No. 1010184

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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

Appellants,
v.
STATE OF WASHINGTON,

Respondent,
and

SAFE SCHOOLS SAFE COMMUNITIES,

Intervenor-Respondent.

INTERVENOR-RESPONDENT SAFE SCHOOLS SAFE COMMUNITIES' ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This lawsuit represents the fourth legal challenge to Initiative Measure No. 1639 ("I-1639" or the "Initiative"), a gun safety measure voters adopted overwhelmingly in 2018. Petitioners Kerry Slone, Gun Owners of America, Inc., and Gun Owners Foundation (together, "Slone") do not dispute that I-1639's title and summary appeared accurately on the ballot. Nor does Slone dispute that the measure's full text appeared accurately in the voter's pamphlet. Instead, Slone's claim for invalidating I-1639 rests solely on her contention that the petition used to qualify it for the ballot did not strictly conform to legal formatting requirements. Specifically, Slone alleges that the petition's font size and omission of certain amendatory formatting lines violate the "full text" and "readability" provisions of article II, section 1(a) and RCW 29A.72.100. This Court and its Commissioner have already rejected pre-election challenges based on those same claims. For three reasons, this

Court should reject them again and deny Slone's Petition for Review ("Petition").

First, the Court of Appeals' opinion ("Opinion") correctly affirmed entry of partial summary judgment, concluding that the petition text itself was large enough to read, and the record contained no evidence that the petition was unreadable to the average person. At no point did the trial court hold that the petition was unreadable, nor did the Court of Appeals engage in "fact-finding," as Slone incorrectly asserts. Rather, the Opinion reflects the traditional rule that summary judgment is appropriate when the plaintiff provides no evidence to support an element on which she bears the burden of proof. Having moved for summary judgment at the case's outset, taking the position that there is "no legitimate dispute" of fact, Slone may not belatedly manufacture a fact issue in the hope of getting a "do-over" to develop a more favorable record.

Second, the Opinion does not decide any "significant" constitutional question. Rather, it is a modest decision tailored to

the unique facts of this case. The unpublished Opinion stands for a narrow, uncontroversial proposition: where a petition contains "every word in the proposed measure, . . . in [the correct] order," it does not violate the constitutional "full text" requirement solely due to inadvertent formatting errors that do not change the measure's meaning. Op. at 12. This Court has long held that the constitution is to be "liberally construed" to advance "the right of initiative," and "not hampered by . . . technical construction[s]." *Sudduth v. Chapman*, 88 Wn.2d 247, 251, 558 P.2d 806 (1977). The Opinion just applies that principle to this case's specific facts.

Third, because those facts are unlikely to recur, this case is not one of "substantial public interest." Slone ignores the evidence in claiming that the I-1639 petition "threatened" the "integrity of the whole initiative process" and "robbed" signers of their "constitutional right to read the actual proposal." Pet. at 17. As the Court of Appeals noted, "nothing in the record shows that the differences in the text were done willfully to mislead, nor

that any signer of the petition was misled by the text." Op. at 13 n.11. This is not the election fraud conspiracy that Slone imagines. It is a case of inadvertent and minor formatting errors that did not change one word in the petition text, nor alter its meaning in any way, nor mislead a single signer. The Court of Appeals correctly affirmed entry of summary judgment for Respondent State of Washington (the "State") and Intervenor-Respondent Safe Schools Safe Communities ("Safe Schools"). This Court should deny review.

II. RESTATEMENT OF ISSUES

1. Where Slone conceded in the lower courts that there was no genuine dispute of material fact precluding summary judgment and now raises that issue for the first time, is the argument waived?

2. Is there a genuine dispute of material fact as to whether the petition was readable, where the Court of Appeals determined from its face that it was, and no evidence in the record

supports Slone's bare allegation that it was unreadable to the average person?

3. Where the petition contained every word in the proposed measure in the correct order and used double-parentheses to show deletions to existing law, did Slone carry her burden to establish that the petition lacked the measure's "full text," Const. Art. II, § 1(a), or a "full, true, and correct copy of the proposed measure," RCW 29A.72.100?

III. STATEMENT OF THE CASE

A. I-1639's Purpose and Scope

Responding to a series of horrific mass shootings involving semiautomatic assault rifles ("assault rifles"), I-1639 proposed to apply certain legal restrictions already in place for handguns to assault rifles, including: (1) raising the purchase age from 18 to 21 ("Age Provision"), CP 37; (2) prohibiting in-person sale to residents of other states ("Nonresident Provision"), CP 36–37; and (3) requiring enhanced background checks before purchase, CP 18–24. I-1639 also proposed (4) a ten-day waiting

period before delivery of an assault rifle ("Waiting Period Provision"), CP 24–25; (5) requiring assault rifle purchasers to have completed a recognized firearm safety training program within the past five years ("Training Provision"), CP 19; and setting enforceable standards for safe storage of all firearms ("Safe Storage Provision"), CP 25–27.

B. I-1639 Petition Process

As filed with the Secretary of State, I-1639 contained amendatory formatting that indicated language proposed for deletion with ((~~double parentheses and strikethrough~~)) and language proposed for addition with <u>underline</u>. Such amendatory formatting is statutorily required for the voters' pamphlet, but not for the initiative text submitted to the Secretary or printed on the petition. Op. at 12 n.8.

On June 7, 2018, the Thurston County Superior Court established I-1639's ballot title and summary. CP 407–08. This left Safe Schools—the political committee supporting the Initiative—less than one month to gather the 259,622 valid

signatures needed to qualify it for the ballot by the July 6 deadline. CP 181, 412.

The petitions used to collect signatures were printed on 11-by 17-inch paper ("ledger" paper). CP 55, 194. This larger paper was necessary to ensure the Initiative's full text fit on "not more than one sheet," as RCW 29A.72.100 requires. The one-sheet requirement "puts proponents of petitions for long measures in the difficult position of having to balance font size and paper size to avoid circulating inordinately large, unwieldy petition forms." Op. at 14. Using ledger paper, the entire text of I-1639 fit on a single sheet in "small, but readable" five-point font. *Id.*; CP 415–16. Past initiatives to the people have used the same size (or smaller) font, including I-1183 (private sale of liquor) and I-1163 (requirements for long-term care workers). CP 418–28.

Due to an inadvertent copy-and-paste error by Safe Schools' contractor, the petition did not contain all amendatory formatting found in the text filed with the Secretary. CP 439–40. Specifically, proposed additions to existing statutory sections

were not underlined, while proposed deletions were set out in double-parentheses but without strikethrough. *Id.*; CP 415–16. The petition contained the complete text of the proposed Initiative, *i.e.*, how the text of all affected statutory sections would read if I-1639 were enacted. Op. at 12–13. And the petition complied with all other legal requirements, including displaying the accurate subject, ballot title, and summary on the front. CP 415–16; RCW 29A.72.090; WAC 434-379-008(2)(b). No evidence suggests even one I-1639 petitioner signer misunderstood the petition text. Op. at 3 n.2; CP 385–86, 429–32.

Safe Schools submitted to the Secretary signatures from 378,085 Washington voters—118,463 more than needed to qualify I-1639 for the ballot. CP 412–13.

C. Pre-Election Legal Challenges to I-1639

On June 29, 2018, Second Amendment Foundation ("SAF"), petitioned this Court to prohibit the Secretary from processing the I-1639 petitions. *SAF v. Wyman*, No. 96022-4

(Wash. July 3, 2018) (Comm'r Ruling); CP 435. SAF's arguments were nearly identical to Slone's claims here, alleging that the I-1639 petitions' font size and lack of underline and strikethrough violated RCW 29A.72.100. CP 435. The Commissioner denied SAF's motion and dismissed its petition, ruling that SAF lacked standing to prohibit the Secretary's acceptance of the petitions under RCW 29A.72.170. CP 437. On July 27, 2018, the Secretary certified I-1639 for the ballot. CP 412–13.

The same day, two new sets of plaintiffs—including two SAF leaders and National Rifle Association ("NRA")—filed suit in Thurston County to keep the Initiative off the ballot. *See Ball v. Wyman*, 435 P.3d 842, 843 (Wash. 2018). As in *SAF*, the *Ball* plaintiffs alleged that the I-1639 petition's font size and amendatory formatting violated RCW 29A.72.100. *Id*. To skirt the Commissioner's ruling, the *Ball* plaintiffs sought relief under RCW 29A.72.240, "a provision that authorizes judicial review of

the number of signatures submitted in support of an initiative." *Id*.

The *Ball* trial court denied the plaintiffs' requests for injunctive and declaratory relief, but issued a writ of mandamus to the Secretary "to estop certification of the Initiative 1639." CP 128. In the trial judge's view, the petition did not comply with RCW 29A.72.100 because, he noted, "I can't read it," and it was "not a replica of the text" filed with the Secretary. CP 176, 174.

This Court reversed. It first held that the "action was not properly brought under RCW 29A.72.240," which is "limited to enforcing the number-of-signature requirements." *Ball*, 435 P.3d at 843. The Court also held that, because the Secretary "has no mandatory duty to not certify an initiative petition based on the readability, correctness, or formatting of the proposed measure printed on the back of the petitions, mandamus cannot lie." *Id.* at 844.

I-1639 went to the November ballot. Nearly 60% of voters approved it. CP 8, 349.

D. Post-Election Legal Challenges to I-1639

Shortly after I-1639's adoption, the third lawsuit against it was filed by plaintiffs including SAF and NRA, challenging the Age and Nonresident Provisions on federal constitutional grounds. *See Mitchell v. Atkins*, 483 F. Supp. 3d 985, 991 (W.D. Wash. 2020), *appeal pending*, No. 20-35827 (9th Cir.). In August 2020, the district court granted summary judgment to the defendants. *Id.* at 999.

Two weeks after the *Mitchell* summary judgment hearing, Slone filed this lawsuit. CP 15. The Complaint alleges that "the I-1639 petition that was printed and circulated to voters for signature did not contain the text of I-1639 as it was filed" with the Secretary, noting the lack of "underline" and "strikeout." CP 6. The Complaint does not reference the petition's font size. Slone attached to her Complaint an exhibit that purports to be a copy of the I-1639 petition but which is, in fact, inauthentic and materially different from the petition actually circulated to

voters. *Compare* CP 46–47 (Complaint Exhibit B), *with* CP 415–16 (true petition).

Slone's first two claims allege that I-1639's Training and Waiting Period Provisions violate article I, section 24 of the State Constitution. CP 12–13. The third claim seeks a declaratory judgment that the I-1639 is "null and void" because its petition was "contrary to Constitution Art. II, Sec. 1 and RCW 29A.72.100." CP 14. On the same grounds, the fourth claim seeks an injunction against I-1639's enforcement. *Id.*

E. Slone's Summary Judgment Motion

Just three weeks after filing the Complaint, Slone moved for summary judgment on the third and fourth claims only. CP 90. Slone did not seek discovery or otherwise develop supporting evidence. Rather, the whole record Slone relied on consisted of materials from *SAF* and *Ball*, with the exception of the Initiative itself and the phony petition attached to the Complaint. CP 94–95. "As to the[] facts," Slone asserted, "there can be no legitimate dispute." CP 77.

Opposing Slone's Motion, the State argued that "[t]he time for challenging" the petition "is long past" and barred by the electorate's adoption of I-1639. CP 251. Joining in the State's opposition, Safe Schools also argued in the alternative that the petition complied with all constitutional and statutory provisions. CP 382–83. Agreeing there was no material fact dispute, Respondents requested that the Court both deny Slone's Motion and grant them summary judgment on the third and fourth claims. CP 383, 254 (citing *Impecoven v. Dep't of Revenue*, 120 Wn.2d 357, 365, 841 P.2d 752 (1992) (court may grant summary judgment to non-movant)).

Slone objected to Respondents' *Impecoven* request as "procedural[ly]" improper, but did not contend there was a fact dispute as to the petition's readability. CP 450. Rather, Slone argued that the *Ball* trial court's finding ("I can't read it") was "binding" in this case under "collateral estoppel," even though this Court *reversed* the *Ball* court's order. CP 450–51.

F. The Trial Court's Ruling

In neither its written order nor its oral ruling did the court make any finding or conclusion regarding the petition's readability. CP 496–510. However, the trial court agreed with Slone "to the limited extent" that the petition "did not comply with the requirements of RCW 29A.72.100 and the 'full text' requirement of article II section 1(a)." CP 518–19.

At the same time, the court ruled that "invalidation of Initiative 1639 as enacted, is not available under the statutes of this State nor in the plain language of the Constitution." CP 519. The court thus denied summary judgment to Slone and granted "summary judgment in favor of [Respondents]" on the third and fourth claims. *Id.*

G. Slone's Appeal

On appeal, Slone argued that the trial court erred in granting partial summary judgment to Respondents and in concluding that all requested relief was unavailable post-election. Slone Br. at 3–4. The State argued for affirmance on the

same grounds relied on by the trial court, taking no position on whether the petition complied with the "full text" and readability requirements. State Br. at 21. Safe Schools joined the State's brief in full, but also urged the Court to affirm on the alternative ground that "the I-1639 petitions complied with the law." Intervenor Br. at 11.

At oral argument, Safe Schools provided the Court a "true-to-size copy of the original petition" as a RAP 11.4(i) demonstrative. Op. at 3 n.1. Slone did not object. Asked about her test for readability, Slone responded: "[I]f I have a book and it's a foot away from my face, . . . if I can't read it, it's not readable," adding that "[o]f course the test is not me, it's what a reasonable person would think."[1] Safe Schools' test was similar: "[T]he plain meaning of readability [is], 'can it be read?' It doesn't say 'easily read,'" but whether, "for the average . . . prospective petition signer, is it readable?"[2]

[1] Oral argument at 36:48 to 37:48 (Mar. 17, 2022), https://bit.ly/3c5cNjj.
[2] Oral argument at 26:38 to 27:05 (Mar. 17, 2022), https://bit.ly/3c5cNjj.

The Court of Appeals affirmed but on different grounds. It agreed with Safe Schools that "the petition text fulfilled the requirements of article II, section 1(a)" and RCW 29A.72.100, "despite omitting the strikethroughs and underlines and being printed in small font." Op. at 12. The petition contained a full, true, and correct copy of the Initiative because "every word in the proposed measure is included in the petition, in order," and neither the constitution nor the statute "requires . . . underlines or strikethroughs." Op. at 12, 14. As for readability, the Court of Appeals concluded that, "although the font is small, it is readable." Op. at 13. Having determined that the petition complied with all legal requirements, the court did not reach the question of whether discrepancies in the petition text would warrant invalidation of an initiative years after it was adopted.

IV. ARGUMENT

A. Legal Standards

This Court has discretion to review a final decision of the Court of Appeals only if it (1) is "in conflict with" either a

decision of this Court or (2) a published Court of Appeals decision; (3) involves a "significant question" of Washington or federal constitutional law; or (4) involves an "issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b).

B. The Opinion Conflicts With No Other Case

Slone seeks review primarily on the ground that the Court of Appeals affirmed entry of summary judgment despite a supposed fact dispute as to the petition's readability. Pet. at 7–10. This argument fails on multiple levels.

First, affirmance of summary judgment was consistent with CR 56 and this Court's cases because Slone failed to put any evidence in the record showing that the I-1639 petition was unreadable. Proving unreadability was Slone's burden—and a "heavy" one at that. *Wash. Fed'n of State Employees v. State*, 127 Wn.2d 544, 558, 901 P.2d 1028 (1995). Slone made the strategic choice to move for partial summary judgment right out of the gate, claiming "there can be no legitimate dispute" as to

any material fact. CP 77. Respondents agreed and requested that the Court grant summary judgment to *them*—because either the petition complied with all legal requirements (as Safe Schools argued) or, even assuming a violation, invalidating the Initiative post-election was not an available remedy (as both Respondents argued). In response, Slone could have introduced evidence supporting her unreadability claim. Or she could have asked the trial court for a CR 56(f) continuance if more time was needed to gather such evidence.

Instead, Slone rested on her bare allegations and the sparse record, urging the trial judge to assess the petition's readability by simply "try[ing] to read it for himself." CP 472; *see also* CP 77 (asserting in Motion that "all relevant facts" are "self-evident"). Standing in the trial court's shoes, that is just what the Court of Appeals did, determining that the text was "small, but readable"—and no evidence in the record suggested otherwise. Op. at 14. Affirming the trial court on that alternative ground was proper, for "[i]f the plaintiff fails to make a showing sufficient to

establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial, then the trial court should grant the defendant's motion for summary judgment." *Burton v. Twin Commander Aircraft LLC*, 171 Wn.2d 204, 223, 254 P.3d 778 (2011) (cleaned up). To avoid summary judgment based on a dispute of material fact, "[a] party . . . cannot simply rest upon the allegations of his pleadings" or speculation, but "must affirmatively present the factual evidence upon which he relies." *Mackey v. Graham*, 99 Wn.2d 572, 576, 663 P.2d 490 (1983). Slone presented no such evidence, so summary judgment in Respondents' favor was required.

Second, because Slone never once took the position in the courts below that there was a genuine dispute of material fact, that argument is waived. *See State v. Houston-Sconiers*, 188 Wn.2d 1, 21 n.6, 391 P.3d 409 (2017). To the contrary, before petitioning this Court, Slone had steadfastly maintained that "there can be no legitimate dispute" as to any material fact.

CP 77. Having moved for summary judgment just three weeks after filing suit, Slone "conced[ed]" the absence of a material fact dispute. *See Hobbs v. Hankerson*, 21 Wn. App. 2d 628, 632, 507 P.3d 422 (2022) (when both parties seek summary judgment, they "concede there are no material issues of fact") (citing *Pleasant v. Regence BlueShield*, 181 Wn. App. 252, 261, 325 P.3d 237, *rev. den'd*, 181 Wn.2d 1010, 335 P.3d 940 (2014)).

In hindsight, Slone now regrets that strategic choice, seeking remand "to introduce expert testimony" on the readability issue. Pet. at 9. But the time for that was in the trial court. Having failed to even try to create a genuine fact dispute there—or move for a CR 56(f) continuance—Slone has waived the issue. *Avellaneda v. State*, 167 Wn. App. 474, 485 n.5, 273 P.3d 477 (2012) (citing *Guile v. Ballard Cmty. Hosp.*, 70 Wn. App. 18, 24–25, 851 P.2d 689, *rev. den'd sub. nom. Guile v. Crealock*, 122 Wn.2d 1010 (1993)).

Third, Slone inaccurately claims that the "Court of Appeals rejected the . . . trial court's declaratory judgment of

'un-readability.'" Pet. at 4. This misrepresents the trial court's ruling. The trial court "declare[d] as a matter of law that the pre-election petitions . . . did not comply with the requirements of RCW 29A.72.100 and the 'full text' requirement of article II, section 1(a)." CP 518–19. But the trial court did not specify whether such noncompliance was because the petition was (a) not a "full, true, and correct copy" (a pure question of law), or (b) not a "readable" copy. Despite Slone's assertion to the contrary, at no point in its order or oral ruling did the trial court "h[o]ld" that the petition was "'too small to read.'" *See* Pet. at 15 (selectively quoting CP 499).

In fact, the trial court's only reference to the petition's font size came amidst a series of questions it posed in framing the various "legal issues encompassed in this proceeding." CP 498. Those questions included: "[i]f the failure to underline and strike through is a violation, *I suppose one might even question* whether it's harmless because at that point the font was too small to read, in any event." 498–99 (emphasis added). That musing

hypothetical does not constitute a holding, much less a "declaratory judgment of 'un-readability.'" Pet. at 4.

Finally, Slone's reliance on the *Ball* trial court's statement that "I can't read" the petition is misplaced. *See* Pet. at 4; CP 176. Initially, it is unclear whether that finding was based the original petition (on yellow ledger paper) or a smaller "black and white copy." CP 135. More importantly, the *Ball* trial court's order was *reversed* by this Court. 435 P.3d at 844. With that reversal, the *Ball* trial court order lost all "'validity, force, or effect'" and became "null and void." *Wheeler v. John Deere Co.*, 935 F.2d 1090, 1096 (10th Cir. 1991) (quoting *Butler v. Eaton*, 141 U.S. 240, 244, 11 S. Ct. 985 (1891)); *accord* Elizabeth A. Turner, 3 Wash. Prac., Rules Practice, RAP 12.8 (9th ed.) (June 2022). The *Ball* trial court's inability to read the petition has no bearing on this litigation.

Nothing in the summary judgment record created a genuine dispute of material fact as to the petition's readability.

For that reason, the Court of Appeals' affirmance of summary judgment is not in conflict with any Washington appellate case.

C. This Case Involves No Significant Constitutional Question

Slone also wrongly asserts that this case involves a significant question of constitutional law. This is a curious contention given that the unpublished Opinion contains few constitutional rulings at all, and certainly none that qualifies as "significant." After setting forth the pertinent text of article II, section 1, and the relevant interpretive standards (which Slone does not challenge), the Court of Appeals concluded that the petition did not violate the "full text" requirement. CP 9, 11–12. In reaching that conclusion, the court hewed strictly to the constitutional text, declining to "read requirements into the constitution that its plain language does not support." Op. at 12.

Slone objects that the petition here was unconstitutional "because of font size" and "through the use of unexplained parentheses" to indicate proposed deletions to existing law. Pet. at 16. For the reasons explained above,

however, the Court of Appeals correctly adjudicated the font size question based on the record before it. *Supra* at 17–22.

As for the petition's use of double-parentheses (without strikethrough) to indicate deletions and omission of underlines, the Court of Appeals correctly ruled that this did not violate the constitutional text: "Nothing in the plain language of the constitution requires that the text of proposed measures in petitions include underlines or strikethroughs." Op. at 12. The "text on the petition . . . is comprehensible" and, "if the text in double parentheses is disregarded while reading, the result is the law as set forth in the RCW." Op. at 12–13. Thus, "the text on the petition was the 'full text' under the plain language of the constitution." Op. at 13. Slone concedes that "neither the statute nor constitution require strikethroughs or underlines" in the petition, Pet. at 12, so it is difficult to understand how the Opinion's modest, text-based application of article II, section 1(a) could represent a "significant" ruling of constitutional law.

Slone also misinterprets the Opinion to mean that the constitution's "full text" requirement "was satisfied even though the text attached to the petition *differed significantly* from that which was proposed." Pet. at 11 (emphasis added). In fact, the Opinion stands for the opposite principle: I-1639's petition "complies with the plain language of [the full text] requirement" because it does *not* differ materially from the text of the filed measure. Op. at 12. The petition (1) contains "every word in the proposed measure, in order," (2) "is comprehensible," and (3) shows deletions in double-parentheses, so "the result is the law as set forth in the RCW." Op. at 12–13. To read the Opinion as licensing "gobbledygook" in petition text, Pet. at 16, is to disregard its reasoning and limited holding.

In reality, the Opinion breaks no new ground and represents a straightforward exercise in reasoned line-drawing. No one could plausibly argue that a petition would comply with the "full text" requirement if it had a substantively different meaning than the filed initiative (let alone pure

"gobbledygook"). At the same time, surely even Slone would not contend that a petition's omission of a single "a" would violate article II, section 1(a) and demand invalidation of a duly enacted initiative years after the election. As this Court has made clear, "provisions of the constitution which reserve the right of initiative . . . are to be liberally construed . . . and not hampered by either technical statutory provisions or technical construction thereof," except as "necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right." *Sudduth*, 88 Wn.2d at 251. Requiring the petition to be identical in *meaning* to the filed measure helps "guard against fraud and mistake" in the initiative process. *Id.* But demanding it be a carbon copy does not—and would only serve to thwart the initiative right by elevating technical form over substance. *See id.* at 255 ("[T]echnicalities will be overlooked in order to give effect to the will of the people expressed in an election.").

The Court of Appeals correctly held that the petition's omission of certain amendatory formatting did not alter its

substantive meaning and thus fell on the constitutional side of the line. This is a reasonable application of article II, section 1(a)'s plain text and established constitutional principles. Slone observes that "[n]o case in this jurisdiction . . . has held the 'full text' constitutional requirement has been satisfied under similar circumstances." Pet. at 11. But it is equally true that no case holds otherwise. While Slone may disagree with the Opinion's application of established legal principles to the facts of this case, that does not make it an example of "significant" constitutional jurisprudence.

Finally, Slone's argument that the Opinion "denies any remedy for a self-executing constitutional provision" makes little sense. Pet. at 15. While the *trial court* correctly ruled that noncompliance with the "full text" requirement could not warrant invalidation of an initiative after an election, the Court of Appeals expressly avoided that constitutional question, holding instead that the I-1639 petition *did* comply. *See* Op. at 10; *see generally Stout v. Felix*, 198 Wn.2d 180, 184, 493 P.3d

1170 (2021) ("We will not reach a constitutional issue unless absolutely necessary to the determination of the case.") (cleaned up). Whether or not the trial court's ruling involved a significant constitutional issue, the Court of Appeals' affirmance on narrower grounds plainly does not—and thus provides no basis for this Court's review.[3]

D. No Issue of Substantial Public Interest Is Present

Slone is also wrong that this matter involves an "issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b). The Opinion is tethered to the unusual—perhaps even *sui generis*—circumstances of this case: an unprecedented and unintentional copy-and-paste error caused technical discrepancies in the petition that, due to the tight timetable, went unnoticed before signature collection began. CP 440. The unpublished Opinion is limited to its unique facts,

[3] As the State explains, the trial court's ruling was correct as a matter of law, making this case an especially poor vehicle for addressing the technical requirements for petition text and formatting under RCW 29A.72.100 and article II, section 1(a). *See* State Ans. to Pet. at 20–28.

which are unlikely ever to recur. It follows that this is not a case involving issues of substantial public interest that should be determined by this Court. *See, e.g., State v. B.O.J.*, 194 Wn.2d 314, 322, 449 P.3d 1006 (2019) (where "unique facts of this case" were not "likely to recur," the "public interest exception" to mootness did not apply).

Slone ignores the evidence in proclaiming that this case "threaten[s]" the "integrity of the whole initiative process" because petition signers were "robbed . . . of their constitutional right to read the actual proposal." Pet. at 17–18. As the Court of Appeals noted, "nothing in the record shows that the differences in the text were done willfully to mislead, nor that any signer of the petition was misled by the text." Op. at 13 n.11. The narrow Opinion cannot reasonably be read to approve willful or substantively deceptive distortions in the petition. Albeit unlikely, any future case presenting either scenario would be readily distinguishable from this one.

Finally, Slone argues that because this suit challenges "the validity of [an] initiative" imposing "criminal penalties substantially regulating . . . firearms in an unprecedented fashion," the case is of "obvious public import." Pet. at 17. But this appeal from partial summary judgment involves Slone's petition-based claims only—not her constitutional challenge to I-1639's substantive provisions. The pendency of those claims in the trial court provide no reason to accept review at this stage.

V. CONCLUSION

The Court should deny review.

This document contains 4,993 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 14th day of July, 2022.

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