

SUPREME COURT OF THE STATE OF WASHINGTON

DEFEND WASHINGTON,
SUSAN YOUNG, and SHARON
CHEN,

Appellants,

v.

STEVE HOBBS, in his official
capacity as Secretary of State for
the State of Washington,

Appellee.

SECRETARY
HOBBS'S
COMBINED
RESPONSE TO
MOTIONS TO
EXPEDITE, FOR
ACCELERATED
REVIEW, AND
INJUNCTIVE
RELIEF

I. INTRODUCTION

Secretary Hobbs takes no position on whether this Court should consider this appeal on an accelerated basis. But Secretary Hobbs strongly opposes Defend Washington's alternative request for injunctive relief pending determination of its appeal. An injunction would deprive Washington voters of the opportunity to exercise their initiative power with respect to three initiatives. Because Defend Washington failed to provide reasonable notice of its requests to affected persons (such as the

sponsor of the initiatives), this Court should decline to consider Defend Washington's emergency motion.

Even if this Court considers Defend Washington's motion, Defend Washington is not entitled to injunctive relief. The issues are not debatable. Defend Washington's argument that the Secretary must disregard valid signatures of legal voters is inconsistent with the plain language of the relevant statutes. And the equities weigh strongly against an injunction. The Washington Constitution provides the people an opportunity to decide this issue at the November 2024 general election; Defend Washington's proposed injunction would interfere with that constitutional command. Further, any emergency is entirely of Defend Washington's own making. Though the August 23 deadline for the Secretary to certify initiatives to county auditors has been clear throughout this litigation, Defend Washington unjustifiably took no steps in either the trial court or this Court to expedite consideration of its challenge until mid-July. This Court should not reward Defend Washington's lack of diligence.

II. RELEVANT FACTS

Following the submission of petition sheets containing hundreds of thousands of signatures in December 2023, Secretary of State Steve Hobbs provisionally certified six initiative measures to the Legislature in January 2024. CP 111-12, 124-27.

Plaintiffs-Appellants Defend Washington, Susan Young, and Sharon Chen (collectively “Defend Washington”) filed a complaint after the Secretary provisionally certified the initiatives. CP 1-28. Among other things, the complaint sought to enjoin the Secretary from certifying five of the six initiatives to the Legislature; for reasons that are not identified in the record, Defend Washington did not challenge the certification of I-2113. CP 26. Defend Washington did not seek a temporary restraining order or a preliminary injunction.

At the time that Defend Washington filed its original complaint, the Secretary had officially certified three of the initiatives. CP 124-25. The Secretary officially certified a fourth

initiative the same day that Defend Washington filed its complaint, CP 126, and officially certified the last two over the following two days, CP 126-27.

The Legislature adopted three of the six initiatives (I-2081, I-2111, and I-2113) in early March 2024,¹ and took no action on the three other initiatives (I-2109, I-2117, and I-2124). The legislative session adjourned sine die on March 7, 2024.

Defend Washington never sought expedited adjudication of its claims in the superior court. The action proceeded exclusively on *the Secretary's* motion to dismiss, filed in February 2024. CP 224-46. Defend Washington did not file a summary judgment motion or any motion to have its claims decided on the merits. As a result, the superior court has not addressed the merits.

¹ <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Initiatives/Initiatives/INITIATIVE%202081.PL.pdf> (I-2081); <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Initiatives/Initiatives/Initiative%202111.sl.pdf> (I-2111); <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Initiatives/Initiatives/Initiative%202113.sl.pdf> (I-2113).

Defend Washington filed its notice of appeal of the superior court's order dismissing its claims on April 17, 2024. CP 440-41. Between April 17 and July 11, Defend Washington took no steps to expedite this Court's consideration of this appeal.

The deadline for the Secretary of State to certify initiative measures has been capable of calculation throughout the entirety of this controversy. If the Legislature takes no action on an initiative, the Secretary must certify the measure to county auditors at the same time that the Secretary certifies candidates. RCW 29A.72.250, .260. That certification must take place "not later than seventeen days following the primary," RCW 29A.60.240, so for the 2024 primary election, the Secretary must certify initiative measures no later than August 23.

III. ARGUMENT

A. The Secretary Opposes Expedited Consideration of Defend Washington’s Request for Injunctive Relief Pending Appeal

This Court should decline to consider Defend Washington’s request for injunctive relief on an expedited basis. There is no genuine emergency here, and Defend Washington has not complied with RAP 17.4(a).

Defend Washington’s purported “emergency” is entirely of its own making. The August 23 deadline for the Secretary to certify initiative measures to the counties is established by statute. RCW 29A.60.240; RCW 29A.72.250-.260. Defend Washington should have been aware of that deadline throughout this litigation and could have filed a non-emergency motion for expedited consideration much earlier in this appeal. It could also have sought—but did not seek—expedited relief before the superior court.

Defend Washington has not shown “reasonable steps under the circumstances to give notice to persons who would be

affected by the ruling sought[.]” RAP 17.4(b). The only notice Defend Washington identifies is an email sent to the Secretary’s counsel 20 minutes before filing the motion. Defend Washington could obviously have provided earlier notice. Further, the Secretary is not the only person who “would be affected by the ruling sought[.]” RAP 17.4(b). The injunction would affect voters throughout the state. At a minimum, reasonable notice should require notice to the sponsor of the initiatives that the injunctive relief would exclude from the ballot.

Because Defend Washington has not taken reasonable steps to provide notice to affected persons, this Court should deny expedited consideration of the request for injunctive relief. While RAP 17.4(b) prohibits only the commissioner or clerk from deciding this motion, the spirit of the rule demands notice even if the motion will be decided by the justices. RAP 17.4(b) (stating that “[t]he commissioner or clerk may decide the motion *only if* satisfied” that the movant has taken reasonable steps to notify affected persons (emphasis added)).

B. The Secretary Does Not Oppose Expedited Consideration of Defend Washington's Request for Accelerated Review

The Secretary neither opposes nor supports expedited consideration of Defend Washington's request for accelerated review. As Defend Washington suggests, absent an order from this Court by August 23, there will be an additional reason that this case is moot. After the Secretary certifies the initiatives to the ballot on August 23, federal and state ballot-mailing deadlines will preclude courts from granting effective relief. And in reality, Defend Washington would need a ruling much earlier. Even if this Court reverses the superior court, Defend Washington would still have to prevail on the merits on remand to prevent the initiatives from being placed on the ballots. Due to Defend Washington's delays, there is not sufficient time for that to occur. But this matters only if Defend Washington has meritorious claims. For reasons established in the Secretary's response brief and as discussed below, Defend Washington's claims have no merit.

C. This Court Should Not Grant Injunctive Relief Preventing the People From Legislating by Initiative

To obtain injunctive relief, Defend Washington must show (1) the case involves debatable issues, (2) relief is necessary to preserve the fruits of its appeal, and (3) relief is justified in light of the equities of the situation. *Confederated Tribes of the Chehalis Reserv. v. Johnson*, 135 Wn.2d 734, 759, 958 P.2d 260 (1998). Defend Washington meets none of these requirements.

1. The issues are not debatable

Defend Washington's argument conflicts with the plain language of the statutes governing the Secretary's verification and certification of initiatives. A specific statute, RCW 29A.72.230, governs canvassing of initiative petitions and it says nothing about verifying legal voters' addresses. RCW 29A.72.230 instead requires the Secretary "to verify and canvass the *names* of the legal voters on the petition." RCW 29A.72.230 (emphasis added). It further provides that this "verification and canvass of *signatures on the petition* may be observed," subject to certain limits, and that, "as soon as the

signatures on the petition have been verified and canvassed,” the Secretary then certifies the initiative to the Legislature. *Id.* (emphasis added).

As this Court made clear in *Sudduth v. Chapman*, 88 Wn.2d 247, 251, 558 P.2d 806 (1977), the term “legal voter” simply means *registered voter*. The canvassing statute thus only requires the Secretary to confirm that the voter is registered, and thus a legal voter, and that the signature is genuine and valid by comparing the signature on the petition against the signatures in the voter’s registration file. *See also* RCW 29A.40.110 (setting forth requirement to verify voters’ signatures on ballots). This is entirely consistent with the constitutional requirement that initiatives bear the requisite number of “valid signatures of legal voters” to be certified to the legislature or qualified for the ballot. Wash. Const. art. II, § 1; *see also Sudduth*, 88 Wn.2d at 251 (interpreting article II, section 1 as ensuring that “the requisite number of registered voters sign [the petition]”). Nothing in

Washington's Constitution or the canvassing statute says anything about verifying voters' registration addresses.

RCW 29A.72.240, the statute under which Defend Washington brings this direct appeal, similarly focuses on the count of voters' signatures. Specifically, RCW 29A.72.240 authorizes judicial review only of the "determination of the secretary of state that an initiative or referendum petition contains or does not contain the requisite number of *signatures* of legal voters[.]" RCW 29A.72.240 (emphasis added). Nothing in RCW 29A.72.240 permits this Court's review of the Secretary's alleged failure to verify the addresses on initiative petition sheets. *See Ball v. Wyman*, 435 P.3d 842, 843 (2018) (holding that "plain language of RCW 29A.72.240 limits the court to examining whether the petitions 'contain the requisite number of signatures of legal voters'").

Defend Washington's argument for grafting an implied duty to verify addresses conflicts with the plain text of both RCW 29A.72.230 and .240. It would require this Court to add

words to RCW 29A.72.230, in direct conflict with well-settled rules of statutory interpretation that courts “must not add words [to a statute] where the legislature has chosen not to include them.” *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). Courts, instead, must assume that “‘the legislature means exactly what it says.’” *Davis v. State ex rel. Dep’t of Licensing*, 137 Wn.2d 957, 963-64, 977 P.2d 554 (1999) (quoting *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995)); see also *Wash. Nat. Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969) (“Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all [other] things or classes of things . . . were intentionally omitted by the legislature[.]”).²

² The Washington Administrative Code likewise does not require the Secretary to verify addresses. Just the opposite. Under longstanding regulations, the absence of an address or the presence of a fictitious address are not sufficient to invalidate a signature. WAC 434-379-009(8)(a), (d);

Here, the Legislature expressly required the Secretary to canvass only the “names” and “signatures” of “legal voters.” RCW 29A.72.230. It only authorized an appeal of the Secretary’s count of such *signatures*. RCW 29A.72.240. Nothing in RCW 29A.72.230 or .240 authorizes—much less requires—the Secretary to reject a valid signature based on a voter’s inactive status, the absence of an address, or a mismatch with the voter’s registration address.

Defend Washington relies heavily on RCW 29A.08.810, permitting challenges to a voter’s registration where the “challenged voter resides at a different address than the residential address provided.” But that statute actually undercuts its argument. The very first words of RCW 29A.08.810 state that “[r]egistration of a person as a voter is presumptive evidence of his or her right to vote.” *Id.*; see also *Sudduth*, 88 Wn.2d at 255 n.3 (“There is a presumption that petitions that have been

WAC 434-379-012(1)(e). Plaintiffs implicitly acknowledge this in seeking to invalidate these regulations. CP 135-36.

circulated, signed, and filed are valid, and the burden of proof to show their invalidity rests upon those protesting against them.”). The Secretary’s canvassing of registered voters’ signatures comports with this statute because the Secretary only counts signatures that can be matched to a registered voter. WAC 434-379-012(1), (2).

Defend Washington would turn this presumption on its head. On Defend Washington’s theory, petition signatures would be presumed *invalid*, even where the voter’s signature on the petition matches the signature in the voter registration file. Similarly, Defend Washington would presume registered voters are ineligible to vote unless they list a current address matching their voter registration address.

While Defend Washington argues that this statutory presumption is overcome whenever a registered voter fails to list their registration address on an initiative petition, Opening Br. at 57, this argument also conflicts with the statute’s plain text. The Legislature specified in RCW 29A.08.810 how to overcome

the presumption that registration evidences an individual's entitlement to vote. It requires specific evidence that Defend Washington has not even attempted to supply here. RCW 29A.08.810(1)(c)(i)-(ii).

Defend Washington also cites RCW 29A.72.110's requirement that initiative petitions "include a place for" signers' addresses and an acknowledgement that the signer's "residence address is correctly stated," to argue that the Secretary has an implied duty to validate such addresses. But, again, nothing in RCW 29A.72.110 contemplates, authorizes, or requires the Secretary to verify that a voter's "correctly stated" address matches their registration address. RCW 29A.72.110. And Defend Washington is simply wrong that the Secretary's process of canvassing only voters' signatures renders this petition language meaningless. An address is useful information to identify voters for purposes of signature verification and to distinguish between voters with the same name. *See* WAC 434-379-012(1).

Defend Washington is also wrong that inactive voters or a person who has moved without updating their address is not a “legal voter.” *See* CP 114 (§ 52). Voters on inactive status are still registered to vote and can vote in any election. In compliance with the National Voter Registration Act, state law provides that a voter “whose registration has been made inactive . . . and who requests to vote at an ensuing election before two federal general elections have been held must be allowed to vote a regular ballot applicable to the voter’s current residence address, and the voter’s registration record updated and restored to active status.” RCW 29A.08.625(1); *see also* 52 U.S.C. § 20507(d) (limiting circumstances in which states may “remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence”).

Additionally, a county auditor shall return an inactive voter to active voter status if, before the passage of two federal general elections, the voter: “(a) [n]otifies the auditor of a change

of address; (b) [r]esponds to a confirmation notice with information that he or she continues to reside at the registration address; or (c) [v]otes or attempts to vote in a primary, special election, or general election.” RCW 29A.08.630(1).

Similarly, voters without current registration addresses are also legal voters. Contrary to Defend Washington’s argument, Washington law is clear that “[a] registered voter who fails to update his or her residential address by th[e statutory] deadline *may vote according to his or her previous registration address.*” RCW 29A.08.140(2)(b) (emphasis added). Defend Washington also concedes that “[a] petition signer’s voter registration may continue to function as proof of their qualification to vote for purposes of voting, regardless of whether the signer furnished adequate proof on an initiative petition to demonstrate their present qualification to propose legislation.” Opening Br. at 36 n.11.

Defend Washington's arguments conflict with the plain language of the relevant statutes and do not present debatable legal issues.

2. The equities weigh overwhelmingly against the requested injunctive relief

The equities weigh strongly against the proposed injunctive relief for at least two reasons: (1) the purported emergency is a problem of Defend Washington's making; (2) the injunction would interfere with the people's constitutional power to legislate by initiative.

To start, Defend Washington has unclean hands. The basis for its emergency motion is that there is not sufficient time for this Court to decide the merits of the appeal. But that is a result of Defend Washington's litigation strategy. It created its own "emergency." This Court should not reward Defend Washington's delay.

Defend Washington could have sought expedited relief under RCW 29A.72.240, which provides an expedited superior court process for challenging the Secretary's count of initiative

petition signatures and an expedited direct appeal. RCW 29A.72.240 (providing that challenges “shall be speedily heard and determined” by the superior court and for review of such decision by this Court “within five days”). Defend Washington, however, did nothing to expedite its case before the superior court and only belatedly sought to expedite its appeal after the parties completed briefing under an ordinary schedule. In prior cases, in contrast, the superior court and this Court considered a similar challenge under RCW 29A.72.240 on an expedited basis in order to render a decision *before* the end of the legislative session. *See* Ex. A. Defend Washington has no one but itself to blame for failing to expedite its challenge to the Secretary’ signature count as contemplated in RCW 29A.72.240.

An injunction would also interfere with the people’s exercise of the constitutional power to legislate by initiative, established under article II, section 1 (“The first power reserved by the people is the initiative”). Under the proposed injunctive relief, an election on Initiatives 2109, 2117, and 2124 would be

postponed until the 2025 general election. But the Washington Constitution requires that the election be held *this* year. Const. art. II, § 1(a) (requiring that the Secretary submit an initiative “to the people for approval or rejection at the next ensuing regular general election”). The public has known since early March, when the legislative session ended without action on the challenged initiatives, that the issues would be presented to the people for decision. Supporters and opponents have acted in reliance on that interest, raising and spending millions of dollars to inform and persuade voters. *See*, https://www.pdc.wa.gov/political-disclosure-reporting-data/browse-search-data/committees?election_year=2024&committee_category=Statewide+Ballot+Measure. Defend Washington’s proposed injunctive relief would disrupt the reasonable, settled expectations of voters.

This Court made clear in *Sudduth*, that the intent of the signature requirement in article II, section 1 “was to require that

an initiative measure be placed upon the ballot if the requisite number of registered voters sign it.” 88 Wn.2d at 251. This Court further held that a “presumption of validity” “attaches to a signature upon a petition” which weighs in favor of the sponsor to “have the measure placed upon the ballot.” *Id.* at 255. Defend Washington cannot defeat this constitutional right so easily.

Indeed, granting Defend Washington’s request for injunctive relief would promote political and litigation gamesmanship. Instead of seeking expedited relief, an initiative opponent would be incentivized *not* to seek expedited relief so they could seek an injunction pending appeal and effectively defeat an initiative without having to prove the merits of its challenge. The legislative process would also be disrupted because legislators would not know whether initiatives to the legislature will be challenged until after the close of the legislative session, impacting their decision whether to adopt an initiative to the legislature in the first instance. This is precisely

the type of disruption the expedited challenge process in RCW 29A.72.240 was intended to avoid.

IV. CONCLUSION

This Court should reject Defend Washington's request for an injunction pending appeal. The Secretary does not oppose this Court's expedited consideration of Defend Washington's appeal on the merits, which should be rejected for all the reasons set forth in the Secretary's Answering Brief.

This document contains 3,201 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 19th day of July, 2024.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I caused to be served a true and correct copy of the foregoing document through the appellate courts electronic filing portal, on the following:

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Exhibit A

FILED
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WASHINGTON STATE
SUPREME COURT

THE SUPREME COURT OF WASHINGTON

KAN QIU, ZHIMING YU and GANG)
CHENG,)
)
Appellants,)
)
v.)
)
KIM WYMAN, in her official capacity as)
Secretary of State of the State of Washington,)
)
Respondent.)
_____)

ORDER

No. 97020-3

Thurston County No.
19-2-00829-3

On March 29, 2019, “PLAINTIFF’S NOTICE OF APPEAL TO THE WASHINGTON SUPREME COURT” was filed in Thurston County Superior Court and forwarded to this Court for determination. The case comes before this Court pursuant to RCW 29A.72.240, which provides that the Supreme Court may review the superior court’s decision. Following an expedited briefing schedule, the Supreme Court reviewed the record and considered this matter on April 17, 2019, without oral argument, and has unanimously agreed that a writ of mandate or injunction should not issue and that the following order be entered.

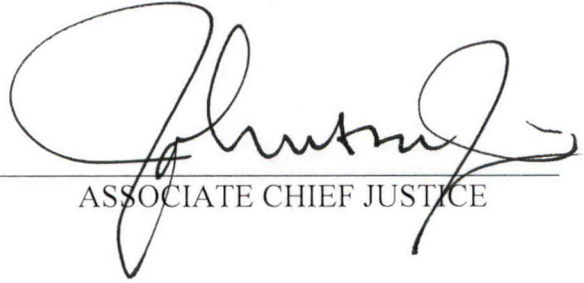
Now, therefore, it is hereby

ORDERED:

Pursuant to RCW 29A.72.240, the Court dismisses the proceedings. The Clerk of the Supreme Court shall forthwith notify the Secretary of State.

DATED at Olympia, Washington this 17th day of April, 2019.

For the Court



ASSOCIATE CHIEF JUSTICE