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NO. 97020-3

SUPREME COURT OF THE STATE OF WASHINGTON

KAN QIU, ZHIMING YU, and GENG CHENG,

Plaintiffs-Petitioners,

v.

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

Defendant-Respondent.

SECRETARY OF STATE KIM WYMAN'S BRIEF

ROBERT W. FERGUSON
Attorney General

CALLIE A. CASTILLO, WSBA 38214
TERA M. HEINTZ, pro hac vice
Deputy Solicitors General

PO Box 40100
Olympia, WA 98504-0100
360-753-6200
calliec@atg.wa.gov
terah@atg.wa.gov
Office ID 91087

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I. INTRODUCTION

Initiative 1000 obtained nearly 140,000 more signatures than necessary to warrant certification to the Legislature. Nevertheless, Petitioners challenge the Secretary of State's certification of Initiative 1000, an affirmative action measure. Despite the narrow focus and compressed timeframe for challenges under RCW 29A.72.240, Petitioners never attempted to meet their burden of proving to the trial court that Initiative 1000 did not have the requisite number of voter signatures to warrant certification. Petitioners instead argued that simply raising questions about the Secretary of State's certification process entitled them to a lengthy court battle over the validity of the Secretary's certification. The trial court appropriately rejected Petitioners' effort to shift their burden of proof, and accepted each of the Secretary of State's arguments that Petitioners' challenge was based on mischaracterizations of the governing law, the Secretary's arguments, and the underlying evidence. Petitioners do not address most of the arguments accepted by the trial court, which independently warrant affirming dismissal of Petitioners' complaint.

As Petitioners have failed to meet their burden of proving that Initiative 1000 lacked sufficient signatures to warrant certification, the trial court's order should be affirmed.

II. COUNTER STATEMENT OF THE ISSUES

1. Petitioners do not challenge many of the arguments accepted by the trial court in dismissing their complaint, including Petitioners' failure to meet their burden of proving that Initiative 1000 lacked sufficient signatures to warrant certification to the Legislature. Does Petitioners' waiver of these arguments independently warrant affirming the trial court's dismissal of their complaint?

2. Did the trial court properly grant summary judgment to the Secretary of State when the Secretary's sampling methodology under RCW 29A.72.230 is entitled to substantial deference and Petitioners failed to prove it resulted in an erroneous certification?

III. STATEMENT OF THE CASE

A. The Secretary of State's Certification of Initiative 1000

On January 4, 2019, sponsors turned in petition sheets to the Secretary of State in support of Initiative 1000 (I-1000). App.[1] at 5 ¶ 14; *see also* App. at 62 ¶ 13. The Secretary of State's election staff (Election Staff) determined that the sponsors had submitted 21,540 petition sheets, containing approximately 396,000 signatures. App. at 62-63 ¶¶ 13, 17. Election Staff further determined that validating I-1000 under

[1] This brief cites to the Stipulated Appendix to the Record included with Petitioners' Opening Brief.

article II, section one of the Washington Constitution, required submission of 259,622 voter signatures, equal to eight percent of the number of votes cast for Governor in the latest gubernatorial election. App. at 64 ¶ 18.

Following their established practices for validating signatures, Election Staff determined that there were sufficient signatures submitted in support of I-1000 to use statistical sampling to validate the signatures. App. at 61 ¶ 9, 64 ¶ 18. This random sampling process is used when the number of signatures submitted appears to be substantially in excess of the minimum needed to validate the measure. App. at 61 ¶ 9. The Secretary of State uses the statistical sampling methodologies set forth in WAC 434-379-010. App. at 61 ¶ 9.

The Secretary of State first adopted the statistical sampling method currently set forth in WAC 434-379-010 in 1978. App. at 173 ¶ 4. While the Secretary of State's office has amended WAC 434-379-010 several times over the past 40 years, the basic methodology set forth in the regulation has not changed, including the requirement that the Secretary take an "unrestricted random sample" to use for validating signatures. App. at 173 ¶ 5. Since approximately 1995, the Secretary has used a computer program to select the unrestricted random sample; the computer program uses a span of anywhere from 1 to 65 between signatures to select signatures for inclusion in the sample. App. at 173-74 ¶ 6. This process is

similar to the processes in place between 1978 and 1995, which were conducted with the original paper petitions bound in volumes, and where Election Staff used dice to determine the starting point, and then manually created a set of numbers ranging from 1 to 65 to select each signature to include in the random sample. App. at 173 ¶ 5.

Once a random sample is selected, each sampled signature is examined by a checker trained by the Washington State Patrol to determine (1) if the signer was a registered voter of the state, (2) if the signature was reasonably similar to the one appearing in the record of that voter, and (3) if the same signature appeared more than once in the sample (only one signature per registered voter is counted). App. at 62 ¶ 10. The Secretary of State's office then double-checks each step of the signature-verification and canvassing process to ensure the accuracy of the signature checks. App. at 176 ¶ 17. Verifying signatures has an inherently subjective component and may be subject to variable determinations by temporary staff, which change from initiative to initiative. App. at 176 ¶ 17. Election Staff therefore double-checks every signature flagged for potential error to ensure that no signature is improperly rejected. App. at 176 ¶ 17.

For I-1000, Election Staff drew the initial random sample from the entire population of petition sheets submitted for I-1000. App. at 176 ¶ 19. During the process of validating signatures for the initial sample, they

discovered that three different variations of petition sheets had been submitted for I-1000. App. at 62-63 ¶ 14. In the first category, Election Staff identified 21,528 petition sheets containing the established ballot title, ballot summary, and initiative text for I-1000. App. at 62-63 ¶ 14. In the second category, Election Staff identified 218 petition sheets that contained a sticker with the established ballot title and ballot summary for I-1000 on the front side of the petition sheets, but the text of a different measure on the backside of the petition sheets. App. at 63 ¶ 15. In the third category, Election Staff identified 64 petition sheets that contained a ballot title, ballot summary, and initiative text on the front and back of the petitions that was different from the established ballot title, ballot summary, and initiative text for I-1000. App. at 63 ¶ 16.

Based on this discovery, Election Staff stopped the verification process before they had an opportunity to double-check signatures that had been flagged by temporary staff as either not matching the voter registration signature or as duplicate signatures. App. at 176 ¶ 19. Election Staff disregarded these interim results and began the sampling process again. App. at 176 ¶ 19. This time, Election Staff excluded the 64 petitions with text different from I-1000 on both the front and the back of the petition sheets. App. at 63 ¶¶ 16-17. Election Staff notified the sponsor of I-1000 that 64 petition sheets had been removed for validation purposes. App. at

63 ¶ 16. All other petition sheets were included in the universe from which the second unrestricted random sample was drawn, including the 218 petition sheets that contained a sticker with the established ballot title and ballot summary on the front side of the petition sheet, and the text of a different initiative on the backside of the petition. App. at 62-63 ¶¶ 14-17.

During the process of validating the second sample, it came to the attention of Election Staff that the imaging quality of the petition sheets might have resulted in the failure to accurately capture all petition sheets in each of the three categories. App. at 63 ¶ 16; App. at 176-77 ¶¶ 20-21. Election Staff then visually scanned all the petition sheets to ensure that no category of petition sheets had been missed. App. at 63 ¶ 16; App. at 176-77 ¶ 20. During this final visual inspection, Election Staff discovered three additional petition sheets that contained text for a measure different from I-1000 on both the front and the back of the petition sheets. App. at 177 ¶ 21.

Election Staff determined that that the random sample did not need to be run again based on the discovery of the three petition sheets. App. at 177 ¶¶ 21-22. Election Staff based their decision on the following determinations: (1) none of the three petition sheets had been included in the second random sample; (2) the second random sample was drawn from an even larger universe than necessary and re-running the sample would not

result in a larger random sample requiring validation; (3) it appeared statistically improbable that the results from a third sample could materially impact the results given the large margin for error; and (4) re-running the sample a third time would result in needless public expense and delay that was not warranted under the circumstances. App. at 177 ¶ 22.

After completing the signature validation process on this second sample, Election Staff found 9,047 valid signatures, 2,859 invalid signatures, and 13 pairs of duplicate signatures. App. at 64 ¶ 19. Election Staff then followed the established procedure under WAC 434-379-010 to determine that I-1000 had sufficient signatures for certification to the Legislature. App. at 65 ¶ 20. The Secretary of State certified I-1000 to the Legislature on February 6, 2019. App. at 65 ¶ 21; App. at 5 ¶ 15.

B. The Trial Court Proceedings

Petitioners filed their complaint on February 11, 2019. App. at 8. Petitioners alleged, on information and belief, four grounds for challenging the certification of I-1000: (1) an unspecified number of petition sheets were printed with a ballot title, concise description, and/or text for a different initiative than I-1000 (App. at 5-6 ¶¶ 16-17, 19); (2) an unspecified number of petition sheets were printed with the text of a different initiative on the reverse side of the sheets (App. at 6 ¶ 18); (3) an unspecified number of

petition sheets allegedly had a sticker affixed after the petitions were signed, altering the text of the initiative on the front side of the petition, and had the text of a different initiative on the backside of the sheets (App. at 6 ¶ 20); and (4) an unspecified number of signatures on the petition sheets were signed by the same person based on the "virtually identical handwriting for each different signature on the petitions" (App. at 6 ¶ 22).

Petitioners never filed a motion to enjoin certification of I-1000. App. at 179. On March 4, 2019, the Secretary of State filed a motion for summary judgment. The Secretary argued, among other things, that (1) Petitioners failed to meet their burden of proving that there were insufficient voter signatures in support of I-1000 to warrant certification to the Legislature (App. at 47, 52-53, 54-55, 160-63); (2) Petitioners sought relief that was not available under RCW 29A.72.240, including an order requiring the Secretary to conduct a manual recount, and a declaration that signatures in support of I-1000 were invalid and insufficient for certification (App. at 52-53, 160); (3) Petitioners' unsubstantiated concerns that stickers on 218 petition sheets had been added after the petition sheets had been signed was not cognizable under RCW 29A.72.240 (App. at 53, 55, 168-69); (4) Petitioners were not free to substitute their own judgment regarding the validity of signatures over that of the Secretary's (App. at 53-54); (5) Petitioners proffered no basis to show that the Secretary's

actions in certifying I-1000 were arbitrary and capricious (App. at 53-54, 168-69); and (6) the Secretary had broad discretion to choose a sampling methodology under RCW 29A.72.240, had used the same basic methodology since WAC 434-379-010 was enacted, and that the Secretary's interpretation of "unrestricted random sample," as used in the implementing regulation, was entitled to substantial deference by the court (App. at 163-65).

After considering the briefs and evidence submitted by all parties, on March 26, 2019, Thurston County Superior Court Judge Chris Lanese granted the Secretary's motion for summary judgment and dismissed Petitioners' complaint with prejudice. App. at 179-80. The Court "*agree[d] with each argument*" raised by the Secretary. App. at 179 (emphasis added). The Court found further that the "bases for challenging the conduct at issue here are exceptionally narrow and Plaintiffs have failed to establish a genuine issue of material fact as to their applicability in this case." App. at 179-80.

IV. ARGUMENT

A. Petitioners Waived Most of the Arguments Accepted by the Trial Court in Dismissing Their Complaint

Petitioners do not challenge most of the Secretary's arguments in support of summary judgment, each of which were accepted by the trial

court. App. at 179-80. These arguments are now waived on appeal and independently support affirming the trial court's order. *In re Petition of Port of Seattle*, 80 Wn.2d 392, 399, 495 P.2d 327 (1972) (failure to raise an issue in assignments of error waive arguments on appeal).

The Secretary's core argument in support of dismissal is that Petitioners bore the burden under RCW 29A.72.240 to prove that I-1000 did not have the requisite number of signatures to support certification. App. at 47, 52-53, 54-55, 160-63. There is a well-established presumption "that petitions that have been circulated, signed, and filed are valid, and the burden of proof to show their invalidity rests upon those protesting against them." *Sudduth v. Chapman*, 88 Wn.2d 247, 255 n.3, 558 P.2d 806, 559 P.2d 1351 (1977); App. at 54, 162. Further, RCW 29A.72.240 establishes a condensed timeframe and process for challenging initiative signature-counts. Merely raising questions about the Secretary's processes for certification, without offering proof that I-1000 did not have sufficient signatures to warrant certification, was insufficient to meet Petitioners' burden under the statute. App. at 52-53, 160-61. Petitioners do not challenge this argument on appeal.

The Secretary also argued that Petitioners failed to show that the Secretary acted arbitrarily and capriciously in validating the signatures for I-1000. App. at 53-54, 168-69 (citing *Wash. Indep. Tel. Ass'n v. WUTC*,

148 Wn.2d 887, 905, 64 P.3d 606 (2003) ("An agency action is arbitrary and capricious 'if it is willful and unreasoning and taken without regard to the attending facts or circumstances.'")); *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 383, 932 P.2d 139 (1997) (If "there is room for two opinions, an action taken after due consideration is not arbitrary and capricious[.]"). Plaintiffs similarly do not assign error to this argument accepted by the trial court.

Petitioners likewise abandon most of their arguments made to the trial court against certification of I-1000, including their arguments that (1) petition sheets with text different from I-1000 on the back of the sheets should have been excluded from the Secretary's signature count; (2) signature gatherers may have committed fraud in collecting signatures in connection with the 218 petition sheets containing stickers by affixing the stickers with correct ballot text after the petitions were signed, and (3) some unspecified number of signatures were signed by the same person. The Secretary argued that Petitioners' challenges were unsupported by evidence and conflicted with this Court's recent decision in *Ball v. Wyman*, No. 96191-3, slip op. at 3 (Wash. Aug. 24, 2018), http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion &filename=961913MAJ (holding that the purpose of RCW 29A.72.240 "is narrow; it does not allow for preelection judicial review of the form,

process, substance, or constitutionality of an initiative petition" including review of discrepancies in the text on the back of a petition). App. at 50-56, 165-69.

Petitioners do not assign error to the trial court's acceptance of any of these arguments. These arguments independently require dismissal of Petitioners' complaint. A challenge under RCW 29A.72.240 is not an ordinary court process. The trial court is the adjudicator under RCW 29A.72.240, which provides solely for expedited equitable relief.

Petitioners did not meet their burden of proving that I-1000 lacked the requisite signatures, or that the Secretary acted arbitrarily or capriciously in validating the signatures for I-1000. Petitioners' criticisms regarding Secretary's certification process, unmoored to any showing of arbitrary or capriciousness, are simply insufficient to demonstrate relief. Petitioners' waiver of these arguments independently warrants affirming the trial court's dismissal of their Complaint.

B. Petitioners Do Not Have Valid Grounds for Appeal under RCW 29A.72.240

Petitioners also do not have valid grounds for appealing the trial court's order under RCW 29A.72.240. That statute provides, in relevant part:

> The decision of the superior court *granting or refusing to grant the writ of mandate or injunction* may be

> reviewed by the supreme court within five days after the decision of the superior court, and if the supreme court decides that a writ of mandate or injunction, as the case may be, should issue, it shall issue the writ directed to the secretary of state; *otherwise, it shall dismiss the proceedings*.

RCW 29A.72.240 (emphases added).

Here, Petitioners chose not to move for a writ of mandate or injunction from the trial court. App. at 179. Nor do Petitioners ask for such relief from this Court. As RCW 29A.72.240 only permits Petitioners to seek review of a trial court's grant or denial of a writ of mandate or injunction, this Court must dismiss these proceedings. *Schrempp v. Munro*, 116 Wn.2d 929, 932, 809 P.2d 1381 (1991) (the authority of the judiciary over the initiative process is limited, " 'except only in so far as there may be express statutory or written constitutional law making the question judicial' " (quoting *State ex rel. Donohue v. Coe*, 49 Wn.2d 410, 417, 302 P.2d 202 (1956))).

C. The Trial Court Properly Rejected Petitioners' Challenge to the Secretary's Selection of an Unrestricted Random Sample Pursuant to WAC 434-379-010

Petitioners' arguments should also be rejected on the merits because they are based largely on mischaracterizations of the Secretary's arguments below, the trial court's order, the governing law, the underlying facts, and their own supporting evidence.

Contrary to Petitioners' characterizations, the Secretary never argued that she had discretion to disregard the requirements of WAC 434-379-010, or otherwise avoid compliance with the law. App. at 161-65. Rather, the Secretary argued, and the trial court accepted, that RCW 29A.72.240 granted explicit discretion to the Secretary to choose any statistical sampling method consistent with implementing regulations. App. at 163 (citing RCW 29A.72.230 (the "secretary of state may use *any* statistical sampling techniques for this verification and canvass which have been adopted by rule as provided by chapter 34.05 RCW")). App. at 163-65. The Secretary's choice of sampling methodology was entitled to substantial deference and Petitioners provided no legal or factual basis to disregard the Secretary's chosen methodology.

WAC 434-379-010 was originally passed in 1978, and the Secretary of State's office has been using the same basic statistical methodology for selecting an unrestricted random sample, with minor variations, since that timeframe. App. at 173-74 ¶¶ 4-6. The Secretary's interpretation and implementation of the regulation is the best evidence regarding the meaning of its terms. *Ctr. for Envtl. Law & Policy v. Dep't of Ecology*, 196 Wn. App. 360, 380, 383 P.3d 608 (2016) (courts show deference to "an agency's interpretation of its own regulations"); *BD Roofing, Inc. v. Dep't of Labor & Indus.*, 139 Wn. App. 98, 107, 161 P.3d 387 (2007) (courts will "uphold

an agency's interpretation of a regulation if it reflects a plausible construction of the language of the statute and is not contrary to the legislative intent and purpose of the enabling statute" (internal quotation marks omitted)).

Petitioners never argued, nor do they argue now, that the Secretary's interpretation of WAC 434-379-010 is an implausible construction of the regulation; they simply offered an alternative interpretation. But that is insufficient as a matter of law and the trial court properly rejected it. *BD Roofing, Inc.*, 139 Wn. App. at 107; *see also Schrempp*, 116 Wn.2d at 938 ("Our analysis is not intended to be a judgmental substitution for the Secretary of State's decision, but rather to show that his action was not a willful and unreasoning action, without consideration and in disregard of facts or circumstances". (Internal quotation marks omitted.)).

Ultimately, if Plaintiffs have concerns about the governing statute or the underlying regulation, there are mechanisms available under the legislative process or the Administrative Procedure Act, RCW 34.05, to address those concerns. They are not free, however, to substitute their own policy preferences or views of fairness on a matter committed to the discretion of the Secretary.

As nearly the entirety of Petitioners' expert's opinion was based on the erroneous assumption that the Secretary was required to apply his

proposed method for selecting the random sample, the trial court properly rejected Petitioners' challenge to the Secretary's chosen method as a basis of relief under RCW 29A.72.240. App. at 163-65; *see also* App. at 130-34 ¶¶ 12-26.

Petitioners likewise mischaracterize their expert's report to suggest that he offered valid evidence that the Secretary did not pick a random sample. The Secretary argued, and the trial court accepted, that the difference in the two sample results analyzed by Petitioners' expert is readily explained by the fact the first sample was interrupted mid-process, before due diligence by Election Staff could be completed. App. at 176 ¶ 19. The 25 pairs of duplicate signatures identified in the first-round results are interim findings and cannot be compared to the 13 duplicate signature sets identified in the second sample, which were confirmed *after* due diligence by the Secretary's permanent election staff. App. at 176 ¶¶ 17, 19. The Secretary conducts such due diligence as a precautionary measure to eliminate error in the process of comparing voter signatures, which has an inherently subjective component, and may be subject to variable determinations by temporary election staff. App. at 176 ¶ 17.

Petitioners' expert himself acknowledged that there are "many possible ways in which the sample outcomes could have changed" and that the "available data cannot not [sic] provide an explanation" for the variation

he identified between the samples. App. at 136 ¶ 37. The trial court properly rejected the speculative assertions by Petitioners' expert that these variations might show wrongdoing by the Secretary. Even now, Petitioners fail to address this analytic hole in their experts' analysis, which undermines any basis for suggesting that the Secretary failed to select an unrestricted random sample.

Petitioners' argument that there were disputed issues of material fact regarding the validity of the Secretary's sampling process for I-1000 is invalid as a matter of law. This argument cannot provide a basis for overturning the trial court's order.

D. Petitioners' Argument Regarding Their Complaint is Irrelevant

Petitioners' argument that they did not need to set forth conclusive allegations about the Secretary's signature count in their complaint similarly does not provide grounds for overturning the trial court's order. The Secretary never argued that Petitioners were required to conclusively allege all facts showing entitlement to relief in their complaint. App. at 162. Moreover, the trial court expressly considered the evidence and arguments that Petitioners submitted in opposition to the Secretary's summary judgment in deciding to dismiss Petitioners' claims. App. at 179. Petitioners

fail to point to anything in the record suggesting that the trial court restricted its analysis to facts alleged in the complaint.

Ultimately, Petitioners bore the burden of proving a right to relief under RCW 29A.72.240 and they failed to do so. Petitioners' argument that they did not need to conclusively allege entitlement to relief in their complaint is legally irrelevant and cannot provide grounds for reversing the trial court's dismissal of Petitioners' complaint.

E. The Trial Court Properly Denied Petitioners' Request to Examine I-1000 Petitions

Petitioners' final argument for reversal is that RCW 29A.72.240 "specifically directs the Thurston County Superior Court to submit those petitions to examination if a dissatisfied citizen asks it to do so." Opening Br. Pet'rs at 20. According to Petitioner, the statute provides the trial court discretion to "adopt a procedure that corresponds to the nature of the demonstration of issues of fact raised by the 'dissatisfied citizen[,]'" including ordering the "Secretary to establish to the [trial] court's satisfaction that the sample from which the projection was made was truly random[.]" Opening Br. Pet'rs at 21. This argument should be rejected for a number of reasons.

To start, Petitioners never made this argument to the trial court. App. at 194; App. at 161 ("Plaintiffs propose no way for this Court to

validate nearly 400,000 signatures in support of I-1000, or anything else that could be achieved through submission of the sheets to this Court.”). Petitioner never suggested that RCW 29A.72.240 provides the trial court with discretion to order particularized relief tailored to a dissatisfied citizen’s complaints under the guise of “examining” the petition sheets. This argument is now waived on appeal. *Wash. Fed. Sav. v. Klein*, 177 Wn. App. 22, 29, 311 P.3d 53 (2013) (generally “an argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal”).

Petitioners’ argument also directly conflicts with a long line of cases by this Court strictly construing the permissible scope of the court’s review over the initiative process. The people’s right to bring an initiative is constitutionally protected. Const. art. II, § 1(a). In light of this, the court’s power over the initiative process is narrowly circumscribed.[2] As explained in *State ex rel. Donohue v. Coe*, 49 Wn.2d 410, 416, 302 P.2d 202 (1956),

[2] The Legislature’s authority over the initiative process is likewise limited to “facilitating its operation.” Const. art. II, § 1(d); *see also Cmty. Care Coal. of Wash. v. Reed*, 165 Wn.2d 606, 612, 200 P.3d 701 (2009).

"[a]ny interference with the secretary of state in the performance of the duties imposed upon him by the constitution and the statute relative to the handling and processing of initiatives can be justified *only by express statutory or constitutional provisions* making the question judicial, or if he acts without authority or in an arbitrary and capricious manner inconsistent with the spirit and intent of the statute or the constitutional provisions." (Emphasis added.) The Court further explained: "In approaching the question of the power of the secretary and of the courts in determining questions arising incidental to the submission of an initiative measure to the voters, it is to be remembered that we *are dealing with a political and not a judicial question* except only in so far as there may be express statutory or written constitutional law making the question judicial." *State ex rel. Donohue*, 49 Wn.2d at 417 (emphasis added) (quoting *State ex rel. Case v. Superior Court*, 81 Wash. 623, 632, 143 P. 461 (1914)); *see also Ball*, slip op. at 3*; Schrempp*, 116 Wn.2d at 932.

Petitioners' proposed construction of RCW 29A.72.240 would enlarge the permissible scope of a trial court's review over the initiative process, transforming the narrowly circumscribed purpose of RCW 29A.72.240 into a free-ranging vehicle for interfering with initiatives. That is directly contrary to this Court's holdings in *Ball*, *Donohue*, and *Schrempp*.

Further, even if the trial court ultimately had discretion to issue the types of order Petitioners propose, Petitioners fail to show that the trial court abused its discretion in denying their request to do so. The abuse of discretion standard is extremely deferential. *Wade's Eastside Gun Shop, Inc. v. Dep't of Labor & Indus*., 185 Wn.2d 270, 279, 372 P.3d 97 (2016). This Court will reverse a trial court decision under this standard only if the decision applies the wrong legal standard, relies on unsupported facts, or adopts a view that no reasonable person would take. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

Petitioners make no argument that the trial court applied the wrong legal standard, relied on unsupported facts, or adopted a view that no reasonable person would take when it declined to examine the I-1000 petition sheets as requested by Petitioners. Further, Petitioners' sole proffered justification for the examination—that the Secretary failed to select an unrestricted random sample according to Petitioners' expert's definition of the term—was properly rejected by the trial court, as detailed above.

Petitioners' arguments in support of examination of the petition sheets by the trial court do not provide grounds for reversing the trial court's order.

V. CONCLUSION

For all of the reasons stated above, the trial court's order dismissing Petitioners' complaint under RCW 29A.72.240 should be affirmed.

RESPECTFULLY SUBMITTED this 11th day of April 2019.

ROBERT W. FERGUSON
Attorney General

s/ Tera M. Heintz
CALLIE A. CASTILLO, WSBA 38214
TERA M. HEINTZ, pro hac vice
Deputy Solicitors General

PO Box 40100
Olympia, WA 98504-0100
360-753-6200
calliec@atg.wa.gov
terah@atg.wa.gov

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I certify, under penalty of perjury under the laws of the state of Washington, that on this date I electronically filed the foregoing document via the Washington State Appellate Courts' Secure Portal which will send a copy of the document to all parties of record via electronic mail.

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s/ Wendy R. Scharber
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