMORANDUM OF *AMICUS CURIAE* WASHINGTON COMMUNITY ACTION NETWORK

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[1] *Former Secretary of State Kim Wyman was the original plaintiff below; current Secretary of State Steve Hobbs substituted in as plaintiff/respondent after he succeeded Secretary Wyman on November 22, 2021.*

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I. INTRODUCTION

There's more than one way to say the same word.

Potato can be said "*pa-tay-toe*" or "*pa-tah-toe*". Tomato can be said "*ta-may-toe*" or "*ta-mah-toe*". (This situation is so common there's even a Saturday Night Live skit about it.[2])

Similarly here, the Washington Community Action Network's *amicus* memorandum shows there's more than one way to describe the plaintiff Secretary of State's violation of rights guaranteed by Article II, §1 and Article I, §4 of our Washington State Constitution.

II. THE SECRETARY'S EDICT

The plaintiff Secretary of State never examined the DocuSign system at issue to learn how it requires each voter's initiative petition signature to be handwritten or how DocuSign

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[2] *See* https://youtu.be/3a9BO_BN0Ro *(partial segment);* https://iheartjimmy.wordpress.com/tag/christopher-walken/ *(full segment).*

prints the signed initiative petition for the initiative sponsor to submit to the Secretary of State.[3]

Instead, the Secretary of State sued initiative sponsor Hankerson for a declaratory judgment that the Secretary has the "discretion" to summarily refuse to consider the handwritten signature of any Washington voter seeking to exercise his or her constitutional right to petition if that voter uses the DocuSign handwritten signature system in this case.

And then the Secretary blocked initiative sponsor Hankerson's attempts to secure a judicial resolution of the Secretary's "discretion" claim before the deadline for submitting signatures: First, by successfully opposing the initiative sponsor's request for timely resolution in this Supreme Court (the direct action suit he had promptly filed).[4] Then, by

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[3] *Indeed, the Secretary's sworn testimony confirms that her office never even looked at the DocuSign signature system before summarily rejecting it. CP 291:21-292:17, 318:6-326:9.*

[4] *Less than 24 hours after receiving the Secretary's rejection, initiative sponsor Hankerson filed an Article IV, §4 Petition Against State Officer in this Court. CP 558 at ¶12; CP 456-518*

successfully opposing the initiative sponsor's request for timely resolution in the trial court (his motion for an expedited summary judgment schedule).[5]

Put bluntly, the Secretary's preemptive impairment and suppression of Washington voters' exercising their constitutional right to petition was blind – for that preemptive edict was issued without the Secretary's bothering to see how the DocuSign system requires a voter's initiative petition signature to be handwritten or how DocuSign prints the signed petitions for the initiative sponsor to submit to the Secretary of State.

(Supreme Court no. 99050-6). This Court dismissed his direct action suit based on the Secretary's argument that her declaratory judgment lawsuit in the superior court provided him a "plain, speedy, adequate remedy at law." CP 398-399 (Secretary's demanding dismissal on the grounds that her declaratory judgment suit provided a "Plain, Speedy, and Adequate Remedy at Law"); CP 164-165 (Supreme Court Commissioner granting dismissal on the grounds that the Secretary's declaratory judgment suit provided Petitioner "a plain, speedy, and adequate remedy at law").

[5] *CP 596-598.*

III. ***PA-TAY-TOE***

Initiative sponsor Hankerson does not repeat his prior filings here. But using the terminology noted in Part I above, he says *pa-tay-toe*. He describes the Secretary's blindly impairing and suppressing Washington voters' constitutional right to petition for the enactment of legislation by initiative as a failure to actually exercise discretion – for a government official's rejecting something without even looking at it is not giving due consideration to the facts in that situation. Petition For Review By The Washington Supreme Court, Parts III, IV, & VI.

IV. ***PA-TAH-TOE***

The Washington Community Action Network describes the legal flaw in the Secretary's "discretion" claim another way. Its *amicus* memorandum describes the unlawfulness of the Secretary's blind impairment and suppression of Washington voters' constitutional right to petition as failing to survive the strict scrutiny required when a State officer infringes upon a

fundamental constitutional right.[6] That point makes sense, for neither the Secretary of State nor the lower court applied any scrutiny to the Secretary's summary rejection of the DocuSign system – choosing instead ignore how the DocuSign system requires a voter's initiative petition signature to be handwritten, how the Secretary's sworn testimony confirmed that the verification standard used to evaluate the validity of a voter's initiative petition signature can be equally applied to a wet ink signature collected *on paper* or a handwritten signature collected *on line* with the DocuSign system in this case, or how DocuSign prints the signed petitions for the initiative sponsor to submit to the Secretary of State. No scrutiny is not any scrutiny – strict or otherwise.

V. CONCLUSION

Marginalized citizens – be they initiative sponsor Hankerson, his fellow NAACP members, or disadvantage

[6] *Amicus Memorandum at 9-16.*

individuals represented by the *amicus* Washington Community Action Network – are an electoral minority in our State's democracy. And unfortunately, they are therefore familiar with their rights being summarily marginalized, disregarded, and infringed by "discretionary" decisions of elected officials.

But in a constitutional democracy, the constitutional rights of disadvantaged citizens are supposed to matter more than money, expedience, or political power.

Yes, the plaintiff Secretary could prevail if Washington law empowers a State officer to suppress a disadvantaged voter's constitutional right to petition for the enactment of legislation by initiative based on that officer's blind speculation about the DocuSign system summarily rejected in this case.

But the initiative sponsor in this case agrees with the Washington Community Action Network that Washington law does not empower State officers to blindly impair or infringe upon fundamental constitutional rights.

Failure to exercise discretion. Failure to satisfy strict scrutiny. *Pa-tay-toe*. *Pa-tah-toe*. In this situation, the constitutional violation of voters' first, foremost, and fundamental right to petition under the unique guarantee of Washington Article II, §1 and Article I, §4 is the same.

And as this Court has long recognized, it is this Court's duty to uphold our State Constitution. E.g., *Seattle School District No. 1 v. State*, 90 Wn.2d 476, 503, 269 P.3d 227 (1978) ("the judiciary has the ultimate power and the duty to interpret, construe and give meaning to words, sections, and articles of the constitution" – even "when an interpretation serves as a check on the activities of another branch of government or is contrary to the view of the constitution taken by another branch", and reiterating that this Court's ultimate power and duty to interpret the Washington Constitution invokes "a judicial issue rather than a matter to be left to legislative discretion"); *State v. Huntley*, 175 Wn.2d 901, 914, 287 P.3d 584 (2012) ("The legislature may

change a statutory interpretation, but it cannot modify or impair a judicial interpretation of the constitution") (underlines added).

Initiative sponsor Hankerson accordingly agrees with the Washington Community Action Network that this Court should not silently sit on the sidelines in this case. The petitioning initiative sponsor in this case agrees with the Washington Community Action Network that this Court should not abdicate its ultimate power and duty to review and rule upon the constitutional issue noted in the pending Petition For Review.

RAP 18.17(b) & (c)(9) Word Limit Certification:

I certify that this Answer, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits), contains 1122 words (less than 2500).

RESPECTFULLY SUBMITTED this 3rd day of August, 2022.

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CERTIFICATE OF SERVICE

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