No. 81857-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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COMMUNITY CARE COALITION OF WASHINGTON *et al.*

Petitioners,

v.

SAM REED, Secretary of State,

Respondent,

and

PEOPLE FOR SAFE QUALITY CARE and LINDA LEE,

Interveners.

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STATE OF WASHINGTON
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**INTERVENERS' ANSWER TO AMICUS BRIEF**

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Knoll D. Lowney, WSBA # 23457
Smith & Lowney, P.L.L.C.
2317 East John St.
Seattle, WA 98112
(206) 860-2883

Michael C. Subit, WSBA # 29189
Frank Freed Subit & Thomas, LLP
705 Second Ave., Suite 1200
Seattle, WA 98104
(206) 682-6711

Without citation to any legal authority, amicus argues that the individuals who fill out signature pages for an initiative determine whether the measure is an initiative to the People or an initiative to the Legislature, rather than the initiative sponsors. Apparently amicus has not read the *Initiative and Referendum Almanac* it attached as Exhibit A-3 to its brief. The entry for Washington State reads:

> Washington (along with Utah) is one of the two states that allow voters to choose between the indirect and direct initiative. The number of signatures required for each type of initiative is the same (8% of the votes cast for governor in the last election); thus **the sponsor chooses the type that seems most advantageous.**

M. Dane Waters, *Initiative and Referendum Almanac*, p. 14 (emphasis added). RCW 29A.72.010 guarantees that the "sponsor chooses" which type of initiative will be "most advantageous" by requiring the sponsor to elect between an initiative to the People and an initiative to the Legislature when the measure is first submitted to the Secretary.

RCW 29A.72 thereafter gives the initiative sponsor a paramount role in the initiative process. *See* RCW 29A.72.020, .070, .080, .090, .100, .150, .180, & 190. The initiative sponsor prepares the signature petition forms. RCW 29A.72.100. The sponsor controls whether a page of signatures supporting an initiative ever becomes an official initiative "petition." *State v. Patric*, 63 Wn.2d 821, 824, 389 P.2d 292 (1964). An "initiative petition" only becomes an actual initiative petition if and when the initiative sponsor submits it the Secretary for

filing. *Id.* An initiative sponsor may choose not to submit the signatures of particular voters to the Secretary. *Id.*; RCW 29A.72.150. Thus, in sharp contrast to an actual election, the voters who fill-out initiative signature forms do not have a right to have their particular preferences counted in the process. It remains the prerogative of the initiative sponsor to submit some, all, or none of the signatures collected in support of the measure. Amicus' assertion that the signers of initiative petitions control the destiny of the measure is contrary to law.

Like the Petitioners, amicus argues the Court should decide this case by myopically focusing on the spurious references to the "legislature" in the fine print on the I-1029 signature petitions. It is a basic principle of law that a court does not read specific words of a document in isolation but must consider those words in the context of the whole document—be it a statute, contract, jury instruction, or initiative signature petition. *See, e.g., Guijosa v. Wal-Mart Stores, Inc.*, 101 Wn. App. 777, 792, 797, 6 P.3d 583 (2000); *Davis v. State Dep't of Transp.*, 138 Wn. App. 811, 818, 159 P.3d 427 (2007). When read as a whole, a signature petition for I-1029 would have indicated to a voter that it was for an initiative to the People, not an initiative to the Legislature. It is amicus, not the Secretary or the Proponents of I-1029, who assume the voters who signed the petitions for I-1029 were ignorant of what they were signing, and the law.

RCW 29A.72 refutes any contention that the Secretary had to look solely at the "petitioning language" on the signature petitions when exercising his

discretion whether to accept or reject those petitions. Only RCW 29.72.170 speaks directly to the Secretary's discretion to file initiative petitions. It permits, but does not require, him to reject an initiative petition for failing to comply with RCW 29A.72.120. Strictly speaking, RCW 29A.72.120 is not a limitation on the exercise of the Secretary's discretion under RCW 29.72.170. RCW 29A.72.120 is a specification directed to the initiative sponsor, who by law must prepare the signature petitions for her initiative measure. RCW 29A.72.100. RCW 29A.72.170 nowhere confines the exercise of the Secretary's discretion to a review of the "petitioning language." Thus, the Secretary may look to the totality of the circumstances in deciding whether to file any non-conforming signature petitions the initiative sponsor has chosen to submit.

Although amicus spends the bulk of its brief arguing that the sponsor of an initiative does *not* determine the form of the measure, amicus suggests that Linda Lee, the sponsor of Initiative 1029, must have actually intended I-1029 to be an initiative to the Legislature because the measure was submitted to the Secretary on March 12, 2008. Amicus notes that March 12 is exactly 10 months to the day before the start of the 2009 legislative session. Since RCW 29A.72.030 requires initiative measures to the Legislature to be filed within 10 months of the next regular session at which they are to be submitted, amicus argues that Ms. Lee must really have intended that I-1029 be an initiative to the Legislature because she filed it on March 12.

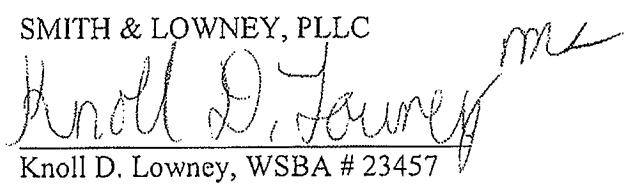
The flaws in amicus' argument are numerous. Ms. Lee actually signed the affidavit for I-1029 and expressly designated it as an initiative to the People on February 8, 2008. *See* Agreed Statement of Facts ("ASF") Ex. 1. That date was within the 10-month timeframe RCW 29A.72.030 provides for initiatives to the People for the November ballot, but not within the timeframe for initiatives to the Legislature. All of the correspondence from the Secretary to Ms. Lee and her attorney referred to I-1029 as an initiative to the People, and Ms. Lee's attorney described I-1029 as an "Initiative to the People" in her letter of March 28, 2008, to the Secretary. *See* ASF Ex. G, H, & L. The 2008 legislative session ended on March 13, 2008. The obvious reason for the delay between Ms. Lee's designation of I-1029 as an initiative to the People on February 8 and its submission to the Secretary on March 12 was the desire of the Proponents of I-1029 to give the Legislature a full opportunity to act before they took their case directly to the People by filing an initiative for the November ballot.

There can simply be no doubt that the sponsors of I-1029 determined it was "most advantageous" to have the measure take the form of an initiative the People and not an initiative to the Legislature. The form of I-1029 became permanently fixed when Ms. Lee filed it. It did not undergo a metamorphosis from an initiative to the People to an initiative to the Legislature because the initiative sponsors made an error in preparing the form of the signature petitions. Amicus relies purely on its own speculation, and the speculation of a *Tacoma*

*News Tribune* editorial, in arguing voters signed the petitions for I-1029 only because they thought it was an initiative to the Legislature. Speculation is not a substitute for evidence. The Secretary reviewed the pertinent evidence and determined the "will of the People" would be best effectuated by submitting I-1029 to the People on the November 2008 ballot. The grounds that amicus offers for overturning that discretionary decision are no more persuasive than those alleged by Petitioners.

RESPECTFULLY SUBMITTED this 3rd day of September, 2008.

SMITH & LOWNEY, PLLC



Knoll D. Lowney, WSBA # 23457

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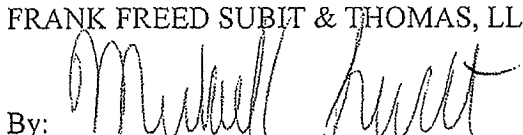
By: 

Michael C. Subit, WSBA # 29189
Attorneys for Interveners
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