

14 THE COURT: As a finding, this court  
15 will find that petitioners have standing. This  
16 court recognizes what is at stake here this  
17 morning. This court understands that it has an  
18 obligation to protect the initiative and  
19 referendum process while still hearing, for lack  
20 of a better word, the community.

21 Sponsors have submitted a number of  
22 declarations. I think Mr. Ard referenced 12. The  
23 court hears mister or miss or they or them  
24 Schultz, Griffith, Janzen, Hackney, Hurd, O'Grady,  
25 Ramey, Rysemus, Johnson, Simpson, Taylor, Shu,

1 Vonhoff. The court has read those declarations,  
2 and the court would not be surprised whatsoever if  
3 the sponsors were able to supply literally  
4 thousands of others.

5 That being said, the court is confident  
6 that if the Petitioners in this action had  
7 intended to or sought to, they could have and  
8 would have submitted declarations and affidavits  
9 from voters of this community who have other  
10 opinions that might differ from the declarations  
11 the court has read. This is not a situation where  
12 the court is tasked with the responsibility of  
13 deciding how the voters of this state would vote  
14 on this very important issue. In other words, how  
15 many people would be in favor of the initiative,  
16 how many people would be opposed to the  
17 initiative. Rather, it is this court's  
18 responsibility to make certain that the process is  
19 accurate, that the law is being followed.

20 On or about July 6, 2018, the sponsors  
21 submitted signed petitions to the Secretary of  
22 State. And as I recall Mr. Wong's representation,  
23 that was a total of 378,000 signatures, something  
24 like that. I apologize if I got the number wrong.  
25 The Secretary of State certified the petitions on

1 July 27 for the purpose of placing Initiative 1639  
2 on the ballot.

3 At issue this morning is whether those  
4 signed petitions, as certified, violate statute  
5 and/or the state constitution. Frankly, this  
6 court does not struggle with this issue. When I  
7 read the initiative when I read the petition, as  
8 it was included on the reverse side of the  
9 petitions, and then when I read the law, it became  
10 apparent to me that the petitions do not comport  
11 with RCW 29A.72.100. That statute provides, in  
12 part, that each petition at the time of  
13 circulating, signing, and filing with the  
14 Secretary of State – I'm going to emphasize  
15 certain words that cannot be reflected in the  
16 transcript when this matter is reviewed by a  
17 higher court, but I'll do it nonetheless – must  
18 have a readable, full, true, correct copy of the  
19 proposed measure on the reverse side of the  
20 petition.

21 The petitions at issue do not contain,  
22 first, a readable copy. Ladies and gentlemen in  
23 the courtroom, I'm showing you what the petition  
24 looks like. I have 20/20 vision. I can't read  
25 it. And I don't mean that to be facetious. I

1 simply cannot read it. Moreover, it is not a true  
2 copy. It is not a correct copy of the proposed  
3 measure. For whatever reason or reasons, the  
4 sponsors, or whomever they entrusted to put this  
5 process together on their behalf, chose to use 11  
6 by 17 inch sheets. And that was not the only  
7 option available to them.

8 The text of the initiative as filed by the  
9 sponsor included proposed deletions via  
10 strikethroughs, double bracketed parentheses so as  
11 to indicate offsets and underlines. The text on  
12 the reverse side of the petition does not include  
13 deletions and underlines. It is not a replica of  
14 the text contained in the petition filed with the  
15 Secretary of State.

16 Yesterday, when I was putting some notes  
17 together, I enlarged the text on the back of the  
18 petition just for the purpose of determining  
19 whether I could see double parentheses. They are  
20 in there. I highlighted some of them just to make  
21 certain that there are double parentheses in  
22 there. It begs the question of, what do those  
23 double parentheses mean. There are no  
24 strikethroughs or underlines.

25 The court found itself asking,

1 rhetorically, perhaps, why AAP Holding Company  
2 and/or others chose to do it this way. Perhaps  
3 we'll never know.

4 But what is compelling to the court is that  
5 at some point during this process, prior to the  
6 27th of July, the Director of Elections of the  
7 Office of the Secretary of State brought those  
8 concerns to their attention, notwithstanding the  
9 fact that she didn't have to, and neither did the  
10 Secretary. And that is indicated in the  
11 declarations, plural, of Ms. Augino, who is the  
12 Director of Elections for the Secretary of State.  
13 Her declarations were both compelling to this  
14 court and instructive and very helpful for the  
15 court to understand the process of the Secretary  
16 of State, and perhaps most importantly or more  
17 importantly, what the Director of the Office of  
18 Elections did in this particular case.

19 Ms. Augino advises that when reviewing the  
20 back of the petitions, her staff noted that the  
21 text on the back was printed differently from the  
22 text as originally submitted to the Secretary of  
23 State's Office. Those concerns were raised to the  
24 Petitioners. Ms. Augino's declaration notes,  
25 where Initiative 1639 amended an existing section

1 of a statute, there was no way for a signer to  
2 know what words were ones that the initiative  
3 proposed to add in contrast with what the existing  
4 law already said. Initiative 1639 proposed to  
5 delete some words from existing law. And while  
6 those words were contained in double parentheses,  
7 there is no notice to the signers about what the  
8 double parentheses might mean. Rather than print  
9 the petition sheets in large booklet form, in this  
10 case, the paper was on 11 by 17 inch, "making the  
11 font of the initiative text so small that it was  
12 doubtful that the text was readable for most  
13 people."

14 It's not readable to me. I don't know  
15 whether I'm most people. I can't read it.

16 The court is not persuaded by the argument  
17 that substantial compliance is the proper  
18 analysis; rather, the court believes that it has  
19 an obligation to require strict compliance with  
20 the initiative process. Mr. Wong very eloquently  
21 and articulately mentioned in his argument, kind  
22 of in passing, that the initiative process must be  
23 vigilantly protected. This court agrees with  
24 that. It is the hope of this court that everyone,  
25 not just in this courtroom, but every voter of

1 this state understands that, appreciates it, and  
2 believes in it.

3 There is no proof in this record that any  
4 of the voters that signed this petition were  
5 misled or deceived. That's not the issue. The  
6 issue is whether the text is true, accurate,  
7 correct, and readable. And it isn't.

8 The argument with respect to the breach of  
9 duty, I guess, alleged against the Secretary of  
10 State is not persuasive. This court finds that  
11 the Secretary of State did exactly what she was  
12 supposed to do. RCW 29A.72.170 provides the  
13 Secretary of State with very limited authority.

14 "The Secretary of State may . . ." as  
15 opposed to "shall" or "must," refuse to file any  
16 initiative if it does not include certain  
17 information or does not include sufficient amount  
18 of signatures or the filing period has expired.

19 Noncompliance with RCW 29A.72.100 is not a  
20 basis for the Secretary of State to reject a  
21 petition. In fact, there is a long line of cases  
22 that clearly stand for the proposition that the  
23 Secretary of State would be in violation of the  
24 law if she or he did otherwise. The people of  
25 this state have a constitutional right to engage

1 in the initiative process. Our state, our  
2 communities benefit from that process. There are  
3 literally -- not literally, but almost literally  
4 countless instances of that process that have  
5 benefited our state and our citizens.

6 This court has the duty to ensure that the  
7 process complies with the law. Voters have a  
8 right to know. Sponsors have a corresponding  
9 obligation to provide what the initiative seeks to  
10 accomplish. A full, complete, and readable  
11 proposed initiative serves those rights and those  
12 obligations. Otherwise, there is no assurance  
13 that voters would know what the proposed changes  
14 were.

15 The text on the back of these petitions do  
16 not allow the voters to make informed decisions.  
17 For this court to hold otherwise would be to  
18 condone noncompliance with the clear provisions of  
19 the law. This court will issue a writ of mandamus  
20 to the Secretary of State to estop certification  
21 of the initiative, and I'll sign that.

22 Declaratory relief is not appropriate, and an  
23 injunction is not appropriate. The appropriate  
24 remedy is a writ of mandamus. I'll sign a writ.

25 The court is aware that there are avenues



1 of appeal of this court's decision, so it is the  
2 hope of this court that the parties can agree on a  
3 language of the writ so the court can sign it  
4 today and allow the parties to seek review if that  
5 is their intention. Thank you. The court is in  
6 recess until 11 o'clock.

7 (A recess was taken.)

8 THE COURT: Thank you. Please be  
9 seated. The court will sign a writ if one is  
10 available for the court's review and signature in  
11 Ball versus Wyman, 18-2-3747-34.

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13 (Conclusion of August 17, 2018, Proceedings.)  
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