NO. 101018-4

SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals, Division II No. 56328-2-II

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.

PETITION FOR REVIEW BY WASHINGTON STATE SUPREME COURT

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I. IDENTITY OF PETITIONER

Richard B. Sanders of the Goodstein Law Group, PLLC, on behalf of Appellants Kerry Slone, Gun Owners of America, Inc., and Gun Owners Foundation, files this Petition.

II. CITATION TO COURT OF APPEALS DECISION

The Court of Appeals opinion was filed on April 19, 2022. That court's orders denying Appellants' Motions for Reconsideration and to Publish were entered on May 16, 2022.

III. ISSUES PRESENTED FOR REVIEW

A. Was the initiative proposal attached to the back of initiative signature petition "the full text of the measure so proposed" as mandated by Const. Art. II, Sec. 1(a) notwithstanding, unlike the proposal filed with the Secretary of State, it omits underlines for language added to the statute, strikeouts for language deleted from the statute and is printed in 5-point type so small it is unreadable?

B. Was the initiative proposal attached to the back of the initiative signature petition "a readable, full, true, and correct copy of the proposed measure" as mandated by RCW 29A.72.100 notwithstanding the differences and deficiencies noted above?

C. If the "full text" and/or "readable, full, true, and correct copy of the proposed measure" was not attached to the signature petition, is the subsequently enacted initiative void?

D. Did the appellate court err as a matter of law when it usurped the trial court fact finding function to determine disputed facts or inferences therefrom denying the litigants a trial on the merits?

IV. STATEMENT OF THE CASE

This proceeding arises from a declaratory judgment action filed in the Pierce County Superior Court to invalidate I-1639 for failure of its initiative petitions to conform the constitutional and statutory requirements referenced above.

Acting on Appellants' (hereafter "Gun Owners") motion for partial[1] summary judgment the trial court found and concluded the initiative petitions violated both Constitution Art. 2, Sec. 1 for want of the "full text" attachment *and* the" correct copy" requirement of the statute. Nevertheless, the trial court, absent cross motion, dismissed the Gun Owners' claims of resulting invalidity, concluding since neither the constitution nor statute facially mandated invalidation of the measure, no relief would be afforded Guns Owners, *i.e*. "a right without a remedy" according to the trial court.

Upon CR 54(b) certification Gun Owners appealed. The Court of Appeals reversed the trial court's grant of summary judgment insofar as it had rendered judgment recognizing statutory and constitutional violations. However, the Court of Appeals affirmed the court's denial of summary judgment insofar as it denied appellants' any remedy, and affirmed the

[1] Claims relating to the constitutionality of the initiative provisions on the merits were reserved for subsequent determination should the predicate motion fail.

trial court's grant of summary of dismissal to respondents. In so doing the Court of Appeals rejected the but rejected the trial court's declaratory judgment of "un-readability" and lack of "true copy." Thus, the Decision surprisingly (at least to your undersigned and probably the State) simply pronounced *ipse dixit*, 5-point type, was "readable" not only as to size but also with the unexplained use of parentheses, and that the "true copy" requirement was satisfied notwithstanding the petition omitted strikeout and underlines that were present in the original proposal. The Court of Appeals credits intervenor, Safe Schools Safe Communities, for the argument which had been rejected by the original parties and two trial courts.

Gun Owners moved to reconsider and, failing that, requested the Court of Appeals publish its opinion. The State stated its agreement with the motion to publish; however the Court of Appeals denied both motions. This petition for review follows.

To illustrate the problem, Sec. (3) (b) of the **proposal submitted** to the Secretary of State in 12 point type with underlines and strikeouts is as follows:

"(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.~~))"

In contrast, the text which appeared on the back of petitions in 5-point type, omitting underlines and strikeout:

"(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.))"

Reversing the findings of two trial courts, the acutely visioned Court of Appeals not only deemed this "readable" type face but also readable in the sense the casual reader on the street would know which language was being added to the statute and which was being deleted thereby exceeding even the "morbid acuteness of the senses" possessed by Roderic Usher.[2]

But why stop there? The Court of Appeals has crafted a legal standard of "readability" of 5-point type not as the floor but the ceiling. How about 3-point?

"(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.))"

V. ARGUMENT

Acceptance of review is justified if: (1) the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;

[2] E. Poe, The Fall of the House of Usher, Penguin Books (1967) 138, 143

or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved, or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

While satisfaction of only one criterion is sufficient for review, all four are met here.

A. Review Should be Granted because the Decision Conflicts with Court of Appeal and Supreme Court Precedent

Procedurally, the Court of Appeals opinion violated multiple Court of Appeal and Supreme Court precedents which reserve disputed issues of fact to trial court determination. While it is true, as the Decision relates, factual findings in the summary judgment context are superfluous and not binding on the appellate court, Op. 11; whether the trial court expressly made factual findings or not, the summary judgment standard is not met by the moving party unless all facts and inferences therefrom construed most favorably to the nonmoving party require all reasonable persons to reach but one conclusion

supporting summary judgment. *See e.g. Cowiche Canyon v. Bosley*, 118 Wn.2d 801, 828 P.2d 549 (1992) However if the facts and inferences so construed do not support summary judgment, the remedy is not for the appellate court to decide the factual issues against movants, but rather deny the motion, setting the disputed factual issue for trial. *Duffy v. King Chiropractic Clinic*, 17 Wn. App. 693, 565 P.2d 435 (1977) rev' den'd 89 Wn.2d 1021 An appellate court is not empowered to substitute its view of disputed facts and/or inferences therefrom, but instead must remand to the trial court for the required factual finding at trial. *Slemmons v. Shotwell*, 64 Wn.2d 595, 392 P.2d 1007 (1964)

Yet that is not what occurred here. Rather, the Court appropriated unto itself the fact-finding function without benefit of trial. Although there is no dispute what was attached to the petition; whether that attachment is "readable" in the constitutional and statutory sense is a separate factual

inference.[3] Laboring under the apparent misapprehension that 5-point type is obviously not readable in the context of street side petition canvassing (a factual inference shared by two trial court judges and seemingly the state), Appellants sought to avoid an unnecessary trial on that question by moving for summary judgment. However, if the Court of Appeals disagrees with what Appellants, the trial court and, apparently, the government, thought to be an obvious and undisputed inference, the remedy is remand to the finder of fact rather than resolution of the factual dispute against the movant on appeal.

For example, at trial Appellants might wish to introduce expert testimony on what a person with 20/20 eyesight might be able to read from what distance, under typical lighting conditions prevalent in petitioning venues. The trial court might wish to exercise its common sense as to readability under the circumstances typically present involving short encounters

[3] Readability is a factual question. *Oregon Environmental Council v. Kunzman*, 817 F.2d 484, 494 (9th Cir., 1987)

in public places including sidewalks, malls and ferry lines. In any event, if Gun Owners' motion for summary judgment is to be denied on facts and inferences construed most favorably to the nonmoving party, the reciprocal must also be true when the moving party is reversed.

Thus, review should be granted because the Court of Appeals Decision conflicts with published decisions of the Court of Appeals as well as Supreme Court precedent.

B. Review Should be Granted because a Significant Question of Law is Involved under the Constitution of the State of Washington

Const. Art 2, Sec. 1 mandates the "full text of the measure so proposed" be attached to initiative signature petitions. "The measure so proposed" is that which is filed with the Secretary of State. The Decision of the Court of Appeals reasoned this mandate also implicitly requires the text be readable. The same constitutional provision mandates: "[t]his section is self-executing, but legislation may be enacted especially to facilitate its operation."

The Court of Appeals addressed the constitutional issue. It *held* the constitutional mandate was satisfied even though the text attached to the petition differed significantly from that which was proposed by deleting strikeout and underlines. And it *held* 5-point type is "readable." No case in this jurisdiction (or any other to the knowledge of your undersigned) has held the "full text" constitutional requirement has been satisfied under similar circumstances

Next, under the heading "Constitutional 'Full Text' Requirement" the Court reasoned: "Nothing in the plain language of the constitution requires that the text of proposed measures in petitions include underlines or strikethroughs. … This appears to be a requirement for proposals printed in the voter's pamphlet, not petition. RCW 29A.32.080." Opp. at 12 and n.8.

Likewise, under the heading "Statutory Requirements" the Court opines "The plain language of the statute contains no requirement for strikethroughs, underlining, or font size.

Accordingly, under the plain language reading of the unambiguous text of the statute, the text in the proposed measure complied with RCW 29A.72.100." Opinion 14

While it is true neither the statute nor constitution require strikethroughs or underlines in the proposal, the statute and the constitution *do* require a true and correct copy of the "proposed measure" or "measure so proposed." Here the "proposed measure" to the Secretary of State ***did*** have strikethroughs and underlines, unlike the attachment to the petition which had neither. **Therefore,** under a plain language reading of the unambiguous text of the statute and constitution, the text in the attachment to the petition ***did not*** comply with the mandate in RCW 29A.72.100 or Const. Art. 2, Sec 1.

The Court of Appeals Decision simply reads "full, true and correct copy of the proposed measure" out of the statute and similar language out of the constitution, seeming to conflate the constitutional "full text" requirement with the "true

copy" requirement. This cannot be reconciled with the plain language of either.

In addition, the Opinion asserts "if the text in double parentheses is disregarded while reading, the result is as set forth in the RCW." Opinion at 13 But as Judge Dixon observed, there is no direction or definition in the attachment as to what double parentheses signifies. CP 55 The Decision's assumption double parentheses always mean deleted statutory material is a conclusion unsupported by the record, and outside the knowledge of the layman petition signer. In other words, it is not self-evident that something enclosed by double parentheses means previously existing statutory language is to be deleted. The point is underlined by the Opinion's citation to RCW 29A.32.080 (relating to voters' pamphlets) which expresses the legislative intent that there *must be express instructions in the pamphlet* that deletion or addition language "must appear as follows: 'And language in double parentheses with a line through it is existing state law and will be taken out of the law

if this measure is approved by the voters. And underlined language does not appear in current state law but will be added to the law if this measure is approved by the voters.'" In other words, RCW 29A.32.080 is a legislative declaration that the meaning of double parentheses is *not* self-evident.

Absent this instruction or something like it, the reader of the plain language of the petition (even if in "readable" font size) would have no reason to know material enclosed by double parentheses is meant to be deleted from a preexisting statute and, indeed, the average petition reader might conclude exactly the opposite (that the language is being added). Therefore, the corrupted copy is not "readable" in this sense either.

The second aspect of the constitutional text involved in this proceeding justifying review is the declaration "[ty]his section is self-executing, but legislation may be enacted especially to facilitate its operation." Thus, the framer's intent was this initiative provision not be a dead letter but its

provisions be **enforced**. *See e.g., Robb v. Shockoe Slip Foundation*, 228 Va. 678, 681 (1985) ("[a] constitutional provision is self-executing when it expressly so declares" and "is enforceable in a common law action."

As the Decision of the Court of Appeals refuses to enforce the plain language of the constitution, it therefore denies any remedy for a self-executing constitutional provision.

The Decision recognized the "full text" must necessarily be "readable," although that is expressly required by the statute as well.

RCW 29A.72.100 requires "Each petition …must…have a *readable*, full, true, and correct copy of the proposed measure printed on the reverse side of the petition." (Italics added). Both trial court judges addressing the issue determined and factually recognized the attached copy was *not* "readable" because it was in 5-point type. Judge Dixon held in *Ball v. Wyman* "I have 20/20 vision. I can't read it." CP 54. Likewise, Judge Blinn below held "the font was too small to

read, in any event." CP 499. Not even the government argued the petition text was readable, leaving Intervenor the only party arguing to the contrary.

"Readability" however is broader than simply the size of the font. Various states have "readability" requirements when it comes to ballot measures to discourage "gobbledygook."[4] If the citizen "can't read and understand the measure as it appears on the ballot, how can they make a meaningful choice?"[5] Here the corrupted copy attached to the signature petition was not only unreadable because of font size but also through the use of unexplained parentheses which the proposers claim indicate prior deleted statutory language but which is not apparent from the text by the signatory lay person.

C. Supreme Court Review is Justified because the Issue Presented is of Substantial Public Interest

It can hardly be gainsaid this matter fails to raise an issue of "substantial public interest."

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[4] E. FRY, THE LEGAL ASPECTS OF READABILITY 1998, revised version of a presentation to the International Reading Association Meeting, New Orleans (May 1989) 5

[5] *Id.*

First, initiative I-1639 passed in 2018. It is a statute with criminal penalties substantially regulating the use and transfer of firearms in an unprecedented fashion. This proceeding goes to the validity of that initiative and is obvious public import.

Second, this case directly addresses the initiative process in a unprecedented manner. There is the constitutional "full text" requirement which has never been addressed before, as well as the "self-executing" clause which the trial court virtually read out of the text of the constitutional provision.

Then there is the plain requirement for the "full text" of the proposal and that it also be a *readable*, *true* and *accurate copy* on the back of the signature petition.

The ballot petition in this case was literally unreadable and obviously not a true and accurate copy of the proposal filed with the Secretary of State. The Secretary filed briefs in the record testifying the integrity of the whole initiative process was threatened by the actions of the petitioners in this case who robbed the citizens of their constitutional right to read the actual

proposal. This case thus is of substantial public interest as it goes to the heart of the constitutional initiative process.

VI. CONCLUSION

Review of this Court of Appeals Decision should be granted by the Supreme Court.

I certify that this Motion contains 3,037 words, in compliance with RAP 18.17(b).

Respectfully Submitted this 14th day of June 2022.

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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of June 2022 at Tacoma, Washington.

s/Deena Pinckney
Deena Pinckney

Filed
Washington State
Court of Appeals
Division Two

April 19, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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, Intervenors.	No. 56328-2-II UNPUBLISHED OPINION

WORSWICK, J. — Kerry Slone, Gun Owners of America, Inc., and the Gun Owners Foundation (collectively, "Slone") appeal the trial court's order granting and denying Slone's motion for summary judgment in part, and granting partial summary judgment to the defendant State and intervenor-defendant Safe Schools Safe Communities (Safe Schools). Slone had filed a complaint for declaratory and injunctive relief challenging the constitutionality of State Initiative No. 1639 (I-1639), which was passed by voters and codified in 2018. Slone alleged that the pre-election petitions for I-1639 did not comply with the requirements of RCW

APPENDIX 1

29A.72.100 and the "full text" requirement of article II, section 1(a) of the Washington Constitution because they did not include strikethroughs of proposed deleted text, underlines of proposed new text, and because the font was too small.

The trial court agreed that the petitions did not comply with the statutory and constitutional requirements, but ruled that Slone's requested relief, invalidation of I-1639 as enacted, was not available under any statute or the plain language of the constitution. Accordingly, the court granted Slone's motion for summary judgment on the issue of whether the pre-election petition complied with the statute and constitution, but denied Slone's motion in all other respects and granted summary judgment to the non-moving parties, the State and Safe Schools.

On appeal, Slone argues that the trial court erred when it determined article II, section 1(a) and RCW 29A.72.100 to be unenforceable. The State argues that the constitution provides no authority for invalidating the initiative after the voters approved it. Safe Schools joins the State and further argues that the I-1639 petitions complied with the "full text" requirement of the constitution and statutory provisions. We agree with Safe Schools. Accordingly, we affirm.

FACTS

I. BACKGROUND

In May 2018, initiative I-1639 was filed with the Secretary of State. The measure sought to change gun safety laws and amend various provisions of chapter 9.41 RCW, Firearms and Dangerous Weapons. The text of the measure filed with the Secretary of State included underlined text to show additions to the current statute, and strikethroughs to show deletions.

Every proposed deletion was further indicated by two sets of parentheses around the proposed deleted text.

The pre-election petition was printed on 11 inch by 17 inch paper with the signature blanks on one side and the proposed measure's text on the reverse. However, the proposed text printed on the petition omitted the underlines and strikethroughs that appeared in the copy filed with the Secretary of State. The proposed text on the petition was also in a small font so as to fit onto a single sheet. The text on the petition retained the double parentheses around proposed deletions.[1]

I-1639 received the requisite number of signatures and the Secretary of State certified it to the ballot.[2] The text of the proposed measure, including the underlines, strikethroughs, and parentheses, was included in the voter's pamphlet. In the November 2018 election, voters passed I-1639 by a margin of more than 500,000 votes.

II. PRE-ELECTION CHALLENGES

In June 2018, several parties filed an action in our Supreme Court, seeking mandamus, declaratory, and injunctive relief to prohibit the Secretary of State from accepting the petitions for signature counting. Ruling Den. Mots. and Dismissing Original Action Against State

[1] In addition to the multiple copies of the petition in the Clerk's Papers, at oral argument Safe Schools supplied us with a true-to-size copy of the original petition as it was presented to signers. *See* Wash. Court of Appeals oral argument, *Slone v. State*, No. 56328-2-II (Mar. 17, 2022), at 29 min., 30 sec. to 30 min., 30 sec., *audio recording by* TVW, Washington State's Public Affairs Network, http://www.tvw.org. Safe Schools presented this as a demonstrative exhibit under RAP 11.4(i).

[2] Slone states that signature gatherers used "'deceptive' tactics" to obtain signatures. Br. of Appellant at 5. However, nothing in the record on appeal shows any deceptive tactic, nor does the record contain any declaration from signers who were misled or otherwise deceived.

Officer, *Second Amend. Found. v. Wyman*, No. 96022-4, at 1-2 (Wash. Jul. 3, 2018). The plaintiffs in *Second Amendment Foundation* argued that the I-1639 petitions were invalid because the font of the proposed measure on the reverse of the petitions was unreasonably small and failed to include the underlining and strikethroughs. Ruling Den. Mots., No. 96022-4, at 2. The Commissioner of the Supreme Court denied the request and dismissed the claim. Ruling Den. Mots., No. 96022-4, at 1, 4. The Commissioner explained that under RCW 29A.72.170, the Secretary "'*may* refuse to file any initiative or referendum petition being submitted' if it is deficient in one or more enumerated ways."[3] Ruling Den. Mots., No. 96022-4, at 3 (quoting RCW 29A.72.170).

The Commissioner ruled that judicial review is not authorized where the Secretary did not refuse to file a petition, and that the right to challenge is limited to the persons who submitted the petition for filing. Ruling Den. Mots., No. 96022-4, at 3 (citing *Schrempp v. Munro*, 116

[3] RCW 29A.72.170 provides:

> The secretary of state may refuse to file any initiative or referendum petition being submitted upon any of the following grounds:
>
> (1) That the petition does not contain the information required by RCW 29A.72.110, 29A.72.120, or 29A.72.130.
>
> (2) That the petition clearly bears insufficient signatures.
>
> (3) That the time within which the petition may be filed has expired.
>
> In case of such refusal, the secretary of state shall endorse on the petition the word "submitted" and the date, and retain the petition pending appeal.
>
> If none of the grounds for refusal exists, the secretary of state must accept and file the petition.

Wn.2d 929, 934, 809 P.2d 1381 (1991)). The Commissioner noted that "opponents to an initiative have no constitutional or statutory basis to impede the proponents' exercise of their right of petition." Ruling Den. Mots., No. 96022-4, at 3.

In July, another group of challengers sought an order barring I-1639 from appearing on the ballot. Order Reversing Mandamus, *Ball v. Wyman*, No. 96191-3, at 1-2 (Wash. Aug. 24, 2018).[4] The *Ball* plaintiffs requested review in Thurston County Superior Court, again arguing "that the print on the back of the I-1639 petitions [was] not a true, accurate, and readable copy of the proposed measure presented to the secretary and was thus not the 'full' text of the proposed measure." Order Reversing Mandamus, No. 96191-3, at 843 (citing RCW 29A.72.100; CONST. art. II, § 37).[5] Ball sought review under RCW 29A.72.240, which provides for judicial review where a referendum petition contains or does not contain the requisite number of signatures. Order Reversing Mandamus, No. 96191-3, at 843. The Superior Court granted Ball a writ of mandamus, finding that the proposed text on the petitions was not readable and did not strictly comply with the requirements of RCW 29A.72.100. Order Reversing Mandamus, No. 96191-3, at 843.

Our Supreme Court reversed and held that mandamus under RCW 29A.72.240 was limited to enforcing number-of-signature requirements. Order Reversing Mandamus, No. 96191-3, at 843. The Court also explained that the mandamus power is available only to enforce

[4] https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/961913PublicOrderTerminatingReview08242018.pdf

[5] RCW 29A.72.100 requires that the petitions include "a readable, full, true, and correct copy of the proposed measure printed on the reverse side of the petition."

a state official's nondiscretionary duty. Order Reversing Mandamus, No. 96191-3, at 843. "Here, there is no legislative mandate that the secretary must decline to certify and present to voters an initiative based on failure to comply with the requirement that 'a readable, full, true, and correct copy' of the initiative appear on the back of every petition, or on legibility or formatting concerns." Order Reversing Mandamus, No. 96191-3, at 843 (quoting RCW 29A.72.100). As explained above, the measure proceeded to the November 2018 general election ballot and was passed by the voters.[6]

III. PROCEDURAL HISTORY

In August 2020, Slone filed a complaint for declaratory and injunctive relief. Slone alleged that the I-1639 petition did not include the underlines or strikethroughs as submitted to the Secretary and that the text was so small and condensed that it was therefore unreadable. Slone alleged four causes of action. In her third cause of action, Slone sought declaratory judgment, alleging that I-1639 was contrary to law because it did not have "a readable, full, true, and correct copy of the proposed measure printed on the reverse side of the petition."[7] Clerk's Papers (CP) at 13-14 (quoting RCW 29A.72.100). Slone also alleged that the petition violated article II, section 1(a) of the constitution, which provides, in pertinent part, "Every such petition shall include the full text of the measure so proposed." CP at 14.

[6] Other opponents of I-1639 have unsuccessfully challenged the initiative's constitutionality. *See Mitchell v. Atkins*, 483 F. Supp. 3d 985, 989 (W.D. Wash. 2020).

[7] Slone based her first two causes of action on the right to bear arms under article I, section 24 of the constitution. These causes of action are not at issue in this appeal.

In her fourth cause of action, Slone sought an injunction preventing the provisions of I-1639 from being included and enforced as statute. Slone alleged, "The I-1639 petition was contrary to law, because the statutory language in the petition was incorrect, misleading, and unreadable, and there is no way to verify that the petition signers had the opportunity to read the full, true, and correct copy of the initiative text." CP at 14.

The State answered the complaint. The State admitted that the petitions did not contain the underlining and strikethroughs that were present in the proposed measure submitted to the Secretary. Slone then moved for summary judgment, arguing that because the parties agreed the underlining and strikethroughs were not present, and because of the small font size, I-1639 therefore violated article II, section 1(a) and RCW 29A.72.100.

The day after Slone moved for summary judgment, Safe Schools filed a motion to intervene as a defendant. The trial court granted the motion.

The State and Safe Schools each filed responses to Slone's motion for summary judgment. The State argued that the voters cured any defect with the petition when they voted to enact the initiative. The State further argued that Slone conflated the standards of the qualification stage and the enactment stage of the initiative process, and that the validity of the measure as enacted must be determined from the election and not the substance of the initiative. The State framed their argument: "[T]he manner in which the measure text was printed on the I-1639 petitions is not at issue in this case. The question presented here is whether a defect in printing a petition invalidates the voters' subsequent enactment of the initiative." CP at 267. The State also argued for the case to be dismissed under the statute of limitations or the doctrine of laches.

Safe Schools argued that no post-election challenge to the initiative process was available to Slone. In the alternative, Safe Schools argued that substantial compliance, rather than strict compliance, was the standard for compliance under the constitution and the statute. Safe Schools explained the text was not "incomprehensible:"

> Every word in the Initiative appeared on the I-1639 petition, including all proposed new provisions of law. Section headings indicated new sections and amendments to existing statutes, and deletions were indicated by enclosure in double parentheses. No words were missing or added; only the amendatory formatting lines were inadvertently omitted. The double parentheses that enclosed deleted provisions indicated these provisions were set off from the remainder of the text—indeed, if the text was read while disregarding the language in double parentheses, the result is the law as set forth in the RCW.

CP at 400.

The trial court entered an order granting Slone's motion for summary judgment in part, denying it in part, and also granting partial summary judgment in favor of the non-moving parties, the State and Safe Schools. The court ruled, in pertinent part:

> 2. [Slone's] Motion for Partial Summary Judgment is GRANTED to the limited extent that this Court declares as a matter of law that the pre-election petitions circulated to qualify Initiative 1639 for the ballot did not comply with the requirements of RCW 29A.72.100 and the "full text" requirement of article II, section 1(a) of the Washington Constitution;
>
> 3. [Slone's] Motion for Partial Summary Judgment is DENIED in all other respects, based upon the Court's conclusion as a matter of law that [Slone's] requested relief, invalidation of Initiative 1639 as enacted, is not available under the statutes of this State nor in the plain language of the Constitution based on the third and fourth causes of action set forth in the complaint.
>
> 4. The Court GRANTS summary judgment in favor of the non-moving parties, Defendant State of Washington and Intervenor-Defendant Safe Schools Safe Communities, dismissing the third and fourth causes of action set forth in the complaint except as provided in paragraph 2, above.

CP at 518-19.

The court also denied Slone's request to certify the decision for immediate appeal under CR 54(b).

Slone then filed a motion for revision. Slone argued that the court erred in concluding that I-1639 could not be invalidated and that the court should certify the issues for appeal under CR 54(b). The court denied Slone's motion to revise its decision on the merits, but certified its order under CR 54(b). CP at 564-65. Slone then filed a notice of appeal to the Supreme Court. The Supreme Court then transferred the case to this court. Order, *Slone v. State*, No. 99469-2 (Aug. 11, 2021).

ANALYSIS

Article II, section 1 of the Washington Constitution provides, in pertinent part:

> The legislative authority of the state of Washington shall be vested in the legislature . . . but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature . . . .
>
> (a) Initiative: The first power reserved by the people is the initiative. *Every such petition shall include the full text of the measure so proposed.* . . .
> . . . .
> (d) The filing of a referendum petition against one or more items, sections, or parts of any act, law, or bill shall not delay the remainder of the measure from becoming operative. . . . All elections on measures referred to the people of the state shall be had at the next succeeding regular general election following the filing of the measure with the secretary of state, except when the legislature shall order a special election. *Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon*: *Provided*, That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. . . . All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. *This section is self-executing, but legislation may be enacted especially to facilitate its operation.*

(Emphasis added.)

RCW 29A.72.100 provides, in pertinent part:

> The person proposing the measure shall print blank petitions upon single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen inches in length. Each petition at the time of circulating, signing, and filing with the secretary of state must consist of not more than one sheet with numbered lines for not more than twenty signatures, with the prescribed warning and title, . . . *and have a readable, full, true, and correct copy of the proposed measure printed on the reverse side of the petition.*

(Emphasis added.)

Slone argues that the text of the measure in the I-1639 petition violates the "full text" language of article II, section 1(a), and that it did not provide "a readable, full, true, and correct copy of the proposed measure." RCW 29A.72.100. Slone further argues that the trial court erred when it concluded that invalidation of I-1639 as enacted is not available. Slone cites the "self-executing" language in article II, section 1(d) to argue that the "full text" requirement of section 1(a), and by extension RCW 29A.72.100, are enforceable without legislative action. Br. of Appellant at 16-22. The State argues that article II, section 1 provides no authority for invalidating an initiative after voters approve it on the ballot, and that an initiative approved by the voters is constitutionally enacted. Safe Schools argues that the I-1639 petitions complied with the constitutional and statutory "full text" requirements, despite the petitions omitting the underlining and strikethroughs. We agree with Safe Schools. Accordingly, we do not reach the remaining arguments.

I. CONSTITUTIONAL FULL TEXT REQUIREMENT

Slone argues that the trial court erred when it concluded the "full text" requirement of article II, section 1(a) to be unenforceable because it is "self-executing" under section 1(d) and

therefore enforceable without any additional constitutional language or statutory provision. Br. of Appellant at 14-19. Safe Schools argues against the trial court's conclusion that the text on the I-1639 petition violated the "full text" requirement of section 1(a) and argues that we should affirm because the record shows no constitutional violation. We agree with Safe Schools that the text of the petition did not violate article II, section 1(a).

A. *Standard of Review*

We review an order granting or denying summary judgment de novo, and we perform the same inquiry as the trial court. *Auto. United Trades Org. v. State*, 175 Wn.2d 537, 541, 286 P.3d 377 (2012). "A motion for summary judgment is properly granted where 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.'" *Auto. United*, 175 Wn.2d at 541 (quoting CR 56(c)) (internal quotation marks omitted). "Findings of fact and conclusions of law are not necessary on summary judgment and, if made, are superfluous." *Johnson v. Lake Cushman Maint. Co.*, 5 Wn. App. 2d 765, 776, 425 P.3d 560 (2018) (internal quotation marks omitted). We may affirm on any ground supported by the record. *Modumetal, Inc. v. Xtalic Corp.*, 4 Wn. App. 2d 810, 834, 425 P.3d 871 (2018). Additionally, we review the question of a statute's constitutionality de novo. *Auto. United*, 175 Wn.2d at 541.

We review questions of constitutional law de novo. *State v. Scott*, 190 Wn.2d 586, 591, 416 P.3d 1182 (2018). We seek to determine and give effect to the manifest purpose for which a constitutional provision was adopted. *State v. Barton*, 181 Wn.2d 148, 155, 331 P.3d 50 (2014). We look to the plain language of the constitutional text to accord it its reasonable interpretation, and we give words their common and ordinary meaning as they existed at the time they were

drafted. *Barton*, 181 Wn.2d at 155. We liberally construe the provisions of the constitution which reserve the right of initiative to facilitate that right. *Sudduth v. Chapman*, 88 Wn.2d 247, 251, 558 P.2d 806 (1977). We will not construe the constitution to hamper that right "by either technical statutory provisions or technical construction thereof, further than is necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right." *Sudduth*, 88 Wn.2d at 251.

B. *Constitutional "Full Text" Requirement*

Safe Schools argues that the petition text fulfilled the requirements of article II, section 1(a), despite omitting the strikethroughs and underlines and being printed in small font. We agree.

As stated above, article II, section 1(a) provides, in pertinent part, that petitions put forth by the people "shall include the full text of the measure so proposed." The text on the reverse of the I-1639 petition complies with the plain language of this requirement.

The record on appeal shows that every word in the proposed measure is included in the petition, in order. *Compare* CP at 16-45 (text as submitted to Secretary of State) *with* 47, 416 (petition). Nothing in the plain language of the constitution requires that the text of proposed measures in petitions include underlines or strikethroughs.[8] We will not read requirements into the constitution that its plain language does not support.[9] Moreover, reading the proposed text

[8] This appears to be a requirement for proposals printed in the voter's pamphlet, not petitions. RCW 29A.32.080.

[9] *See State v. Hastings*, 115 Wn.2d 42, 50, 793 P.2d 956 (1990) (declining to read into the constitution "that which is not there").

on the petition, it is comprehensible. Additionally, if the text in double parentheses is disregarded while reading, the result is the law as set forth in the RCW. And although the font is small, it is readable.[10]

Slone argues that Safe Schools argues "nothing new that was not already presented and rejected below" and that "two superior courts already have made factual findings and concluded that violations did occur." Reply Br. of Appellant to Safe Schools at 1, 5. Slone further argues that Safe Schools attempts to "undermine factual findings by the superior court." Reply Br. of Appellant at 1. But we review an order granting or denying summary judgment de novo, and we perform the same inquiry as the trial court. *Auto. United*, 175 Wn.2d at 541. And findings of fact, to the extent the trial court made any, are not necessary on summary judgment and are superfluous. *Johnson*, 5 Wn. App. 2d at 776.

Slone then argues that the lack of underlines and strikethroughs in the petition text were not inadvertent or technical. Instead, Slone argues that the omissions of the underlines and strikethroughs were "deliberate and willful" so as to confuse potential signers as to the intent of the proposed measure. Reply Br. of Appellant to Safe Schools at 8-9. But this is beside the point. The question here is whether the text on the petition was the "full text" under the plain language of the constitution, not the intent of the individuals who printed the signature pages.[11]

[10] Although the plain text of the constitution does not require readability, it follows from the constitution's "full text" requirement that potential signers of a petition be able to read said text.

[11] Moreover, 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.

As noted above, we may affirm on any ground supported by the record. *Modumetal*, 4 Wn. App. 2d at 834. We hold that the record here shows that the text of the proposed measure on the petitions was the "full text" under the plain language of article II, section 1(a) of the constitution.

C. *Statutory Requirements*

For the same reasons, we agree with Safe schools that the text of the petition provided "a readable, full, true, and correct copy of the proposed measure" under RCW 29A.72.100. The plain language of the statute contains no requirement for strikethroughs, underlining, or font size. Accordingly, under a plain language reading of the unambiguous text of the statute, the text in the proposed measure complied with RCW 29A.72.100.

Furthermore, RCW 29A.72.100 requires that the text of petitions "must consist of not more than one sheet." This 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. Here the proponents used the standard 11 inch by 17 inch petition, and small, but readable font. They complied with the plain language of the statute. Accordingly, we hold that the trial court properly dismissed Slone's third and fourth causes of action.

CONCLUSION

We hold that the text of the measure proposed in the I-1639 petition did not violate the "full text" requirement of article II, section 1(a) of the constitution. We further hold that the text of the measure was a readable, full, true, and correct copy of the proposed measure in accordance with RCW 29A.72.100. Accordingly, the trial court did not err in denying Slone's motion for

summary judgment and granting summary judgment in favor of the State and Safe Schools Safe Communities. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, P.J.

We concur:

Maxa, J.

Price, J.

Filed
Washington State
Court of Appeals
Division Two
May 16, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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, Intervenors.	No. 56328-2-II ORDER DENYING MOTION FOR RECONSIDERATION

The unpublished opinion in this matter was filed on April 19, 2022. Appellants, Slone and Gun Owners of America, filed a motion for reconsideration on May 6, 2022. The court having reviewed the documents and files, it is hereby

ORDERED that appellants' motion for reconsideration is DENIED.

Panel: Jj. Worswick, Maxa, Price

FOR THE COURT:

Worswick, P.J.

APPENDIX 2

Constitution, Art. II, Sec. 1(a)

Section 1 Legislative Powers, Where Vested

The legislative authority of the state of Washington shall be vested in the legislature…but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls….

(a) Initiative: The first power reserved by the people is the initiative. Every such petition shall include the full text of the measure so proposed…

(d) …All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation…

APPENDIX 3

RCW 29A.32.080

Amendatory style.

Statewide ballot measures that amend existing law must be printed in the voters' pamphlet so that language proposed for deletion is enclosed by double parentheses and has a line through it. Proposed new language must be underlined. A statement explaining the deletion and addition of language must appear as follows: "Any language in double parentheses with a line through it is existing state law and will be taken out of the law if this measure is approved by voters. Any underlined language does not appear in current state law but will be added to the law if this measure is approved by voters."

[**2003 c 111 § 808**. Prior: **1999 c 260 § 6**. Formerly RCW **29.81.260**.]

RCW 29A.72.100

Petitions—Paper—Size—Contents.

The person proposing the measure shall print blank petitions upon single sheets of paper of good writing quality (including but not limited to newsprint) not less than eleven inches in width and not less than fourteen inches in length. Each petition at the time of circulating, signing, and filing with the secretary of state must consist of not more than one sheet with numbered lines for not more than twenty signatures, with the prescribed warning and title, be in the form required by RCW **29A.72.110**, **29A.72.120**, or **29A.72.130**, and have a readable, full, true, and correct copy of the proposed measure printed on the reverse side of the petition.

[**2003 c 111 § 1811**; **1982 c 116 § 8**; **1973 1st ex.s. c 118 § 4**; **1965 c 9 § 29.79.080**. Prior: (i) 1913 c 138 § 4, part; RRS § 5400, part. (ii) **1913 c 138 § 9**; RRS § 5405. Formerly RCW **29.79.080**.]

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