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SUPREME COURT  
STATE OF WASHINGTON  
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**SUPREME COURT OF THE STATE OF WASHINGTON**

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KAN QIU, ZHIMING YU, and GANG CHENG,

Plaintiffs/Appellants,

v.

KIM WYMAN, in her official capacity as Washington Secretary of State,

Defendant/Respondent.

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**AMICUS BRIEF OF  
INITIATIVE 1000 SPONSOR  
NAT JACKSON**

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## I. SUMMARY

This is the amicus brief that the Court's April 4 letter granted the Initiative Sponsor (Nat Jackson) permission to file.

Mr. Jackson's brief is brief. It confirms that the facts material to this appeal's dismissal are few:

- The Initiative Sponsor turned in 395,938 signatures to the Secretary of State.
- That's 136,316 more than required for certification.
- The Secretary of State submitted sworn testimony to the trial court evidencing her conclusion that there were not enough invalid signatures to eliminate that 136,316 surplus.
- Plaintiffs filed a person's unsworn statements alleging that he thinks the Secretary of State's conclusion might have been wrong.

*Infra*, Part III below. One reason this appeal must be dismissed as a matter of law is that unsworn allegations do not create a genuine issue of fact to evade summary judgment. *Infra*, Part III below.

This brief also notes why this Court's dismissal should be issued promptly:

- Initiative 1000 is an Initiative to the 2019 Legislature.
- The 2019 Legislature adjourns April 28, 2019.
- Initiative 1000's Legislative hearing is set for 8:00 a.m. on April 18, 2019.

*Infra*, Part IV below. The Initiative 1000 Sponsor believes that citizens' constitutional right under Article II, §1 to submit a certified Initiative to

the Legislature should not be hamstrung by delay. The Initiative 1000 Sponsor respectfully submits that this Court must therefore act with all deliberate speed to terminate any uncertainty with respect to whether Initiative 1000 is or is not a validly certified Initiative for the 2019 Legislature’s upcoming hearing and vote pursuant to Article II, §1 of our State Constitution. *Infra*, Part IV below.

## **II. ISSUES PLAINTIFFS NOW CONCEDE ON APPEAL**

### **A. Plaintiffs’ Decision to Omit the Initiative Sponsor as a Party Deprived the Court of Jurisdiction to Issue the Declaratory Judgments their Complaint Sought**

Plaintiffs chose to omit the Initiative 1000 sponsor as a party to their Initiative 1000 suit.<sup>1</sup> As the briefing below explained, the court therefore lacked subject matter jurisdiction to grant any of plaintiffs’ demands for declaratory relief.<sup>2</sup>

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<sup>1</sup> *Identifying an Initiative’s Sponsor is easy – for the Washington Secretary of State website publicly posts every Initiative sponsor’s name and contact information. E.g., <https://www.sos.wa.gov/elections/initiatives/initiatives.aspx?y=2018&t=I> (listing the Initiative 1000 sponsor as follows: “Nathaniel Jackson. Public Contact Information: 6335 Pacific Ave SE, Olympia, WA 98503, Phone: 360-888-7004, natjackson1@comcast.net”). App. 147 of 184.*

<sup>2</sup> *App. 149-150 of 184 (noting Washington’s Declaratory Judgment Act mandates that “When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration”(RCW 7.24.110), and that a plaintiff’s failure to do so therefore “deprive[s] the court of jurisdiction to grant declaratory relief.” Kendall v. Douglas, Grant, Lincoln and Okanogan Counties Public Hospital District No. 6, 118 Wn.2d 1, 10-11, 820 P.2d 497 (1991)). This was dispositive to any request by plaintiffs for declaratory relief because plaintiffs based their Complaint on RCW 29A.72.240. Feb. 11 Complaint at ¶¶10-11 (bringing their action “pursuant to RCW 29A.72.240”). But RCW 29A.72.240 does not provide for declaratory relief.*

Plaintiffs' opening brief did not dispute plaintiffs' failure to invoke any declaratory judgment jurisdiction in this case.

**B. Plaintiffs' Lack Evidence for their Complaint's Allegations about Petition Sheets With Stickers**

Plaintiffs' February 11 Complaint alleged the Secretary of State "wrongly counted" the signatures on 218 Initiative petition sheets that had a sticker on the front side of the sheet.<sup>3</sup> The Initiative Sponsor submitted sworn testimony rebutting plaintiffs' unsworn allegations about those stickers.<sup>4</sup>

Plaintiffs' opening brief did not dispute plaintiffs' failure to have any evidence to support their allegations about those petition sheets.

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<sup>3</sup> *February 11, 2019 Complaint For Writ Of Mandate, Declaratory And Injunctive Relief, And Application For Citation ("Feb. 11 Complaint") at ¶¶18-21 (alleging "on information and belief" that the sponsors of I-1000 attached a sticker altering the front of those petitions "after the petitions were signed and before turning them in", and that the "Secretary of State wrongly counted" the signatures on those petitions "as valid signatures in support of I-1000").*

<sup>4</sup> *App. 154-155 & 147-148 of 184 (establishing that the timing of that sticker's placement on those petition sheets was simple: One of the print runs for the Initiative 1000 signature petitions mistakenly printed sheets without the correct Initiative 1000 ballot title and ballot summary on the front; a sticker stating the correct Initiative 1000 ballot title and ballot summary was therefore put on those petition sheets before they were distributed to signature gatherers for signature gathering; and the sticker with the correct ballot title and ballot summary was accordingly on those 218 petition sheets before anyone signed those petition sheets).*

### III. PLAINTIFFS' APPEAL FAILS ON THE MERITS

Plaintiffs' opening brief did not dispute the following facts:

- The Initiative Sponsor turned in 395,938 signatures to the Secretary of State.<sup>5</sup>
- That's 136,316 more than required for certification.<sup>6</sup>
- The Secretary of State submitted sworn testimony to the trial court evidencing her conclusion that there were not enough invalid signatures to eliminate that 136,316 surplus.<sup>7</sup>
- *After* the Initiative Sponsor filed his amicus brief in the trial court, plaintiffs filed a person's unsworn statements alleging that that person thinks the Secretary of State's conclusion might have been wrong.<sup>8</sup>

The first reason plaintiffs' appeal must be dismissed as a matter of law is very direct and straightforward: unsworn allegations do not create a genuine issue of fact to evade summary judgment.<sup>9</sup> Plaintiffs' unsworn allegations accordingly did not create a genuine issue of fact to defeat the summary judgment the Secretary of State's sworn testimony showed she was entitled to as a matter of Washington law. This one reason alone

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<sup>5</sup> App. 62 of 184 at ¶19(a).

<sup>6</sup> The number of signatures required under Article II, §1 of the Washington Constitution is 259,622. App. 62 of 184 at ¶18. 395,938 - 259,622 = 136,316.

<sup>7</sup> App. 57-63 of 184.

<sup>8</sup> App. 123-139 of 184. That person's unsworn allegations are also premised on his personal legal conclusions about the interpretation of Washington law.

<sup>9</sup> E.g., CR 56(e) ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.").

establishes that the trial court's dismissal based on plaintiffs' failure to create a genuine issue of material fact was not erroneous.<sup>10</sup>

**IV. PLAINTIFFS ARE NOT ENTITLED TO MORE DELAY**

Article II, §1 of our State Constitution grants citizens the right to submit an Initiative to the Legislature to force legislators to address legislation that legislators find politically convenient to procrastinate on and put off until "maybe next year".

Initiative 1000 is such an Initiative.

It has now been over 3 months since the January 4 date this Initiative's sponsor turned in 136,316 signatures more than required for certification to the 2019 Legislature. And as noted in Part III above, plaintiffs' appeal fails on the merits as a matter of law. Washington law – and the underlying purpose of citizens' Constitutional right to submit Initiatives to the Legislature – require this Court to dismiss plaintiffs' appeal forthwith in order to terminate any current uncertainty over whether or not Initiative 1000 is a validly certified Initiative that the 2019 Legislature must put through its legislative course before the

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<sup>10</sup> *The Initiative Sponsor also agrees with the additional reasons thus far briefed by the Secretary of State, but does not repeat them in order to avoid unnecessary repetition.*

impending April 28 adjournment (e.g., the legislative hearing currently set for 8:00 a.m. on April 18 if this Initiative’s certification is resolved <sup>11</sup>).

## V. CONCLUSION

The Secretary of State’s Response will undoubtedly provide additional reasons why Washington law requires plaintiffs’ appeal to be promptly dismissed. But additional reasons are not necessary. For the Secretary of State’s reasons, as well as the straightforward reasons noted above, this Court must promptly dismiss plaintiffs’ appeal without further delay. Then this Initiative to the 2019 Legislature can proceed in the little legislative time left (mere 17 days from today) without more stalling or uncertainty over whether Initiative 1000 is or is not a validly certified Initiative to the 2019 Legislature.

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of April, 2019.

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<sup>11</sup> Initiative 1000 is set for public hearing in the Legislature April 18, 2019 at 8:00 a.m., but “subject to change” depending upon how events unfold. <https://app.leg.wa.gov/billsummary?BillNumber=1000&Year=2019&Initiative=True> ; <https://app.leg.wa.gov/committeeschedules/Home/Documents/25803?/House/902/04-08-2019/04-19-2019/Schedule///Bill/> . (It is the Sponsor’s understanding that the time was set to allow former Governors Evans, Locke, and Gregoire to testify while they are available in State.)

**FOSTER PEPPER PLLC**

**April 11, 2019 - 8:46 AM**

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